

# **Trade Facilitation Handbook**

## **Part II**

### **Technical Notes on Essential Trade Facilitation Measures**

Part II of this Handbook consists of a collation of technical notes on the most important trade facilitation measures countries should consider when reforming their trade, transport and customs operations. Written by experts in the respective areas, they provide technical and practical detail. The technical notes complement Part I of the Handbook on National Facilitation bodies, which focused on institutional structures and consensus building between government and private sector stakeholders for identifying and implementing trade facilitation measures in a given country.



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## **Note**

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delineation of its frontiers or boundaries.

The Handbook and its technical notes are intended to be guideposts for a country's reform of its trade and Customs operations and do not seek to prejudice negotiating positions of individual WTO Members.

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UNCTAD/SDTE/TLB/2005/2

## FOREWORD

Today's global economy driven by the liberalization of trade in goods and services affects countries in different ways as it generates mutations in traditional trade and logistics patterns in order to cope with growing international competition. Changes in manufacturing processes that call for just-in-time delivery, the ongoing revolution in information technology and electronic communications and the phenomenal growth in world trade are only some examples that make trade facilitation an ineluctable policy for all countries to pursue if they want to benefit from multilateral trade. It is especially relevant in light of growing South-South trade.

Cumbersome documentation requirements, non-transparent regulations, excessive delays at the border and related business losses constitute costly non-tariff barriers with the effect of nullifying much of the gains from trade due to historically low tariffs, innovations in multimodal transport or modern production and distribution methods. Developing countries are likely to benefit the most from the introduction of simple, standardized trade documents and the modernization of Customs. However, a wide gulf can exist between developed and developing and least developed countries in the area of Customs and trade facilitation due to its multifaceted nature, including trade and transport infrastructure and its technological requirements. Trade facilitation is not only a cross-sectoral discipline involving traders from all industries and various government ministries but it also depends on the condition of a country's infrastructure — be it roads, ports or Customs facilities — its human resource and revenue base, and its institutional and regulatory capacity. To modernize Customs administration and simplify trade procedures it is necessary to proceed in a coordinated and inclusive manner by involving both private and public stakeholders in devising and implementing reform measures. This interaction and dialogue between public officials and business operators needs yet to be fostered in many countries.

In carrying out its mandate to promote development through trade, UNCTAD has long been active in helping countries improve their Customs administration and trade logistics services. In particular, UNCTAD promotes the creation of national trade and transport facilitation committees where reform measures can be researched and discussed between government, trade and transport operators and the business sector, and subsequently recommended for implementation. Its technical assistance in these areas aims to enable developing countries to participate more actively in global trade.

I hope that this Handbook, complemented with technical advice on specific trade facilitation issues, will assist governments and traders alike in operating national committees in support of domestic trade facilitation reform.

Supachai Panitchpakdi  
Secretary-General  
December 2005



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## INTRODUCTION

In carrying out its mandate to promote development through trade, UNCTAD has built up considerable experience particularly in the fields of transport (policy, legal and management), Customs (implementation of reform and modernization), and trade facilitation (simplification of commercial procedures and documents). In 1999, UN/CEFACT updated Recommendation No. 4 of 1974 to promote the establishment of national organizations, or other suitable means, for implementing international trade procedure.<sup>1</sup> Subsequently, the UNCTAD Commission on Enterprise, Business Facilitation and Development endorsed in its work programme on Trade Facilitation, Transport and Logistics the elaboration of a reference document for officials and practitioners setting out the basic concepts and tools for consideration by the private and public sectors engaged in promoting and implementing trade facilitation measures in their country.

Trade facilitation measures seek to establish a transparent and predictable environment for border transactions based on simple, standardized Customs procedures and practices, documentation requirements, cargo and transit operations, and trade and transport arrangements. The cross-sectoral nature of trade facilitation calls for close coordination between traders, operators, service providers, Customs and various ministries and regulatory agencies.

The profile of trade facilitation was raised in 2001 when the WTO Ministerial Conference placed it on the Doha Development Agenda with the aim of clarifying and improving multilateral trade rules governing transparency, Customs operations and transit trade. In July 2004, the WTO arrived at an explicit consensus to start negotiations on trade facilitation on the basis of principles and modalities set out in Annex D of the July 2004 Package.<sup>2</sup> A coordinated approach to delivering technical assistance and capacity building in support of negotiations and thereafter and to conceiving and implementing national trade policies and facilitation measures constitute the underpinnings for a successful outcome of the negotiations.

Part II of this Handbook containing “Technical Notes on Essential Trade Facilitation Measures” is the sequel to Part I: “National Facilitation Bodies: Lessons from Experience” (UNCTAD/SDTE/TLB/2005/1), published in December 2005.

### **TRADE FACILITATION ISSUES AND OBJECTIVES**

Trade facilitation is a diverse and challenging subject with potential benefits for both business and government at national, regional and international levels. It involves political, economic, business, administrative, technical and technological as well as financial issues all of which converge with Customs at the border, and which must be taken into consideration when a country or region develops its trade facilitation strategy. The often highly technical contents of trade facilitation measures require the input of expert practitioners and administrators.

Most importantly, government agencies, enterprises and traders with a direct interest in improving border transactions need to cooperate in the planning and implementation of reform measures, innovations and regulations. Experience has proven that public-private partnerships are vital to both pinpointing the requirements of traders and government and implementing any relevant national or international measures to improve border transactions.

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<sup>1</sup> UNECE Recommendation N°. 4 — National Trade Facilitation Bodies (ECE/TRADE/242), 2001, available at the following URL: [http://www.unece.org/cefact/recommendations/rec04/rec04\\_ecetrd242e.pdf](http://www.unece.org/cefact/recommendations/rec04/rec04_ecetrd242e.pdf).

<sup>2</sup> [http://www.wto.org/english/tratop\\_e/tradfa\\_negoti\\_e.htm](http://www.wto.org/english/tratop_e/tradfa_negoti_e.htm); (WT/L/579).

Any measure that eases a trade transaction and leads to time and cost reductions in the transaction cycle fits into the category of trade facilitation. This can be done through more efficient procedures and operations — increasing value without a proportionate increase in cost, and/or through removing any dead-weight economic loss and redundancies.

Therefore, trade facilitation may cover measures regarding:

- a) formalities, procedures and documents and the use of standard and electronic messages for trade transactions;
- b) faster physical movement of goods through improvements in Customs services (transparent, predictable, uniform), the regulatory framework, and the transport and communications infrastructure; as well as the use of information technology and Customs automation;
- c) the timely discussion and dissemination of trade-related information to all concerned parties (traders, enterprises, services providers and government agencies), ideally through an established consultation mechanism, such as a trade facilitation body.<sup>3</sup>

The main objectives are to simplify and standardize documents, procedures and operations with a view to harmonizing local (regulatory and commercial) customs and practices in line with multilateral agreements, either binding (e.g. WTO rules and WCO conventions) or voluntary business standards (e.g. recommended customs and practices of the International Chamber of Commerce).

## **BENEFICIARIES**

Part II of the Trade Facilitation Handbook targets government and customs officials, traders, and transport services providers and users. In addition, professional staff from development banks, UN regional commissions, WTO and UNCTAD, including task force leaders and project and training officers, might find the technical notes helpful in deepening their knowledge as to what is required for modernizing Customs administrations and reducing trade and customs procedures and formalities to the necessary minimum. Equally, they can form the basis for stakeholder discussions in existing trade facilitation bodies, guide capacity building efforts or assist in the formulation and implementation of domestic trade facilitation measures.

## **SCOPE**

To assist developing and least developed countries in modernizing trade, transport and Customs operations and inject transparency into related transactions, encourage more trading activity, quicken the flow of goods across borders and improve revenue collection, these UNCTAD notes suggest practical steps to implement trade facilitation measures, their benefits and cost implications. The notes highlight essential issues and refer to a variety of existing conventions, instruments, and aligned documents whose application would greatly facilitate trade.

The preparation of this Handbook coincided with WTO negotiations on trade facilitation, which were to “...clarify and improve relevant aspects of Articles V (Freedom of Transit), VIII (Fees and Formalities connected with Importation and Exportation) and X (Publication

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<sup>3</sup> A trade facilitation body is “an effective forum where private sector managers, public-sector administrators and policy makers can work together towards the effective implementation of jointly agreed facilitation measures.”

and Administration of Trade Regulations) of the GATT 1994<sup>4</sup> with a view to further expediting the movement, release and clearance of goods, including goods in transit.”<sup>5</sup> UNCTAD, together with several other international organizations active in the area of trade facilitation, was called upon to help ensure the effectiveness and coherence of technical assistance and capacity building in trade facilitation ( Annex D, paragraph 8 of the July 2004 Package).<sup>6</sup>

## TECHNICAL NOTES

Many of the measures discussed in Part II are the subject of long-standing recommendations by various specialized or UN agencies, business and transport organizations or are in fact part of international conventions or agreements. However, developing and least developed countries often lack, inter alia, the resources, capacity and/or political will to embark on a full-fledged Customs reform or introduce specific trade facilitation measures. Even though the latter would ultimately yield greater benefits — in terms of higher revenue collection, smoother and faster movement of goods, less corruption, more efficient Customs operations and higher trading activity — relative to the investment costs. The prospect of enhanced technical assistance and capacity building in support of identifying individual countries’ needs and priorities augurs well for the eventual implementation of necessary measures by developing and least developed countries.<sup>7</sup>

The purpose of the UNCTAD notes, which have been drafted by seasoned experts in Customs modernization and transport, is to treat the subjects in greater depth, provide additional information or an overview of existing instruments and practices, and to bring prerequisites for implementation and their benefits to the attention of member states and other users of the Handbook.

The technical notes provide general or technical background, discuss the measure itself, its implications, implementation requirements, and highlight benefits and costs involved. They are organized around GATT 1994 Articles V, VIII and X, which at present constitute the core of multilateral rules on trade facilitation. Whatever the outcome of WTO negotiations may be in terms of additional provisions and disciplines, this Handbook and its technical notes are intended to be guideposts for a country's reform of its trade and Customs operations but do not seek to prejudice negotiating positions of individual WTO Members. Section One addresses the importance of transparency in trade-related regulations and administrative decisions to the trading community. Section Two groups measures to simplify, streamline and automate Customs administration and procedures. The third Section focuses on measures to facilitate the movement of goods in transit, which are of particular importance for landlocked countries. These technical notes (and in some cases additional background notes) of Part II of the Handbook will also be posted on the UNCTAD website.

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<sup>4</sup> The General Agreement on Tariffs and Trade (GATT) governed the multilateral trading system from 1948 to 1995, when the World Trade Organization (WTO) superseded it. GATT 1994 constitutes an integral part of the WTO Agreement.

<sup>5</sup> For the reader's convenience, relevant WTO proposals are referenced but do not, of course, reflect the outcome of negotiations.

<sup>6</sup> See Appendix I to this Handbook.

<sup>7</sup> For negotiating proposals submitted by WTO Members and a summary compiled by the WTO Secretariat (document TN/TF/N/43 and subsequent revisions), the reader can consult the WTO's trade facilitation website at [http://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_negoti\\_docs\\_e.htm](http://www.wto.org/english/tratop_e/tradfa_e/tradfa_negoti_docs_e.htm).



# Section One — Transparency, Integrity and Appeal

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## Publication of Trade Regulations and their Uniform Administration

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### Background

Timely, accurate and easily accessible information on trade laws, applicable fees and charges, customs regulations, and related judiciary mechanisms is essential for lending transparency and predictability to and promoting the efficiency of international commercial transactions by private traders, which are often small and medium enterprises (SMEs), particularly in developing countries. Dynamic growth in world trade and technological innovation require governments to adapt their trade laws and Customs regulations and operations to meet these challenges in order to derive maximum benefits from multilateral trade.

Article X of GATT 1994 (Publication and Administration of Trade Regulations) sets out comprehensive transparency obligations for WTO Members and vis-à-vis their trading communities. It lists the type of publications and measures that governments must make available to the trading community<sup>8</sup> and prohibits enforcement of modified and new measures prior to publication. It also calls for non-discrimination in administering trade regulations and for judicial redress through independent appeal mechanisms. While Article X imposes an explicit obligation on Members to publish trade regulations promptly for governments and traders to become acquainted with them, the existing provisions lack the kind of specificity and disciplines needed to operate efficiently in today's trading environment.

Easy access to trade regulations, Customs requirements, and administrative processes that apply before and during importing/exporting goods, represents both time and cost savings for traders. For many businesses the difficulty of acquiring basic trading information, for example, on how to obtain an import license and how long that would take or what fees and delays their goods might encounter at the border, might dampen their entrepreneurial enthusiasm to engage in trade. Some developing and least developed countries simply lack the resources and technology, and in some cases the political will, to make such information easily available. Even in some developed countries such information is not readily retrievable. Establishing the right channels to disseminate trade-related information through modern, transparent and simple mechanisms and procedures would not only be an incentive for more businesses and individuals to engage in trade but also save time and money at the border. However, the challenge ahead lies not only in making publicly available all trade-related information and regulations but also in simplifying existing regulations and procedures, which would make both publication and administration an easier task.

The early recognition of non-transparency as a non-tariff barrier to trade is evident from the fact that parts of Article X originate in the 1923 International Convention Relating to the Simplification of Customs Formalities. The entire Article X was part of the Geneva draft of the Havana Charter. It was strengthened with respect to notification and

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<sup>8</sup> These pertain to “the classification or valuation of products for customs purposes, rates of duty, taxes or other charges, or requirements, restrictions or prohibition on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use.” (Article X:1).

publication requirements of both general and specific decisions in the 1960s and 1970s. The 1994 Ministerial Decision on Notification Procedures incorporated the 1979 Tokyo Round Understanding and provided for a central secretariat registry of notifications and review of procedures by the WTO Council of Trade for Goods.<sup>9</sup>

A number of GATT/WTO panel rulings have since shed light on the interpretation of Article X, while exposing some of the weaknesses in its application.<sup>10</sup> Hence it is worth recounting some of the existing interpretative guidance on Article X:

- It relates to publication and administration but not the substantive contents of Members' laws, regulations and administrative rulings of general application. Any discriminatory elements therein or substantive shortcomings fall outside the scope of Article X and can be challenged under appropriate GATT/WTO provisions, unless the rule itself is administrative in nature
- The principle of “uniform, impartial and reasonable” administration of trade regulations is not necessarily violated in the case of different outcomes based on differences in the relevant facts<sup>11</sup>
- Notwithstanding that any measure of “general application” inevitably has to be applied in specific cases, Article X does not deal with specific transactions. A country-specific measure may be considered of “general application” when it affects an unidentified number of economic operators, but not when a specific shipment or company is targeted
- Internal laws on border measures or imports, such as licensing regulations for tariff quotas, fall within the scope of Article X:1 and 3(a)
- Uniform (impartial and reasonable) administration: applies to the daily application of Customs rules, trade laws and regulations; does not constitute a broad anti-discrimination principle in the sense that all Members, products, or trader should be treated equally — different products may warrant differential treatment; applies to the treatment accorded by government authorities to traders and not solely to discrimination among Members; applies to persons/traders in similar circumstances; and differential treatment may arise from different relevant factors involved in a given administrative action
- There is a linkage between Article X:1 and 3(a), concerning the prompt publication of trade regulations of “general application” and their “uniform administration” in that while Article X:1 specifically references the importance of transparency to individual traders, it is through Article X:3(a) that the real impact of a measure on traders operating in the commercial world can be examined.

In addition, some of the findings of WTO panels and the Appellate Body reveal uncertainties in Article X due to the absence of specific time limits between publication and enforcement of a law or ruling; or of rules on the simultaneous dissemination of

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<sup>9</sup> See “The Results of the Uruguay Round of Multilateral Trade Negotiations - The Legal Texts,” Decision on Notification Procedures, p.444. The Annex to this Decision contains an indicative list of notifiable measures apart from those comprised in Annex 1A to the WTO Agreement.

<sup>10</sup> See Note by the secretariat TN/TF/W/4 (a revision of G/C/W/374), which is a factual synopsis of the scope and application of Article X from a legal viewpoint.

<sup>11</sup> For examples see, inter alia, WTO Panel Report on “United States - anti-dumping measures on stainless steel ... from Korea” (Claim under Article X of GATT 1994 and Articles 6 and 12 of the Antidumping Agreement - WT/DS179/R, 20 December 2000, p. 47).

information to domestic and foreign traders and any competitive damage that traders might incur as a result; or on whether or not governments can retroactively apply restrictive governmental measures, rendering moot any prior publication of the measure.

Instances where trade regulations are not administered in a uniform, impartial or reasonable manner can often be traced to unclear information, inconsistent practices at different national border crossings, or imprecise criteria, for example, for Customs classification. Such inconsistencies give Customs officials discretionary powers that may result in decisions detrimental to the trader, especially in the absence of an appeal mechanism.

### Proposed improvements

During trade facilitation negotiations, WTO Members submitted detailed proposals to clarify and improve Article X.<sup>12</sup> They fall into the following main categories:

- Broadening the range and scope of trade-related laws, regulations and administrative measures of the types of customs procedures, administrative rulings and documentation requirements to be published, such as: conditions for different forms of customs treatment; standard processing times; penalty provisions; trade-related treaties and agreements; document formats; applied tariff rates; decisions and examples of customs classification/preferential regimes; appeal procedures and conditions for appeal; service contracts between PSI entities and governments; details of export inspection for safety standards, and management plans for implementing WTO commitments
- Ways and means of publication to make information easily accessible and in a non-discriminatory manner, including new channels of communication and publication, with the use of the internet as the prominent vehicle for dissemination. Suggestions include for the WTO secretariat to maintain a central website on trade facilitation with links to Member countries
- Additional mechanisms to access trade regulations, laws and procedures, including through the establishment of Enquiry Points. Proposals for setting up national Enquiry Points are modelled on existing provisions in WTO agreements on sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT) and Services (GATS)
- Publication of drafts of trade-related laws and regulations before their implementation, and affording the opportunity for Members and traders to comment. A reasonable interval should be fixed between publication and enforcement of new or amended measures for that purpose
- Regarding fees and charges, it has been proposed, inter alia, to prohibit the collection of unpublished fees and charges
- On ensuring uniform administration as per GATT Article X:3(a), suggested improvements involve setting up a function within government responsible for interpreting trade regulations, particularly, for example, in the areas of customs classification and valuation, where a lack of consistency abets discriminatory application

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<sup>12</sup> Please recall that when this Handbook was being prepared, WTO negotiations on trade facilitation were under way, and that, therefore, these proposals are of a tentative nature.

- New approaches to special and differential treatment, linked to individual countries' capacities and including longer implementation periods
- A tailored approach to technical assistance and capacity building based on self-assessment of countries in need.

#### Implications of proposed publication requirements

The expanded publication requirements proposed by WTO Members as part of the clarification and improvement of Article X:1 would largely lead to improvements in domestic transparency of countries' trading conditions and practices, an area that so far has been left to the discretion of sovereign governments. Publication of comprehensive information on trading conditions might not only encourage SMEs to import or export more but might also have direct benefits for various cross border transactions, reducing delays at Customs and relieving officials from having to examine, reject or reprocess faulty procedures.

Additional publication requirements, provisions and disciplines; the drafting of new measures and regulations; and the creation of channels for effective communication and dissemination of trade information may stretch the infrastructure, technological, administrative and human resources of some countries. Adequate capacity building support and technical assistance would go a long way in accompanying those countries in their efforts. At the same time, such support could provide the opportunity for authorities to focus on restructuring, updating or even eliminating obsolete trade information provided to business and WTO Members. It is important for governments to establish private sector friendly mechanisms of consultation and information gathering.

#### Aspects of Implementation

Developed countries for the most part publish detailed trade and customs information, and often that of their major trading partners, on official government websites. Many developing and even least developed countries are following suit with the rapid spread of the internet into remote corners of the world. But while websites in these countries are up and running, many tend to be skeletal with inactive links regarding vital trade information. Targeted capacity building in computer technology, replete with staff training, and technical assistance in operating software and website programming for publishing relevant trade information would be required.

Prior to implementing any of the suggested improvements so far, it is advisable for governments to embark on a stocktaking of existing trade laws and regulations in their countries. Such an exercise could be accompanied by a survey of material assembled by their trading partners on current websites to gather tips on what would be useful information. Another source for the actual functioning of a given country's trade regulations and procedures would be resident diplomatic trade missions with practical experience on the ground and local evaluation of Customs. Cooperation and mutual assistance among WTO Members towards that end would be desirable as would the involvement of private traders and operators in devising a comprehensive electronic publication policy, for example.

Trade policies, practices and measures of WTO Members are also the subject of periodic assessment in the context of the WTO's Trade Policy Review Mechanism. These reviews, published in their entirety on the WTO website, are most frequent for the largest trading nations and least frequent for developing or non-existent for least

developed countries, ranging from 2-6-0 years, respectively. The descriptive information, data, analysis and government responses to queries by other Members provide a well rounded picture of a country's trade policies, laws and regulations. Such sources of information might be of interest to developing WTO Members and international traders and could be better advertised. This, however, would presuppose a change in the reviewing frequency by the Trade Policy Review Body for developing and least developed countries,<sup>13</sup> with attendant implications for the capacity of the WTO secretariat itself to conduct more reviews. Concise summaries/lists of laws and regulations and where to consult their contents could be placed on national websites that can be clicked from the WTO main site. In addition, it would be helpful to include up-to-date information directly related to trade facilitation. The advantage would be that such information would already be in one of the official WTO languages — translation being a concern for many developing countries — although it does not address the problem of translating domestic trade laws and regulations themselves, which would pose a considerable challenge for these countries.

Setting up a special government function, as suggested in a WTO negotiating proposal,<sup>14</sup> to interpret trade regulations in an effort to ensure uniform, impartial and reasonable administration might, however, place an additional burden on some developing countries. Alternatively, any contested administrative decision is likely to be interpreted by the competent judicial organ. One can assume that with the introduction of certain automated customs procedures and formalities, improved publication practices, and judicial redress mechanisms, there will be less and less room for discretionary Customs decisions.

Preparing for any additional transparency obligations under Article X that may be negotiated will be facilitated by the detailed and specific nature of WTO proposals and active involvement of developing countries in providing input into the negotiations. Many proposals also stress the term “where possible/feasible” when suggesting comprehensive publication via electronic means and the internet. This indicates that countries in need would have the possibility to phase their compliance according to their abilities and the amount of assistance they receive. However, while the principles and modalities of Annex D of the July 2004 package for the first time incorporate special and differential treatment and technical assistance for capacity building as an integral part of each measure and country's capacity to implement, the type of measures adopted and the corresponding assistance will ultimately be decided within the context of negotiations.

With needs assessment also being an integral part of the negotiations, the time required for implementation will in a first instance depend on how quickly and accurately countries are able to assess their needs in this area; how effectively technical assistance will be employed in this exercise, and how committed governments are to modernizing their Customs procedures and operations.<sup>15</sup> The clarification and improvement of Article X and any new provisions and disciplines that might emerge from the negotiations will provide important guideposts for developing countries in meeting their

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<sup>13</sup> Currently, the frequency of trade policy reviews is based on a country's share in world trade.

<sup>14</sup> See TN/TF/W/8.

<sup>15</sup> See Annex D, paragraph 4, of the July 2004 Package. “As an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least developed countries, and shall also address the concerns of developing and least developed countries related to cost implications of proposed measures.”

transparency obligations over time in line with their abilities and will, on a piecemeal basis, improve the efficiency of a country's Customs operations and trade transactions.

### Benefits and costs

The expected benefits lie in ameliorating the conditions under which small and medium enterprises, traders and operators can effectively engage in foreign trade; speeding up the movement of goods across borders — hence increasing trade; and increasing revenue collection through Customs modernization. Indeed, the availability of accurate and timely information on existing regulations and proposed changes or innovations that reduce and clarify Customs formalities will cut transaction costs for traders and administrative costs for governments and allow them to reallocate their resources. The savings in resources and the efficiency that, for example, internet publication promises will bring direct returns to the countries in terms of improved trading opportunities.

Start up costs in terms of computer equipment and internet infrastructure and website development, training and installation are involved. These costs have dropped substantially and off-the-shelf hard and software components have become easily available. In fact, the rapid application of information and communications technology (ICT) in this area is proving to be a perfect opportunity for leapfrogging by developing and least developed countries. However, maintenance and updating of existing electronic systems, networks, and trained manpower to ensure the dissemination of trade information, the regular submission, notification and translation of trade related laws and administrative rulings might require sustained international advice and financial support. However, while internet publication and website links seem to be the wave of the future, publication of vital trade and Customs information in official Gazettes and commerce journals will continue to provide valid and essential media channels.

Bringing publication and notification methods into the internet age is a necessary process, which if delayed will only disadvantage a country vis-à-vis its trading partners. Many countries have worked with UNCTAD, UNECE, the World Bank, IMF and WCO in the past to modernize their Customs data bases and document processing. Work on trade facilitation measures is an ongoing process for most governments in their own interest; whereby WTO negotiations provide additional focus and direction in this area. Clarity of coverage and disciplines for implementation will help countries in lowering their trade barriers at the border. With capacity building, technical assistance and special and differential treatment being central tenets of modalities for WTO trade facilitation negotiations, countries may ultimately benefit from a tailor-made approach to implementing the necessary measures and infrastructure for publication.

Most of the benefits of improved transparency and accessibility of trade information are expected to accrue to SMEs who generally lack the wherewithal to search out trade laws and Customs procedures from a variety of sources when looking for markets for their products and services.

Assessment of needs and effective implementation can be measured by established websites; information dissemination (or enquiry) points; the regularity of notifications to the WTO secretariat and in other print and electronic media, as evaluated by Members and traders. Official trade gazettes, published regularly, and the scope of detailed trade information, policy decisions and agreements accessible via the internet will provide reliable assessment indicators. Equally, an inventory of existing, planned and implemented publication measures would represent a good progress indicator.

Allowing commentary by interested parties, on drafts or amendments of trade regulations might favour implementation as it would familiarise both officials and traders with the regulatory framework or other measures and presumably better reflect their needs. However, some countries might be unable to institute such a complex drafting process without external assistance. Additional requirements, such as furnishing justification for not incorporating proposed comments, would make such an exercise very cumbersome.

### Local Capacity

The primary source for assessing local capacity to meet publication requirements on trade regulations would be the Members themselves. That information needs to be complemented by institutions and governments active in providing technical and financial support in trade and Customs areas to a given country. Because of the underlying technological capacity needs for modern information and communications methods, such an assessment needs to cover not only the human resource needs for providing:

- summaries of trade laws and regulations and their translation into one or more WTO languages
- updates on changes therein
- notification to the WTO secretariat
- regular information to national Enquiry Points, and
- information and assistance to the business community and traders, including SMEs

but also physical and technical infrastructure needs, such as:

- electric power, satellite and broadband delivery systems for internet use, and
- personal computers, computer networks etc.

In the last example, it is important to evaluate the relevance of a sophisticated computer based information system in a country where private traders, SMEs and operators are not equipped in the same way, albeit, the benefit for WTO Members would be undeniable. In such a case, the burden would be on the government to reach out and inform its trading community through publications, such as official gazettes and to make available information officers to respond promptly to trade-related requests.

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## National Enquiry Points<sup>16</sup>

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### Background

Multilateral trade rules oblige WTO Members to publish promptly all trade regulations and administrative rulings of general application for each others' benefit and that of their national trading communities (GATT 1994 Article X on Publication and Administration of Trade Regulations). Suggested improvements to this Article made in the context of WTO negotiations<sup>17</sup> to ensure the ready accessibility to this type of information include the creation of Enquiry Points / Single National Focal Points / Information Centres (hereafter referred to as Enquiry Points)<sup>18</sup> Provisions for Enquiry Points already exist in WTO agreements on technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS), and services (GATS), whose function is to respond to information requests from Members and interested parties and make accessible documents on, inter alia, technical regulations, standards and conformity assessment procedures. However, the scope of these enquiry points is limited to the subject areas covered by the above-cited agreements and falls well short of the intention of the current proposal.

An Enquiry Point would constitute the officially designated medium in each WTO Member entrusted with the task of providing trade-related information, such as:

- all relevant laws, regulations, administrative guidelines, decisions and rulings of or having general application
- customs and other border-related agency processes (including port, airport and other entry-point procedures and relevant forms and documents)
- conditions for different forms of customs treatment
- appeal procedures (including standard times and conditions for appeal)
- fees and charges applicable to import, export and transit procedures and requirements
- agreements with any other country or countries relating to the above issues
- management plans of Customs and other government agencies relating to implementation of WTO commitments, possibly including standard processing times or relevant reform and modernization programmes
- all significant amendments to the above.

Such information should be provided in the simplest manner possible and be made easily available to governments and traders alike, on a non-discriminatory basis, where feasible by electronic means, and via person-to-person and on-line enquiry services, as suggested in various WTO proposals, including a timeframe for responses. An Enquiry Point should be equipped with competent staff, and the information be made available — insofar as local capacities allow — in one of the official languages of the WTO (English, French or Spanish). For some countries, translation of trade laws and regulations may be unfeasible owing to lack of resources, in which case a brief summary would be useful. In many cases, particularly in developed economies, trade-

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<sup>16</sup> Also referred to as single national focal points, information centres, and national trade enquiry points in the various WTO negotiating proposals.

<sup>17</sup> Ongoing at the time of this writing.

<sup>18</sup> Specific proposals are included in communications TN/TF/W/6, 7, 8, 10, 26, 30 and 45.

related information from partner countries is translated for the benefit of domestic SMEs. Such translations could be made available as widely as possible.

### Implications of the measure

Expediting the movement of goods to save time and costs and promote trade through Customs reform and simplified procedures will only bring the expected benefits if the pertinent information on trading is readily available, especially for small companies engaged in foreign trade. Enquiry points would serve this purpose well for all economies.

A priori costs and set-up procedures may not be too burdensome as many governments already have the seeds of an Enquiry Point either within the official organs of state or in the public or private arena.

The most complex aspect is likely to be the running of the Enquiry Point and feeding it with information. Designing an efficient tailor-made mechanism for channelling the information from its source in any of the various government agencies or departments to the Enquiry Point and making the information accessible in a readily usable form will present the biggest challenge. This can be addressed by step-by-step harmonization of procedures and formats for dealing with the information, resorting whenever necessary to examples from other countries and to the wealth of online help for data standardization and interchange (see References and Tools below).

Enquiry Points would be in a position to assume the dual responsibility of replying to border-out enquires and retrieving information from abroad in response to border-in enquiries. This implies fluid communication with corresponding offices in other countries for reciprocal enquiries.

### Benefits and costs

- Ready access to comprehensive trade information saves traders costs and time
- Traders can make quick and informed decisions on importing and exporting based on the regulations, charges, formalities and procedures involved before and at the border
- Governments benefit from more effective and efficient deployment of resources and a simpler scenario for control and compliance purposes
- Governments and traders will benefit overall from the increased transparency and integrity of the international trading system
- The end result should be a level playing field in accessing vital trade information and an overall increase in the volume and speed of trade flows.

Taking into account that Enquiry Points can be created on the basis of already existing infrastructures within the government or by taking advantage of non-government entities providing similar or complementary services, set-up costs can be kept fairly low. Online trade portals covering much of the information involved in this measure already operate in many countries; these could be built upon and restructured. Irrespective of the pre-existence or not of a suitable framework, neither the initial implementation costs nor the running costs of Enquiry Points need be high.

It is not meaningful to attempt a budgetary estimate for computer and internet infrastructure set-up costs on a one-size-fits-all basis. Suffice it to say that market prices continue to follow a downward trend and the required hardware and software lie well

within an affordable price range for most governments. Broadband internet connection may present more of an obstacle in some countries, but should nevertheless be aimed at. Assuming that in some countries the use of internet is not the customary channel through which SMEs seek information, it is important to have a small but well-trained staff available for person-to-person enquiries. In establishing the working hours of the Enquiry Point, account should be taken of business hours in different time zones. Adequate staffing provisions need to be made for collecting, sorting and storing and regularly updating the information, electronically or manually depending on the situation in a given country as well for responding to and following up on inquiries.

## Implementation issues

### *Requirements*

Transparency and easy access to trade information is in the long-term interests of all trading nations and therefore worthy of government support. The basic infrastructure requirement is a computer-equipped office plus a small staff to process the incoming information and build the databases. Access to a fast internet connection is desirable. Information sharing should take place at the national level from where trade related information should be channelled and centralized via a reliable mechanism at the Enquiry Point. Cooperation and coordination among government ministries and official agencies are essential for such a focussed undertaking.

The gradual formation of a widespread network of trade-related information providers and producers throughout the country would be desirable in order to cover all facets of trade. This network could include product quality-standard bodies, packaging associations, commercial banks and financial institutions offering trade credit, freight forwarders and shippers, customs entry and exit points, chambers of commerce and industry, trade and investment promotion bodies, academic trade-related research organizations, business schools, specific industrial/agricultural sector-related bodies, overseas commercial representatives, and export promotion agencies that are in a position to spot bottlenecks abroad and thus contribute to a solution by notifying about the inconvenience.

### *Assessment*

The successful implementation of Enquiry Points can be assessed partly through reality checks based on feedback from the business community and official foreign trade offices. However, evaluating the extent to which the accessible information is complete, transparent, updated and in a sufficiently digestible form for the end-user is not so straightforward. It is for this reason that if the implementation of Enquiry Points is really to have a dynamic impact on the international trading system then, particularly during the initial years of implementation, it would be useful for governments to undertake periodic reviews and internal audits to keep the Enquiry Point on track, remedy information gaps, implement any additional capacity building that may be needed, and generally advance towards the more efficient processing of information. In the long run, where there is no notification of complaint it may be assumed that the business community enquirer is satisfied with the quality / relevance of the information provided.

### *Local capacity to implement the measure*

The skills required for implementing the measure are not highly technical and should not be difficult to find locally — experience in foreign trade-related issues, good knowledge of English, basic computer skills. Use could be made of trained staff in

central government agencies that already work on trade issues. The skills required are not unlike those in trade facilitating organisms / trade promotion agencies, which exist in a number of countries. Any additional technical assistance and capacity building requirements can be provided in the short term by entities with long-standing experience in this field (WTO, UNCTAD, ITC, World Bank etc). Prior government surveys of ministries and agencies involved in the production and storage of trade-related regulations might prove useful in order to determine the extent of technical assistance required.

The possibility of using an already existing framework for the Enquiry Point should be carefully explored. There is not a country engaged in trade that does not already have some sort of mechanism for gathering and passing on trade-related information, whether in the public or private sector. These should be identified and their usefulness assessed.

#### References and tools available

##### *Singapore's experience in setting up a single window system for trade declarations*

In WTO communication TN/TF/W/58, Singapore provides a useful account of the country's experience with the introduction of a one-stop e-platform for customs procedures. The type of set-up used in Singapore could prove useful in designing Enquiry Points. See [http://www.tradenet.gov.sg/trdnet/index\\_home.jsp](http://www.tradenet.gov.sg/trdnet/index_home.jsp)

##### *Argentina's National Information Service on the Agreement on Technical Barriers to Trade*

Set up within the Argentine Ministry of Economy and Production in accordance with Articles [10.1](#) and [10.3](#) of the [WTO TBT Agreement](#). In addition to local information, this site also contains links to legislation from various ministries in other WTO countries, currently Brazil, Canada, Chile, EU, Mexico, Uruguay, and USA, classified by month; and links to sanitary and phytosanitary information. See <http://www.puntofocal.gov.ar/>

##### *Legislative search engine in Argentina*

Again in Argentina, the website of the Ministry of Economy and Production has a search engine for locating all legislation, resolutions, decrees, etc. published in the official government gazette. A trade-related filter of this type of centralized information would usefully serve the purposes of an Enquiry Point.

See <http://infoleg.mecon.gov.ar/default1.htm>

##### *World Trade Point Federation*

One existing global set-up that could be exploited, or certain organizational parts of it emulated, is the Trade Point network of the World Trade Point Federation. The advantage of this network is that it comprises physical local offices with global virtual reach. Already geared to providing trade-related information to SMEs the world over, Trade Points could be converted into precisely the kind of Enquiry Point needed to centralize official information within the scope of the present context and make it accessible in a user-friendly form throughout the Trade Point network, currently active in over 80 countries. See <http://www.tradepoint.org>.

##### *WTO website providing contact details of Enquiry Points set up Articles [10.1](#) and [10.3](#) of the [WTO TBT Agreement](#)*

See [http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_enquiry\\_points\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_points_e.htm). See also the Organization of American States website listing (and linking to) all the Enquiry Points

informed by countries of the Americas within the context of the same Agreement.  
[http://www.sice.oas.org/tbt/inq\\_e.asp#arg](http://www.sice.oas.org/tbt/inq_e.asp#arg)

#### *UNLK*

United Nations Layout Key for Trade Documents (UNLK/ ISO 6422) integrates a set of international standards and codes for designing aligned series of forms using a master document. It can also be used to design screen layouts for the visual display of electronic documents. See [www.unece.org/cefact/recommendations/rec\\_index.htm](http://www.unece.org/cefact/recommendations/rec_index.htm).

#### *UNTDED*

The United Nations Trade Data Elements Directory (UNTDED, ISO 7372) contains standard data elements for use with any method for data interchange on paper documents and other means of data communication. See [www.unece.org/cefact](http://www.unece.org/cefact).

#### *UN/EDIFACT*

United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT) is a set of internationally agreed standards, directories and guidelines for the electronic interchange of structured data, in particular that related to trade in goods and services between independent, computerized information systems. See [www.unece.org/trade/untdid/welcome.html](http://www.unece.org/trade/untdid/welcome.html).

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## Electronic Media in Trade-related Publications

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### Background

At the planning stage of any international trade project, to assess the feasibility of the operation, the exporter and trade supply operators would need to know the rules of the game, potential costs, average time for different formalities and risks involved. In other words, the trader is interested in transparency and predictability. Therefore, they need reliable, specific and easily accessible information before initiating operations and, later on, a transparent flow of products, during the transport process, in transit and at their final destination, consistent with the published information. Article X of the GATT 1994 requires that WTO Members publish all laws, trade regulations, judicial decisions and administrative rulings of general application “in such a manner as to enable governments and traders to become acquainted with them.” This Technical Note analyses how this information on trade requirements and procedures can be made easily available to interested parties in advance.

In order to facilitate international trade in today's global environment, transparent and efficient border measures are needed. Access to advance information on the formalities involved at different stages of trade operations is as important as simple and harmonized procedures. A useful way of publishing these formalities implies more than having access to a rough and heavy set of local documents. It requires a prior effort of streamlining and harmonization of those formalities in line with the improved texts of GATT Articles V, VIII and X (currently under negotiation), as well as an organized set of documents easy to browse and search from a single national inquiry point (SNIP).

Such information normally includes:

- Customs regulations (procedures, customs valuation and tariff classification, duties and charges, conditions and qualifications for different forms of customs treatment; measures against illicit traffics, appeal mechanisms)
- Maritime transport and port regulations (FAL, safety, environment protection, security, dangerous goods)
- Sanitary and phytosanitary procedures
- Immigration requirements (crew, drivers, tourists, traffic of undocumented persons, stowaways, persons rescued at sea)
- Road transportation directives (vehicles, containers, drivers, dangerous goods, security, insurance, mandatory routes, escorted convoys)
- Aerial transportation directives
- Special security and anti-terrorism measures
- Bank, insurance and currency exchange requirements
- Facilitation instruments in operation (electronic transmission of documents, single window, single Enquiry Points for trade information, pre and post arrival inspections, advanced binding rules)

- Statistical information on charges, average waiting time, usual queues, winter closures of border passes, availability of services, references on fuel costs, all multilateral, regional and bilateral agreements affecting international trade policy.

Consequently, the amount and size of the texts to be published is voluminous per se and could amount to thousands of pages and, unless additional measures are taken, this information may be poorly organized and may be frequently incomplete and sometimes unreliable. Therefore, the large amount, and sometimes low quality, of information may be unpractical for users intending to discern the actual regulations applicable to their specific trade operation. Also, the costs and difficulties for its publication, translation and processing would be excessive.

The simple use of electronic means will not actually solve the problem. Therefore, before publishing, the preparation, streamlining and harmonization of the information are necessary conditions and highly beneficial prerequisites, aligned with WTO obligations and rules.

#### Advances in streamlining and simplification of national regulations

Several countries of different regions of the world have recognized limitations and deficiencies in their current trade regulatory environment. Outdated and poor quality regulation act as a brake on trade and business innovation whilst also failing to provide intended protections for citizens. Therefore, these countries have developed national campaigns and plans for better regulations, in order to maximize net benefits from regulations and impose the smallest possible economic and paperwork burden on the users and public.

#### Examples of plans for better regulation

The UK Better Regulation Plan is based on principles of good regulation, such as proportionality, accountability, consistency, transparency and targeting.

The Mexican Program for Simplification of Regulations 2001–2006 aims to avoid obstacles to business innovation, strengthening democratic development, create employment and, favour investment and economic growing in the long term. Their strategy is to create and maintain a transparent regulatory environment that stimulates a competitive business environment through accepting six challenges:

- Avoid obstacles and facilitate the creation and operation of small and medium size enterprises (SMEs), including their efficient participation in international trade.
- Assure that benefits of better regulation reach the business and trade operators and consumers
- Training human resources and achieve the internalization of better regulations in the government bodies.
- Establish a new form of governance based on analysis, transparency and public participation, reducing corruption; and
- Strengthening democratic development and the state of law.

The Program for Simplification of Formalities, developed by the Costa Rican Commission on Better Regulation, is progressing in the same direction, looking for efficiency, effectiveness and balance.

## Proposed plan for streamlining and harmonization of legislation

According to successful experiences, the following principles should be considered:

- Since the regulations to be streamlined cover a variety of subjects, each government's trade authority should contribute with their own tasks, under the coordination of a national authority at the highest level, such as:

agree on common terms of reference, working principles and criteria for the streamlining process, in close consultation with trade operators and in line with international trade rules, conventions, guidelines and instruments of WTO, WCO, IMO, ICAO, UNECE/CEFACT, UNCTAD, etc, as references

perform a preliminary simplification and harmonization of the rules and procedures in their particular field of competence

create the Single National Inquiry Point (SNIP)

- Computing systems will be a highly valuable tool in the streamlining process but beforehand it is necessary to convert paper texts of regulations into digital formats.
- Once all documents of trade regulations are in digital form, they can be browsed with computers, searching for texts related to specific subjects or keywords. This will help, for example, an interagency expert group to identify inconsistent, obsolete, overlapping, and redundant texts for eventual removal, and to extract essential measures to ensure efficient trade operations.
- After this cleaning process, the validated texts could then be subject to a harmonization process by comparing them with the texts of current international regulations. This could prove to be a valuable opportunity for the improvement of current national regulations to meet international standards.<sup>19</sup>
- The final texts can then be organized into a national trade code, based, for example, on WTO recommendations.
- Finally, as a joint effort, all government agencies involved together with private operators and policy makers, should request the prompt adoption and insertion of the new code into the national legislation, superseding the previous trade regime and allowing for an advanced enforcement through administrative provisional directives.

## Advantages of the streamlining and harmonization process

- Trade legislation would be modernized and free of outdated and useless requirements, with a positive impact on trade operations, appeal mechanisms, tribunal rulings, etc, in terms of costs and time
- The use, management and translation of these texts, greatly reduced in number and length, would be facilitated. In fact, without the prior filtering and reduction of existing laws, regulations and administrative rulings, these tasks could be hardly accomplished

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<sup>19</sup> See WTO proposals TN/TF/W/17, 28, 30, and 39.

- By allowing a comparative analysis of national legislation of a group of countries or region, or negotiating free trade agreements, the harmonization and compatibility of such regulation will be much facilitated
- The costs of these processes would be largely exceeded by their broad benefits.

**The UK case: "Less is more"**

'The potential economic gains from stripping away unnecessary regulation are enormous. The Better Regulation Task Force (BRTF) has estimated that changing our approach could boost British national income in the long term by 1% of GDP — a huge gain of around £10bn for the UK economy. (John Hutton, Chancellor of the Duchy of Lancaster, 2005).

**Attributes of information to be published**

In order to be useful, transparent and to avoid eventual discrimination, fraud and corruption, the information on national trade regulations to be published should be:

- Comprehensive (covering all applicable trade regulations of a given country)
- Reliable (only authoritative texts of the publishing State, currently in force)
- Suitably structured (the Code should be structured following defined standards, model, formats, categories, etc, prepared by WTO, to facilitate the search of information)
- Suitable for uploading on the internet and subsequent downloading by users
- Reasonable in size, to be translated at affordable costs.

**Digitization of trade regulations texts on paper**

Many developing countries still have a significant part of their regulations in paper format, or in old digital formats. This will impede or significantly reduce their practical use in trade facilitation efforts, including their streamlining and subsequent internet publication. Therefore, the digital conversion of these texts is a priority.

Document digitization is a process developed for several purposes, and different techniques are available for specific needs. Large libraries and archives have been active in this process for preservation purposes. The main internet search engines, Google and Yahoo, are also involved in large digitization projects with main libraries, related to the access to books through the digital media.<sup>20</sup> Although the concept is apparently the same, digitization of national trade regulations is a rather simple technical process, without all the complexities related to digitization for preservation or involving copyrights. Therefore, the experience gained by these libraries could be very useful for the digitization of trade regulations.

The most used digitization technique is to scan the texts, converting them into digital images and then use Optical Character Recognition (OCR) techniques to convert the image into a digital text document. However, where labour costs are low, manual retyping is a valid option, and in some cases dictation of texts combined with voice recognition capabilities could be an option too. Technical assistance in this area from competent international organizations could help establish best conversion options and

<sup>20</sup> "Google shook up the worlds of publishing and library science last year when it announced it would digitize millions of books from several of the world's greatest libraries — including Oxford's Bodleian Library and the New York Public Library — and make their contents searchable on the Web" (MIT Technology Review, 20 October 2005).

explore the advantages and economies of scale of creating sub regional centres for digitization.

As a provisional facilitation measure, some countries (Senegal et al.), propose to accept simply scanned documents (equivalent to a digital photocopy) as a valid documents in trade formalities. However, images of scanned documents do not allow for a computer assisted streamlining and searching process, although they can be published on the internet.

#### Single suitable option for publication

Considering the needs of trade users, the selected media for publication should comply with the following qualifications:

- Easy and inexpensive publication (installation) and maintenance by the single national inquiry point
- Easy access, download and printing, even for remote users (WTO Members, trade operators, national entities, border agencies, etc)
- In case of a paper publication, physical distribution to local and remote users and periodic printing of updates should be considered. Also, English versions would be needed. Therefore, the printed option may represent low initial investments, but high operating costs and limited reach to users
- Consequently, a webpage would be the preferred option for publication of trade regulations. This includes the use of fast computers; fast and cheap broadband internet access; full connectivity from remotely located border agencies (single windows); efficient software for browsing and searching; restricted access for its maintenance and qualified computer operators. In this context, the harmonization software should be promoted for access and processing of published trade regulations
- internet use by SMEs in developing countries and, particularly, least developed countries, though still low, is on the rise. UNCTAD is committed to capacity building in the use of internet and information and communication technologies in support of their integration into the multilateral trading system<sup>21</sup>
- Since the ultimate objective of this measure is to allow for an easy search of national databases of trade related information, the effort should go beyond and include the development of special software for simulations of trade operations, where users can enter a given country's actual trade information available on the internet. This would allow an interested party to test the economic feasibility of a specific trade project in advance in different countries based on different requirements and costs. The potential use of such a tool could be invaluable for trade facilitation, increasing transparency in trade formalities and assisting users and governments in:
  - business decisions relating to a particular trade operation
  - advanced clearance of cargo invoices
  - automatic or computer assisted advance rulings

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<sup>21</sup> See “Use of the internet for efficient international trade. Guide for SME managers” — UNCTAD/SDTE/TIB/2003/3, 17 March 2004.

- inspections at the borders and pre and post inspections
- appeal processes, and
- reducing risks of discrimination, fraud and corruption.
- Although access to published trade regulations should be free, WTO Members could evaluate, as a differential treatment measure, the possibility of funding the implementation costs by allowing the least developed countries to charge for this information in a suitable manner
- The creation of the SNIP is a necessary complement to the publication effort
- Training programs for government computer operators would be needed to familiarize them with the following matters:
  - development and maintenance of a national webpage at the SNIP
  - development and use of electronic transmission systems to link the SNIP with each national border agency
  - use of general or dedicated software to access, process and download trade information from the SNIP webpage of a particular country. This may eventually include the use of the trade simulator suggested above
  - use of a special form to request advance rulings on a specific trade operation
  - government use of the system to process and authorize requests from advance rulings, creating a data base of rulings adopted
  - generation of trade statistics as well as indicators of costs, charges and productivity of border services
  - familiarization with computer applications related to electronic transmission and clearance of FAL forms and other documents related to cargo, vehicles and persons entering ports, border points, or transit operations; integrated border management and the single window.

#### Suggested tasks for WTO in the development of this measure

In order to avoid duplication and enhance harmonization and economies of scale, some aspects of the development and implementation of this measure could be better accomplished in a collective and centralized manner, for example, through WTO. Members may perceive the advantages of collaborating with other international and private bodies active in trade facilitation to develop:

- Guidelines for drafting a national trade regulations Code (including the Code content, alignment with selected international regulations, structure and categories, development issues, electronic management)
- Guidelines for the streamlining and simplification process of trade regulations and formalities (criteria for discarding, adaptation and integration of texts, use of computers in this task, useful references for harmonization)
- Guidelines for the establishment and operation of the SNIP
- Centralized translation capacity to assist less developed countries in translating the refined texts of their national trade regulations into English. This will enable international trade operators and interested parties to consult national regulations

- Recommendations for the digitization of paper-based regulations. Also, advantages of creating sub regional centres for digital conversion should be assessed
- Definitions for the hardware, software and minimum internet requirements for the streamlining, digitization and publication of trade regulations in the least developed countries
- Assessment criteria for the usefulness of a global trade simulator to assist countries and trade operators in searching and analysing the applicable regulations for a particular trade project in one or more countries and facilitate their business decisions
- Technical assistance missions to least developed and some developing countries, in all the fields mentioned above

While most developing countries could probably afford to finance the implementation of the essential phases of the publication process in line with GATT 1994 Article X obligations and recommendations, some of them and the least developed countries will require external cooperation in the following areas:

- Technical advisory missions to assist the relevant government agencies to undertake their streamlining and simplification process of trade regulations and a subsequent integration and harmonization
- Translation of their regulations from the local language to English
- Technical assistance to develop and operate their SNIP and the creation and maintenance of their webpage containing the national trade regulation code, including the necessary computer facilities
- Training government officials in the different areas related to publication of trade regulation, ideally in a broader context of trade facilitation measures, including the use of electronic means in the transmission, reception, processing and clearance of trade documents and forms
- Training local exporters of least developed countries in the use of electronic media for trade inquiries and transactions including, eventually, the use of the proposed trade simulator
- Provision of the needed computer systems<sup>22</sup>
- Considering the amount of information to be published, connectivity to a fast broadband provider is essential.

As a reference, for large libraries in the US, the cost of quality digitization, for full text searching and analysis, is about US\$ 8.25 per page.<sup>23</sup> This means that 500 pages would cost about US\$ 4,000.

Recurrent costs of the measure would arise from periodic training, upgrade of hardware and software, refining the streamlining process, and additional translations, for example.

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<sup>22</sup> Of the total cost of information and communication technology, hardware (computers, printers, networks, scanners, hard disks, etc.) represents 38.5%, software (operative systems, applications, utilities) 20.3% and services (planning, implementation, support, maintenance, training) 41.2%. (*R. Stevenson, International Data Corporation, 2005*).

<sup>23</sup> *Digitization Costs & Funding*, Digital Workshop Library, Indiana, 2003  
<http://www.dlib.indiana.edu/workshops/alioc03/costs.pdf>.

## Local capacity to implement the measure

As a result of deficient practices in generating laws and regulations, many developing and least developed countries currently do not have their trade regulations prepared for direct publication on the internet.

A few countries have begun the simplification and harmonization of their legislation, partial digitization of old regulations, creation of their SNIP and subsequent internet publishing of their regulations. However, the information often found is still voluminous, incomplete, dispersed over several web pages (each border agency has one) and the download mechanisms are not always user friendly. Several countries are working on improvements in these areas, but the great majority of countries, especially developing nations, are not, and many may not have the capacity and required level of governance to implement the measure in the short term.

The current differences in access to digital resources that separate “digital have” countries from “digital have not” countries (global digital divide), surprisingly enough, may not pose an obstacle to the implementation of this measure because, even in least developed countries, border agencies have some form of internet access, albeit via a limited broadband connection.<sup>24</sup> Therefore, as with other facilitation measures, if proper technical assistance mechanisms are developed pragmatically and focus on capacity building, the worldwide implementation of this measure could be feasible.

An option for WTO to consider is the hosting of national web pages of least developed countries on its website in which case these countries would only need to ensure the update of their own webpage.

## Conclusion

It is worth reiterating that direct publication of national trade regulations will only be useful if the relevant information has been streamlined, harmonized, standardized and digitized beforehand. In the medium and longer term, as harmonization of domestic trade regulations and procedures and the use of international regulations and standards take hold, national regulations will consist of an increasing proportion of common regulations. These might eventually be fully integrated into the body of WTO rules, allowing countries to reduce their publication to a limited number of specific regulations, procedures and formalities that differ from global regulations.

## References

WTO <http://www.wto.org>  
UNECE/ UNCEFACT <http://www.unece.org/cefact/>  
WCO <http://www.wcoomd.org/>  
UNCTAD <http://www.unctad.org/>  
GFP (Global Facilitation Partnership) <http://www.gfptt.org>  
ITU <http://www.itu.org>

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<sup>24</sup>The worldwide number of PCs in use surpassed 820 million in 2004 and is projected to top 1 billion in 2007 (150 million will correspond to developing countries). *Computer Industry Almanac*, March, 2005.

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## Integrity and Ethical Conduct of Officials

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### Background

The administration of trade regulations and Customs procedures requires of government agency staff and Customs officials a high level of integrity and professionalism in their dealings with members of the public, traders and other government officials. However, complicated and unclear procedures often tempt Customs officials and operators to take discretionary actions, exercise favouritism or engage in corrupt transactions. To maintain and reinforce competent and ethical behaviour of public servants it is essential that each government provide a code of conduct that sets out standards of behaviour, rights and obligations in respect of the exercise of their public duties, and disciplinary measures in case of non-compliance.

WTO Members must ensure that their trade-related laws, regulations, decisions and rulings are administered in a “uniform, impartial and reasonable manner” as per Article X:3(a) of GATT 1994 (Publication and Administration of Trade Regulations). In this context and as part of the ongoing negotiations on trade facilitation, WTO Members have submitted proposals that address the need for improved ethical guidance and conduct of border agency officials and legal redress mechanisms in case of malfeasance.<sup>25</sup>

Apart from general provisions on loyalty, efficiency and effectiveness, codes of conduct for Customs officials would emphasise the central importance of integrity, fairness and the principle of impartiality and non-discrimination in the administration of Customs laws and regulations. Such a code would also define unacceptable types of actions like, for example, undue preferential treatment of any group of individuals, abuse of authority, and acceptance of gifts or benefits. Provisions more specific to Customs may also prescribe the conduct of Customs officials when dealing with the business community; their involvement in procurement, business interests and government contracts; concessions and discounts offered to members of Customs; involvement in private financial transactions; handling official money; specific official identification and dress code. Most importantly, officials need to receive proper training to enable them to administer statutory Customs procedures and formalities.

Most countries have comprehensive codes of conduct in place setting out clearly and consistently the functions and duties for all categories of public officials. Some of them have specific codes of conduct for high, medium or low-level officials. Others have codes of conduct for specific categories of public officials. Most countries incorporate such codes or similar provisions in their domestic laws or administrative policies. For countries applying such codes, see the report by the UN Economic and Social Council entitled *Implementation of the International Code of Conduct for Public Officials*, based on information from 54 States.<sup>26</sup>

Customs officials should also be held accountable for their actions. Usually, statutory enforcement of code violations and disciplinary action are anchored in domestic laws or regulations, in a specific code of conduct, or in both.<sup>27</sup> Such actions and decisions might also be open to judicial review. Sometimes provisions for disciplinary measures for illegal or unethical behaviour may not be explicit but implied in the general principles

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<sup>25</sup> See WTO submissions TN/TF/W/8 and 60.

<sup>26</sup> E/CN.15/2002/6/Add.1, paras. 5-11.

<sup>27</sup> *ibid.*, paras. 25-28

set out in the code of conduct. In cases of serious misconduct amounting to unlawful behaviour, criminal sanctions may be envisaged under domestic law.<sup>28</sup>

While a Customs code of conduct may contain references to disciplinary measures and penalties pertaining to illegal or unethical behaviour of officials, they tend to be unenforceable unless supported by appropriate legislative and administrative provisions.

An effective way of minimizing the potential for arbitrary or illegal Customs actions is through the introduction of Customs automation and computerization. Establishing coordination and control mechanisms between Customs administrations and organizations responsible for ethics policies in Customs services could also prove to be effective.<sup>29</sup>

Many countries offer training in ethics and professional behaviour to their public officials at least once at the beginning of their service. Such training is provided either by the individual institution or office employing the official, or by a specific agency within the government.

### Benefits and costs

Adoption of measures that both increase Customs officials' awareness of integrity and provide for greater accountability would benefit Customs administration in general and provide officials with the necessary tools and education to administer customs rules in a more efficient, transparent, and impartial way.

Financial benefits could be considerable for both governments and companies, especially small and medium enterprises in developing countries that have few alternatives when confronted with unethical or unlawful customs practices. In the longer term the proposed measures could yield overall economic benefits in terms of higher revenue collection, more trade and respect for the rule of law.

Implementation costs of some of these measures would invariably depend on the conditions in a given country. Some developing countries and LDCs in particular may have to incur costs for the following tasks and items:

- Drafting of codes of conduct for Customs and other government agency officials
- Adjusting and amending the legislative and administrative frameworks governing the conduct of officials and employees
- Training of respective officials
- Professionalizing customs services
- Introducing efficient coordination and control systems, etc.

### Implementation of the measure

In order to effectively implement the proposed measures, codes of conduct for Customs officials would need to be introduced, and incorporated into respective national legislations or administrative frameworks. This might require adjustments of existing legal and administrative provisions or addition of new ones, in order to make the provisions of the code enforceable. Also, provisions containing requirements for the

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<sup>28</sup> WTO submission TN/TF/W/60 proposes that a “*system of penalties*” be established as part of a country's Customs legislation and that “*offences by customs officials be considered as criminal acts.*”

<sup>29</sup> *ibid*

training of officials would have to be introduced in the national legislation. Institutional adjustments may also be required, including in relation to coordination and oversight mechanisms, training and computerization.

In this context, compiling information on the situation of individual countries, including the relevant applicable domestic and international legislation, would be a first step in the right direction. This could be initiated by the countries themselves, and supported by international organizations through technical assistance and capacity building, if necessary.

#### Relation to other trade facilitation measures

Maintenance and reinforcement of integrity and ethical conduct among officials is closely related to other measures aimed at securing uniform, impartial and transparent administration of trade regulations, including the right of appeal. Proposed measures related to automation, computerization, reform and modernization of Customs functions may also play an important role, as opportunities for corruption and unethical behaviour thrive particularly where outdated and inefficient Customs practices are used.

#### References and available tools

##### *United Nations International Code of Conduct for Public Officials*

In view of the serious problems posed by corruption, the United Nations General Assembly included in one of its resolutions (A/RES/51/59 “Action against corruption,” 12 December 1996) an annex entitled *International Code of Conduct for Public Officials*, which contains some basic principles.

##### General principles outlined in the International Code of Conduct for Public Officials

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.
2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.
3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

The *United Nations Convention Against Corruption*, adopted in 2003 and entering into force on 14 December 2005, contains a provision inviting states to take note of this Code and other “relevant initiatives of regional, interregional and multilateral organizations” (Article 8, para.3).

##### *World Customs Organization*

Within the framework of its integrity programme, the WCO has produced an *Integrity Self-Assessment Guide*, a *Model Code of Conduct*, an *Integrity Development Guide*, and an *Integrity Action Plan*, which is continuously updated. In addition to these global efforts, there have been many undertakings to improve integrity in Customs at national and regional levels. One of the key examples is the *Maputo Declaration*, adopted in March 2002 by the Heads of Customs across Africa.

For examples and information on codes of conduct for Customs officials adopted in various countries, see the *Compendium on Integrity Best Practices*, issued by the WCO in May 2005, available at the WCO website ([www.wcoomd.org](http://www.wcoomd.org)).

The *Model Code of Ethics and Conduct*, developed by the WCO, serves as a guide for these countries. The need for the adoption of such codes was also recognised by the WCO in its *Declaration of the Customs Co-operation Council Concerning Good Governance and Integrity in Customs*, in June 2003 (Revised Arusha Declaration). It includes, inter alia, a specific recommendation stating that “A key element of any effective integrity programme is the development, issue and acceptance of a comprehensive code of conduct which sets out in very practical and unambiguous terms the behaviour expected of all Customs personnel. Penalties for non-compliance should be articulated in the code, calibrated to correspond to the seriousness of the violation and supported by appropriate administrative and legislative procedures.”

The 11 key elements of a code of conduct for Customs officials are first outlined, and then described in detail, in the *WCO Model Code of Ethics and Conduct*. They are:

1. Personal Responsibility
2. Compliance with the law
3. Relations with the Public
4. Acceptance of Gifts, Rewards, Hospitality and Discounts
5. Avoiding Conflict of Interest
6. Political Activities
7. Conduct in Money Matters
8. Confidentiality and Use of Official Information
9. Use of Official Property and Services
10. Private Purchases of Government Property by Staff
11. Work Environment.

The *WCO Model Code of Ethics and Conduct* provides for disciplinary action for the most serious offences committed by Customs officials. It states: “All officials of Customs must comply with the law. The special responsibilities of Customs mean that offences relating to legislation that Customs administers, or has an interest in, are regarded most gravely when committed by Customs officials. Customs officials who commit offences involving, in particular: prohibited drugs; fraud; seeking or accepting bribes; or illegal importation or exportation of goods will be subject to disciplinary action, regardless of any penalties applied as a result of criminal proceedings.”

As suggested by the *WCO Revised Arusha Declaration*, disciplinary measures and penalties in case of illegal or unethical behaviour of officials would have to be proportionate to the violation.

Other relevant multilateral instruments and initiatives:

- the Inter-American Convention against Corruption, 1996;
- the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997;
- the Convention on the fight against corruption involving officials of the European Communities or officials of member States of the European Union, 1997;
- the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime, 1995

- the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption, 1997
- the Manila Declaration on the Prevention and Control of Transnational Crime, 1998
- the UN Declaration against Corruption and Bribery in International Commercial Transactions, 1996.

Other multilateral initiatives to promote rules of conduct for public officials in Customs administrations are:

Global Forum I on Fighting Corruption (1999)

Global Forum II on Fighting Corruption (2001)

Global Forum III on Fighting Corruption (2003)

Global Forum IV on Fighting Corruption (2005).

More information on these Global Forums and related documents can be found at:

<http://www.ivforumglobal.org.br>;

<http://usinfo.state.gov/topical/econ/integrity>;

<http://www.state.gov/p/inl/rls/other/21851.htm>.

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## Release of Goods in Event of Appeal

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### Background

Customs authorities do not normally release goods until all issues are resolved and any duties and taxes are paid. Delays in receiving goods due to customs clearance is a matter of concern for any company, but particularly small and medium enterprises, under the pressing demands of today's market. Such delays can arise for various reasons, including valuation problems and others not currently regulated by WTO provisions, such as classification problems and e.g. tariff heading determination, missing documents, lack of certificates of origin or health certificates, payment procedures, and in the event of an appeal of a customs decision. Many countries have solved this problem by allowing release of goods prior to the actual payment and collecting duties and taxes in separate procedures independent of final clearance.

While WTO Members are bound by Article X of GATT 1994 to maintain and institute judicial, arbitral and administrative mechanisms to ensure uniform and impartial administration of trade regulations, there are no express provisions for the clearance of goods and suspension of duty payments upon deposit of a financial security pending appeal procedures. Such a provision only exists in the case of delays in determining the customs value of goods. Article 13 of the WTO Agreement on Customs Valuation (CVA) stipulates that goods are to be released from Customs pending determination of customs value, provided the importer deposit a financial guarantee or surety covering liability for ultimate customs duties. National legislation must make provisions for such circumstances.

With the aim of avoiding delays at Customs, some WTO proposals favour the release of goods and suspension of duty payments pending the appeal of a disputed Customs decision, the finalization of customs valuation or classification, and for imports undergoing inward processing and subsequent reexport.<sup>30</sup> Such early release until resolution of disputes, valuation or classification issues would need to be backed by deposit of a guarantee or collateral security. The security instrument would be deposited with Customs, allowing them to satisfy any claims in case the trader does not fulfil his obligations. Thus, physical custody of the goods by Customs would become unnecessary, and delays in their release and delivery would be avoided. If such a measure were to be adopted, it would need to be included in national legislation.

The provision of financial security to ensure prompt release of goods is also envisaged in the WCO *International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention, 1999)*. Standard 3.41 of this Convention provides: "If the Customs are satisfied that the declarant will subsequently accomplish all the formalities in respect of clearance they shall release the goods, provided that the declarant produces a commercial or official document giving the main particulars of the consignment concerned and acceptable to the Customs, and that security, where required, has been furnished to ensure collection of any applicable duties and taxes." The Revised Kyoto Convention enters into force in February 2006.

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<sup>30</sup> European Communities (TN/TF/W/6); United States (TN/TF/W/21), Australia and Canada (TN/TF/W/19), Peru (TN/TF/W/30).

## Implications of the measure

### *Benefits*

The implementation of proposals related to release of goods in the event of appeal would bring benefits for traders and governments.

For traders, it would ensure:

- quicker release of goods from Customs
- avoidance of delays in delivery (important for just-in-time operations)
- greater predictability in Customs procedures and trade transactions in general
- greater certainty regarding shipping times and costs
- cost savings (e.g. no storage and handling fees)

For governments, it would ensure:

- financial guarantee pending appeal process
- more trust between Customs authorities and traders, hence better working relations
- improved compliance by traders with customs laws and regulations of the country

### *Costs*

For certain developing and least developed countries, costs might arise from setting up appropriate financial and banking mechanisms to hold traders' collateral security and financial guarantees until resolution of outstanding Customs or judicial investigations. This may also entail training of officers in the wider use of collateral security arrangements and in the establishment of appropriate administrative and banking procedures for the handling of financial security. However, introduction of such services will often be part of broader Customs modernization programmes, with technical assistance as needed.

### *Local capacity to implement the measure*

Based on the identification of needs and priorities, including relevant appeal mechanisms and financial arrangements for posting guarantees or sureties, possibly with the help of specialized agencies, certain countries may introduce special goods release procedures pending an appeal, or may do so in the context of a broader Customs automation programme. Special and differential treatment might be applicable as per Annex D of the WTO's July 2004 Package, allowing countries to pace implementation in line with their capacity.

## References and tools available

### *World Customs Organization*

International Convention on the Simplification and Harmonization of Customs Procedures (as amended), (Revised Kyoto Convention), 1999. ([www.wcoomd.org](http://www.wcoomd.org)).



## Section Two — Customs Efficiency

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### Levy of Fees and Charges

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#### Background

Governments are at liberty to levy a variety of residual fees and charges related to import and export procedures and formalities. Substantial differences exist between the type and amount of fees levied worldwide. While the EU does not impose fees and charges for most Customs services, other countries do. In addition, most of the fees are not published so that traders face uncertainty over the amount, the basis of the calculation, the government authority assessing the fee and the timeframe of payment. Some countries also levy fees and charges for fiscal purposes and/or to protect domestic products rather than for pure recovery of costs.

Certain types of fees and charges have a clear and justified nature, namely to recover costs related to the production and delivery of a particular service.

Article VIII of GATT 1994 (Fees and Formalities connected with Importation and Exportation) imposes a binding obligation on WTO Members that the amount of fees and charges must approximate the cost of services rendered and not serve hidden protectionist or fiscal motives. Minor breaches of customs regulations or procedures must not carry a substantial penalty, especially if easily rectified and no fraud intended.<sup>31</sup> Other WTO agreements on preshipment inspection, sanitary and phytosanitary measures, technical barriers to trade, rules of origin and import licensing also impose disciplines on certain fees and formalities, as does GATT Article V:3 (Freedom of Transit).

What is needed are objective criteria, parameters and disciplines regarding the levy of fees with the overall objective to increase transparency and reduce unwarranted and disproportionate fees and charges. In particular, the calculation of the fees and charges should: reflect the approximate cost of services rendered and undergo periodic review as to their appropriateness in light of new business practices and technological improvements. The publication of fees and charges and their regular review are also recommended, as is a ban on collecting unpublished fees and charges. Various rulings by GATT/WTO dispute settlement panels and the Appellate Body have interpreted the types of fees that can be levied and activities that could be included in calculating their cost base.<sup>32</sup>

#### Examples of fees and charges

A few examples below are presented to illustrate the nature of some typical fees and charges levied by many countries.

##### *License fees*

Payments by an importer or exporter to obtain license to import or export specific goods. When such fees are collected for fiscal reasons (hidden tax) they violate

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<sup>31</sup> Paragraph 4 of Article VIII provides an illustrative list of fees, charges, formalities and requirements, i.e., consular transactions; quantitative restrictions; licensing; exchange control; statistical services; documents, documentation and certification; analysis and inspection; and quarantine, sanitation and fumigation.

<sup>32</sup> See WTO secretariat Note G/C/W/391).

Article VIII:1. It should be noted that licensing requirements represent a major bottleneck to international trade, because of the delays — several days or even weeks — to get through the administrative formalities necessary for issuance of the license. When taken into account that there is little or no economic or commercial justification to the existence of the license, this constraint becomes merely a costly and time consuming exercise to the traders. It is sometimes maintained that licenses are used with a view to controlling the quantity of goods imported or exported. Thus it can be concluded that licenses are mostly imposed for no reason other than to collect fees (extra taxes) or for protectionist purposes.

#### *Consular fees and stamps*

Amounts paid to the importing countries' embassies or consulates in foreign countries to “authorize” or stamp the invoice for imported goods. This requirement is a remnant from the past when it was important to have the invoice authenticated abroad. In today's trading environment, such regulations are outdated and, moreover, contradict UNECE Recommendation No.18 (third revision adopted by UN/CEFACT, March 2001), Measure 3.12: “Legalization of documents (e.g. consular invoices) should not be requested.”

#### *Inspection fees*

Payment for Customs inspection of cargo, if clearance is required in a non-authorized place or undertaken outside office hours. Such fees, or overtime payments, seem to be allowed within the context of GATT Article. VIII, because the amount represents a levy for a concrete service that is only available free of charge within office hours. However, fees for general inspections, i.e. within office hours or in designated places seem unjustified.

#### *Computer fees*

A fee usually applied to recover costs related to Customs modernization, including computerization of procedures. This type of fees is warranted provided it is strictly a cost recovery mechanism to compensate for the introduction of automated procedures. The traders pay a fixed amount per transaction (transaction fee) and the revenue is accumulated in a special account and used entirely for maintenance and upgrade of computer equipment.

#### *Transaction fees*

Fees with the same function as the computer fees described above.

#### **Implications of the measure**

##### *Review of fee structures to minimize their number and diversity*

Countries considering a review of their fee structure could be guided by the following criteria to determine if fees/charges actually imposed or planned are in compliance with GATT Article. VIII:

1. The fee must represent a cost recovery mechanism rather than an additional taxation
2. The fee cannot include any element of protection of domestic production or services
3. The fee figure should be calculated as the lowest possible amount reflecting the approximate actual cost of the service rendered

4. The fee should be collected as a fixed amount irrespective of the value of the goods or the number of tariff headings declared
5. A ministerial decree should legalize the fee and clearly specify the objective and amount to be paid
6. The objective of the fee/charge should be well defined, and fees and charges collected should be accumulated in a special treasury account earmarked for this purpose, viz. overtime service, upgrading computer systems etc.

The process of determining the purpose and modalities for implementation of fees and charges should be transparent and ideally undertaken in a forum with representatives from both the authorities concerned and the appropriate trade sectors. In the interest of the government concerned and that of the trading community, a Trade Facilitation Committee would be well suited to host such work.

#### *Publication and periodic review*

Applicable fees and charges should be published through the appropriate medium (trade journal, gazette, or internet, where possible), and their appropriateness and relevance be reviewed at regular intervals. The collection of unpublished fees is unfair on traders and invites arbitrary decisions by individual Customs officials. The publication of fees and charges provides the trader with predictable costs and ensures transparent transactions between him and Customs officials.

#### **Country experience**

The following country example shows the process of defining the structure and the conditions for a cost recovery mechanism, i.e. a transaction fee related to automation of Customs clearance procedures. Provisions of GATT 1994 Article VIII were carefully taken into consideration in the process.

1. The fee amount was calculated on the basis of existing computer equipment and an estimate of the direct costs for maintenance and replacement of equipment within a reasonable timeframe, i.e. 4–5 years;
2. The fee was agreed as a fixed amount, not in excess of US\$ 5.00 per declaration with no reference to the value declared or the number of tariff headings in the declaration;
3. The fee was legalized by a decree explaining the background and the objective and setting out the amount to be paid per declaration;
4. The fee was to be collected automatically by the computer system;
5. The collected fee amount was to be accumulated in a special account in the Treasury and earmarked exclusively for maintenance and renewal of computer equipment in Customs.

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## Use of Customs Automation Systems

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### Background

Automated systems in Customs provide one of the most important tools for facilitation of international trade procedures. As a complement to Customs reform, automation becomes a catalyst for modernization of Customs and a stimulus for increased use of information and communications technology (ICT) by other government agencies and private sector stakeholders, whose activities involve Customs operations. These parties, including government agencies, importers, exporters, freight forwarders, carriers, customs brokers, terminal operators, banks, shipping and insurance agents — as eventual beneficiaries — should actively participate in an automation initiative. Customs automation mainly results in increased transparency in the assessment of duties and taxes, substantial reduction in Customs clearance times, and predictability, all leading to direct and indirect savings for both government and traders.

Automation is usually part of a Customs reform and modernization programme. It replaces the manual processing of Customs documents by computer-assisted treatment of electronically-transmitted information. Reform and modernization is not only a vector for the introduction of international standards and recommended best practices related to ICT, but also an opportunity for reviewing and aligning Customs procedures to international standards, conventions and other instruments, e.g. the revised Kyoto Convention.

#### World Customs Organization (WCO)

WCO counts more than 160 Customs administrations as members to the organization. It is the leading international institution for simplification and harmonization of Customs procedures. It plays a vital role in Customs reform and cooperation all over the world. A wide range of international conventions and standard procedures are agreed and monitored by WCO. Main examples are the Revised Kyoto Convention on Harmonization and Simplification of Customs procedures, and The Harmonized Commodity Coding and Description System (HS).

Article VIII of the GATT 1994 (Fees and Formalities Connected with Importation and Exportation) recognises “the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.” Automation of Customs and other border agency procedures goes a long way towards meeting these needs.<sup>33</sup>

### Benefits

Among the many benefits of Customs automation are the following:

- Increased collection of duty and taxes due to uniform application of the law, automated calculation of duties and taxes, and built-in security
- Enhanced revenue collection and administration controls
- Improved and timely foreign trade statistics as trade data are an automatic by-product of the system
- Less corruption due to transparency and automated procedures
- Faster release of cargo from Customs clearance

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<sup>33</sup> See WTO communications TN/TF/W/30, 36 and 45.

- Simpler procedures and documents based on international standards
- Reduced physical examination of goods
- Separated payment of duties and taxes from physical clearance of goods (under a deferred payment scheme, e.g. payment by week or month)
- Faster electronic lodgement of Customs declarations, using Direct Trader Input (DTI) or other on-line connections
- Reduced Customs audit of documents and records after release of the goods
- Readiness for introduction of e-commerce and e-governance
- Capacity building of staff and management in Customs and in the private sector (e.g. through training courses on simplified procedures and documents based on international norms, UN recommendations and WCO standards).

## Costs

Cost implications for the implementation and operation of a Customs automated system vary from country to country depending on the initial situation of the Customs administration (existing computers systems and reform programmes, e.g.) and the level of locally available professional skills to support the modernization process. Implementation costs are mainly influenced by:

- The number of international advisers and experts needed to install the basic computer hardware infrastructure and customize the key software elements to the local conditions, such as tariff structure and contents (this will depend on the level of skills available in-country, i.e. Customs advisers, ICT experts and trade facilitation consultants)
- Training needs for Customs staff and management, taking into account the likely turn-around of staff attracted by higher salaries outside Customs after becoming ICT specialists
- Procurement of computer equipment and access to telecommunication infrastructures (this component is totally dependent on the number of sites to be computerized, including ports, border offices and regional offices)
- Refurbishment of buildings at Customs headquarters and at each of the regional offices and border posts where automation components will be installed.

Experience shows that technical assistance for implementation of UNCTAD's Customs automated system (ASYCUDA) may cost between US\$ 0.5 million and several US\$ millions and take about two years. Delays can occur due to revision of legislation, construction of new office buildings, procurement of hardware, etc.

Some countries have reported substantial reductions in release times, for example, in Zambia, from 5 days to 2 hours and in Yemen, from 4 days to 3 hours. Chilean Customs was able to reduce processing an import declaration from an average 10.8 hours in the paper-based system to 2.2 hours using EDIFACT. Similarly, Customs controls based on risk management reduced the need for physical inspection by 5–12 per cent, resulting in direct cost savings for the private sector of more than US\$ 1 million a month (WTO Symposium on Trade Facilitation, March 1998).

### **ASYCUDA in the Philippines**

The Philippines undertook Customs reform in 1993 to address, among others, two major problems: (a) an unsecured collection/payment system, and (b) delays in release of shipments. The project cost US\$27 million and involved several agencies including the World Bank which lent US\$19 million for the acquisition of: (i) ASYCUDA or the Automated System for Customs Data Management, a software developed by UNCTAD, for about US\$ 6 million; (ii) the contract for a Systems Integrator and (iii) the facility for the training of 2,500 personnel. Through this reform process, the simplification of regulations and processes resulted in significant efficiency gains. Signatures required to release a cargo from the port were reduced from 92 to 5; this entailed replacing about 30 documents with a Single Administrative Document. The offshoot was a remarkable contraction of the period for processing a cargo — from 8 days to about 2 hours. The Selectivity System minimized inspection requirement to a few alerted shipments. The verification of bank remittances to the National Treasury was reduced from 4 months to 10 days. Similarly, payments of import taxes and duties to the banks can be verified in real-time, while it took 2 to 3 days before the reform. At the height of the reform, about 95% of the transactions were allowed to pass through the green lane.

The 2004 Review of UNCTAD Technical Assistance activities (ASYCUDA programme) shows that a number of developing countries are self-funding the implementation cost of the pilot phase of ASYCUDA++ (configuration of the system to local needs, installation at Customs headquarters and pilot Customs stations) with amounts approximating US\$ 600,000.

### **Implementing the customs automation systems**

Successful implementation of the Customs automation systems can be achieved only if a number of conditions are met from the outset:

- Political will and support from the government and Customs management of reforms and modernization
- Transparent and collaborative approach by project management to generate support from staff and external users, including brokers and agents (cooperation between public and private sectors)
- Phased implementation of the Customs Automation Systems
- Introduction of international conventions, standards and other instruments, including a national Customs Tariff based on the Harmonized System and a declaration based on the United Nations Layout Key (See the UN/CEFACT Recommendation 1 and Guidelines) and the Single Administrative Document (SAD)
- Review and amendment of the Customs law and other related legal instruments to ensure compatibility with the new procedures, notably electronic lodgement of clearance data and introduction of the SAD

ICT systems must be in place for countries to provide electronic connectivity.

### **Functionalities**

Customs' main functions are to control the cross-border flow of goods, ensure compliance with government rules and regulation, collect the duty and taxes dues based on the national Customs tariff, and to protect the country against importation of goods and material intended for illegal purposes, including terrorism. In this complex work, Customs administrations make extensive use of computer systems consisting of

comprehensive and integrated software packages with a number of functionalities or modules, such as:

- *Cargo control*, to monitor all movements of imports, transit and exports and ensure that all goods are duly cleared before release
- *Declaration processing*, to capture and process data for collection of duty and taxes
- *Payment and accounting*, to register and account for payments by the importers and exporters
- *Risk management*, to select those consignments with risks that may conceal duty and tax, illegal importation of drugs or material for terrorism
- *Statistics and reporting*, to extract data for dissemination of foreign trade statistics and to generate management reports for Customs
- *E-commerce*, to provide efficient gateways for communication between Customs and traders and other governments agencies
- *Intelligence and enforcement*, to store and exchange data for risk profiling and enforcement cases

Different software packages intended for Customs purposes are available in the market. The most widespread system is ASYCUDA, developed and implemented by UNCTAD in more than 85 countries. Other software products developed in the context of cooperation and partnership between Governmental institutions and business are, for example, used in Singapore (Tr@denet) and Senegal (ORBUS2000).

#### *ICT staff*

Customs automation is a highly technical and complex project. Hence ICT staff are very important in all phases of the implementation. Usually international ICT experts are included in the initial stages to build the system and to train local computer staff, who should be enticed through attractive remuneration to stay on beyond the implementation phase to provide continued expertise and maintenance.

Creation of an ICT division with the appropriate technical staff will justify an organizational body responsible for operation and support of all ICT systems in Customs. Competitive Human Resource Development packages (salary and fringe benefits) for such skilled personnel should be secured.

#### *Hardware*

Upgrade and replacement of computer equipment is a reality that cannot be avoided. Customs administration should, therefore, as early as possible, make sure that required funds will be available at the appropriate time.

Some countries have created saving accounts, through collection of a computer fee for each transaction reflecting the actual costs of system upgrade and replacement. This is a workable method, unless funds can be provided by other sources.

## References and tools available

### *WCO Revised Kyoto Convention*

The Revised Kyoto Convention of the World Customs Organizations includes Standards and comprehensive implementation Guidelines for the application ICT in Customs. See [www.wcoomd.org](http://www.wcoomd.org).

### *ASYCUDA*

The Automated System for Customs Data and Management (ASYCUDA) is a computerized customs management system, developed by UNCTAD, which is fully integrated and covers the complete clearance process. The system handles manifests and customs declarations, accounting procedures, transit and suspense procedure ASYCUDA generates trade data that can be used for statistical economic analysis. It has been implemented in more than 85 countries worldwide. A web-based version, ASYCUDAWorld, integrates the most recent IT techniques. See [www.asycuda.org](http://www.asycuda.org)

### *World Bank Customs Modernization Guide*

The Guide provides operational guidelines to deal with issues such as customs valuation, rules of origin, duty relief and exemptions, transit and security issues, and use of information technology. See [www.wcoomd.org](http://www.wcoomd.org)

### *IMF on Customs modernization*

“Changing Customs: Challenges and Strategies for the Reform of Customs Administration,” Michael Keen, ed, 2003. The IMF's main reasons for providing analysis of and technical assistance for Customs improvement as an interface between tax and tariff systems are to rationalize fiscal revenue collection and minimise impediments to trade. The IMF is one of the organizations mention in Annex D of the WTO's July Package to provide technical assistance and capacity building as part of the ongoing trade facilitation negotiations. See [www.imf.org](http://www.imf.org)

### *United Nations Layout Key for Trade Documents (UNLK; ISO 6422)*

The UNLK is an international standard for trade documents integrating a set of international standards and codes to serve for designing aligned series of forms using a master document. It can also be used to design screen layouts for the visual display of electronic documents. See [www.unece.org/cefact/recommendations/rec\\_index.htm](http://www.unece.org/cefact/recommendations/rec_index.htm).

### *UNCITRAL Model Law on Electronic Commerce*

The Model Law on Electronic Commerce by the United Nations Commission on International Trade Law provides standards by which the legal value of electronic messages can be assessed and rules for electronic commerce in specific areas, including carriage of goods. See [www.uncitral.org](http://www.uncitral.org)

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## Simplified Formalities and Documentation and Use of International Standards

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### Background

The need for simple and transparent documents, procedures and formalities to facilitate cross border transactions has long been recognised as for example in the revised Kyoto Convention of the World Customs Organization or in Article VIII:1(c) of the GATT 1994 (Fees and Formalities connected with Importation and Exportation).

Trade documents are the core means for exchanging data and information in import, export and transit transactions. Traders face a large number of documents and forms (40 on average), often containing redundant data and information (200 data elements on average). These documents are frequently not standardized, hence complex and cumbersome to fill in by traders or to check by authorities. Particularly, if they exist only in a foreign language, such documents and forms might be difficult to understand. Excessive paperwork may significantly increase the time involved in import/export and transit procedures and requires more human resources of both authorities and traders, thus raising trade transactions costs. Small and medium-sized enterprises (SMEs) are affected the most.

Simplified trade procedures and documents, aligned to international standards, are vital for addressing these difficulties, as they provide a common internationally agreed basis for the similar measures applied by different regions and countries. In addition, aligned trade documents are the first step towards automation of trade procedures and electronic documents submission.

### Benefits and costs

Among the most obvious benefits are:

- Fewer documents and forms, easy to complete
- Reduced time, money and human resources, hence reduced total transaction costs
- Harmonized data, facilitating the documents transmission between the nations, and removing language barriers
- Easy reproduction and fewer mistakes, as data is entered only once
- Improved administration controls
- Smoother transition to automation and electronic documents submission.

The necessary administrative changes implied by simplification and standardization of trade documents might involve one-time costs related to introduction of the new formats of aligned documents. This could involve an expertise for producing the national sets of aligned trade documents and computer software, which may be needed to design such aligned documents. But once the new document formats are in place, the additional costs should be minimal. The benefits in terms of faster, more accurate and more efficient Customs transactions will more than offset the costs incurred.

The Trade Documents Toolkit, which is currently developed by the UN Regional Commissions, could help trade facilitators in the near future to provide a reasonable and low-cost solution especially for developing and least developed countries and SMEs

worldwide. Prior to the process, technical assistance might be necessary for carrying out analysis and studies on some existing procedures and related documents, particularly in least developed countries. Training of Customs officials as well as users of aligned trade documents might be necessary.

### Simplified and aligned documents

#### *UNLK*

The most widely used international standard for trade documents is the United Nations Layout Key for Trade Documents (UNLK; ISO 6422). Using the UNLK ensures that the same information and data are found in the same place on all documents, and the same format is used regardless of the size of paper. Some information items and data contained in the UNLK are based on international standards such as the Code for the Representation Names of Countries (ISO 3166), Numerical Representation of Dates, Time and Periods of Time (ISO 8601:2000); Alphabetic Code for the Representation of Currencies (ISO 4217), UN/LOCODE and others.

See [www.unece.org/cefact/recommendations/rec\\_index.htm](http://www.unece.org/cefact/recommendations/rec_index.htm).

#### *Physical document layout*

The UNLK also provides a standard for the format and size of documents, ensuring compatibility between the different paper formats and sizes, e.g. between A4 used in Europe and the legal size used in the United States, one document is being printed. It also prescribes the size of boxes, margin, spacing and other requirements, which are vital for a physical document layout. On the basis of the UNLK, aligned series of trade documents and forms can be designed to permit copying from one format to the other without losing information.

#### **Example SITPRO**

The United Kingdom's trade facilitation body SITPRO was directly involved in developing the UK Aligned Series of Export Documents. It maintains those documents and licenses a network of approved suppliers to produce and supply the standard forms, computer software and laser systems to create them. This series now contains about 70 standard commercial, transport, banking, insurance and other official forms.

See [www.sitpro.org.uk/documents/index.html](http://www.sitpro.org.uk/documents/index.html).

#### *Examples of International Sectoral Documents based on the UNLK*

##### Regulatory documents:

- Single Administrative Document (European Union)
- Phytosanitary Certificate (Plant Protection Convention)
- Certificate of Origin (WCO Kyoto Convention)
- GSP Certificate (UNCTAD)
- Dangerous Goods Declaration (UNECE)
- Dispatch Note for Post parcels (World Post Convention)

##### Transport documents:

- Standard Bill of Lading (International Chamber of Shipping)
- Freight Forwarding Instructions (FIATA)

- International Road Consignment Note (CMR)
- International Rail Consignment Note (CIM)
- Universal Air Waybill (IATA)

## Requirements for Implementation

### *Key steps*

- *Take a 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. Then use international standards for essential documentation and formalities
- *Publish and make widely available* new documentation and procedural requirements.

### *Who should be involved?*

The leadership of the project involving simplification and standardization of trade documents could be provided by the National Trade and Transport Facilitation Committees (NTTFC), where they exist, in close cooperation with the public and private sector. Such NTTFCs already operate in a number of developing countries, including NTTFC of Nepal, NTTFC of Pakistan, SRILPRO of Sri Lanka, TANPRO of Tanzania, and NITPRO of Nigeria. A list of NTTFCs is available at [www.unece.org/cefact/nat\\_bodies.htm](http://www.unece.org/cefact/nat_bodies.htm).

#### **Example NITPRO**

In 2002, the Nigerian Committee on Trade Procedures (NITPRO) undertook analysis of 12 trade documents. These documents included: Bill of Lading, Invoice, Form “M”, ICO Certificate of Origin, Single Goods Declaration (SGD) Form, Packing List, Combined Transport Bill of Lading, Road Tally Sheet, Consignee Bill of Terminal Delivery Order, Quality Certificate, Certificate of Analysis, Nigerian Export Proceeds Form (NXP), Export Invoice and Certificate of Fumigation. Re-engineering of these documents, which were then aligned to the United Nations Layout Key, was carried out by the Central Bank of Nigeria, Nigerian Customs Service, Nigerian Ports Authority and Nigerian Shippers Council.

### *Simplified and standardized data and information*

A lead agency should start by collecting all trade documents used in a particular application (such as invoice, order, dispatch advice, certificate of origin, Customs declaration, cargo manifest, veterinary certificate, etc.), and select common data elements. Technical, legal, commercial, administrative and practical aspects, as well as the relevance of these data should be considered in consultation with various interested parties. As trade documents are usually structured in a “box format,” where the data is grouped in boxes, it is important to match them with the internationally agreed standard data elements, using, e.g., the United Nations Trade Data Elements Directory

(UNTDDED; ISO 7372) or the WCO Customs Data Model. To place the data elements in the documents correctly, the Box Completion Guidelines should be followed. Box Completion Guidelines help complete a specific trade document, usually accepting international standards, best practices, legal, administrative and other requirements.

#### References and tools available

##### *United Nation Trade Data Elements Directory (UNTDDED; ISO 7372)*

The UNTDDED contains the standard data elements, which can be used with any method for data interchange on paper documents as well as with other means of data communication. See [www.unece.org/cefact](http://www.unece.org/cefact)

##### *Code for Trade and Transport Locations (UN/LOCODE).*

The UN/LOCODE is based UN/CEFACT Recommendation No. 16. Through a five-letter alphabetic code it facilitates the identification of ports, airports, inland freight terminals and other locations around the world, where Customs clearance of goods can be made. See [www.unece.org/cefact/locode/service/main.htm](http://www.unece.org/cefact/locode/service/main.htm).

##### *Aligned Invoice Layout Key for International Trade*

UN/CEFACT Recommendation No. 6; on the basis of the UNLK, provides a layout for designing commercial invoices.

See [www.unece.org/cefact/recommendations/rec\\_index.htm](http://www.unece.org/cefact/recommendations/rec_index.htm).

##### *Layout Key for Standard Consignment Instructions*

UN/CEFACT Recommendation No. 22; is based on the UNLK and provides a layout for designing Standard Consignment Instructions.

See [www.unece.org/cefact/recommendations/rec\\_index.htm](http://www.unece.org/cefact/recommendations/rec_index.htm).

##### *WCO Customs Data Model*

As a global Customs standard to implement reduced data requirements and electronic submission of declarations and supporting documents forms the basis for the development of common electronic messages based on international standards. See [www.wcoomd.org](http://www.wcoomd.org).

##### *IMO Convention on Facilitation of International Maritime Traffic (IMO-FAL)*

Includes in its Standard 2.1 a list of documents which public authorities can demand of a ship and recommends the maximum information and number of copies which should be required. It has developed Standardized Forms for seven documents, including the ones for trade in goods such as Cargo Declaration and Dangerous Good Declaration. See [www.imo.org](http://www.imo.org).

##### *Trade Documents Toolkit*

A set of tools and guidelines, being prepared by UN/CEFACT, to design their national, sectoral and company trade documents and forms, based on international standards and other tools. It will also provide for a repository of trade documents used by various countries.

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## Document Requirements in Maritime Transport

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### Background

Most of the goods traded worldwide are transported by sea at costs that tend to be on average two to three times higher than customs duties of importing countries. Big differences exist between countries regarding the quality, efficiency and costs of the port and shipping services available to their importers and exporters.

Since the beginning of shipping, local and central authorities have developed a complex set of regulations related to customs, immigration, health, quarantine, environment and security protection, many of them independently of each other. Therefore, a ship visiting several countries en route could be requested to fill out numerous forms that vary from port to port and often require the same information.

In this process, ships and cargoes are delayed and hundreds of expensive man-hours are wasted. When comparing documentation requirements and procedures in international shipping with those in the international airline industry, the latter requires fewer documents. Any improvements to Article VIII of GATT 1994 on Fees and Formalities Connected with Importation and Exportation that reduce and simplify documentation, procedures and formalities would also benefit maritime transport.<sup>34</sup>

To prevent unnecessary delays in maritime traffic, member countries of the International Maritime Organization (IMO) adopted in 1965 the Convention on Facilitation of International Maritime Traffic (IMO-FAL). IMO is the UN specialized agency responsible for promoting the adoption of the highest practicable standards to ensure safe and efficient shipping. Its Facilitation Committee seeks to prevent unnecessary delays in maritime traffic and promote uniformity in port formalities and other procedures.

The Convention plus amendments reduces the number of declarations to only nine.

- IMO general declaration
- Cargo declaration
- Ship's stores declaration
- Crew's effects declaration
- Crew list
- Passenger list
- Dangerous goods declaration
- Declaration required under the Universal Postal Convention, and
- Declaration required by international health regulations.

The first seven declarations (IMO-FAL forms) were designed using the UN-Layout-Key for Trade. They are currently under review for adaptation to electronic transmission, the WCO Data Model and the Single Window Concept.

Apart from documentation requirements, the duration of the total maritime voyage can be prolonged by cumulative delays in the clearance of ships in the intermediate ports of

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<sup>34</sup> See TN/TF/W/17, 18, 24, 30, 31, 36, and 46 for proposals submitted in the context of WTO negotiations on trade facilitation.

call for a variety of reasons related to security (illicit traffic — smuggling of drugs, arms, toxic wastes; stowaways, persons rescued at sea, illegal migrants, piracy or armed robbery, etc.); substandard conditions of the ship or its crew (Port State Control); discharge of ship's residues in ports; weather and sea conditions, etc.

Today, maritime facilitation efforts also aim at total electronic clearance of ships and cargo, mainly through pre-arrival electronic messaging. Thus, the IMO Compendium on Facilitation and Electronic Business (2001) is currently being amended to ensure alignment with UN/CEFACT, ISO and the WCO "Framework of Standards to Secure and Facilitate Global Trade (2005)." These are the types of international standards on maritime facilitation, which should be implemented to contribute to the trade facilitation goal, as agreed in several documents of WTO, WCO, UNCTAD, UN/ECE, and ISO.

#### Benefits and costs

- Quick turn-around and cost savings due to standardized system of clearing ships with easy completion of clearance documents, based on electronic information transmitted prior to the arrival of ships
- FAL-Forms minimize language difficulties, are easy to understand by shipmasters and to check by authorities, and can be used for electronic transmission of information and automatic data processing techniques
- Reduced administrative burden and better utilization of government personnel is achieved by eliminating non-essential documents and information
- Cargoes awaiting shipment or collection are exposed for a shorter time to the risk of damage or theft within port facilities
- Facilitation aspects of measures adopted for prompt response to security, ships safety or environmental episodes reduce their impacts and resulting delays of ships and cargo.

The implementation of maritime facilitation measures will be an important step in the entire effort of streamlining and harmonization of trade related regulations. By reducing the number and size of texts to be published and searched, it will also facilitate the publication of trade regulations required by GATT Article X.

The overall impact of these measures results in reduced trade transaction costs.

#### *Recurrent and implementation costs*

Implementation of the IMO-FAL should include costs relating to re-engineering of the national shipping documents and aligning them with IMO-FAL standard documents. The information and computer infrastructure and connectivity may however involve more costs. Technical assistance could be required for training personnel to implement the described facilitation measures related to maritime documentation and to use the new forms and their advance electronic transmission. Once the system is developed and installed no recurrent costs are envisaged, besides minor maintenance costs and communication charges. The implementation of maritime measures and their costs form part of the overall trade facilitation effort of a country. Therefore, expenditures for government agency coordination at ports, optimization of port processes, implementation of the XML-based Single window concept in ports, ship controls based on risk management, special treatment for law-abiding maritime operators, and publication of trade-related maritime regulations (including port and ships security) should be considered as part of the total costs of overall trade facilitation.

## Implementation issues

Currently, 102 countries (60% of the Port States of the world) are Parties to the IMO Convention.

### *Adoption and implementation requirements*

Countries not yet Parties to the IMO-FAL should initiate the adherence process as soon as possible to rationalize documentation requirements for arrival, stay and departure of ships based on IMO-FAL forms. The following factors are essential for implementation:

- Political will and commitment to formally accept the FAL Convention (insertion in the national regulatory framework)
- Coordination and information sharing between the various national institutions involved (creating the National FAL Commission, harmonization of inspections, partnerships, sharing of premises, single window concept, etc)
- Involvement of the private sector (commercial and transport operators)
- Close monitoring of ongoing work in IMO related to the development of Message Implementation Guidelines (MIG) for electronic information exchange on all IMO-FAL Forms and of a uniform ship's pre-arrival electronic message for the transmission of security-related information
- Strengthening trade information centre (TIC) capabilities of the government agency acting as Single Window, in hardware, software, broadband connection, intranet and internet exchanges, system operators, etc.
- Personnel training in related subjects: FAL forms, electronic transmission of information, web page management, detecting illicit traffic, ship inspections, etc. In support of such training, IMO is preparing an explanatory Manual on the FAL Convention, which would be ready by the end of 2006. Also, concerning the electronic transmission of FAL forms, the IMO Compendium on Facilitation and Electronic Business, 2001 edition (under revision) is a useful reference
- Reduction of security, safety and environmental risks in compliance with international standards.

Some of these tasks are of an administrative nature requiring skills normally available in developing countries, except in LDCs. However, the implementation of measures related to changes in national legislation, inter-institutional coordination and partnership, electronic management of information and facilitation aspects of security will require external cooperation for some countries.

### *Local capacity to implement the measure*

Concerning the need for technical assistance and capacity building, IMO has carried out expert missions and several regional seminars on maritime facilitation. Still, some LDCs and regions may require additional training, in particular at the national level both for creating awareness and for implementation of measures. IMO is the proper entity to provide the necessary expertise, but any training should integrate important aspects of WTO, UNCTAD and WCO. Other international organizations, such as the World Bank and regional development banks, should be involved in project finance.

## References and available tools

### *International Maritime Organization*

Convention on Facilitation of International Maritime Traffic (FAL), 1965 (1998 edition). IA350E ISBN 928011459.

[http://www.imo.org/Conventions/mainframe.asp?topic\\_id=259&doc\\_id=684#12](http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=684#12)

Reports of the Facilitation Committee (FAL 32/22 – 25 July 2005, and previous ones)

*Note:* All IMO Member Countries have an authorized password for internet access to all IMO meeting documents and other relevant instruments. [www.imo.org](http://www.imo.org).

### *Other*

#### *UNECE/ UNCEFACT*

<http://www.unece.org/cefact>

#### World Customs Organization WCO

<http://www.wcoomd.org>

#### European Union, Directorate-General for Energy and Transport

[http://europa.eu.int/comm/transport/maritime/sss/imo\\_fal\\_en.htm](http://europa.eu.int/comm/transport/maritime/sss/imo_fal_en.htm)

#### Global Facilitation Partnership for Trade and Transport

<http://www.gfptt.org/>

#### Review of Maritime Transport 2005

<http://www.unctad.org>

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## Risk Management in Customs Procedures Background<sup>35</sup>

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### Background

A common characteristic of Customs work is the high volume of transactions and the impossibility of checking all of them. Customs administrations therefore face the challenge of facilitating the movement of legitimate passengers and cargo while applying controls to detect Customs fraud and other offences. Customs services find themselves increasingly under pressure from national governments and international organizations to facilitate the clearance of legitimate passengers and cargo while concurrently responding to growing transactional crime. These competing interests mean that it is necessary to find a balance between facilitation and enforcement.

The purpose of all Customs controls is to ensure that the movement of all vessels, vehicles, aircraft, goods and persons across international borders occurs within the framework of laws, regulations and procedures that comprise the Customs clearance process. Against this backdrop, the solution to passenger and cargo examination is best found in the development of Customs controls that are based on risk assessment, profiling and selectivity.

The concept of risk management in Customs procedures falls under Article VIII of the GATT 1994 (Fees and Formalities connected with Importation and Exportation, which encourages WTO Members to minimise the incidence and complexity of import and export formalities and to decrease and simplify import and export documentation requirements. Proposals related to clarification and improvements of Article VIII by WTO Members submitted in the context of ongoing negotiations on trade facilitation consider, inter alia, introduction of risk management techniques in Customs procedures, which would minimize Customs interventions for legitimate trade.<sup>36</sup>

In the importing environment, the three levels of Customs controls are pre-clearance, clearance and post-clearance audit. These controls are intelligence-led and focused on the identification of high-risk commercial activity. Risk identification is crucial to the process and this is achieved by identifying risks that are a serious threat to Customs enforcement activities and the consideration of existing Customs controls and their vulnerabilities, determining why weaknesses exist and establishing risk indicators that may increase or decrease the degree of risk. Risk indicators may relate to a particular commodity code, country of origin, value, etc.

Risk assessment is an analytical process that is used to determine both actual and acceptable level of risk and involves the assessment of the probability that goods subject to Customs control may have not been declared or fully declared. Risk assessment factors will include import patterns, duty and tax rates, types of goods, previous examination results and routes and modes of transport.

The risk assessment process is then given effect by a procedure involving the building of profiles, which are simply a group of characteristics displayed by unlawful consignments (or offending passengers) at a specific location and which are matched against day-to-day Customs transactions.

The development of profiles relies heavily on the gathering, charting and analysis of information from the WCO database, Regional Intelligence Liaison Office database

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<sup>35</sup> Based largely on information available on the World Customs Organization's website ([www.wcoomd.org](http://www.wcoomd.org)).

<sup>36</sup> See the WTO communications TN/TF/W/10, 17, 30, 45, 46 and 49.

(RILO database), national seizure reports, and other administrations acting under the Nairobi Convention or bilateral agreements. It seeks patterns in these indicators such as the method of concealment, type of conveyances used, place and time of seizure, offender biographical data and the origin or routing of the goods or passenger. These profiles then drive inspection selectivity programmes.

Inspection selectivity programmes analyse the data declared and select the shipments on the basis of risk parameters or criteria pre-assessed according to the potential risks involved in specific consignments. Depending on the selected risk level, goods are routed through lanes or channels:

Green Channel	= Immediate release without examination
Yellow Channel	= Documentary check
Red Channel	= Physical examination of goods and documents
Blue Channel	= Examination at a later stage (post audit).

In addition, risk management techniques are used as a powerful tool to identify shipments with a possible link to international terrorism.

### Benefits and costs

Risk management techniques allow “low risk” travellers and shipments to attract minimal attention and intervention from Customs and to be processed quickly. They enable the re-deployment of Customs resources on intensified controls for higher and unknown risk travellers and shipments. In addition to improving Customs productivity and efficiency, these techniques do away with unnecessary burdens on traders by downscaling physical inspection, reducing bottlenecks at border crossings, and replacing certain documentation controls at the border with post-clearance audits. They significantly enhance the predictability and consistency of border requirements by allowing the harmonization of practices between different border points and the facilitation of information sharing.

Reduced controls can apply to low-value shipments, which are unlikely to be subject to significant duties or import controls, and the need for physical inspection can also be limited for goods in transit, except for making sure that the consignment corresponds to what was originally declared and that it would leave the transit territory as it entered it, without a portion of the transported goods being illegally sold or diverted on the way.

### *Benefits*

- *Better human resource allocation.* Following implementation of risk-based clearance, Customs management can upgrade staff from laborious work generating few results to highly qualified work leading to enhanced results of control and examination.
- *Increased revenue.* Despite the relatively low examination rate, the improved efficiency and professionalism in Customs control leads to an increase in duty collection in many countries.
- *Improved compliance with laws and regulations.* It is a general experience that the improved efficiency in Customs — together with the traders’ incentive to achieve faster release through the green channel — brings about better compliance on the part of the traders. This has a further positive impact on the correctness of foreign trade statistics.

- *Improved collaboration between traders and Customs.* Interaction between Customs and traders is part of the process to assess the risks related to goods carried or imported/exported by specific traders. Normally such contact and communication will lead to better understanding by both parties and improve the relationship in general terms. It is therefore highly desirable to set up partnership agreements between Customs and the traders.
- *Reduced release time.* The fact that only 10–20 per cent of the goods are examined under efficient risk-based clearance implies that Customs can concentrate on this minor part of imports and release the vast majority of shipments immediately after the clearance document has been lodged with Customs.
- *Lower transaction cost.* The time taken to clear goods in Customs using old-fashioned procedures can amount to as much as one or two weeks. New risk management techniques will release 80–90 per cent of the goods within a few hours — and thus save significant transaction costs to the traders.

### Costs

Risk assessment can mean significant infrastructural changes within an Administration. For example, it will require a national and regional intelligence structure providing strategic and operational intelligence respectively, fewer officers for physical and documentary examination and more auditors and investigators. Provided Customs use automated systems in procedures and management, risk management needs access to an “intelligence” database and procurement of a few additional computer screens. In addition, introduction of a new methodology requires additional staff training. Training courses must be organized for both management and the officers concerned. WCO organizes comprehensive training courses in this respect.

### Implementation requirements

Changing the control procedure entails a fundamental shift in the traditional way of thinking in Customs. While many people believe that 100 percent control is the ultimate objective, modern Customs philosophy has proven that risk management provides a much more efficient approach. Hence, successful implementation and operation of these new techniques require a good deal of preparatory activities with a view to creating awareness and understanding of the system. Such activities are as follows:

- It is vital to change the mentality of staff and management, so that everybody recognizes the value and effectiveness of risk management.
- Awareness courses must be organized for the entire organization to bring about a common understanding of the new procedures, while specialized, including technical, courses must be arranged for staff directly involved in the implementation and operation of the new procedures.
- A risk management policy and a strategic management plan must be drawn up to highlight the objectives and priorities in introducing the new system.
- The internal structure in Customs must be adapted, including creation of a Risk Management Committee, with representatives from various Customs offices (regional and/or local). The objective of this Committee is to discuss and agree on new risk criteria.

- A separate unit in Customs (e.g. Risk Management Unit) must be established and become responsible for maintenance and operation of the system.
- This Unit must gather, chart and analyse intelligence data on importers and carriers from relevant sources, including from WCO database, RILO database, national seizure reports, and other administrations acting under the Nairobi Convention or bilateral agreements.
- Customs law and regulations must be reviewed to ensure legal use of risk management instead of traditional examination of goods
- Use should be made of the electronic manifest, which is aligned to international standards, to provide for advance identification of high-risk shipments.

#### Linkage to other trade facilitation measures

Targeted controls based on risk management techniques are complemented by audit-based controls and compliance measurements, which are the basis of simplified procedures for authorized traders.

These are special or “fast track” procedures requiring little intervention by Customs for the release and clearance of goods. The concept of authorized traders relates to businesses and other participants in the supply chain, including logistics providers, sufficiently “known” and trusted by the Customs authorities on account of their good compliance record of accurate declarations and timely payments to be exempted from the ordinary controls and subject to much lighter procedures and requirements. Audits provide a clear and comprehensive picture of the dutiable transactions and of the compliance rate of businesses, while they also feed into the risk management mechanisms the compliance measurements determining the extent to which traders conform to Customs requirements. By way of example, the Swedish Customs implemented a step-by-step Customs clearance system for authorized traders called “Stairway” (see [www.tullverket.se/en/Business/the\\_stairway](http://www.tullverket.se/en/Business/the_stairway)).

With respect to transit traffic, criteria may be slightly different than for imports and exports, focussing for instance less on Customs value issues and more on the risk of diversion into the domestic market. Such a risk, associated with goods that are subject to special health, safety and sanitary controls, or to high rates of duties and charges, needs to be properly assessed in order to define appropriate guarantee levels in transit regulation or to devise satisfactory insurance schemes in the framework of transit agreements. Well adapted and reliable instruments to underwrite the movement of goods, for example in the form of insurance, guarantees including surety bonds and associated security-enhancing physical devices, such as transit seals, can eliminate ordinary risks of revenue loss and account for third party liability, although they do not necessarily cover risks associated with other trade policy measures, such as import restrictions.

#### Sustainability

The risk criteria are based on information either generated from the data contained in the intelligence database or collected from other sources, such as traders and agents, business organizations, Customs in other countries or the police. Such information must be analysed constantly and the database updated accordingly.

It is, therefore, important to retain staff with the adequate background and experience in the risk management unit. This staff will ensure ongoing monitoring of the risk criteria in order to be able to develop new criteria when needed and to abolish criteria that are no longer valid.

#### References and tools available

##### *World Customs Organization*

WCO Revised Kyoto Convention; WCO Risk Management Guide; WCO Guideline for the Immediate Release of Consignments by Customs; WCO Framework of Standards to Secure and Facilitate Global Trade; WCO Customs Data Model. [www.wcoomd.org](http://www.wcoomd.org)

##### *UNECE*

UN/EDIFACT [www.unece.org/trade/untdid/welcome.html](http://www.unece.org/trade/untdid/welcome.html)

##### *UNCTAD*

ASYCUDA [www.asycuda.org](http://www.asycuda.org)

##### *International Maritime Organization*

IMO FAL [www.imo.org](http://www.imo.org)

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## Customs Procedures — Post Clearance Audit

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### Background

Post clearance audit means Customs control or audit performed subsequent to the release of cargo from Customs custody. Such audit may take into account individual transactions or cover imports/exports undertaken over a certain period. The audit can take place either at a Customs office or on the premises of a company.

Implementation of post clearance audit is a major simplification of Customs control and thus provides facilitation for the traders. Time previously spent waiting for Customs clearance will be reduced to a minimum, and traders can dispose of their goods quickly after arrival in the country. Post clearance audit is therefore also a facilitation measure recommended by WTO Members to give teeth to GATT 1994 Article VIII:1(c): “The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.”<sup>37</sup>

In traditional Customs procedures, goods are subject to control upon arrival at the border or in the port of entry. The goods will normally be stored in a warehouse or on a wharf pending the importer's or his clearing agent's presentation of the declaration and supporting documents for clearance at a Customs office. The process may take several days, sometimes weeks, if disputes or irregularities occur. However, goods remain in Customs custody until all checks have been performed and requirements fulfilled, including payment of duty and taxes.

In applying risk management techniques and audit-based control, Customs is able to release the vast majority of shipments and retain only consignments matching the risk profiles. Non-selected cargo will be released immediately but may be subject to *a posteriori* control, i.e. post clearance audit. Such audit will focus on the supporting documents as well as books, records and observations at the premises of the importing company.

Post clearance audit allows Customs to change the approach from a purely transaction based control to a more comprehensive company-oriented control. This control method is normally implemented as part of a modernization project in Customs under which a number of *Customs* best practices are put in operation. Modernization programmes introduce a number of reform elements, including:

- Automated clearance, i.e. introduction of ICT systems to process the entire clearance electronically
- Pre-arrival clearance, i.e. advance lodgement of clearance documents enabling Customs to clear goods prior to arrival and apply immediate release procedures
- Risk management methods enabling release of the vast majority of shipments without physical inspection
- Separation of payment from clearance, i.e. making payment independent of the release of cargo from Customs
- Post clearance audit, i.e. *a posteriori* control of documents, including verification of data in the traders' books and records

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<sup>37</sup> Also refer to WTO communications TN/TF/W/10, 18, 30, 49 and 55.

- Improved trust, compliance and cooperation between Customs, traders and companies

The key international instrument on Customs reform is the Revised International Convention on Simplification and Harmonization of Customs Procedures (Kyoto Convention). The Kyoto Convention sets out a large number of recommended standards relating to all aspects of Customs procedures. Chapter 6, Customs Control, recommends use of risk management methods and audit-based control, among others.

#### Benefits and costs

More efficient control. On the face of it, traditional Customs control involving inspection of each transaction seems superior to any other type of control. However, experiences of many countries confirm that post clearance audit generates better results than traditional examination. The reason being that traditional control is performed at random with no specific objective other than to confirm that everything seems correct. In contrast, post audit is based on an analysis of available information and intelligence about the imports and the company concerned.

Post clearance audit allows Customs to change the approach from a purely transaction based control to a more comprehensive company oriented control. Customs audit can benefit from a broader picture of the transactions over a longer period. Details for comparison will flow from local or national databases compiling information from each Customs declaration registered. By comparing prices and tariff headings for identical or similar commodities related to different companies, inconsistencies may indicate fraud. A targeted approach is more efficient and results in savings for Customs.

Increased revenue. Similarly, comparison between countries of origin or different suppliers may reveal false declaration. If the audit detects incorrect declaration, e.g. undervaluation, the audit officer will ask for correction of the declaration and revaluation of the goods, which may entail additional payment of duty or taxes by the trader. Such additional payments will raise Customs revenues.

Better use of human resources. When changing from traditional Customs control to post audit, the usual pressure from traders to obtain early release is removed from the officers. It leaves Customs more time for planning and executing relevant and prioritized control.

Post clearance audit should be seen in conjunction with facilitating best practices applied by Customs. Use of risk management techniques is vital, since up to 80–90 per cent of total imports are released without Customs intervention. However, this part of the imports will normally be subject to post clearance audit.

Reduced release time. The time taken while goods are in Customs custody will be reduced as compared to traditional Customs control. Fast release is of paramount importance to traders due to the time saved. Electronic clearance and immediate release from Customs clearance is decisive for improving competitiveness of traders.

Saving storage fees. Storage and warehouse fees will be reduced as a direct consequence of faster Customs clearance. The same effect can be achieved for insurance costs for goods under storage.

Since post clearance audit normally is part of an overall Customs modernization program, including automation, expenditures directly related to the post audit will be relatively low. The cost relates to capacity building programmes for Customs management, staff and development of IT programmes to support post clearance audit.

## Implementation of post clearance audit

A number of actions and operations are essential prerequisites for successfully conducting a post clearance audit, as listed below:

Commitment and support. As for any reform programme the most critical prerequisite is the commitment and long-term support from the highest level in the organization.

Strategy and planning. Customs management must develop an audit strategy and provide staff with guidance on implementation.

Capacity building. Customs staff must be trained to comprehend the effective methods offered by post clearance audit. Further, training courses must be provided to create awareness of the analytical work necessary to take advantage of the system.

Cooperation with traders. Post clearance audit is often undertaken on the premises of traders when Customs require additional documentation to verify clearance documents. Therefore, it is important to establish a positive and cooperative atmosphere between Customs and the traders.

Automation. Post clearance audit will normally surface in conjunction with implementation of automated procedures in Customs. However, audit based control can also be applied in a manual or semi-automated environment.

Amendment of legislation. In many countries Customs laws define the mandate and obligation of Customs, among others, to inspect imports and exports both on a physical and on a documentation basis. Moreover, the laws seldom contain provisions for Customs to inspect books and records on the premises of the traders. Therefore, countries need to revise their laws and provide necessary authority to implement the new audit methods.

### *Skills required*

Post clearance audit is a facilitation measure based on specific knowledge regarding audit methods and how to plan and arrange the most suitable audit. Such knowledge can only be made available through training courses, mostly in connection with the implementation of risk management.

### *Assessment of implementation*

There are several ways to assess the effective implementation of audit-based control. Firstly, the internal structure in Customs must include an audit team with the necessary skills. Secondly, a reporting system should provide management with adequate evidence of the results achieved by the team.

Assessment can be undertaken regularly by the management, i.e. self assessment using guidelines from World Customs Organization. WCO's "Self Assessment Checklist" and other diagnostics tools and surveys are available at the WCO website: [www.wcoomd.org](http://www.wcoomd.org).

It should also be stressed that involvement of local business organizations in the assessment process normally proves very useful. The services delivered by Customs will thus be viewed by partners and users, which will lend credibility to the evaluation and, at the same time, strengthen the cooperation between Customs and the business community.

### *Local capacity*

Modernization of Customs procedures, including introduction of post audit based control is relevant and necessary for countries desiring to take advantage of global, liberalized trade. While legislation and the overall strategy for modernization are to be established by governments, local Customs offices will undertake the actual implementation and operation.

Local Customs staff need training capacity building in order to understand the philosophy and benefits related to post clearance audit. It is not a particularly difficult subject; all it takes is sufficient awareness of audit methods paired with analytic abilities. Further, general knowledge of computer systems and programmes available for audit purposes is required.

There is no doubt that post clearance audit can — and should — be introduced at local level, especially as a spin-off from automated procedures. With some experience and capacity building, Customs staff have the necessary ability and skills to successfully implement and operate post clearance audit procedures.

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## Pre-Arrival Customs Clearance

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### Background

In today's global trade, delays caused by Customs clearance and cumbersome control measures should be eliminated or minimized to give way to modern trade and transport procedures such as e-commerce and just-in-time operations. This need has been recognised and has motivated governments throughout the world. The vision for Customs is twofold, namely to ensure and protect national revenue effectively, and to expedite clearance and release of the goods.

Certain groups of goods are particularly sensitive to the earliest possible release from Customs, for example, airborne shipments that involve high freight costs for traders. Similarly, urgent consignments of newspapers, medicine and hospital equipment, perishables etc, need to be released immediately after arrival at the port of entry. This applies equally to express consignments with spare parts, samples etc.

Pre-arrival clearance is a facilitation measure relating to Article VIII of the GATT 1994 (Fees and Formalities Connected with Importation and Exportation). Of particular relevance is paragraph 1(c): "The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements." WTO submissions in the course of the ongoing trade facilitation negotiations, inter alia, related to clarification and improvements of Article VIII, consider introduction of pre-arrival clearance.<sup>38</sup>

In applying pre-arrival clearance, traders and carriers may clear the goods through Customs with little or no delay.

### Definition

There is no internationally agreed definition of pre-arrival clearance, but it can be described as: A function allowing traders to submit clearance data to Customs for advance processing and release of the goods immediately upon arrival to the country; release may even take place prior to the actual arrival of the goods, provided all necessary details have been communicated and screened by Customs in advance.

The key international instrument on Customs reform is the Revised International Convention on Simplification and Harmonization of Customs Procedures (Kyoto Convention). The Kyoto Convention sets out standards relating to all aspects of Customs procedures.

### WCO Guidelines

WCO has addressed the traders' need for early release in the "Guidelines for the Immediate Release of Consignments by Customs" ([www.wcoomd.org](http://www.wcoomd.org)). According to the guidelines, goods are divided into four categories for which *immediate release* can be permitted on the basis of simplified requirements:

1. Correspondence and documents: Such items without commercial value can be released on the basis of the transport document or even an oral declaration.

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<sup>38</sup> See WTO communications TN/TF/W/10, 17, 18, 30, 46, 45 and 53.

2. Low value consignments for which no duty or taxes are collected: The value limit, e.g. SDR 50,<sup>39</sup> can vary from country to country, and release can be granted against a simplified declaration submitted to Customs in advance.
3. Low value dutiable consignments: The value limit may correspond to SDR 1000, and duty and tax has to be paid or deferred against a guarantee. Simplified or periodic declaration may apply.
4. High value consignments: Facilitated clearance will be granted provided necessary information has been lodged with Customs in advance. Immediate release and subsequent clearance may be permitted if payment of duties and taxes is guaranteed.

#### Electronic release

Customs clearance can be further expedited when traders and carriers are linked to Customs systems for electronic lodgement of data. In countries using modern ICT systems, traders can submit clearance data to Customs ahead of the goods arriving in the country. Customs systems will process the data automatically, including screening through risk management profiles, calculation of duties and taxes and release the goods on line — even before actual arrival of the goods. In case the goods are selected for physical inspection, the importer will be advised on line, so he can arrange in advance for the goods to be presented to Customs without delay.

#### Memorandum of Understanding (MOU) with authorized traders

Speedy and efficient clearance is in the interest of both Customs and the traders. Therefore, modern Customs administrations do pursue a service-minded approach based on the assumption that most importers and carriers are honest and credible partners in the supply chain who want to comply with rules and regulation.

When a business company has proven to be a trustworthy and accountable entity, partnership with Customs could be established aiming at close cooperation to the benefit of both parties. Provided the trader meets certain criteria a MOU specifying the facilitated procedures could be agreed.

Through such a cooperative approach and mutual trust a number of trade facilitation measures can be achieved at local level. Therefore, Customs administrations should be urged to consider close cooperation with business circles and their associations.

#### Benefits

Partnership agreement with traders. When pre-arrival clearance is permitted, Customs should seek closer cooperation and partnership with that company. Customs specialists will study the import pattern, the relevant commodities in relation to tariff classification, tax regimes, valuation issues, supply chain etc. This way Customs will establish a thorough knowledge of the company and its activities, including its books and records. Any necessary corrective measures will be agreed. In turn, such cooperation will lead to other facilitating treatments, such as periodic clearance, simplified procedures, and deferred payment.

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<sup>39</sup> The SDR is an international reserve asset, created by the IMF in 1969 to supplement the existing official reserves of member countries. SDRs are allocated to member countries in proportion to their IMF quotas. The SDR also serves as the unit of account of the IMF and some other international organizations. Its value is based on a basket of key international currencies.

Better use of human resources. Since the communication of data from the traders under pre-arrival clearance is supposed to take place prior to arrival, Customs will have a chance to better organize the work. The same effect will be achieved when authorized traders submit periodic declarations.

Reduced release time. The time taken while goods are in Customs custody will be reduced as compared to traditional Customs control. Immediate release is of paramount importance to traders due to the time saved. Electronic clearance and immediate release from Customs may be decisive in terms of competitiveness.

Just-in-time operations. Speedy Customs clearance and the earliest release possible is a prerequisite for modern trade operations, such as e-commerce and just-in-time delivery.

Saving storage fees. Storage and warehouse fees will be reduced as a direct consequence of pre-arrival clearance. The same effect can be achieved for insurance costs for goods in storage.

## Costs

Implementation of pre-arrival clearance will normally be part of an overall Customs modernization program, in particular connected to the introduction of computerized clearance systems. Expenditures directly related to the pre-arrival clearance refer to the following subjects:

- Capacity building programmes for Customs management and staff;
- Configuration and development of IT programmes to support pre-arrival clearance operations.

## Implementation issues

A number of prerequisites have to be in place to ensure successful implementation of pre-arrival clearance:

Commitment and support. As for any reform programme the most critical prerequisite is the commitment and long-term support from the highest level in the organization.

Strategy and planning. Customs management must develop a strategy and give guidance to the staff on the implementation.

Capacity building. Customs staff must be trained to comprehend the beneficial methods offered by pre-arrival clearance. Further, training courses must be provided to create awareness of the system.

Cooperation with traders. Pre-arrival clearance is a method based on effective cooperation with the traders. Therefore, it is important to establish a positive atmosphere between Customs and the traders.

Automation. Pre-arrival clearance will normally go hand in hand with the implementation of automation of Customs activities. Obviously, the best results will be accomplished in conjunction with automated procedures. However, pre-arrival clearance can also be applied in a manual or semi-automated environment.

Amendment of legislation. In many countries, Customs laws define the mandate and obligation of Customs to inspect imports and exports both physically and via documentation. Moreover, the laws seldom contain provision for Customs to inspect books and records at the premises of the traders. Therefore, countries need to revise their laws and provide necessary authority to implement the new clearance method.

### *Skills required*

Implementation of new procedures, such as pre-arrival clearance, requires knowledge of the options and the conditions relating to the new procedure. Such knowledge can be made available through training courses to the staff in Customs — and should be extended to the trading community, including carriers and clearing agents.

### *Assessment of the effective implementation*

There are several ways to assess the effective implementation of procedures for pre-arrival clearance. First, internal auditors should verify if new procedures have been properly documented to the staff and published to the trade community. In addition, the review must ensure that capacity building activities have been completed and followed up.

A good indication of effective implementation will emerge when a number of traders are using the pre-arrival procedures regularly. Also, the number of partnership agreements between Customs and private traders/operators is interesting in this context.

It should be stressed that involvement of local business organizations in the assessment process normally proves very useful. The services delivered by Customs will thus be viewed by partners and users, which will add credibility to the evaluation and, at the same time, strengthen the cooperation between Customs and the business community.

The management can undertake assessments regularly, i.e. self-assessment using guidelines from World Customs Organization. WCO has developed a “Self Assessment Checklist” and other diagnostics tools and surveys available at [www.wcoomd.org](http://www.wcoomd.org).

### *Local capacity*

Modernization of Customs procedures, including introduction of pre-arrival clearance is relevant and necessary for countries with a desire to take advantage of global, liberalized trade. While the foundation for modernization is to be established by governments, the actual implementation and operation will be undertaken at local Customs offices.

Local Customs staff need training courses in order to understand the philosophy and benefits related to pre-arrival clearance. They need to create sufficient awareness of Customs procedures in general and a good rapport with the trading community. Furthermore, offering general training in computer systems is desirable.

Pre-arrival clearance could be introduced at local level with some training, experience and capacity building to offer Customs staff the necessary skills with which to implement and operate pre-arrival procedures.

### *References and tools available*

The following documents are available at the WCO website: [www.wcoomd.org](http://www.wcoomd.org).

The Revised Kyoto Convention of the WCO

The WCO Guidelines for the Immediate Release of Consignments by Customs

The WCO Self Assessment Checklist

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## Separating Release from Clearance Procedures

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### Background

The key international instrument on Customs reform is the Revised International Convention on Simplification and Harmonization of Customs Procedures (Kyoto Convention) as agreed in 1999 by the World Customs Organization (WCO), which will enter into force in February 2006. The Kyoto Convention provides standards for all aspects of Customs procedures.

Procedures to expedite Customs clearance also relate to GATT 1994 Article VIII on (Fees and Formalities connected with Importation and Exportation) and, in particular, paragraph 1(c), which recognises the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements. In the ongoing negotiations on trade facilitation WTO Members propose to separate the release of goods from clearance procedures.<sup>40</sup> This issue is linked to Customs modernization and automation.

The term “separation of release from clearance” can be described as a procedure that allows goods to be released from Customs clearance prior to payment of duties and taxes in cases where final determination of classification of the goods, assessment of value and other transactions are postponed. A security in the form of a deposit or bond may be required.

The vision for Customs is twofold, namely, to ensure and protect national revenue efficiently and, at the same time, to expedite clearance and release of goods. Delays in the release of goods due to Customs clearance, including lengthy control and payment procedures, constitute serious problems for modern trade and transport practices, such as e-commerce and just-in-time deliveries. This reality has been broadly recognised and has motivated Customs administrations throughout the world to revise procedures in order to make trade transactions more efficient and cost effective and enhance the competitiveness of private enterprise. The adoption of separate release procedures should go hand in hand with the introduction of other modern customs tools, including risk assessment. Advance clearance on the basis of documentation approved prior to the arrival of goods and other pre-arrival procedures would allow traders to pick up goods upon arrival and constitute time and money savings.

A major problem that needs to be addressed is the fact that Customs authorities do not normally release goods from clearance until all issues are resolved and duties and taxes due are paid. Classification of goods for tariff purposes is sometimes difficult to finalize on the spot, as is the case for chemical substances, which may require lengthy laboratory analysis. Also, disputes over the correct assessment of the value may be a lengthy process. Such concerns and similar issues holding up the final payment and release have a negative impact on the trader’s competitiveness and should be eliminated or minimized to the extent possible. In other words, separating release from clearance procedures is a measure that could speed up release of goods.

### *Sources of delay*

Delays are due to various reasons. Some relate to substantial issues, such as lack of information to assess the value of goods for Customs purposes or to determine the

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<sup>40</sup> See WTO submissions TN/TF/W19, 21 and 30.

correct tariff heading. Others relate to processing of payment, i.e. calculation of the amounts due, money collection, and issuance of the receipt and release notes.

- *Valuation problems.* Problems often surface with respect to the assessment of Customs valuation, because the value and related costs form the direct basis for calculation of duties and taxes in most cases. An invoice may be missing, a deduction in the price may not be well documented or Customs may want further documentation to verify the declared value. In particular, valuation in cases where the exporter is a branch of the importing company — or otherwise related — has proven to be difficult. Such cases may sometimes be referred to an expert panel established within Customs, but the inevitable consequence is a delay in the release of goods. Therefore, Customs in many countries have implemented the following provision in Article 13 of the WTO Agreement on Customs Valuation: “If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument covering the ultimate payment of customs duty for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.”
- *Classification and other problem areas.* Apart from valuation difficulties, other problems may delay clearance for which no recourse to WTO provisions is available. These might be:
  - classification: e.g. the tariff heading cannot be determined on the basis of information available at clearance, or, there is a dispute between Customs and the declarant;
  - missing documents: e.g. insufficient information about transport conditions, quality or quantity; lack of certificates of origin to qualify for preferential treatment, or of health certificates
  - payment procedures in themselves can cause delays, especially when Customs cashiers are to (manually) calculate the amounts due, collect the money and issue receipt and release note. Many countries have found solutions to this problem by allowing release of goods prior to the actual payment and collecting duties and taxes in a separate procedure independent of the final clearance. Such solutions include: payment in advance of the clearance, either to the Customs cashier or to a commercial bank linked to Customs; deferred payment, i.e. payment of duties and taxes within a short time limit after the clearance — a deposit or a guarantee is normally required; and credit schemes, i.e. release of the goods while the amounts due will be charged to a credit account for payment at a later stage — this entails a legal obligation on the part of the importer.

**Examples:**

The Philippines Bureau of Customs implemented an advance payment system as part of the automation programme (ASYCUDA) in the late 1990s. It implies that duties and taxes are paid directly to a commercial bank connected electronically to Customs. A separate electronic release system provides for the immediate release as soon as the screening under risk management has been completed. It is considered a significant improvement that Customs does not need to be involved in the money transactions.

The European Union operates a credit scheme available to traders in the member states. It is a general system under which payments relating to imports in one calendar months become payable by 16th of the following month. A guaranty, bond or other suitable surety is required for all importers using the credit system.

### *Security for payment*

As mentioned above, security for payment and compliance is a main instrument to secure advance release of goods. Once a trader has posted a security with Customs, a number of simplified procedures are available. It would therefore be a useful service to traders if Governments took necessary steps to implement such security options in national legislation.

Security instruments can take several forms, including cash deposits, surety by banks or insurance companies, bonds or other legally binding obligations confirming final payment of duties and taxes. The security can cover a single transaction or be of a general nature, i.e. it covers a number of transactions.

### Implications of the measure

Apart from security instruments to protect Customs, to be practicable and reliable, the early release of goods through expedited clearance procedures would benefit from risk analysis along international practices, screening of trustworthy companies based on previous compliance records with trade regulations, and risk management techniques, as well as on post-clearance audit procedures.

### Benefits to traders

Introduction of a separate release system should be seen in parallel with other best practices applied by Customs. Through the use of early release procedures prior to the completion of clearance, the trader will gain time and save cost as described below:

Reduced release time. Fast release of goods from Customs custody using electronic clearance is of paramount importance to traders to maintain their competitiveness.

Just-in-time operations. Speedy Customs clearance and the earliest release possible is a prerequisite for production and trade operations, such as e-commerce and “just-in-time” delivery.

Saving storage fees. Storage and warehouse fees will be reduced as a direct consequence of separate release procedures, as will insurance costs for goods in storage.

### Benefits for governments

Improved security. The use of security provides a guarantee for the ultimate payment of duties and taxes, i.e. there is little risk to loose revenue.

No responsibility for handling of money. When the amounts due are settled with commercial or national banks, Customs has no responsibility for the management, control and accounting of the money. This is a sensitive area for many Customs administrations, since the physical handling of money can lead to losses, including robbery and theft, and also become a temptation to certain staff.

### Costs

Separation of release from clearance procedures will often be part of a broader Customs modernization program. In that case, expenditures related directly to this facility may be

relatively low and limited to publications informing business circles and training courses for Customs management and staff.

## Implementation issues

### *Pre-requisites*

Capacity building. Customs staff must be trained to better understand the beneficial methods offered by separating release from clearance procedures. Implementation of new procedures requires knowledge of the security options and the conditions relating to the new procedure. Equally, training seminars should be offered to the trading community, including carriers and clearing agents. Training courses can be arranged internally or with assistance from WCO.

Security systems. When importing companies want to take advantage of separate release procedures, a guarantee system must be available to ensure proper payment of duties and taxes. Such systems must offer various security instruments, including bank guarantees, bonds, and deposit of funds.

Amendment of legislation. Governments may need to revise their Customs law and provide necessary authority to implement new release procedures.

### *Assessment*

There are several ways to assess the effective implementation of separate release procedures. To begin with, internal auditors should verify whether new procedures have been properly documented to the staff and published to the trade community. In addition, the review must ensure that capacity building activities have been completed and followed up.

A good indicator of effective implementation will emerge when a number of traders are using new procedures.

It should be stressed that involvement of local business organizations in the assessment process normally proves very useful. External partners will thus view the services delivered by Customs and users, which will add credibility to the evaluation and, at the same time, strengthen the cooperation between Customs and the business community.

The management following guidelines from the World Customs Organization can undertake assessments regularly. WCO has developed a “Self Assessment Checklist” and other diagnostics tools and surveys available at [www.wcoomd.org](http://www.wcoomd.org).

### *Local capacity*

Modernization of the Customs administration, including separation of clearance from release procedures, is necessary for countries with a desire to take advantage of global, liberalized trade. While the foundation for modernization is to be established by governments, the actual implementation and operation will be undertaken at local Customs offices. Local Customs staff, therefore, need to be knowledgeable about new Customs procedures, including computer systems, and develop a good rapport with the trading community.



## Section Three — Transit Trade

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### Freedom of Transit and Regional Transit Arrangements

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#### Background

Transit is a major trade facilitation tool designed to allow goods to be transported with the minimum of control within and through the Customs territories of a particular region. The system permits Customs duties and taxes payable on goods originating from or destined to countries outside the region to be suspended whilst the goods are being transported. Duties and taxes are suspended until the goods depart from the region concerned, or enter another Customs regime.

For each transit movement, an identifiable person, often referred to as the “principal” to the movement, will be responsible for making a transit declaration to Customs, and arranging for a guarantee to cover the duties and taxes at risk. The guarantee will be provided by a recognised financial institution, usually a bank or an insurance company.

Whilst Customs transit arrangements theoretically cover goods transported by all modes of transport, in reality it is road-based systems that have developed successfully over the years. For example, the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention of 1975) caters to multimodal transit movements, but at present the TIR system covers only goods transported by road.

Article V of the GATT 1994 (Freedom of Transit) provides for the freedom of transit of goods, vessels and other means of transport across the territory of Member States, via the routes most convenient for international transit, with no distinction based on flag of vessel, origin, departure, entry, exit, destination, or ownership of the goods, vessels or other means of transport involved. Whereas the concept is a simple one, a number of broader, interrelated issues often militate against the full implementation of the spirit of this article. These include the standardization and simplification of Customs procedures, documents and data, the adoption of risk management techniques and the maximum use of information and communication technology (ICT), which are similar to those issues described in technical notes relating to Article VIII.

#### Benefits and costs

- Less congestion at borders
- Improved security of revenue
- Enhanced use of risk assessment, leading to more efficient controls, and reduced rate of physical examination, as well as more effective deployment of staff
- Reduced transit times
- Simplified documents and procedures
- Lower rate of physical examination
- Improved predictability

- Increased international competitiveness
- Improved transparency.

Implementing and automating a transit system costs tens of millions of US dollars and, depending on levels of commitment from governments, regional organizations and the business community, may take many years. The time and costs are determined by each country's starting point, implementation capacity, infrastructure and financial resources. A one-size-fits-all approach cannot therefore be applied here, but each country has to consider its own tailor-made model, based on international standards.

The costs of implementation are soon recovered; however, as an efficient transit system will enhance the effectiveness of Customs controls and significantly reduce transit transport costs.

### Existing transit systems

The difficulties of developing international transit systems are so great that in practice the only feasible approaches are either *regional*, based on a coherent geographical area, or *corridor-based*, reflecting the trade/transport requirements of the business community involved. Worldwide, various systems have been developed to allow regional or corridor-based transit operations to take place, including the following:

#### *TIR System*

The United Nations Economic Commission for Europe (UNECE) manages the TIR system, established under the TIR Convention. It has 65 contracting parties, covering the whole of Europe, North America, the Middle East, Central Asia and several countries in South America, including Chile and Uruguay. Other countries in Africa, Asia and South America have recently expressed interest in joining the Convention. Therefore, the TIR system is in fact international rather than regional.

The main elements of a successful transit system such as TIR include:

- Use of secure vehicles and containers
- International guarantee valid in all countries of transit
- Single Customs declaration document valid in all countries of transit
- Simplified Customs procedures, including extensive use of risk management
- Mutual recognition of Customs controls between participating countries
- Controlled access to the system.

#### *Common/ Community Transit System in Europe*

In Europe, the Common/ Community Transit system (CT) has been developed, covering transit within the EU (Community Transit), and between EFTA and EU countries (the Common Transit Convention). The related EC/EFTA Convention on the Simplification of Formalities in Trade in Goods sets out the requirements for the use of the Single Administrative Document (SAD), a unified document based on the United Nations Layout Key, covering all Customs regimes.

#### *Other Transit Systems*

The Southern African Customs Union (SACU) has implemented a transit system for its members; transit systems are also being developed by members of the Southern African

Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC). In sub-Saharan Africa a number of corridor-based initiatives are being pursued, on the Northern Corridor, the Maputo Corridor, the Walvis Bay Corridor, the Dar Corridor, the Trans-Kalahari Corridor and the North-South Corridor.

ECOWAS members have developed the TRIE transit system in West Africa, and transit agreements have been signed in Latin America by members of Mercosur and in Asia by ASEAN members under the Framework Agreement on the Facilitation of Goods in Transit.

## Conditions and implications of transit systems

### *Legal framework*

A common legal framework is a prerequisite for the implementation of an effective transit system. The TIR Convention (1975), the Common Transit Convention (1987) and the Community Customs Code are successful examples. The legal framework provides participating members and the trading community with the essential uniformity in the application of rules and procedures, in the provision of financial guarantees for duties and taxes at risk, and for approval of the means of transport.

The legal framework should go beyond the basic issues of standardization of Customs control, documents, procedures and data, and address the following issues:

- The introduction of risk management techniques, including authorized trader programmes, to provide maximum trade facilitation without compromising revenue protection
- The simplification of procedures and documents, and the facilitation of transit trade to the fullest extent
- The maximum use of information and communication technology (ICT)
- Coordination with other agencies involved in cross-border traffic, for example those responsible for security, immigration or plant and animal health
- The development of partnerships between government agencies and business
- Non-discriminatory treatment of traders and modes of transport
- The notification, and reduction to a reasonable minimum, of fees and other charges on transit movements
- Cooperation and information sharing between the different Customs services involved, and related agencies.

### *Risk management and simplified procedures*

With the growth in international trade over past decades, it has become impossible for Customs services to apply traditional transaction-level physical and documentary controls on the movement of goods. This has led to increased use of risk management techniques, allowing the vast majority of goods to be released with the minimum of interference whilst targeting scarce manpower resources on the control of goods perceived as carrying a higher risk of revenue evasion, or of contravening prohibitions and restrictions.

In transit regimes such as TIR, risk is further reduced by **setting minimum conditions for transporters** wishing to use the system, for example, proven experience of the

international transport business, sound financial standing and absence of serious Customs or tax offences.

By contrast, the Community and Common Transit (CT) systems are available for all traders, with **special concessions**, often referred to as “simplified procedures” who fulfil conditions of reliability and absence of offences. These traders, referred to as “authorized consignors” and authorized consignees’ are able make electronic declarations to Customs, and are permitted to load and despatch goods for transit from their own premises, subject to approval from the Customs office of departure. Similarly, at the end of a transit movement, goods can be delivered to the premises of the consignee, who makes an electronic declaration to the Customs office of destination that the goods have arrived. These authorized traders are subject to systems audit by Customs, to ensure that their internal control systems provide an adequate level of control, especially of the guarantee, and can be satisfactorily audited by Customs.

This approach facilitates transit to the maximum extent. The commercial advantages, which in time include 100% guarantee waivers, provide a powerful incentive for the trader to respect the conditions under which the concessions have been made. The philosophy is to make as much use of the trader’s internal control mechanisms as possible, and not to duplicate these unless necessary.

Risk management is thus closely allied to the extensive **use of ICT**, and promotes a partnership approach between government and business. Connecting all government border agencies through an electronic Single Window facility — a one-stop-shop for submitting and processing all electronic trade documents — could further develop this approach. This could also include electronic payment of transit fees and charges.

However, when designing these facilitated regimes for authorized traders, care should be taken to ensure that small and medium-sized enterprises (SMEs) are also able to benefit from the arrangements. Larger companies with greater financial and staffing resources are in a better position to take advantage of such schemes, and smaller companies should not be excluded from them by cost or complexity.

#### *Simplification, standardization and automation of transit procedures and documents*

Automation is not an end in itself. It is an essential component of the trade facilitation objectives of Customs transit. Manual systems that rely on the transfer of paper documents to discharge the guarantee tend to drown in sheer volumes of paper. Slow acquittals result in traders having to take out larger guarantees than necessary, at extra cost, in order to maintain truck movements. Manual, paper-based systems are inefficient and more vulnerable to fraudulent attacks.

Prior to automation, **transit procedures should be simplified and aligned** to the Revised Kyoto Convention of the World Customs Organization (the International Convention on the Simplification and Harmonization of Customs procedures 1999). The next step is to simplify and standardize Customs and paper trade documents, through reduction of their number as well as alignment of their formats and data to the United Nations Layout Key (UNLK).

United Nations Trade Data Elements Directory (UNTDDED) and UN/EDIFACT must be adopted to align electronic messages to international standards. Such matching would not only align data with international standards, but also facilitate transition to electronic trade documents such as UNEDocs.

Automation should allow principals to make **electronic declarations** to Customs by direct trader input (DTI), permit pre-notification of the goods in transit to offices of exit, transit and destination, manage the control of the guarantee amounts and acquittals and facilitate the production of management information.

*Partnership between government agencies, and between government and business*

An **effective partnership between government agencies** is vital if the trade facilitation objectives for transit systems are to be achieved. In many cases, the functions of non-Customs agencies can be delegated to Customs on an agency basis. Equally, effective partnerships between government and business play a key role in the facilitation of transit trade.

Customs, as the service with direct responsibility, needs to take the initiative **to build cooperative relationships with all stakeholders**, including both within government (specifically Ministries of Trade, Transport, Finance/ Treasury, Immigration, Agriculture, veterinary and phytosanitary agencies) as well as with the business community (importers, exporters, transit principals, freight forwarders, carriers, customs brokers, terminal operators, banks and insurance agents).

To **assist the business community in a practical way**, Customs should for example arrange for all official regulations and guidance related to transit to be published and made freely available, preferably also on the internet. This information should include the addresses and opening times of Customs offices of transit, approved transit routes, and any national requirements and fees, which should in any case be reasonable and related to the cost of services provided.

*Non-discrimination among means of transport*

Article V:1 of the GATT, considers the means of transport of transit goods themselves as “traffic in transit.” Under practical regional Customs transit arrangements, the means of transport carrying transit goods should be allowed access to the Customs territories of participating member states, and should be permitted to return empty without the need for additional documentation. Some transit countries demand, incorrectly, that such empty returning vehicles should obtain a “Carnet de Passages”<sup>41</sup> to cover the temporary admission of the vehicle during its return journey.

Further, in order to fulfil the facilitation objectives of Customs transit, all countries of transit and destination must accept the means of transport by which goods in transit are being transported. It makes no sense, for example, for goods in transit to be off-loaded at national frontiers under the pretext that the truck does not conform to national technical specifications, or to national transport policy. This has the effect of a non-tariff barrier, and should be avoided by the development of clear, transparent rules on the specification of the means of transport. The TIR Convention, for example, provides such specifications for the load compartments of truck, and for containers. To accompany these technical specifications, a series of bilateral or multilateral agreements need to be set up to ensure the free movement of trucks and other modes of transport among countries participating in a regional transit agreement.

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<sup>41</sup> The Carnet de Passages en Douane is issued by the Alliance Internationale de Tourisme/Fédération Internationale de l'Automobile (AIT – FIA).

### *Cooperation and information sharing between the different Customs services involved, and related agencies*

A major principle of the TIR system is the **mutual recognition** of Customs controls. The controls carried out at departure, such as documentary checks, possible physical examinations of goods, sealing of load compartment etc, are accepted by Customs authorities in the countries of transit and destination. This allows the vast majority of consignments to be released at subsequent exit and entry offices with the minimum checks of the documents, seals and load compartments.

Customs should also cooperate with neighbouring services on administrative issues, for example, border office opening times.

For a transit system to function effectively, this mutual recognition of controls is essential. This principle should be extended to include the sharing of relevant information on operational and administrative matters, and where required, on individual traders, especially where smuggling is detected or suspected.

### References and available tools

#### *The Revised Kyoto Convention*

The Revised Kyoto Convention of the WCO on the Simplification and Harmonization of Customs Procedures (1999), specifically, annex E1 on Transit, provides the international standards and recommended practices for the implementation of transit systems. See [www.wcoomd.org](http://www.wcoomd.org).

#### *TIR Convention*

The TIR Convention provides that goods carried under the TIR procedure in approved and sealed road vehicles, combination of vehicles or containers, are not subject to Customs examination, unless irregularities are suspected. The Convention reduces the regular requirements of national transit procedures, while avoiding the need for physical inspection during transit, other than checking seals and the external conditions of the load compartment or container. In addition, it dispenses with the need to operate national guarantees and national systems of documentation.

See [www.unece.org/trans/bcf/tir/welcome.html](http://www.unece.org/trans/bcf/tir/welcome.html)

#### *TIR Carnet*

The TIR Carnet is a single transit document used within the TIR system, which is issued by the International Road Transport Union to national trucking associations, and reduces the risk of furnishing inaccurate or incomplete information to Customs authorities. See [www.unece.org/trans/bcf/tir/welcome.html](http://www.unece.org/trans/bcf/tir/welcome.html)

#### *International Convention on the Harmonization of Frontier Controls of Goods*

The International Convention on the Harmonization of Frontier Controls of Goods of the UNECE (known as the Harmonization Convention) provides international standards in order to facilitate the movement of goods across international borders. Annexes to the Convention deal with the following types of controls and inspections: Customs, medico-veterinary, veterinary, phytosanitary, technical standards and quality. See [www.unece.org/trans](http://www.unece.org/trans).

### *United Nations Layout Key for Trade Documents (UNLK, ISO 6422)*

The UN Layout Key is an international standard for Customs and trade documents integrating a set of international standards and codes for designing aligned series of forms using a master document. It can also be used to design screen layouts for the visual display of electronic documents. See [www.unece.org/cefact](http://www.unece.org/cefact).

### *United Nations Trade Data Elements Directory*

The United Nations Trade Data Elements Directory (UNTDDED, ISO 7372) contains the standard data elements, which can be used with any method for data interchange on paper documents as well as with other means of data communication. See [www.unece.org/cefact](http://www.unece.org/cefact)

### *UN/EDIFACT*

The United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT) is a set of internationally agreed standards, directories and guidelines for the electronic interchange of structured data, and in particular that related to trade in goods and services between independent, computerized information systems. See [www.unece.org/trade/untdid/welcome.html](http://www.unece.org/trade/untdid/welcome.html).

### *WCO Customs Data Model*

The WCO Customs Data Model is a global Customs standard for the implementation of reduced data requirements and electronic submission of declarations and supporting documents, and is expected to form the basis for the development of common electronic messages based on international standards. See [www.wcoomd.org](http://www.wcoomd.org).

### *ASYCUDA*

UNCTAD's Automated System for Customs Data (ASYCUDA) is a computerized customs management system that handles national transit regimes, and is being upgraded to handle regional transit systems. See [www.asycuda.org](http://www.asycuda.org).

### *UN/CEFACT Recommendation 33*

The UN/CEFACT Recommendation 33 on establishing a Single Window facility enables parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once. This may also provide a platform for coordinating controls among the agencies involved and payment of relevant duties, taxes and fees. See [www.unece.org/cefact/recommendations/rec\\_index.htm](http://www.unece.org/cefact/recommendations/rec_index.htm).

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## Border Cooperation and Coordination amongst Agencies, Authorities and the Private Sector in Relation to Transit

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### Background

The lack of effective cooperation between landlocked countries and their neighbours as one of the major obstacles to the introduction of more streamlined transit procedures but this observation is also true in other border crossing contexts.<sup>42</sup> Article V of the GATT 1994 regulates freedom of transit. Whereas the concept is a simple one, in practice, the smooth movement of goods in transit is often impeded by the uncoordinated activities and requirements of border agencies that impose slow, cumbersome procedures, some of which duplicate each other. WTO negotiations on trade facilitation are addressing these issues.

As regards the cooperation amongst agencies, it is important to distinguish between the various categories of cooperation, as both the objectives and methods may vary in each case. The main permutations are:

- Cooperation between corresponding authorities, for example, Customs in two separate countries.
- Cooperation between authorities and agencies within the same country
- Cooperation between authorities/agencies and the private sector within the same country.

### Benefits and costs

Cooperation and coordination among stakeholders yield the following benefits:

- The prevention of fraud and smuggling
- Enhanced security
- The reduction of delays and congestion at border crossings and control points, arising from harmonization of activities and requirements between border agencies
- Integrated and simplified data collection
- Rationalization of physical controls.
- Detection of revenue evasion
- Protection of national interests and population
- Reduction in costs through better deployment of resources.

The costs of improving coordination and cooperation amongst border agencies are almost impossible to quantify. However, the costs of these improvements will be far outstripped by the savings in time and expense to both government and the business community, and hence the economy at large, to the eventual benefit of society as a whole.

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<sup>42</sup> See also WTO document TN/TF/W/28.

## Implications of the measure

### *Mutual Interest*

Without a commitment to sharing information, coordinating enforcement efforts and aligning procedures it is impossible to make any practical progress towards achieving the above objectives. The key is finding the mutual interest that can act as the catalyst for commencing the process from dialogue to action.

Whilst this key will vary depending on local conditions in many areas it is increased security concerns that are currently driving the technological, investment and legislative changes necessary to reform the way cross border goods movements are handled.

In the current climate, schemes such as the United States' CT-PAT and EU proposals for pre-notification seem bound to proliferate and it is notable that in both examples dialogue with the business community on the practical implications has been seen as an essential element. Such systems are predicated on a cooperative effort in which all authorities embrace the responsibility for harmonized data capture and dissemination in a timeframe that avoids delays to shipments.

However, whilst reform in the interests of increased security provides an opportunity to improve the efficiency of controls on other illegal cross-border activities and economic fraud, it is also a potential mechanism for strangling trade flows, adding costs to business and reducing wealth.

It is at this point that the degree of success becomes crucially dependent on effective cooperation between the relevant national authorities and agencies and the input of the business community.

In all cases the goal is to find a proportionate balance between controls and the free flow of goods. Cooperation both in the exchange of information on a consignment-by-consignment basis and a coordinated approach to controls on adjacent borders is a vital factor in achieving effective risk management without excessive delays or manpower costs.

Even without the security dimension, government-led initiatives to reduce the levels of bureaucracy, duplication of controls and multiple submissions of data in different formats have delivered significant benefits in improving efficiency and stimulating trade. There are now many initiatives worldwide seeking to replicate Singapore's success with implementing a Single Window approach to international trade transactions and controls.

### *The Single Window*

The common element in all the Single Window projects is the mutual acknowledgment of the various agencies and government departments that their requirements will be met by sharing data collected from the trader through a single portal, either electronic or manual. To maximize the benefits to government and traders it is essential that the package include standardization of data sets, an area where the WCO Customs Data Model provides a benchmark.

Nevertheless, however laudable the intentions and irrespective of the level of cooperation between government departments and agencies, it is vital that there be an involvement of the business sector from inception. Whether this happens through individual traders or their representative bodies is perhaps less important than ensuring that there is input from all those involved in international trade: importers, exporters, manufacturers, transport operators, forwarders, customs agents, customs debt

guarantors, port and airport operators and software developers. The list is not exhaustive.

In the context of technical assistance and capacity building, many donor-driven projects do not involve the private sector during the design phase, even when the private sector is expected to play an important role in project implementation. Public-private sector consultation can improve project design and help ensure effective implementation. (UNCTAD/LDC/MISC.84)

### *Towards trade efficiency*

A successful integrated system for the efficient management of international trade movements is not simply about improving data exchanges; the ultimate objective is to reduce congestion and delays at borders and to facilitate the rapid movement of goods without prejudicing risk management.

The two biggest contributors to delays and congestion are goods being held pending either documentation processing or physical inspection. This latter aspect is particularly significant for certain types of goods liable to inspection by several control agencies in addition to Customs, for example, food of animal origin and plants. Without cooperation between agencies such cargoes may be moved from location to location on different days before control procedures are completed. In such cases it is the business community that is often the best source of intelligence on the scope for a more rationalized and coordinated approach.

Whilst the potential benefits of good levels of cooperation and coordination between authorities, agencies and the private sector may seem axiomatic, the creation of both the necessary environment and the adequate mechanisms poses challenges.

Many government departments and agencies are understandably protective of their roles and independence, and moves towards a more integrated approach can create fears about a change in function or loss of status. This often combines with genuine concerns about the consequences of any perceived diminution in the quality or frequency of controls. It is therefore essential that any project to foster the benefits of cooperation be under the auspices of a lead government department with the authority to evaluate each case and impose solutions.

### *Cooperation forums*

Equally the input from the business community has to be through a structured and systematic mechanism. The best models incorporate a standing liaison committee comprising representatives of all relevant government departments working with trade association representatives. Below this highest tier there will be working groups dealing with specific issues, this second tier should ideally include representatives from individual companies, which can also provide a pool for running pilot schemes.

It should be stressed that the concept of a regularly meeting liaison group is separate from any formal consultations between government and business interests that may precede the introduction of legislative change. The primary purpose of liaison groups is to look at the practical application of controls and procedures and to find constructive solutions that may or may not require national legislation or the cooperation of other countries.

The involvement of representative trade organizations should be a sufficient safeguard against changes to international transit procedures being unduly influenced by the interests of large multinational companies at the expense of small and medium sized

enterprises (SMEs) but it is incumbent on the lead government body to ensure that the views of all sectors are fairly represented. This is less an issue where there is the involvement of a government-sponsored trade facilitation body alongside industry-funded trade bodies.

General guidelines on the relationships between Customs authorities and the trading community are set out in the WCO Revised Kyoto Convention on the simplification and harmonization of Customs procedures (1999).

#### *Multinational coordination and cooperation*

The above comments apply to cooperation and coordination at a national level. The best example of such a mechanism operating at a multinational level is in relation to the management and development of the TIR system where the meetings of Working Party 30 provide a forum for a dialogue between Customs authorities from contracting parties, IRU as the authorized administrators of the TIR scheme, and national representatives of transport operators using TIR carnets.

It is through these meetings that practical measures to reduce the threat of fraud and ensure the sustainability of the TIR system have evolved with corresponding amendments to the TIR Convention where necessary. It has also served to demonstrate the need for the private sector to work closely with the authorities in policing international trade.

Indeed the whole concept of effective risk management is predicated on a high level of cooperation and trust between the authorities and those companies able to demonstrate that they are reliable, efficient and trustworthy in meeting the obligations arising from their international trade activities.

Whether it is access to the TIR scheme or attaining authorized consignor / consignee status under the Community / Common Transit (CT) system there has to be a process of initial vetting followed by periodic audits in return for which those meeting the requisite standards can be freed from a variety of controls ranging from the need to deposit financial guarantees to having to physically present goods to Customs. All these trade facilitation measures help to speed the flow of goods and reduce the cost of international trade.

A further, and perhaps logical, step is the outsourcing of the initial vetting and subsequent audits to the private sector. The argument in favour of this is that it further frees resources to concentrate on those shipments identified as potentially posing risk. To some extent this is already happening as authorized private sector companies become involved in assessing whether or not supply chains and cargo handling locations are secure. This in turn can lead to shipments using those routes receiving preferential treatment in transit and at destination.

#### References and available tools

*The Revised Kyoto Convention of the WCO on the Simplification and Harmonization of Customs Procedures (1999)*

provides the international Standards and Recommended Practices for relations between Customs authorities and third parties. [www.wcoomd.org](http://www.wcoomd.org)

#### *WCO Customs Data Model*

is a global Customs standard for the implementation of reduced data requirements and electronic submission of declarations and supporting documents, and is expected to

form the basis for the development of common electronic messages based on international standards. [www.wcoomd.org](http://www.wcoomd.org)

*International Convention on the Harmonization of Frontier Controls of Goods (UNECE 1982)*

provides international standards to facilitate the movement of goods across international borders.

*United Nations Layout Key for Trade Documents (UNLK/ ISO 6422)*

is an international standard for Customs and trade documents integrating a set of international standards and codes for designing aligned series of forms using a master document. It can also be used to design screen layouts for the visual display of electronic documents.

*The United Nations Trade Data Elements Directory (UNTDDED, ISO 7372)*

contains the standard data elements, which can be used with any method for data interchange on paper documents as well as with other means of data communication.

*Single Window (UN/CEFACT Recommendation 33)*

recommends establishing a Single Window facility, allowing parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once. This may also provide a platform for coordinating controls among the agencies involved and payment of relevant duties, taxes and fees. [www.unece.org/cefact](http://www.unece.org/cefact)

*UNCITRAL Model Law on Electronic Commerce*

provides standards by which the legal value of electronic messages can be assessed and rules for electronic commerce in specific areas, including carriage of goods. [www.uncitral.org](http://www.uncitral.org)

*UNCITRAL Model Law on Electronic Signatures*

establishes criteria of technical reliability for the equivalence between electronic and hand-written signatures. [www.uncitral.org](http://www.uncitral.org)

# APPENDIX I

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## Mandate and modalities for negotiations on Trade Facilitation in the WTO

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### **Annex D<sup>43</sup>**

#### **Modalities for Negotiations on Trade Facilitation**

1. Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.<sup>44</sup> Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.

2. The results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least developed countries. Members recognize that this principle should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least developed Members. It is further agreed that those Members would not be obliged to undertake investments in infrastructure projects beyond their means.

3. Least developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

4. As an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least developed countries, and shall also address the concerns of developing and least developed countries related to cost implications of proposed measures.

5. It is recognized that the provision of technical assistance and support for capacity building is vital for developing and least developed countries to enable them to fully participate in and benefit from the negotiations. Members, in particular developed countries,

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<sup>43</sup> The General Council's decision on the Doha Agenda work programme, also known as "the July 2004 package", WT/L/579, 2 August 2004.

<sup>44</sup> It is understood that this is without prejudice to the possible format of the final result of the negotiations and would allow consideration of various forms of outcomes.

therefore commit themselves to adequately ensure such support and assistance during the negotiations.<sup>45</sup>

6. Support and assistance should also be provided to help developing and least developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope. In this context, it is recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed-country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. It is understood, however, that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least developed Member continues to lack the necessary capacity, implementation will not be required. While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended.

7. Members agree to review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations.

8. In order to make technical assistance and capacity building more effective and operational and to ensure better coherence, Members shall invite relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank to undertake a collaborative effort in this regard.

9. Due account shall be taken of the relevant work of the WCO and other relevant international organizations in this area.

10. Paragraphs 45–51 of the Doha Ministerial Declaration shall apply to these negotiations. At its first meeting after the July session of the General Council, the Trade Negotiations Committee shall establish a Negotiating Group on Trade Facilitation and appoint its Chair. The first meeting of the Negotiating Group shall agree on a work plan and schedule of meetings.

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<sup>45</sup> In connection with this paragraph, Members note that paragraph 38 of the Doha Ministerial Declaration addresses relevant technical assistance and capacity building concerns of Members.