UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT


# TECHNICAL NOTES ON TRADE FACILITATION MEASURES

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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

# Technical Notes on Trade Facilitation Measures

The Technical Notes on Trade Facilitation Measures were first published in 2006 to provide background information on the concepts discussed in the trade facilitation negotiations at the World Trade Organization (WTO). The WTO negotiations on trade facilitation have evolved over the past three years, with a number of new issues being brought up, and other concepts dropped.

These notes have been revised to reflect the latest developments in these negotiations; they now feature 17 individual technical notes on trade facilitation. Each of the notes introduces technical and practical details of major trade facilitation concepts and best practices as they relate to the consolidated draft text of the WTO negotiations on trade facilitation issued by the Chair of the Negotiating Group on Trade Facilitation in December 2009 (TN/TF/W/165 and its revisions).

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# Note

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This document is a revision of the document entitled “Handbook on Trade Facilitation Part II: Technical Notes on Trade Facilitation”, published by UNCTAD under the document symbol UNCTAD/SDTE/TLB/2005/2. The revised document has been assigned a new document symbol, as the name of the document and the name of the division publishing the document have changed.

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# Contents

# Introduction

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. With trade facilitation reforms, governments seek to establish a transparent and predictable environment for cross-border trade transactions based on simple, standardized Customs procedures and practices, documentation requirements, cargo and transit operations, and trade and transport arrangements.

The profile of trade facilitation was raised in 2001 when the WTO Ministerial Conference placed it on the Agenda of the Doha Round of Trade Negotiations with the aim of clarifying and improving multilateral trade rules governing transparency, Customs operations and transit trade. In July 2004, WTO members agreed to start negotiations on trade facilitation on the basis of principles and modalities set out in the so-called Annex D of the July 2004 Package (WTO/L/579). The negotiations aim to clarify and improve relevant aspects of Articles V, VIII, and X of the General Agreement on Tariffs and Trade (GATT) 1994, draft provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and Customs compliance and enhance technical assistance and capacity building support.

Against the background of the negotiation process information on these best practices, concepts and recommendations used globally for trade facilitation were needed. UNCTAD therefore published a Handbook on Trade Facilitation in 2006, including a Part I on national trade facilitation bodies, and a Part II of so-called technical notes on trade facilitation. Each of the technical notes was written by an acknowledged expert in the field and provides technical and practical information on a trade facilitation concept, recommendation or best practices. A particular emphasis was placed on the presentation of implementation related issues, including, when possible general information on costs and benefits. The Part II constituted a useful document for use by capital and Geneva based negotiators engaged in the WTO negotiations on trade facilitation.

Since 2006, the negotiations have progressed and a first draft consolidated text for a future agreement on trade facilitation was issued by the Chair of the Negotiating Group on Trade Facilitation in December 2009 (TN/TF/W/165). The current draft text is substantially different from the proposals presented in 2005, the first year of the negotiations. WTO members have since been working on draft legal language for each of the proposed legal discipline. Also, some concepts and proposed disciplines have been dropped from the negotiating agenda, whilst others have been expanded or newly introduced. A revision of the Handbook Part II seems therefore both relevant and timely.

This revised version of the technical notes relates more closely to the text currently negotiated. New notes have been incorporated on the following subjects: national trade facilitation working groups; the right of appeal; Automated System for Customs Data (ASYCUDA); bonded Customs regimes and Customs procedures; and, border Agency coordination. The following two previously existing notes have been deleted: maintenance of integrity amongst officials and documentation requirements in maritime transport. They no longer relate to any proposal included the current draft consolidated text. The remaining 12 notes were partly or fully rewritten so as to provide more detail and clarity.

# Section One — Access to information and transparency

Transparency is a central element of the Article X of GATT 1994. Art X.1 requires that all WTO members "publish promptly" all their trade regulations of general application "in such a manner as to enable governments and traders to become acquainted with them". Art. X.1 further defines the coverage of this requirement which extends to all laws, regulations, rulings and judicial decisions of general application with Art X.2 specifying that modified or new measures cannot be enforced prior to their official publication.

The transparency provisions of GATT aim at ensuring predictability and access to information on trade policies, regulations, and legislation. The expected benefits lie in ameliorating the conditions under which traders and operators, especially small- and medium-sized enterprises (SMEs) engage in international trade transactions. Transaction costs for traders will be cut through more predictability and clarity on the costs and formalities involved in transaction. Improving the transparency also helps reducing opportunities for corruption, in particular the collection of unpublished and illegal fees and the maintenance of outdated practices.

In the context of the negotiations on trade facilitation WTO members propose clarifying and strengthening the publication requirements of GATT 1994. This would entail a clearer and closed definition of documents to be published, and the clarification of means and channels of publication. The latter could include placing the content on websites, and establishing national enquiry points. Proposals also aim at extending the publication obligation beyond the current scope of Art. X to also include information of more practical nature, such as procedural outlines or descriptions and forms and documents.

# Publication of trade regulations

## Background

Publication is the act of making information available to a third person or the general public by display, distribution, or circulation. Information can be published through different means, channels and in different formats: on paper or in electronic format, in a newspaper or by placing it on a website accessible through the Internet.

Timely, accurate and easily accessible information on trade legislation, applicable fees and tariffs, and related adjudicatory mechanisms is essential for the transparency, predictability and efficiency of international commercial transactions. However, publication provisions and practices differ amongst countries.

### *Coverage of GATT Article X*

The current scope of Article X pertains to laws, regulations, judicial decisions and administrative rulings of general application. Laws and regulations are mentioned separately in the text; with laws referring to enforceable rules of general application promulgated by parliamentary or legislative bodies, and regulations referring to so-called secondary legislation adopted by the administration. Judicial decisions and administrative decisions are interpretations of the application of existing regulation by governmental agencies referring to a particular situation or case. Rulings and decisions, as opposed to regulations, relate in general to specific cases and situations and are binding only on those cases. However, some rulings may not be specifically addressed to a particular company or person and therefore be qualified as of general application. Several WTO panel and the appellate body decisions dealt with the scope of application of certain administrative rulings. Further to acts of general application, bilateral or multilateral agreements shall also be published.

### *Publication of acts of general application*

In most countries, the publication of laws is part of the constitutionally mandated legislative procedure and the publication by the signatory is a necessary condition to become a law. Through the publication the existence of the law is rendered public and the published text will be deemed authentic and admissible in national courts. Most countries use a government publication – journal, bulletin, gazette are synonyms in this context, as the official channel of publication of the law by date of vote or entry into force. Such gazettes are printed regularly and distributed through individual or institutional subscription and/or by single issue sales in public kiosks. Many countries have also developed an electronic version of their bulletin and provide additional functions of access to codified laws on dedicated websites.

Publication practice and obligation for secondary legislation and decisions by the judiciary vary across countries. Often administrative rulings and judicial decisions are not published in a large scope but are displayed to the public at specific locations or circulation internally if they are considered to be of general application. Further to the display, such rulings and decisions may be available to interested parties upon request at the registry.

Laws can furthermore be codified by topical subject area and published in consolidated form – either in special editions of the government gazette, government departments or ministerial printings or through external legal publishing house.

## Issues to consider

*Traders' needs*

Traders need information to carry out the importation and exportation transactions. The required information includes the existing regulatory framework, applied procedures, operational practices, and intelligence information on the quality of services delivered for the importation and exportation.

However, traders need the information to be timely, accurate and readable. Paper-based publications which appear with delay or are not available to a large public are of limited use to traders, in particular SMEs. Legislative texts are important in case of dispute and appeal. Nevertheless, practical information – such as opening hours of border crossings, applicable fees and charges and tariff schedules, and descriptive outlines of the procedures and formalities – have a greater value for the operational practices.

The publication of trade-related information should therefore not be addressed in an isolated and ad hoc manner by each agency. Rather, it should be addressed as a comprehensive strategic objective of trade facilitation. Guiding principles of a trade information management should be readability with regards to the content and accessibility based on a combination of different channels and means of publication, including the Internet. Taking such an overall approach to trade related information management and incorporating requirements of traders improves the government services and ensures a more efficient management of the information.

## Implementation Issues

Four elements need to be taken into consideration for trade-related information management: Governance, Delivery, Data/Information, and Storage.

The governance element includes the role and responsibilities of the different agencies, the legal framework, security measures and rules, as well as a monitoring mechanism to control the quality. Delivery regroups aspects of maintenance of information, such as decision of means and channels, as well as a selection of a technology to support the delivery process. Data and information include the collection, analysis and production of information, the development and adoption of templates for the publication, as well as the structure of the data and information provided. Storage is the final element of information management and covers questions related to digitalised or paper archives and centralised or individual storage system.

These elements can be addressed in a step-by-step approach, starting with an initial decision over departmental responsibility to conduct the information management project. In a next step, the information requirement and offer is analysed, taking into account actual information needs of traders. This analysis leads to the definition of the information to be provided. This information may need to be produce or rearranged. The production of the information to be provided and the testing of its user-friendliness and readability is, therefore, the next step. At the same time, the legal framework has to be revised to ensure legal validity and authenticity of the information provided. A final step is the definition and organization of the information delivery. During this phase, aspects of the means and channels of the publication will be defined and, if necessary, an information technology selected to assist in the maintenance, storage and publication of the information. Further,

an organizational framework to oversee the maintenance of the information and institutional responsibilities, as well as policies or rules, including security rules, will have to be adopted.

# Internet publication

## Background

The transparency obligation of Article X of GATT does not specify the means and channels of publication. Art. X.1 requires only that the information is published "in such a manner as to enable governments and traders to become acquainted with them".

In reality, disclosure and provision of trade-related information differs from country to country. In many countries, published legislative information is still kept to a minimum level and relies on paper-based distribution as means and channel of publication. This limits the access to the information and the offer of information.

The use of information and communications technologies (ICTs) offers a huge potential to improve access to information on a 24-hour daily basis with little operating costs. Traders can have 24-hour/365-day access to the information independent of their location. RSS technique or e-mail alerts can be used to inform users of recent updates in content. The information published on websites can be mirrored on several sites without duplication of the actual content and related work of uploading and maintaining it.

The content and user-friendliness of information can also be improved. Centralized websites can provide topical subject collections without again duplicating the information. Different formats for text and multimedia can be combined and therefore offer new opportunities for the presentation of information.

## Implementation issues

Internet publication has to be seen in line with the concept of the information management system described in the technical note on publication. Several questions related to Internet publication arise: security (mainly the authenticity and control of the information provided), definition of scope of information, and the development of a comprehensive information technology (IT) strategy.

*Security: Authenticity and legal validity of information*

In an ICT-enabled environment where information administered by government is published, shared and even processed electronically security concerns relate to "protect information assets from unauthorized acquisition, disclosure, manipulation, modification, or damage and loss" (UNCTAD, *Information Economy Report 2005*: 187). Information security thus is the "sum of processes and technologies" (ibid.) to ensure such protection.

The main security concerns for publication of trade-related legislative and operational information are legal validity of the information electronically provided, and the authenticity of the information. Legal validity refers to the question of whether the information displayed and downloaded from the Internet will be an acceptable record for the public authority with regulatory supervision. Countries' legislation regarding legal validity of electronic information and data vary. It is therefore important to provide an adequate legal disclaimer stating the limitation of the validity as well as ways to access the original and valid document with the piece of information.

Authenticity requires ensuring that the information has not been altered by a third party and that the displayed document is the latest valid and original document. In a paper-based

environment, the control of authenticity is provided through signature, stamps, envelopes, seals, letterheads. Alternative means of the control have to be accepted and introduced for Internet publication.

Ideally, government bodies have official websites set up, maintained, secured and backed up on official servers. This way ownership and control of the information remains with a central body with necessary staffing and skills. In addition to the equipment infrastructure a web-publication policy and guidelines need to be implemented, clearly defining the responsibilities and mechanism of web-publication.

*Scope of published information*

The transparency obligation of Article X of GATT is mainly related to legislative texts. However, WTO delegates have stressed that additional information is required to enhance transparency of cross-border trade transactions. Further information on, for example, operational procedures, access to online forms, descriptive outlines of information as well as news-flashes on changes in legislation are equally important to traders. Publishing this information constitutes the added value from a trade facilitation perspective.

Many countries have in recent years introduced an electronic version of the official government journal or gazette publishing regularly adopted legislation. The electronic version either complements or supplements the printed version, depending on the legal validity given to electronic documents. Government journals or gazettes made accessible via the Internet offer access to full legal text and can provide additional services, such as access to consolidated legal texts, to legal digests or abstracts and search functions.

Examples of such government gazettes on the Internet

Argentina: Boletín Oficial de la Republica Argentina (http://www.boletinoficial.gov.ar/)
Burkina Faso: Journal Officiel de la République du Burkina Faso (http://www.legiburkina.bf)
Chile: Diaro Oficial de la República (http://www.anfitrion.cl)
Germany: Bundesgesetzblatt (http://www.bundesgesetzblatt.de) and Law Portal (http://www.gesetzesportal.de)

In addition, many government agencies, ministries and even private sector associations compile and make subject-relevant legislation and regulations available on their own websites. In order to ensure authentic and updated information, such information portals or collections often only mirror the information on the official gazettes' websites or provide only summaries of legislation and regulations with a link to the document on the gazette website.

For example, many Customs websites already provide a collection of legislation and regulations related to import and export formalities, procedures and restrictions, and Customs tariffs, fees and charges. Electronic Single Window platforms may also function as information platform (e.g. Cameroun Single Window (GUCE)). An example of a comprehensive trade information portal can be found under http://www.tradeinfo.pk.

Pakistan Trade Information Portal

The Pakistan Trade Information Portal has been conceived as a single-stop resource bank on the trade, transport and transit laws of Pakistan, commodity tariffs based on Harmonized System (HS) Code, trade statistics, free trade agreements, transit agreements and other trade related information. It offers the possibility of a two way access with a private log-in area of registered users.

*IT strategy*

Adequate ICT infrastructure, an implemented web-publication policy as well as an information security policy are basic requirements for secure, efficient and updated Internet publication by government entities. Many countries develop IT strategies in light of e-governance reform efforts.

Government agencies require a secured server to locate their websites, and a regular back-up service. Other requirements include software for the editing and control of the content of the sites, and trained staff. An administration-wide policy and regulation would deal with issues such as legal disclaimers, and links or mirroring of authentic legislative documents and will be followed up by internal guidelines defining the procedures for updating the content and attributing dedicated staff to this task. Security concerns will have to be addressed through the use of security technologies, the definition of an appropriate legal framework and ongoing training of staff.

# Single national enquiry points

## Background

Access to trade-related information is essential for clarity and predictability of international trade transactions. A national enquiry point (NEP) is a means to facilitate access to information already published, with the additional benefit of providing it in a personalized and customized manner responding to specific requests. It is an official body that responds to requests from traders and dispatch relevant information by means of telephone, fax and/or email. Provisions for enquiry points under the existing WTO agreements describe the responsibility of these NEPs as follows: to answer to all reasonable questions from interested countries, and to provide relevant documents. WTO members are obliged to notify the contact details of the NEP to the WTO secretariat.

There are different ways how enquiry points can manage trade information and provide its services. They can either build their own comprehensive physical or electronic trade information library or can function as a coordinating body that transmits requests to the concerned national agencies, compiling their replies and sending them back to the requesting party. In many countries, different agencies have their enquiry or contact points with staff knowledgeable in the particular area of work of the agency. For instance, Customs administrations often operate a phone service which companies can use for enquiries. Export promotion bodies also provide trade information service and market intelligence. A national trade enquiry point can thus function more as a cross-cutting coordinating service, which collects the requests and dispatches them to the appropriate body. The institutional and operational mechanisms of such national enquiry points will thus vary from country to country.

During the negotiations, delegations discuss in more detail (a) the type of information that should be made available through the enquiry point; (b) the language in which the information is to be provided; (c) the parties entitled to request the information; (d) the channels and the means required to submit requests and receive replies; and (e) the delimitations of responsibilities between regional and NEPs when countries are part of a regional trade agreement or a Customs Union.

### *Benefits*

Businesses engaging in international trade transactions require access to trade information, including information on the regulatory framework in place and operational practice. Through an enquiry point, this information can be obtained in one or few centralized locations. The information provided by the enquiry points is not only easily accessible, but also precise, up-to-date, and complete and requests are answered in a timely manner and on a non-discriminatory basis.

Enquiry points therefore offer time and costs savings due to this ready access and comprehensive information. Ensuring that the information is up-to-date and complete also improves compliance through the avoidance of mistakes and the solving of problems related to missing information prior to the transaction. Overall, enquiry points contribute to the quick and informed decision making process by traders.

Enquiry points suit both small and big economies alike. It is of particular interest for SMEs and small developing economies looking for facilitated market access.

## Implementation issues

A trade information enquiry point provides information on currently applied regulations, charges, formalities and procedures in place. This information has to be precise, up-to-date, complete and continuous, and has to be transmitted and dealt with in a professional and timely manner. The requirements for such a service to function correctly are at two levels. On the institutional side, an appropriate governmental agency or department needs to be designated and attributed the functions of the enquiry point. The responsibilities of such a trade enquiry point have to be set. This includes in particular, the determination of the relationship of the enquiry point with other relevant agencies which are bound to collaborate and provide information. Furthermore, a physical location and staff needs to be attributed to the enquiry point as well as means provided for the appropriate ICT equipment.

Secondly, personnel at the enquiry point will require training in order to manage operations, including in the areas of information management, and quality of service delivery. Guidelines have to be set up covering all steps from receiving the request to the dispatching of the responses to the requesting party, the development and use of communication templates, and standards and procedures of quality control. The last could include fixed timelines for answers.

An essential step before setting up an enquiry point is to undertake an information needs analysis and develop a suitable strategy to respond to the needs. This includes the decision over the use of ICT in support of the enquiry points, such as an electronic information library.

## Tools and examples

*WTO*

The WTO website provides detailed information on countries' experience with setting up the notification authority and enquiry points under the the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). See www.wto.org/english/tratop_e/sps_e/sps_handbook_cbt_e/intro1_e.htm for a training handbook on this issue. For contact details of the national enquiry points foreseen in Articles 10.1 and 10.3 of the WTO TBT Agreement, see www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_points_e.htm.

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

Electronic information facility within the Argentine Ministry of Economy and Production, in accordance with Articles 10.1 and 10.3 of the WTO TBT Agreement. This site contains local information and links to legislation in selected WTO countries, currently Brazil, Canada, Chile, the European Union (EU), Mexico, Uruguay, and United States. See www.puntofocal.gov.ar/.

*Examples of trade related enquiry points*

- Sweden's Open Trade Gate, a contact point of the National Board of Trade, established to facilitate exports from developing countries to Sweden and EU markets. www.opentradegate.se.
- EU Commission's Export Helpdesk for developing countries (only online services), www.exporthelp.europa.eu.

# Section Two — Administration of trade regulations

Articles VIII and Article X of GATT 1994 establish basic disciplines regarding the administration of trade regulations. Art. X.3(a) requires each WTO member to *"administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of [Article X]"*. Art. X.3(b) provides for the possibility to review actions by agencies through domestic review bodies, specifically first instance courts. These provisions aim at ensuring the uniform application of trade regulations and the effective establishment of a domestic appeal mechanism. Art. VIII.3(c) furthermore requires the simplification and reduction of the incidence and complexity of important and export formalities.

The levy of fees and charges, including penalties, is also an important aspect of the administration of trade regulation. Art. VIII requires all members to respect basic disciplines regarding the levy of fees and charges. The underlying rational of these disciplines is to prevent countries to levy charges for fiscal purposes and as a means of market protection.

The objective sought with regards to the administration of trade regulations is to reduce the burden and time spent by traders for filling out documentation and complying with the formalities of the various agencies and to strengthen uniform administration. By reducing uncertainty and ensuring access to an independent review of agencies' actions, the trading environment becomes more predictable. Uniform administration is a means to protect traders from surprises and discriminative treatment, including corruption.

In the context of the negotiations on trade facilitation, WTO members propose clarifications to the appeal procedure and the conditions of access to it referred to in Art. X.3(b). Another area for improvement relates to the simplification of formalities and documentation, as well as of and fees and charges. Some of the proposals touch upon institutional aspects, such as regular review of formalities and procedures, cooperation between border agencies, and consultation with the private sector over policy objectives and the introduction of new or amended legislation. Early in the negotiations there were also proposals for the "development of codes of conduct for staff of border agencies".

# Right of appeal against Customs and other agency rulings and decisions

## Background

Customs and other government agencies normally take administrative action in the form of rulings related to import, export and transit of goods. It is crucial for affected traders to have recourse to an independent appeal mechanism for review and, where appropriate, for the correction of administrative action or omission. The right of appeal ensures traders the right to appeal against Customs or other border agencies' decision on the basis that such decision or omission is not in compliance with the laws and regulations. An independent and competent authority will then review the application of legislation in the case under appeal and issue a decision. Appeal procedures can be lengthy and it would therefore be important for the traders that, when decisions are disputed and subject to appeal, goods can nevertheless be released against the provision of financial guarantee.

The fundamental principles and the right of appeal of administrative decisions are in most countries regulated by constitutional law, whereas detailed appeal procedures are subject to administrative specific regulation. Chapter 10 of the Revised Kyoto Convention outlines a number of standards concerning (a) the right of appeal, (b) the form and grounds of appeal, and (c) the consideration of appeals, for Customs matters.

### *Benefits*

A functioning appeal system helps protect traders against the application of decisions by the administration which may run against existing legislation and regulation. It ensures a fairer and more transparent application of legislation administered or enforced by Customs and other border agencies.

Appeal procedures, in particular judicial review, can often be lengthy and costly for the traders. The option to request more information on the decision taken prior to an appeal reduces the incidents of appeals without prejudice to the right of appeal. Administrative appeals processes often offer substantive advantages over judicial review. In particular, they enable quick decisions on minor or local appeals and involve fewer costs for traders, reducing at the same time the burden on the administration to adjudicate in appeal matters. The provision of a multiple-stage appeal therefore benefits both the traders and the national administrations. To ensure impartiality and fair treatment the authority to which an appeal is made should be independent from the administration which issued the decision. Such independent review can often only be ensured through judicial appeal.

## Appeal system

### *Multiple-stages appeal*

An appeal process typically consists of multiple stages to ensure a fair and impartial review. In general, national legal frameworks provide for administrative and/or judicial appeal.

The administrative stage usually entails an initial right of appeal within the same administration which issued the decision; either at the same level of authority, for example, the Customs office, or to a higher authority supervising the administration. This should

then be followed by the right to appeal to an authority independent of the authority which issued the decision, such as an established arbitration procedure or a special administrative tribunal. In many countries, Customs appeal bodies composed of several appointed individuals have been set up with the powers to settle appeals in Customs and tax law related matters.

At a final recourse, appeal to an independent judicial authority should be made available to all individuals. Some administrations allow judicial appeal at any stage whilst others stipulate that all stages of administrative appeal have to be exhausted before the right to judicial appeal.

*Requirements for filing an appeal*

In general, appeal procedures provide details on who can lodge an appeal, the types of decisions and omissions which can be appealed, forms and grounds of appeal, and the implementation of the appeal decisions.

The legal requirements and procedures for filing an appeal vary from country to country. Mostly, the right of appeal is generally available and accessible to the individual directly affected by the decision without any formal distinction on the basis of nationality. National legislation has to specify who is considered as being directly affected and whether the individual has the right to be represented by a legal representative.

According to the Revised Kyoto Convention (RKC) Standard, an appeal has to be filed in writing referring to the particular decision and the grounds in which the appeal is made. It has to be submitted within a given time period and with supporting evidence. A longer time limit can be granted for submitting the supporting evidence. The decision of the authority on the appeal, including the decision to accept or dismiss the appeal, has to be communicated in writing to the appellant and implemented by the administration, except for cases when the administration lodges an appeal against the decision.

## Implementation issues

National legislation has to provide for a right of appeal on Customs and other border agencies related matters. The legislation should include the right to administrative and judicial appeal. Furthermore, the legislation has to clearly lay out the appeal procedures, legal requirements and filing procedures. The legislation needs to be easily available (see Technical Note 1 Publication of Trade related information).

In addition to the legal framework, institutional capacities have to be developed, including when necessary by setting up of Customs appeal bodies and tribunals in Customs and tax matters with powers to adjudicate in appeal matters. It should be ensured that these bodies have sufficient human and technical resources to exercise their functions. For example, a Customs appeal body may consist of commissioners appointed by the government, but requires a secretary to register and fill the appeals, set the bodies' meeting dates, and handle correspondence related to the decision.

# Disciplines on the levy of fees and charges

## Background

A cross-border trade transaction incurs various services delivered by public or quasi-public agencies mandated to perform the service on behalf of the administration. A payment of user fees and charges is required for many of those services. GATT Article VIII sets general disciplines regarding all fees and charges "… imposed …on or in connection with the importation and exportation… " with the exception of "…taxes within the purview of (GATT) Article III…". In compliance with Article VIII.1(a) these fees and charges have to comply with three criteria: they have to be "…limited in amount to the approximate cost of services rendered...", should not „... represent an indirect protection to domestic products, and should not represent „...a taxation of imports or exports for fiscal purposes". The first condition limiting the price of the service entails another requirements: the fee should be related to a service. The United States – Customs Users Fee panel further ruled that the service has to be a direct and immediate service "…rendered to the individual importer in question".[1] Standards 3.2 and 9.7 of the General Annex of the revised Kyoto Convention likewise requires that service delivered by customs shall be limited to the approximate cost of service rendered.

In reality, however, user charges and fees are often used for raising government revenue in general and therefore have a fiscal character prohibited by Article VIII.1(a) and are calculated on the basis of ad valorem which may be a violation of Article VIII.1(a).

Complying with payment formalities involves costs for businesses. There are multiple points of collection of the fees with different opening hours, varying payment formalities. This requires traders to carry multiple bills and moneys, and carrying of additional paper documents as receipts. From a trade facilitation perspective, the levy of fees and charges should therefore be simplified as much as possible, be based on objective and transparent parameters, correspond in a reasonable way to the costs of the service rendered, and be administered in a consistent way.

### *Benefits*

The simplification of the fees and charges and the application of a cost-recovery calculation for the calculation of the price of the fee also benefit the administrations collecting the fees. The review of the currently applied fees allows identifying services that are undercharged, due to outdated prices, as well as overcharged areas. On a general level, if fees and charges are perceived as fair, justified and reasonable related to value delivery by the service, traders are more likely to comply with them. One reason for doing so is the fact that the costs of compliance are lower than the costs for seeking illegal or legal means to avoid payment. The administrations thus have to spend fewer resources for ex-post enforcement.

[1] § 80 of the report of the Panel adopted on 2. February 1988, (L/6264 – 32S/245.

## Issues to consider

*What services to charge for?*

Fees and charges are imposed to recuperate the costs of a service delivery by the State. Services provided by the State are of obligatory character if the utilisation of the service or the public infrastructure is mandatory for by regulation. These services are statutory services. Public services can also be non-statutory services if they can be used, at least strictly legally speaking, on voluntary basis.

It is possible for a public agency, to provide both statutory and voluntary non-statutory services (e.g. the processing of the goods declaration by Customs as mandated by regulation and an operation of an telephone information service).

Given this mixture of services provided to the public and the traders the determination for which services to levy fees or charges is an important and political question. Not all public services are subject to a service charge.

. Services can be entirely or partially subsidized by the government's regular budget for public interests reasons.

Different service areas, such as information services or processing services by Customs can be charged differently. Every service area can also have ranges of services for which, again, a different fee system can apply. This relates in particular to the priority or premium treatment which can be charged differently.

*How to set the charge and define the incurred costs?*

Setting the price of the fees and charges is complex as the task relates to selecting the appropriate pricing framework and assessing the costs to be taken into consideration. The price setting is usually not undertaken in a discretionary manner. Most countries use for this purpose either the so-called equivalence principle, which is based on the proportionality of the utility/value to the user and the costs of the service delivery alike, or the cost recovery principle. This principle provides that a charge should be set to recover all costs incurred in the provision of the service. Charges are set equal to the marginal cost or the average cost of the service in question.

With regards to the price of the fees and charges GATT Article VIII .1(a) set an overall limit to the price imposed[2]. This limit is the "approximate cost of service rendered". The price can thus not exceed the expenditures related to the provision of the service.

The cost-recovery principle is widely used as a basis for the calculation of public fees and charges..

The cost-recovery principle is not the only concept used in public finance. The non-application of the cost-recovery principle can be justified by a political reasoning of whether a charge is fair, equal, and reasonable. The so-called equivalence principle, for example, is. In a diversion from the strict cost recovery, charges can therefore be set above or below costs recovery. If the full cost of providing a service is not entirely recovered through the charges, some cross-subsidisation among some services or aspects of service delivery may prevail.

Assessing the costs of a service is difficult as it requires putting a monetary value, ideally reflecting the actual cost, on all cost factors. In general the full costs, meaning the total

[2] There is no different interpretation of the meaning of the requirements of GATT Article II.2(c) and Article VIII:1(a)

costs of all resources used in the provision of the service, should be assessed. This includes labour and associated salary and wage costs, materials, operating expenses, accommodation and corporate overheads and capital related costs. The assessment of the so-called overhead and joint costs of the service can sometimes be problematic, although financial accounting principles have been developed to provide guidance on this issue. Another difficulty is the inclusion of the external costs, costs to the society, and opportunity costs in the accounting.

*Administration of fees and charges*

Fees of non-mandatory nature, and their modalities of the determination of the price and the collection process are usually set by secondary legislation not requiring parliamentary approvallegislative procedures. Fees of mandatory nature however, require legislative approval

The introduction of new or the amendment of charges is thus usually subject to approval by a superior executive bodyministry or the parliament. Details of the approval and the rights of agencies to amend charges vary from country to country. A review of the services and the charges should be undertaken regularly and are, a t intervals subject to a more fundamental review a general auditor for example. The objectives of a fundamental review are to assess if the financial objective of costs recovery is achieved, if service delivery efficiency and effectiveness can be improved, and if the adequate assets for the service are provided. Such a review should also take into consideration the consolidation of fees, and the use of ICT to facilitate the payment For example, the large majority of Customs automation software now offers functionalities of e-payment allowing the payment through commercial or national banks by electronic transfer.

A related question to the levy of charges is the earmarking of revenues. Commonly revenues from the collection of fees and charges are earmarked for the budget of the same agency which provided the service and can be invested into the functioning of this service only.

## Implementation issues

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

Countries considering a review of their fee structure could be guided by the following:

- Conduct a review of current user charges and fees related to the importation, exportation or transit of goods;
- Categorize the services charged for in service range and categories;
- Ascertain costs for each of these services and analyse if the current charges are appropriate;
- Based on these findings revise existing charges, consolidating where possible fees and increasing efficiency of administration and collection;
- Consider drafting guidelines for the levy of charges intended to be used by public sector and setting up a pool of experts to assist agencies in the devising of their charges.

Applicable fees and charges should be published through the appropriate medium (trade journal, gazette, or Internet, wherever possible). It may be advisable to make a list of applicable fees available in the offices where they are due to be paid.

# Border agency coordination

## Background

The geographical border is the location where one country's authority over goods and persons ends and another country's authority begins. Traditionally, the border is the location where enforcement of and compliance with national legislation in such areas as security, environment, immigration, consumer protection, commercial policy, Customs duties, excise and taxes takes place. Control and enforcement involve various operations from document and goods control, to the calculation of Customs duties and taxes, the collection of revenue, and immigration and vehicle control. These operations are performed by various governmental agencies, often physically represented at the border.

Traders have reasonable concerns on the number of border control formalities and their organization. Lengthy border crossing procedures cause delays and congestions and put a strain on the border post facilities, in particular on land border posts, which are often not equipped with sufficient parking lots for trucks and have only one access road. Unpredictable crossing times impact trade and the overall performance of the supply chain which penalizes perishable goods in particular.

Border agency coordination aims to speed up the release of goods at border crossings or inland clearing facilitation through a better institutional arrangement and administration of regulations. It has a domestic dimension; coordinating and cooperating amongst national agencies involved in border controls, and a cross-border/international dimension; recommending cooperation between agencies of States with common borders.

*National border agency coordination*

The term Integrated Border Management (IBM) is often used in the national context to describe different forms and levels of border agencies coordination and cooperation aimed at facilitating legitimate trade and increasing operational efficiency. Coordination and cooperation can encompass different components; including:

- Joint, coordinated or delegated conduct of inspections with shared risk management processes, control and payment procedures;
- The exchange of data to allow traders and agents unique data entry through (e.g. a single window platform);
- Operation of integrated procedures and joint or delegate inspections; and
- Joint management of the border post and related facilities.

Border agencies cooperation can be implemented through different governance frameworks and levels of coordination. When selecting the governance framework for cooperation, various options exist. These include, for example, setting up a new agency, incorporating the responsibilities of the previously existing different agencies, establishing a legal framework which allows for the exchange of information and the sharing of control functions amongst agencies, and regular consultations among agencies.

Indeed, border agencies often cooperate on a voluntary and ad hoc basis at the border crossing itself. For example, contingencies such as the need to plan traffic flows in peak times, are discussed and addressed in cooperation. However, in order to strengthen and

move cooperation to the higher levels of hierarchy, a more formalized approach is necessary. The sharing of resources and infrastructure often requires regulatory changes and a well established communication amongst the agencies.

An integrated IT system, such as a Single Window platform, would facilitate the exchange of data and the operation of integrated procedures, and therefore support border agency cooperation and coordination.

*Cross-border cooperation*

Cross-border agency cooperation is very complex and relies on a robust legal framework shared by both countries; a policy declaration, a memorandum of understanding or a bilateral agreement. The optimal form of cross-border cooperation is the Joint One Stop Border Post (OSBP), operated by two neighbouring countries (see box below). The joint operation of border posts requires close cooperation in the daily management of the border posts, the harmonization of requested documentation, joint maintenance of the infrastructure, joint or mutually recognised controls, and the exchange of data. The deployment of border agency officials on the neighbour's territory has to be regulated as well. Often substantial infrastructure investments (new buildings, access roads, information and communications infrastructure (ICT) and agreements for sharing the information, shared new scanners and weight bridges etc) will be necessary.

Joint border posts in Africa

After several years of preparation, a bilateral agreement to establish a Joint Border on the South Africa–Mozambique Border was singed on September 2007 between the Presidents of South Africa and Mozambique. South Africa has agreed to finance the major infrastructure works and both countries are in the process of setting up the necessary bilateral working groups to undertake the preparatory work. These technical working groups would deal with legal framework, infrastructure, ICT, operational procedures, human resources and training, safety and security and border management. In addition, a Communications Unit was created to keep all stakeholders — public as well as private — informed of the progress and solicit advice.

In West Africa, joint border posts are planned on the borders between Ghana and Burkina Faso and on the border between Burkina Faso and Mali, as well as on the border between Senegal and Mali. These initiatives are undertaken in the context of Corridor developments financed by the national Government, the EU, the African Development Bank and the World Bank. Most of the preparatory work is undertaken at the Commission of the West African Economic and Monetary Union. Progress towards a model agreement on the legal and operational framework, as well on infrastructure works and the Border post management, is well advanced.

Less integrated forms of cross-border cooperation also have beneficial impact on trade facilitation and constitute first steps towards a joint OSBP. The alignment of office hours for Customs clearance can be achieved via a simple consultative mechanism, including neighbouring countries' border posts managers and stakeholders. Countries can also agree to recognize controls, such as vehicle weighing, and the cross-border road permits. On the basis of the World Customs Organization (WCO) Johannesburg Convention countries can also provide mutual administrative assistance and share Customs information in cases of infractions. However, if countries would like to establish a routine exchange of Customs data, a national legislation providing for the collection and transmission of information in line with existing laws on data protection and data privacy, and a bilateral agreement specifying the condition and use of such information become necessary; the WCO Model Bilateral Agreement on mutual administrative assistance in Customs Matters, and Guidelines for the Development of national Law for the collection and transmission of Customs Information are useful tools in this respect.

*Benefits*

Coordination and cooperation of border agencies contribute to reducing compliance and enforcement costs, and result in efficiency gains and less operating costs. Benefits for the trading community include for example:

- Simplification of document preparation (lower compliance costs for the declarant);
- Faster border crossing resulting from harmonization of physical inspections of crossing cargo, vehicles and drivers and better flow management;
- Reduce pressure on the infrastructure;
- Costs savings in administration, and streamlines procedures, improved working conditions for government officials due to the use of shared information, common premises and services; and
- Reduced staff needs owing to task sharing among different agencies, thus liberating skilled human resources for other activities.

## Implementation issues

- The movement to more integrated border agencies operations should start with an analysis/mapping of each agency's existing procedures, mandate and operations. Based on these findings a new set of joint operational functions will be designed. These should reflect simplification and be aligned to international standards — including risk management — and joint data elements. This would lead to the development of common documents and integrated procedures.
- A monitoring system of the traffic flow and time delays should be designed to measure the impact of the changes and to continuously identify possible bottlenecks at the border post.
- The decision to share data between the different agencies and departments operating at the border will require a new IT environment, and possible the introduction of a Single Window platform.
- A governance model for the joint border post will need to be defined. This includes the financing modalities for the construction and maintenance of the facilities, the operations of the facility.
- If new infrastructure and facilities are foreseen, these should be planed based on the existing and projected traffic flows (vehicles, trains, persons) and the new operational procedures that will determine the sequences of fulfilling the formalities.
- The delegation of responsibilities and tasks, the exchange of information as well as the need to operate on an extra territorial basis for some agent requires that an enabling legal and regulatory framework be prepared.

# Multi-Agency Working Group on Trade Facilitation

## Background

Governments' participation in WTO trade facilitation negotiations requires policy coordination and knowledge of the national trade facilitation needs and priorities. In some countries a working group or committee has been set up as a coordinating mechanism to support the negotiations through the provision of technical expertise and feedback on the tabled proposals. Others have created a trade facilitation task force in the context of the WTO trade facilitation needs assessment.

Often these task forces resemble an ad hoc group of stakeholders, created for the single purpose of conducting the self-assessment. Many countries now recognize the value of sustaining these task forces in the form of a permanent multi-agency working group with a view to supporting the ongoing negotiations and planning for the implementation process.

Trade facilitation involves a wide and diverse range of public agencies performing functions related to cross-border trade. Public authority has largely been divested to specialized, quasi-autonomous executive agencies operating in often different locations. Such delegation of authority makes coordination and collaborative work a challenging task; agencies work in an atomized manner sealed off from input of other stakeholders. Executive agencies responsible for the implementation of policies are rarely involved in the preparation of policies and designing of solutions. In such an environment, the success of a coordinating mechanism is strongly dependent on the appropriate institutional framework; leadership/or a national champion to drive the process; a clear vision and goals, and committed participants.

The purpose of this note is to provide guidance on the institutional requirements and managerial aspects of a national trade facilitation coordinating mechanism, or National Trade Facilitation Working Group (NTFWG). It is an addition to the document TN/TF/W/51 submitted by the World Bank in 2005.

## Role and functions of multi-agency working group

A key role of a multi-agency working group in the current context of the ongoing negotiations on trade facilitation is to provide technical backstopping for the Geneva-based negotiators. Missions of developing countries to the WTO generally lack sufficient resources to cover all technical aspects of the negotiations and are therefore dependent on timely expert input and feedback from the capital. There is, however, often very little communication between the capital-based experts and the Geneva-based negotiators. A national trade facilitation working group facilitates the communication and provides the necessary expertise for the analysis of the tabled proposals.

Furthermore, it provides a platform for dialogue with private stakeholders and contributes through intra-agency policy coordination to a high level of policy coherence at the national level, as well as in international negotiations.

In view of the implementation of the negotiated commitments, its experts can provide necessary input for the development of operational and strategic solutions and the designing of an implementation plan, taking into account broader trade facilitation reform objectives.

## Implementation issues

The complex institutional setting of multiple agencies having responsibilities with regards to cross-border trade and transit of goods makes intra-agency coordination a challenging task. Agencies operate in an atomized manner and lack the experience and structure for collaboration. Conflict over resources and mandates between the different ministries, departments and agencies typically characterize the trade facilitation policy environment. Private sector consultation is often limited to ad hoc information and briefing sessions on the occasion of the introduction of new or amended legislation and procedures. When considering setting up a working group as a coordinating mechanism one has, therefore, not only to look at the institutional arrangements of the working group, but also the managerial aspects of its daily operations. A clear institutional framework defining the role and responsibilities of the working group, strong leadership, clearly defined vision and goals, as well as committed participants, are key elements for the sustainability of trade facilitation working groups.

### *Institutional framework*

The establishment of the institutional arrangements for the coordinating mechanism is critical to its success and sustainability.

The specific institutional arrangements for the multi-agency coordinating mechanism on trade facilitation would vary from country to country with regards to the mandate and resources and decision-making power attributed to them. Working groups could be formalized with a clear mandate endorsed by the government or operate in an informal, consultative ad hoc manner. Whilst some may be given key decision-making powers, others may function as an expert advisory body only. There is no prescriptive structure and role for a working group.

The role and tasks of the working group need to be integrated into the national economic policymaking and aimed at contributing to the effective delivery of national development and reform efforts. Trade facilitation is only one of the many strategic development goals of a country and is closely linked to broader public policy objectives, including, inter alia, Customs modernization, public sector reform and export promotion.

The functions and responsibilities of the working group should be defined in its terms of reference and mandate. Key elements of the terms of reference are the line of communication and reporting to existing governmental institutions, and the type of outcomes expected from the working group. The terms of reference, therefore, determine how much control over resources is attributed to the group and how the working group is linked to the executive and the government in general. It may, furthermore, be necessary to attribute responsibility for the working group to one particular administration.

If the working group is established as a permanent body, a coordinator should support its functions. The role of the coordinator should extend to performing secretarial functions, including setting meeting schedules, preparing the agenda, keeping records and minutes of meetings and circulating information to members. The coordinator can be appointed or elected based on the terms of reference agreed by the body. It is recommended that the choice of coordinator should be one agreed upon by stakeholders, in order that the legitimacy of the functionary is established. In order to perform the task of coordinator, the requisite tools and resources should be made available to the functionary. Regularity of meetings and good record keeping help keep the group motivated.

*Leadership and urgency*

Institutional arrangements, however, are not the key factor for success of a multi-agency working group. In addition, appropriate leadership is necessary, in particular, in the process during the establishment of the working group.

At the outset the role out of the group is aided by a strong leader, sometime referred to as a *champion*. This individual would stimulate interest in the group and generate awareness of the importance of establishing the working group. In addition to stimulating interest, the role of the champion would include selling the vision and benefits of the trade facilitation working group (TFWG) to the political establishment and key social and economic actors. The leader in this context is required to be pro-active, committed to the task in a nearly ideological manner – similar to that of an entrepreneur. Leadership is demonstrated by the very act of a willingness to guide the process, and is recognized because of formal or informal authority provided by acknowledged competence, access to the political establishment, and the capacity to mobilize.

There are, however, conditions that support the emergence of leadership, such as a perceived sense of urgency to act and the expectations of benefits to be gained for interested parties. The urgency to implement trade facilitation reform is related to a country's desire to reduce trade costs and enhance trade efficiency and ultimately national trade competitiveness. Evidence gathered through benchmarking studies and trade facilitation audits can be used to underscore the need to act upon the observed trade facilitation challenges. If the TFWG proves to be a successful agent of reform, its leadership will receive recognition, resources and authority for implementation. This motivates its leaders and members for their work.

The negotiations on trade facilitation at the WTO also have an important role for mobilizing support for the TFWG. Against the background of the ongoing negotiations, trade facilitation has been identified as a key factor for economic development and in some cases, regional integration.

An initial impulse and strong leadership throughout are crucial for guiding the work of the TFWG and encouraging members to achieve the goals of the group. A mission statement and a work plan are tools needed to facilitate the successful accomplishment of tasks by members of the group.

*Mission statement, objectives, work plan and achievements*

The development of a mission statement is important to the identification of a common objective and to reflect the collective aspirations of the group. The mission statement should be phrased in a simple sentence which is easy to communicate and understand.

Objectives and goals define, in more detail, the work of the task force over a specific timeframe. In this context, objectives of the TFWG should be broad and continuous to remain flexible and subject to re-evaluation over time.

Goals, as contrasted with objectives, are measurable targets to be achieved within identified timeframes. They can be short or long-term. Actions or tasks will be defined against the specific goals. The work plan links objectives to goals and spells out what actions will be carried out. It should also contain the required actions, measurable goals, expected timeframe and should designate individual or subcommittees based on demonstrated competences to carry on these specific responsibilities.

Trade facilitation is a large policy field, necessitating interventions in many distinct areas, such as: Customs (modernization), strengthening enforcement (transparency and oversight), e-government, logistics, transport infrastructure and simplifying trade

procedures. The ongoing negotiations at the WTO and regional economic integration processes provide for an additional layer of complexity.

The TFWG group should take a pragmatic approach to the development of a work programme. There is the danger of setting the objectives too high. Rather, it is important to set achievable objectives and goals with short-term and long-term time frames which are reflective of the groups' resources and decision-making power vested to the group.

Ideally, a group such as the TFWG contributes to and, where possible, initiates policy change. In this context, the TFWG would function at all levels of the policy cycle, from problem identification to the development of solutions and the delivery.

Within this broader context, many different targeted objectives can exist, ranging from strategic to operational goals. Operational objectives are very powerful in persuading decision-makers, and members alike, that the TFWG leads to concrete accomplishments. Strategic objectives aim at influencing the policy process and directing it towards the implementation of necessary policy reforms. The performance and recognition of the working group itself should also be included in the objectives. Developing and maintaining a viable network with the government and ensuring successful follow-up of the groups' decision require attention and resources of the group. It is highly recommended to include the working group in determining the objectives, the work plan and the mission statement, through e.g. joint brainstorming sessions. This ensures a high level of ownership and buy-in over the process by the membership and results in a greater level of commitment on the part of the members of the working group.

*Committed participants*

As noted above, ensuring a broad, multi stakeholder participation in the TFWG is critical to success. All relevant actors and stakeholders should be brought into the process. An inclusive structure is important for the legitimacy of, and support to the working group. However, it requires time and effort to establish a work environment of trust and transparency.

Trade facilitation stakeholders comprise a diverse group of public agencies and representatives from the trading community. The following is an indicative list of agencies and organizations that are typically involved in cross-border trade issues and could be invited to become members of the TFWG. The name and responsibilities of the listed agencies may vary from country to country:

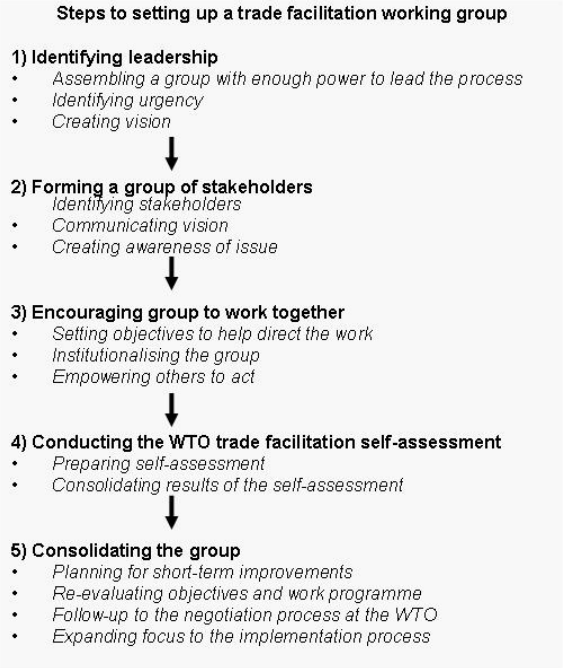
- Implementing agencies: (Customs, Quarantine, Standards Board, Port Authority and Airport Authority, etc.);
- Attorney General or Legal Department of Cabinet (legal matters, e.g., appeals);
- Line Ministries for Transport, Commerce, Foreign Affairs, Economy and Finance , Agriculture and Animals, Food and Drugs, and Environment;
- Private sector: a cross-section to reflect wide interests, including large and small, importers and exporters, carriers, freight forwarders and associations, cargo owners, chambers of commerce and shippers associations).

Representatives on the TFWG should come from different functional levels, including executive and non-executive directors and technical staff. It is important, and requires time, to create an open environment of transparent collaboration based on contributions of each of the members. Different collaborative techniques exist allowing for different contributions and level of engagements, e.g. focus groups or citizen panels. Members of the task force can thus be involved at a level of engagement that takes account of their time limitations and interests.

Participants have to be encouraged to take ownership of actions, and receive recognition for accomplishments. In addition to taking on board the contributions of members of the working group, the tasks set out in the work plan should be distributed in a manner that spreads responsibility amongst all represented agencies. It is recommended that, at each meeting, time should be devoted to reporting on progress made on delegated tasks. Likewise, members should share with the group problems encountered so that broader lessons can be drawn and used for the implementation of future tasks. Members have to be able to see that the working group adds value commensurate to the amount of time they dedicate to its work. In this regard, measurable short-term goals provide the impression of quick-wins, and act as a strong motivation for members to become engaged with the working group and take over responsibilities for tasks.

## Steps to setting up a trade facilitation working group

Taking into account the different elements described above, setting up a trade facilitation working group follows a step-by-step process outlined below:




For those countries interested in strengthening their existing national coordinating mechanism following the WTO national self-assessment, the starting point would be the institutionalization of the group. The existing institutional framework for trade policy coordination and trade policy reform into which the trade facilitation working group would integrate has to be analysed before drafting the terms of reference and putting them forward for endorsement by the executive and cabinet. The next important step is to establish a working plan and set achievable goals, bearing in mind the importance of realizing quick and tangible accomplishments. The group could either start with limited objectives focusing on the WTO negotiations or from the outset, setting objectives that fall within the broader agenda of trade facilitation reform.

## Guides and recommendations

*UN/CEFACT*

United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation No.4 second edition National Trade Facilitation Bodies (ECE/TRADE/242, Geneva 2001).

UN/CEFACT Guidelines to recommendation No. 4. Creating an efficient environment for trade and transport. (ECE/TRADE/256, Geneva 2000).

*The World Bank*

Trade Facilitation Negotiations Support Guide published as TN/TF/W/51.

*UNCTAD*

UNCTAD Trade Facilitation Handbook Part I. National Trade Facilitation Bodies: Lessons Learned (Geneva 2005).

# Simplification of trade documentation using international standards[3]

## Background

Documents are the support to collect information and data. Document requirements in international trade serve different purposes. These may include for example documents required as part of governmental procedures, supply chain management and payment requirements. Managing the various documentary requirements becomes problematic as the information need to be submitted to different agencies in different countries and languages, on difference forms, and with various supportive documents attached to them. National and international businesses, traders and transport operators have to cope with numerous documents and forms (sometimes up to 40 originals), often containing redundant and repetitive data and information (200 data elements on average).

The World Bank **Doing Business Study** www.doingbusiness.org provides country-specific data on document requirements for export operations, informing of opportunity costs induced by trade document processing. The data shows that in many developing countries the costs for document preparation are the biggest cost factor in the export process. For example, Indian exporters experienced costs of $350 for document preparation, $120 for Customs clearance, $150 for port and terminal handling and $200 for inland transport. The costs for document preparation in a country with highly simplified and automated processes such as Germany were reported at $85 per shipment. The data indicates that for developing countries and transition economies document simplification and automation is an important instrument to increase competitiveness at competitively low investment costs.

Simplification of trade documents, therefore aims at reducing document and data requirements and aligning them to international standards. Aligned trade documents are the first step towards paperless processing of documents and Customs automation.

### *Benefits*

Simplified and standardized trade documentation yields tangible benefits:

- Fewer documents, and forms that are easier to complete;
- Reduced time, money and human resources resulting in lower total transaction costs;
- Harmonized data elements that facilitate the document transmission between countries and remove language barriers;
- Easier reproduction and fewer mistakes as data is entered only once;
- Improved administrative controls; and
- Smoother transition to automation and electronic document submission.

### *International standards for documents, data elements and electronic transmission*

Over the past 40 years, the United Nations has launched several initiatives to move towards simplified and standardized trade documentation. Examples include:

[3] This Technical Note has been produced jointly by the United Nations Economic Commission for Europe (UNECE) and UNCTAD.

- The United Nations Layout Key (UNLK) was first adopted in 1963. It is essentially a master layout design from which other trade documents (administrative, commercial) can be derived. It organizes coded information (address, buyer, seller, documentation requirements for certain products, etc.) in a box format, in fixed locations on a document. Using the UNLK ensures that the same information and data are found in the same places on all documents, and the same format is used regardless of paper size. 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), the geographic coding scheme UN/LOCODE, and others. Forms created with the UNLK are called "Aligned Paper Documents".

Examples of international documents based on the UNLK

Regulatory documents:
- Single Administrative Document (SAD, European Union)
- Phytosanitary Certificate (Plant Protection Convention)
- Certificate of Origin (WCO Revised 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)
- The IMO Standardized Forms (FAL 1-7)

- The United Nations Trade Data Elements Directory (UNTDED, ISO 7372) provides definitions for the most important terms used in trade documents and in international trade. The publication is maintained and published jointly by the International Organization for Standardization (ISO) and the United Nations Economic Commission for Europe (UNECE). The WCO Data Model is based on the UNTDED.
- The United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT, ISO 9735) comprises internationally-agreed standards, directories and guidelines for the electronic interchange of structured trade data between independent computerized information systems.
- The United Nations Core Component Library (UN CCL) is a library of technology neutral building blocks to define information which can be implemented in different syntax. The UN CCL is based on the ISO 15000-5 (ebXML) standard. It builds on both the UNTDED and UN/EDIFACT standard. The data structures can be expressed either in UN/EDIFACT or in extended Mark-up Language (XML).
- The United Nations electronic Trade Documents (UNeDocs) to provide the equivalent of paper documents in electronic format. UNeDocs is based on the UNLK and the UN CCL.

## Implementation issues

For the implementation phase, a sequential step-by-step approach can be envisaged, as follows:

- Simplifying and harmonizing the underlying processes, regulations and procedures;
- Simplifying and standardizing layouts of documents and data requirements; and
- Transforming into electronic formats and transmitting documents electronically.

*Requirements*

A starting point for the simplification is a sound analysis of the existing trade procedures and requisite formalities and documentation, the commercial and documentation practices, as well as the ICT systems used to generate and process trade documents. This could be done by taking one trade operation as an example and by listing all the necessary steps including licensing requirements, commercial documents, governmental formalities and documents, border crossing processes, inspection and related requisite time.

Based on this analysis, the procedures and formalities can be simplified, and information requirements common to several procedures and agencies identified. Common data elements in the main trade documents can be collected to constitute the basis for a national UNeDocs application. Requirements of the different IT systems by public and private operators can be examined in view of introducing one common standard for the transmission of the data.

Once the new aligned documents are developed, a test run for one specific import or export procedure can be undertaken involving public agencies and traders. When the new documents are validated, stakeholders should be informed and trained to use these documents and, if necessary, training should also be provided in relation to the relevant IT systems used. Throughout the entire process, an active involvement of private traders, transport operators, agents, insurers, commercial banks, and forwarders would be beneficial.

Example: NITPRO

In 2002 NITPRO, the Nigerian Committee on Trade Procedures analysed 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, aligning them 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. See Trade Policy Review Nigeria, WTO WT/TPR/S/147, 2005.

*Tools for document alignment*

The Trade Documents Toolkit, developed by the United Nations Regional Economic Commissions helps trade facilitators to design national trade documents aligned to the United Nations Layout Key. It contains an electronic toolkit for the development of write-enabled paper documents in PDF format, a handbook and sample document forms, and a library of resources for the alignment of trade documents. Documents developed with the Toolkit can be used for later extension to UNeDocs electronic trade documents. Prior to using the Toolkit, it might be necessary to carry out analysis of existing procedures and related documents with a view to rationalizing or complementing them. For this purpose, and to put the toolkit to practical use, technical assistance might be needed. In addition,

Customs officials as well as other users of aligned trade documents should benefit from training.

**Thailand**

The Government of Thailand has started a process of establishing a national Single Window for e-Logistics. Several initiatives have been taken, including those whereby important national trade documents were simplified and aligned to the United Nations Layout Key. The Ministry of Transport completed a process of analyzing transport documents and modelling of the relevant documents and business processes using the UNeDocs. Data requirements from 57 transport-related documents were analysed and harmonized. The initial number of 1,346 data elements could be reduced to 210 data elements. The Ministry of Information and Communication Technology commissioned a similar initiative for other 310 documents related to permits and licenses from controlling government agencies. Royal Thai Customs has replaced its traditional EDI system with ebXML-based e-export and e-import systems. It is working with 28 government agencies to integrate electronic licenses and permits with customs declaration information for faster cargo clearance.

## Tools for the simplification of trade documentation

*UNECE instruments*

More details on UNeDocs are available at www.unece.org/etrades/unedocs/.

The following UN/CEFACT Recommendations provide more information on the standards and its implementation and can be found at http://www.unece.org/cefact/recommendations/rec_index.htm:

- Recommendation No. 1: UN Layout Key;
- Recommendation No. 6 Aligned Invoice Layout Key for International Trade;
- Recommendation No. 16 Code for Trade and Transport Locations UN/LOCODE;
- Recommendation No. 22 Layout Key for Standard Consignment Instructions;
- Recommendation No. 25 Use of the UN Electronic Data Interchange for Administration, Commerce and Transport Standard (UN/EDIFACT).

*World Customs Organization*

WCO instruments include the WCO Customs Data Model. It is a global Customs standard to implement reduced data requirements and electronic submission of declarations and supporting documents. It forms the basis for the development of common electronic messages based on international standards.

*International Maritime Organization*

The IMO Convention on Facilitation of International Maritime Traffic (IMO-FAL) includes in its Standard 2.1 a list of documents that public authorities can demand from a ship and recommends the maximum information and number of copies. It has developed Standardized Forms for seven documents.

*Trade Documents Toolkit*

A set of tools and guidelines, developed by the five United Nations regional economic commissions (ECE, ECLAC, ECA, ESCWA and ESCAP), for the design of national, sectoral and company trade documents and forms, based on international standards and other tools. UN Toolkit for aligned trade documents, see: http://unece.unog.ch/etrade/tkhome.aspx.

# Section Three — Customs clearance

Expedite Customs clearance relates to Article VIII of GATT 1994, in particular Art.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”.

Release in the Customs context means the action by Customs to permit goods undergoing clearance to be placed at the disposal of the persons concerned. Clearance means the accomplishment of the Customs formalities necessary to allow goods to enter home use, to be exported or to be placed under another Customs procedure (RKC).

The key measures proposed aim to expedite the clearance and release of goods at the borders. These measures include, inter alia, pre-arrival clearance, separate release from clearance, authorized trader schemes, risk management, and post-clearance audit. Customs modernization through automation and ICT use is a useful step in implementing such procedures.

# Advance rulings[4]

## Background

A major source of dispute between Customs officials and traders is related to the treatment attributed to the goods for Customs purposes – determination of the value, classification of goods, and determination of rules of origin. Wrong valuation and classification decisions may constitute a non-tariff barrier to trade if they are a de facto way to circumvent the official tariff schedule. They are also a source for corruption if traders aim to obtain a better treatment of their goods by way of bribery. Informal enquiries concerning the future treatment of goods at market entry are common in many countries.

Advance ruling provisions aim to set up a transparent and formal process whereby exporters and importers obtain upon request rulings from Customs administrations prior to the transaction. The ruling thus obtained is legally binding on the Customs authority as well as, in some countries, the trader over a fixed time period.

Although details of advance ruling provisions vary from country to country, common elements allow for the following definition: an advance ruling for Customs purposes is a **binding** official decision **prior to an importation or exportation**, issued by a competent Customs authority **in writing**, which provides the applicant with a **time-bound ruling on the goods to be imported.**

> The World Customs Organization's guidelines on advance rulings in accordance with the provisions of standard 9.9 of the Revised Kyoto Convention define the term as follows: "The expression 'binding ruling' (or 'advance ruling') generally designates the option for Customs to issue a decision, at the request of the economic operator planning a foreign trade operation, relating to the regulations in force. The main benefit for the holder is the legal guarantee that the decision will be applied" (see http://www.wcoomd.org).

### *Benefits*

Advance rulings enhance certainty and predictability of cross-border trade transactions. Disputes at the actual moment of release or clearance with the Customs authority on tariff headings, valuation and origin, i.e. eligibility to preferential treatment, are reduced and consequently delays avoided. Customs integrity will not be challenged during the clearance of consignments and possibilities for corruption are reduced.

In sum, advance rulings may be crucial at the time a company contemplates cross-border trading. Sales and purchase contracts can be concluded based on the information of the advance ruling.

## Subject areas

### *Classification according to the national Customs tariff*

The identification of the proper tariff heading and subheading determines the duty rate to be applied to goods. A coding system is used for classification purposes and many countries base their national coding system on the HS code (Harmonized Commodity Description and Coding System) developed and administered by WCO. Many tariff codes

[4] This Technical Note has been produced jointly by the World Customs Organisation (WCO) and UNCTAD.

contain 10,000 headings or more, with highly-technical chapters, such as chemical compounds, textile goods, and electronic components. Sometimes, final classification depends on laboratory analysis of a sample of the goods.

Hence, an advance decision on the classification can greatly simplify the clearance process and reduce delays.

*Valuation of goods*

The determination of the value for Customs purposes defines the duty liability. It can be a complex and lengthy process and national practices vary. In general, valuation of goods is based on the transaction or invoice value. In case of doubt of the transaction value, Customs authorities can use alternative valuation options – such as using the value of similar or identical goods. This is particularly the case if buyers and sellers are related or associated.

For the transparency of the valuation process, it is important to revert to transparent and objective criteria, as laid out, for example, in the WTO Valuation Agreement. Furthermore, it is important to monitor the practice of fraudulent invoicing.

An advance ruling on the criteria for Customs valuation is a useful facilitation measure, as traders are aware of the supporting documents they have to present to proof the value of the goods. If the value of goods is questioned by Customs, the burden of proof is with the importer.

*Rules of origin*

A rule of origin is a criterion used by Customs to determine the nationality of a product or a producer. Rules of origin are of particular importance when preferential agreements allow for the discrimination of goods depending on sources of supply. However, the determination of origin is complex, as the processing of goods can occur in several countries and might involve products originating in different countries.

Advance rulings on origin are already covered by the WTO Agreement on Rules of Origin.

## Implementation issues

National legislation has to provide the legal framework for the validity of advance ruling. The legislation has to clearly state the information to be supplied by the applicant, the period of validity, and reasons for revoking an advance ruling, such as a change in legal provisions or the submission of false information. Furthermore, provisions for civil or administrative appeal procedures have to be applicable to advance rulings as well.

Subsequently, there will be a need to establish the procedures required when making and processing a request. Such procedures should include a specification of the time frame involved when making an application, the means of communication, and the time required before the authorities communicate a reply.

A specialized unit or section for the treatment of the advance rulings has to be set up in the Customs headquarters and needs to be staffed with sufficiently trained people. A database for the rulings may facilitate the task of the staff and enhance coherence of decisions. Finally, border offices must be fully informed of advance rulings. Options how this communication can be supported by the existing IT infrastructure have to be explored.

Processing of advance ruling requests can initially be done as a paper-based transaction and later on transformed into an electronic process.

# Post-clearance audit[5]

## Background

Post-clearance audit means audit-based Customs control performed subsequent to the release of the cargo from Customs' custody. The purpose of such audits is to verify the accuracy and authenticity of declarations and covers the control of traders' commercial data, business systems, records and books. Such an audit can take place at the premises of the trader, and may take into account individual transactions, so-called "transaction-based" audit, or cover imports and/or exports undertaken over a certain period of time, so-called "company based" audit.

Post-clearance audits can be conducted on a case-by-case basis, focusing on targeted operators, selected on the grounds of risk analysis of the commodity and the trader, or in a planned, regular way, set out in an annual audit programme. Furthermore, the audit could also be used as criteria to offer special treatment to certain economic operators.

Chapter 6 of the General Annex of the Revised Kyoto Convention sets out a large number of recommended standards relating to all aspects of Customs control, including the use of audit-based controls. (Standard 6.6. and 6.10).

Introducing post-clearance audit reflects a different approach to Customs control, as it has the effect of offering an immediate release of goods or reduced release times. Implementation of post-clearance audit is part of the risk management strategy.

*Reduced release time*

The time taken while goods are in Customs custody will be reduced as compared to traditional Customs control, and traders can dispose of their goods promptly upon their arrival in the country.

In applying risk management techniques and audit-based control, the Customs authority is able to release the vast majority of shipments (up to 80–90 per cent of total imports in most countries) and retain only consignments matching identified risk profiles. Non-selected cargo is released immediately but may be subject to control *ex post facto*, i.e. post-clearance audit.

*Saving storage fees*

As a direct consequence of the expedite clearance process, storage and warehouse fees – together with insurance costs for goods under storage – will be reduced.

*More efficient control*

Post-clearance audits can cover all Customs regimes – i.e. temporary importation, inward processing, duty-free zones, end-use tariff items – and therefore enhance Customs control over some of these regimes which could not be checked at the border.

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 of time. Details for

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comparison will come from local or national databases and include 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.

Similarly, comparison between countries of origin or different suppliers or pattern of intra-company trading may reveal false declarations. If the audit detects an incorrect declaration, the audit officer will ask for the correction of the declaration. This may entail an additional payment of duties or taxes by the trader and even raise Customs' revenues.

## Implementation issues

Audit-based control methods are normally implemented as part of a Customs modernization package. In general, modernization programmes introduce a number of reform elements, such as:

- Automated clearance;
- Pre-arrival clearance;
- Use of risk management methods and post-clearance audit; and
- Separation of release from clearance.

Post-clearance audits are often introduced in conjunction with the implementation of automated procedures in Customs operations. However, audit-based control can also be applied in a manual or semi-automated environment. Post-audit controls are an integral part of Risk Management Systems.

### *Prerequisites*

*Commitment and support* – As it is the case with any reform programme, the most critical prerequisite is the firm commitment and long-term support for it of the highest levels in the organization. This would lead to the set up of an audit team with the necessary skills, guidelines and regulations, inside the Customs departments.

*Amendment of legislation and regulations* – In many countries, Customs laws and regulations define the mandate and obligation of Customs, among others, to inspect imports and exports both on physical and documentation bases. Moreover, those norms seldom allow Customs to inspect books and records on the premises of traders. Therefore, countries could consider revising their laws and provide necessary authority to implement the new audit methods. Likewise, overall national accounting principles, which lay down general requirements for traders' record-keeping, may need to be drafted or revised. Additionally, national legislation may be required to ensure traders cooperate in providing not only access to books records, etc., but working space during the audit and access to personnel.

*Strategy and planning* – Customs management must develop an audit strategy and a clear step-by step process, which gives guidance to the staff on its implementation.

*Capacity-building* – Customs staff must be trained to fully understand the effectiveness of post-clearance audits. Furthermore, training courses must be provided to create awareness of the analytical work that is necessary to take advantage of the system. Training in common bookkeeping methods and audit methods is also required.

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

*Skills required*

Post-clearance audit is a trade facilitation measure based on specific knowledge of audit methods. Such knowledge can only be made available through training courses, mostly in connection with the implementation of risk management.

*Assessment of the effective implementation*

A reporting system should provide management (and the supervisory authorities to the Customs service) with adequate evidence of the results achieved by the audit team. Assessments can be undertaken regularly by Customs management, i.e. using the WCO self-assessment guidelines. It should also be stressed that involvement of local business organizations in the assessment process can be very useful, adding credibility to the evaluation and strengthening cooperation between the Customs service and the business community.

The purpose of introducing of post-clearance is to contribute to more effective and simplified Customs procedures leading to a better compliance in the first instance – thus, a reduction in the amount of duty and taxes collected by means of an audit will also show the effectiveness of both post-clearance audit and simplified procedures.

*Local capacity*

The modernization of Customs procedures, including the introduction of post audit-based control, is relevant and necessary for countries with aspirations of taking full advantage of global, liberalized trade. While legislation and the overall strategy for modernization are established by governments, their actual implementation and operation will be undertaken by local Customs offices. Local Customs staff needs to be trained to understand the benefits and the operation of post-clearance audit measures.

# Separating release from clearance procedures[6]

## Description

The WCO Revised Kyoto Convention (RKC) defines Customs clearance as "the accomplishments of the Customs formalities necessary to allow goods to enter home use to be exported or to be placed under another Custom procedure" (WCO, RKC, General Annex Chapter 2), and release as "the action by the Customs to permit goods undergoing clearance to be placed at the disposal of the persons concerned" (WCO, RKC, General Annex Chapter 2).

Traditionally, Customs authorities do not release goods until all issues related to the transaction are resolved and duties and taxes due are paid – thus, the clearance completed. However, the final clearance can be delayed for various reasons, such as pending decision on classification and valuation, missing documents, or appeal process against decision. Such delays have a negative impact on traders' supply chains, as the goods are upheld in a Customs-controlled facility and are not at the disposal of the trader.

Separating release from clearance means that goods are released by Customs prior to the payment of duties and taxes in cases where final classification of the goods, assessment of value and other transactions are pending. A security for the applicable duties and taxes in the form of a deposit or bond is usually required.

### *Benefits*

Introducing regulation allowing for the separation of release from clearance of goods yields substantial benefits for traders in particular, as it supports a seamless and faster supply chain used in particular in e-commerce and just-in-time delivery. Furthermore, goods spent in Customs warehouses are subject to fees and induce inventory and insurances costs for traders. On the Customs side, the separation reduces requirements for storage and warehouse infrastructure. Risks related to the early release are sufficiently controlled through the deposit of a security before release.

### *Sources of delay*

Delays in the final clearance process can arise for a variety of reasons; the most frequent are the assessment of the value of the goods for Customs purposes, determination of the correct classification, and missing documentation.

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 an affiliate of the importing company – or otherwise related – has proven to be difficult (transfer pricing). Such cases may sometimes be referred to an expert panel established within Customs, but the inevitable consequence is a delay in the release. Therefore, Customs in many countries have implemented the provision in Article XIII of the WTO Agreement on Customs Valuation. The provision reads as follows:

[6] This Technical Note has been produced jointly by the World Customs Organisation (WCO) and UNCTAD.

"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 [WTO] Member shall make provisions for such circumstances."

Apart from valuation difficulties, a number of other reasons may cause substantial delays in the clearance process, and for which there is no similar support from any WTO provisions, such as:

- Classification problems, e.g. cases where the tariff heading cannot be determined on the basis of the details available at clearance, or where 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.

## Implementation issues

*Prerequisites*

- Capacity-building and awareness-raising on the benefits of the separation of release from clearance procedures, on the financial guarantee system and the conditions relating to the new procedure for Customs staff and the trading community, including carriers and clearing agents, professional associations and the banking sector;
- Training Customs staff – While the government carries the responsibility for planning and providing the means for Customs modernization, the actual implementation and operation will be undertaken at local Customs offices. Local Customs staff needs to be trained in the new Customs procedures, including computer systems, and develop good relations with the trading community;
- Surety – 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 should offer a variety of 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.

*Security for payment*

Putting in place financial mechanisms for securing payment and compliance by traders is a prerequisite for the release of goods in advance. Once a trader has posted a surety or guarantee with Customs, a number of simplified procedures can be made available. 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.

Examples of a credit scheme to allow for deferred payment

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

*Assessment*

There are several ways to assess the effective implementation of separate release procedures. Indicators of effective implementation will be the actual use by traders of the new procedures, and the time it takes for goods to be released.

Internal auditors can verify whether new procedures have been properly communicated to staff and the trading community. In addition, the review must ensure that capacity-building activities have been completed and followed up. The involvement of local business organizations in the assessment process can be very useful, add credibility to the assessment and, at the same time, strengthen cooperation between Customs and the business community.

# Risk management for Customs control[7]

## 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 also responding to increase in transactional crime and terrorism. These competing interests mean that it is necessary to find a balance between facilitation and control.

Customs controls should ensure that the movement of vessels, vehicles, aircraft, goods and persons across international borders occurs within the framework of laws, regulations and procedures that comprise the Customs clearance process. Given the high number of export, import and transit transactions, many Customs administrations use risk analysis to determine which persons, goods, and means of transport should be examined and to what extend (WCO Revised Kyoto Convention, Standard 6.4.). Risk analysis and risk assessment are analytical processes that are used to determine which risks are the most serious and should have priority for being treated or having corrective action taken.

Inspection selectivity programmes make use of risk profiles, which have been established in a process of risk analysis and assessment. Risk profiles encompass various indicators, such as type of good, knowing the trader and compliance records of traders, value of goods and applicable duties, destination and origin countries, mode of transport and routes and are built based on characteristics displayed by unlawful consignments (or offending passengers).

The development of profiles relies heavily on the gathering, charting and analysis of intelligence and the WCO has developed various tools to assist its member countries in the establishment of profiles and the management of intelligence collection. The WCO Customs Enforcement Network (CEN) database can, for example, provide useful intelligence for the establishment of risk profiles.

These profiles then drive inspection selectivity programmes, through which data declared will be analysed on the basis of the identified risk parameters and consignments, and depending on the selected risk level, goods and persons are routed through different channels of Customs control.

| ASYCUDA Customs Control channels using risk management | | |
|---|---|---|
| Green Channel | = | Immediate release without examination |
| Yellow Channel | = | Documentary check |
| Red Channel | = | Physical examination on of goods and documents |
| Blue Channel | = | Examination at a later stage (post audit) |

Risk management techniques are a useful means to ensure enforcement, security and trade facilitation at the same time. By selectively categorizing goods and passengers for verification, a more rapid release and clearance can be achieved. Consignments and persons considered as “low-risk” based on the risk profile attract minimal attention and

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intervention from Customs and can be processed quickly. Furthermore, it enables Customs staff to concentrate their efforts and resources on fewer consignments.

*Benefits*

- *Better human resource allocation* – Following implementation of risk-based clearance, Customs staff can concentrate efforts on fewer consignments, and staff can be deployed more efficiently;
- *Increased revenue* – Despite few physical inspections, 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, imported or exported by specific traders. Normally, such contact and communication will lead to better understanding between both parties and improve their relationship in general terms;
- *Reduced release time* – The fact that on average only 10–20 per cent of the goods are examined under efficient, risk-based clearance implies that Customs can release the vast majority of shipments immediately after the clearance document has been lodged with Customs;
- *Lower transaction costs* – 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 traders.

## Implementation issues

Changing control procedures entails a shift in the way Customs perceive and fulfils its mandate. Traditionally, 100 per cent control was believed to be the only way to ensure enforcement. However, risk management, and therefore selective inspections, provide a much more efficient approach. Successful operation of this technique requires preparatory activities with a view to creating awareness and understanding of the system.

Such activities should take into account that:

- It is vital to change the mentality of staff and management, so that everybody recognizes the value and effectiveness of risk management;
- Awareness courses for the entire organization can increase the understanding of the new procedures, while specialized, technical courses should be arranged for staff directly involved in the implementation and operation of the new procedures;
- A risk management policy and a strategic management plan can highlight the objectives and priorities in introducing the new system;
- The internal structure of the Customs administration has to be adapted, including through the creation of e.g. 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) can be established to become responsible for the maintenance and operation of the system;
- The Risk Management Unit can gather, chart and analyse intelligence data on importers and carriers from relevant sources, including from the WCO CEN database, national seizure reports, and other administrations acting under the WCO's Nairobi Convention or bilateral agreements;
- Customs laws and regulations need to be reviewed to reflect the use of risk management techniques within legal boundaries;
- Use should be made of the electronic manifest, which is aligned to international standards, in order 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 in 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 customs transactions and of the compliance rate of traders and therefore feed into the risk management mechanism the compliance measurements determining the extent to which traders conform to Customs requirements.

With respect to transit traffic, criteria may be slightly different than for imports and exports, focusing 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.

## WCO tools on risk management

The relevant instrument which can be found on http://www.wcoomd.org include:

- The International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention of 1999);
- The Risk Management Guide;
- The Guidelines for the Immediate Release of Consignments by Customs;
- The SAFE Framework of Standards to Secure and Facilitate Global Trade;
- The Security data elements of the SAFE Framework of Standards to Secure and Facilitate Global Trade;
- The International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs offences (Nairobi 1977); and
- The Standardized Risk Assessments, Model Risk Indicators/ Profiles (EC0149E6) which contains specific indicators for Multilateral Environmental Agreements (MEA)-related illicit trafficking.

# Pre-arrival Customs processing[8]

## Background

In cross-border trade transactions the clearance and release of goods at point of entries often create a barrier to trade because of long delays. Modernization of Customs procedures so as to expedite the clearance and the release are therefore an import trade facilitation tool. Advance lodging of information allows for a release with little or no delay upon arrival.

The International Convention on Simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention or RKC) refers to pre-lodgement and pre-registration in Chapter 3 of the General Annex.

### *WCO Guidelines*

WCO has also addressed the traders' need for early release in its Guidelines for the Immediate Release of Consignments by Customs. According to the Guidelines, goods are divided into four different categories for which immediate release can be permitted according to simplified requirements:

- Correspondence and documents – Such items without commercial value can be released on the basis of the transport document or even an oral declaration;
- Low value consignments for which no duty or taxes are collected – The value limit which varies from country to country, and release can be granted against a simplified declaration submitted to Customs in advance;
- Low-value dutiable consignments – The value limit may again vary and duty and tax has to be paid or deferred against a guarantee. Simplified or periodic declaration may apply; and
- 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 information exchange*

Customs clearance and release can be further expedited through the electronic lodgement of data. In countries using modern ICT systems, traders can submit required documents and data to Customs ahead of the goods arriving in the country. Customs systems will process the data automatically, including the screening through risk management profiles, and the calculation of duties. In some countries, administrations will also advise traders electronically prior to the arrival of the goods at the point of entry. In case the goods are selected for physical inspection, the importer is advised online, so that the presentation of the goods to be handed over to Customs for inspection can be arranged without delay.

[8] This Technical Notes has been produced jointly by the World Customs Organisation (WCO) and UNCTAD

*Benefits*

- Advance electronic processing of information facilitates the use of risk management systems;
- Reduced delays at border crossings/entry points;
- Reduced release time – Fast or immediate release is of paramount importance to traders due to the time saved; and
- Saving storage and insurance fees – Such fees will be reduced as a direct consequence of pre-arrival clearance.

## Implementation issues

*Prerequisites to implementation of pre-arrival processing*

- The electronic transmission of data and documents requires the use of standardized documents in electronic format (UN e-docs, UNTDED, WCO Customs Data Model). The electronic information exchange also needs to be put in place based on widely agreed standards, such as EDIDACT;
- Cooperation with traders – Pre-arrival processing is a method based on effective cooperation with the trading community. Therefore, it is important to establish a positive atmosphere of mutual access and respect between Customs and the traders;
- Automation – Pre-arrival processing can be applied in a fully automated Customs environment as well as in a manual or semi-automated environment;
- Amendment of legislation – In many countries, Customs' physical inspections of goods and document is still mandatory. A revision of the Customs code and other relevant legal text is therefore necessary before applying pre-arrival processing; amd
- Effective implementation of a risk management system.

*Skills required*

The implementation of new procedures, such as pre-arrival processing, requires knowledge of the options and the conditions related to the new procedure. This is done through training courses for Customs staff and if possible the trading community as well, including carriers and clearing agents.

# Use of Customs automation systems

## Background

Automated systems in Customs are one of the most important tools for simplifying international trade procedures. Automated Customs procedures replace the manual processing of Customs documents by the computer-assisted treatment of electronically-transmitted information. Use of automated Customs systems facilitates trade through the normalization of forms and documents, data standardization, simplification and computerization of Customs clearance procedures to accelerate the clearance of goods. It also strengthens Customs operational efficiency for control by implementing sound procedures and providing full audit trails and mechanisms. Automated Customs Systems provide governments with accurate and timely statistics on foreign trade and revenue.

As a complement to Customs reform, automation is an integral part of Customs modernization which also encompasses the alignment of Customs procedures and documents with international standards, conventions and other instruments. This is a critical review that will allow the introduction of international standards and recommended best practices and lead to efficient Customs reform.

The introduction of Customs Automation also stimulates use of information and communications technology (ICT) by other governmental departments and private sector stakeholders, whose activities involve Customs operations. They include various government agencies, importers, exporters, freight forwarders, carriers, Customs brokers, terminal operators, banks, and shipping and insurance agents.

### *Benefits*

A modern, automated Customs administration brings substantial cost savings in trade and transport logistics. The electronic lodging of Customs declarations, document processing and goods clearance brings substantial time savings and predictability to all aspects of cross-border trade and limit the room for manoeuvre by traders and Customs officials alike to circumvent the system. The collection of taxes and duties is enhanced, as is the statistical database for fiscal and economic policy purposes. And finally, as part of the process of the automation of Customs, working relationships between Customs and the private sector improve. More specifically, benefits include:

- Faster electronic lodgement of Customs declarations, using Direct Trader Input (DTI) or other online connections;
- Reduced Customs clearance times and less physical examination of shipments owing to the use of risk management applications;
- Increased collection of duties and taxes and less fraud due to the uniform application of laws and regulations, the automated calculation of duties and taxes as well as built-in security;
- Enhanced capacity-building of staff and management in both Customs and the private sector (e.g. through training courses on simplified procedures and documents based on international norms, UN recommendations and WCO standards).

## Implementation issues

*Preconditions*

A successful implementation of Customs automation systems requires that a number of conditions be met from the outset:

- Strong political backing of the reform and modernization processes by the government and Customs management;
- A transparent and collaborative approach by the project management to generate support from staff and external users, including brokers and agents (cooperation between the public and private sectors);
- A phased implementation of the Customs automation systems;
- The implementation of international conventions, standards and other instruments, including a national Customs tariff based on the Harmonized System and a documentation based on the United Nations Layout Key (UNLK); and
- An overall review and amendment of the Customs law and other related legal instruments to ensure compatibility with the new procedures, notably the electronic lodgement of clearance data and the introduction of a Single Administrative Document (SAD), where applicable.

*Purpose and objectives*

Customs' main functions are to control the cross-border flow of goods, ensure compliance with government rules and regulations, collect the duties and taxes due according to the national Customs tariff and tax code, and protect the country against the import of goods and materials intended for illegal purposes, and against terrorist activities.

This complex work can be facilitated through the 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 import, transit and export, and ensure that all goods are either duly cleared before release or a mechanism is in place that allows for the release prior to clearance;
- Declaration processing, to capture and process data for duty and tax collection;
- Payment and accounting, to register and account for payments by importers and exporters;
- Intelligence operations, to store and exchange data for risk profiling and enforcement, and risk management to select consignments bearing a higher risk of concealing duties and taxes, or those prone to smuggling and trafficking illegal substances and materials; and
- Statistics and reporting, to extract data for foreign trade statistics and to generate management reports for Customs.

Today, there are different software packages available often developed jointly by the public and private sector. The most widespread system is ASYCUDA, developed by UNCTAD since 1981 and implemented in more than 90 countries and territories.

*ICT staff*

Customs automation is a highly technical and complex project and ICT is very important in all phases of implementation. Usually an ICT Division within the Customs Authority will be responsible for the operation and support of all ICT systems. Often, international ICT experts are included in the initial stages to build the system and to train local computer staff in running and maintaining the project. Owing to this extensive training, their qualifications and IT capacities can increase their value on the job market to a point that they often are reluctant to stay beyond the implementation phase. Therefore, only competitive employment conditions will ensure their continuous support.

*Equipment and maintenance*

Upgrading and replacement of computer equipment is a reality that cannot be avoided. As early as possible, Customs administration should, therefore, make sure that required funds will be available at the appropriate time, for example through the collection of a user fee for each transaction, reflecting the actual and projected costs of systems upgrade and replacement.

*Costs*

Cost implications for the implementation and operation of an automated Customs system vary from country to country, depending on the initial state of ICT applications in the Customs administration (e.g. existing computer systems and reform programmes), the scope of the project and the level of locally available professional skills to support the modernization process.

Implementation costs are mainly linked to hardware requirements, software development or purchase, training and expert consulting needs, more precisely:

- Hardware requirements, i.e. the procurement of computers and related ICT equipment, and connectivity, i.e. access to the necessary telecommunication infrastructure. This component is directly dependent on the number of physical sites to be computerized (including ports, border and regional offices), the characteristics of the territory (mountainous terrains, archipelagos, inaccessible passes, etc.); and the refurbishment of buildings (Customs headquarters, regional offices and border posts) where automation components will be installed;
- Software requirements, i.e. the need for necessary computer programmes to transform documents into required formats and automate Customs transactions and procedures. The necessary software will either have to be purchased or developed as well as installed, often by national and/or international advisers and experts. In addition, the key software elements will have to be customized to reflect local conditions, such as tariff structure and content;
- Training requirements, that is costs linked to the installation, operation and maintenance of hardware and software. This will largely depend on the level of skills available and the resulting training needs of Customs staff and management.

In addition, costs and delays occur due to other factors including legislative reforms, or the need to build new offices or new telecommunication networks.

# ASYCUDA

## Background

UNCTAD's Automated System for Customs Data (ASYCUDA) is an automated Customs data management system that can handle all Customs clearance-related processes. This is done by implementing simplified and harmonized procedures and standardized trade documents. The system allows for the electronic processing of declarations, risk management, transit operations and expedited clearance of goods, in addition to collecting timely and accurate statistical data for fiscal and trade policy objectives.

UNCTAD developed and implemented the first version of ASYCUDA in three West African countries between 1981 and 1984 to compile foreign trade statistics. Since then, it has gone through three major upgrades, taking advantage of innovation in computer hardware, programming language and software technology, in order to meet the challenges of the growing volume and complexity of international trade.

The second version (1985–1995) introduced Local Area Network and provided a more powerful data transaction capacity through the use of file servers. It implemented the fully automated processing of Customs clearance including declaration, manifest, cash and accounting, and warehousing. The third version (ASYCUDA++, 1992 to present) added Customs modules and functionalities, such as direct trader input, risk management, transit monitoring, and submissions of declarations by Customs brokers via the Internet.

The latest edition is ASYCUDAWorld, a truly e-Customs version, introduced in March 2002 and compatible with major database management and operating systems (Oracle, DB2, Sybase MS/Windows and Linux, HP-UX, respectively). The use of extensible mark-up language (XML) permits, at the national level, the exchange of any documents between the national Customs administration and traders, and, at the international level, between different Customs administrations via the Internet. As it uses modern telecommunications systems and devices and installations like VSAT, independent high-speed Internet connections between Customs Headquarters and border posts can be guaranteed.

The modularity of ASYCUDA means that new or advanced programmes (modules) can be added on at any time to suit the needs of a given country. Such add-on modules can cover Customs functions such as risk management, transit operations or new security standards, depending on national priorities.

The technical advantages of ASYCUDA lie in its:

- Modularity – which allows implementation on a broad range of software and hardware platforms from mainframe to PCs;
- Multi-language/alphabet enabling translation into numerous languages;
- Built-in security features, such as user authentication and asymmetric encryption;
- Updates of reference data without programming; and
- High-level Communication features including the Internet and Intranet, as well as independent telecoms infrastructure.

To date, ASYCUDA represents UNCTAD's largest technical cooperation and capacity-building programme worldwide. It is implemented in more than 90 countries. More than

15 million Customs declarations are processed annually with ASYCUDA for both exports and imports.

Recent information on installations of ASYCUDAWorld may be found on the ASYCUDA website www.asycuda.org. In addition, it is worth noting an initiative to develop a Regional Transit management system which is underway in the CEMAC[9] countries and the migration to ASYCUDAWorld that has been undertaken in Belize, Dominica, and Trinidad and Tobago, where the Manifest module is operational.

## ASYCUDA objectives and functions

*Key objectives*

The programme has the following objectives:

- To facilitate trade through the normalization of forms and documents, data standardization, simplification and computerization of Customs clearance procedures to accelerate the clearance of goods;
- To strengthen Customs operational efficiency for control by providing modern tools and techniques, implementing sound procedures and providing full audit trails and mechanisms for controlling Customs operations; and
- To strengthen Customs management and control by providing Governments with accurate and timely statistics on foreign trade and revenue for trade policy and decision making purposes.

Often accompanied by a trade facilitation component, the project's objectives may include the following main functions:

- Strengthening of the institutional capacity of the Customs service, including border points;
- Cooperation among cross-border control agencies and between Customs and traders;
- Automation of all Customs procedures and regimes (cargo control, clearance processes, transit monitoring), with robust inbuilt Customs control capabilities through manifest, full declaration processing, risk assessment and selectivity, accounting, and the automated calculation of duties and taxes;
- Streamlining and simplification of Customs procedures and documentation;
- Alignment of national trade documents with international standards for forms (United Nations Layout Key (UNLK), Single Administrative Document (SAD)), documentation and data elements as contained in international conventions and recommendations, e.g. the World Customs Organization (WCO Data Model), UNECE and UN/CEFACT, UN/EDIFACT;
- Use of the Harmonized Commodity Description and Coding System (HS) and the development of integrated Customs tariffs with corresponding national laws and regulations;
- Electronic lodging of Customs declarations by traders and declarants using electronic data interchange (EDI) and allowing for direct trader input (DTI);

[9] Communaute Economique et Monetaire de l'Afrique Centrale. Member countries: Cameroon, Central African Republic, Chad, Congo, Gabon and Equatorial Guinea.

- Automatic processing of Customs declarations and information sharing with all participants in the clearance process;
- Benchmarking costs and transport times;
- Collection and storage of trade and Customs statistics for fiscal and policy purposes;
- Assessment of the trade and transport regulatory environment; and
- Transparency of Customs operations and reduced opportunity for fraud.

*ASYCUDA and risk management*

With the growing volume of transactions in international trade, the systematic and in-depth physical examination of all cargo is fast receding into Customs history. Computerized risk-management systems determine the routing of transactions for Customs control according to criteria established by Customs officers specialized in enforcement and intelligence gathering. Using modern and computerized procedures that track and target high-risk consignments and reduce the number of physical inspections is also the most efficient balance between expedited Customs clearance and supply chain security.

ASYCUDA's risk management system capitalizes on over 25 years of experience in the computerization and implementation of Customs operations worldwide. ASYCUDA covers the whole declaration-processing path, including cargo and transit. It uses sophisticated tools, from the classic selection of the examination procedure and the allocation of the declared goods to a control "channel" – green, for the release of goods without examination; yellow, for documentary checks prior to goods release; red, for physical examination of the goods prior to release; or blue, indicating that goods will be released but will be subjected to a post-clearance audit control by Customs – to the use of multimedia, scanned images and wireless devices. State-of-the-art technological tools provide Customs officials with immediate remote access to intelligence and control databases.

Customs controls can now be undertaken in situations where this was not possible before – for example, to stop cargo in transit and verify that the paper documents presented correspond to what has been declared at departure, or to perform on-the-spot checks of a container's content and the status of the goods (cleared, in transit, etc.). The ASYCUDA system permits the periodic assessment of risk-management processes in order to measure the effectiveness of selection criteria and to change, extend or eliminate risk-management parameters as needed.

*ASYCUDA and customs transit*

The transit module of ASYCUDA includes forgery-proof electronic documents, electronic signature, and registration of all transactions. No data re-entry is required by carriers or at border crossings. The system can process transit documents such as the TIR Carnet. It allows for the full integration of transit procedures into the Customs clearance process with transit documents being generated from waybills and export declarations.

## Implementation issues

*Customs reform*

The programme is developed by UNCTAD Customs and IT experts in close collaboration with national Customs authorities and government agency officials. The implementation of ASYCUDA is sometimes embedded in larger development and capacity-building projects

of the World Bank, regional development banks or bilateral donor projects. It may target, for instance, the building or renovation of Customs facilities and telecoms equipment in line with UNCTAD specifications for the efficient installation and functioning of ASYCUDA. In some cases, ASYCUDA is implemented entirely by national authorities and experts in line with UNCTAD guidelines – but without its support during the rollout of the programme. However, the extensive training component is normally supervised by UNCTAD experts.

*Project preparation*

The introduction of a Customs modernization and automation programme should be backed by:

- High-level political support;
- An overall reform of Customs possibly including related government agencies and private sector operators; and
- Legislative and regulatory reform.

Political support is crucial for embarking on Customs reform and a key factor in determining the pace and success of its implementation. Individual Customs officials may oppose the introduction of automation because they fear for their jobs, their privileged positions and reduced opportunities for discretionary intervention, and thus undermine the functioning of the programme. Therefore, the preparatory phase includes awareness-raising seminars and functional and technical training of the national team with a view to making them partners in the process of Customs automation. The ASYCUDA programme is planned in consultation with the Customs authority and related government agencies taking into consideration the particular trader and transport operator environment.

Functional and technical preparations include the elaboration of user requirements; an assessment of the legislative and regulatory framework; an inventory and redefinition of the declaration processing path and its codifications for computerization; and the preparation of technical specifications for hardware, software as well as physical and energy infrastructure requirements for implementation.

*Pilot phase and rollout*

The ASYCUDA programme is usually organized in two phases: a pilot phase of minimum one year and a half and the completion phase of about two years.

Phase one includes:

- Awareness-raising seminars and ASYCUDA training programmes for the national team;
- Regulatory, procedural and operational assessments as well as technical and functional analyses;
- Building of the prototype of the programme and configuration for national requirements, such as the integrated Customs tariff based on the Harmonized System, related legal requirements and regulations, and duty and tax rules;
- Implementation of relevant standards and recommendations such as those from ISO, UN, WCO (Data Model) and WTO (Customs valuation);
- Preparation of Customs user training modules and training of traders and operators in system and user documentation;

- Implementation of the pilot site with the installation of equipment and new operational procedures; and
- Testing of the ASYCUDA pilot system.

Phase two of the project includes the rollout of the system to all Customs offices throughout the country, including installation of LANs, computer hardware, and training of local users. During that phase, ancillary trade facilitation components are implemented, such as:

- improving transport arrangements;
- modernising documentation practices;
- strengthening the role of private sector users (trucking associations, freight forwarders, banking and insurance);
- identifying necessary changes to the legal basis underlying trucking regulations, professional associations, cargo and liability, new Customs procedures and documentation; and
- establishing data bases and benchmarking for transport and transit movements, revenue collection, and other trade-related policy objectives.

*ASYCUDA and regional support*

ASYCUDA maintains permanent regional support centres in:

- Kuala Lumpur, Malaysia, for Southeast Asia (ASEAN);
- Suva, Fiji, for the Pacific Island states (a sub-regional centre);
- Bangui, Central African Republic, for Central and West Africa (ASYCUDA is known in French as SYDONIA);
- Dar es Salaam, United Republic of Tanzania, for East Africa;
- Lusaka, Zambia, for Eastern and Southern Africa (COMESA); and
- Caracas, Venezuela, for Latin America and the Caribbean (ASYCUDA is known in Spanish as SIDUNEA).

These centres are either financed by contributions from member states themselves or from donor governments and institutions.

*Costs*

From the start ASYCUDA is a government-owned and operated Customs management system. The implementation of ASYCUDA or migration to its latest version is most often financed by the country itself, sometimes with the assistance of international grants or loans, as part of a development project. UNCTAD provides the ASYCUDA software and additional modules for use by national Customs administrations plus the technical and functional documentation and training material.

UNCTAD technical assistance guides the national experts through all phases of:

- IT system configuration in line with the national Customs Code, Customs tariff, implementing regulations and new procedural requirements from a standardized declaration-processing path to accounting, payment and clearance;
- training of national Customs experts, consultants and related personnel (train the trainer technique) ; and

- implementation of the pilot system and national rollout.

Special technical support beyond the duration of the project for troubleshooting and upgrades of software application is also provided by UNCTAD.

The costs of implementing the ASYCUDA system vary according to the size and complexity of the country (number and accessibility of border posts and Customs houses); the volume of foreign trade; the condition of its physical infrastructure; the skill level of Customs and government staff; and whether it is a transit, landlocked or island country.

# Section Four — Transit Trade

Transporting goods internationally often requires crossing the territory of one or more third countries, i.e. transit as part of the operation. Article V of the GATT 1994 defines transit *as traffic across a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes*. GATT Article V provides for Freedom of Transit of goods, vessels and other means of transport across the territory of WTO members via the routes most convenient for international transit. It stipulates the following principles of freedom of transit:

(i) equal treatment independent of flag of vessel, origin, departure, entry, exit, destination or ownership of the goods, vessels,;
(ii) prohibition to make traffic in transit subject to unnecessary delays or restrictions;
(iii) prohibition to levy customs duties, transit duties and other transit related charges (except for charges for transportation or those commensurate with administrative expenses entailed by transit, or with the cost of services rendered);
(iv) level of charges levied should be reasonable to the conditions of traffic),:
(v) Most favoured nation treatment with regards to charges, regulations and formalities.

In the WTO context, goods are defined to be in transit when the crossing of the territory of another WTO Member constitutes only part of the journey between departure and final destination country, whether or not transhipment, warehousing, breaking of bulk or change in transport mode are involved. GATT Article V therefore only refers to so-called through-transit, i.e. transit in the GATT context, normally involves at least three states. It should be noted that in the context of Customs transit regimes, other parts of a journey are also defined as constituting transit, notably inward transit (from a Customs office of entry to an inland Customs office), outward transit (from the inland Customs office to the Customs office of exit) and interior transit (from one inland Customs office to another in the same country).

Movements of goods in transit are usually required to be carried out under Customs supervision, i.e. under a Customs transit regime during which the payment of duties and taxes is suspended during the transit. To preserve the interest of the transit country whilst allowing the suspension of the payment of duties and taxes Customs transit systems may require a financial guarantee to be provided, also sometimes referred to as a bond. Article V of GATT 1994 does not contain detailed prescriptions as regards such Customs transit regimes and guarantees. It only stipulates that goods in transit shall not be "*subject to unnecessary delays or restrictions*" and that no duties or taxes are to be charged apart from reasonable administrative and transportation charges. Countries can furthermore require that the point of entry for traffic in transit be a Customs house.

Proposals related to the clarification and improvements of Article V consider, inter alia, strengthening disciplines as regards the requirements and administration of a transit guarantee system.

# Freedom of Transit and Regional Transit Arrangements

## Background

International trade often requires the crossing of goods across and through territory of other States. For landlocked countries and regions, the transit across other States' territories to access international markets and transport services is an essential condition for their integration in the international economy. Therefore, the right to pass through other countries, the use of simplified and harmonized procedures, including provisions for financial Customs guarantees in transit countries, and application of efficient and rapid administrative procedures on traffic in transit, including the use of ITC are particularly important for the economic development of landlocked developing countries.

Freedom of transit as a principle[10] in international law is derived from the access to the Sea for landlocked countries. Goods, means of transports, and persons, should enjoy freedom of transit in order to have access to the Sea. Access to and from the Sea and passage rights across the territories of states have been the subject of various international conferences and several international conventions which form the basis for the principle of freedom of transit; commencing with the Barcelona Statute on freedom of transit (1921), Article V of the GATT 1947, the New York Convention on Transit Trade of Landlocked Countries (1965), and the United Nations Convention on the Law of the Sea (UNCLOS III) (1982).

However, the ability to enjoy freedom of transit is limited by the sovereignty of states over their territory and because of this, the question of the right to transit and the duty of the transit state to allow transit across its territory remains a contentious issue in international law. As such, the texts of the New York Convention and UNCLOS III stipulate that the exercise of the right of free and unrestricted access to the Sea shall in no way infringe the legitimate interests of the transit state. Consequently, it is understood, that whilst enjoying freedom of transit, there is also a right for the transit state to set requirements for granting access or transit rights. Such access and transit rights regulate the terms and modalities of the exercise of this freedom and are in general subject to bi- or multilateral negotiations.

## Implementation Issues

*Traffic and access rights*

Generally speaking transit traffic rights regulate access to a territory. They are subject to negotiations between states and form part of bi, regional, or multilateral agreement on transit or cross-border transport. Such agreements define the terms and modalities of the transit traffic rights, including quotas and permits, and other technical aspects related to transit operations.

From an operational perspective, a transit operation involves goods, services, operations, vehicles or other means of transport and infrastructure. Transit must therefore comply with

[10] Principles of law are distinct from rules. It is widely recognised that principles are the higher and more general norms that lay the foundations of and influence other norms, including laws. Laws are explicit and precise laws. The principle of international law, freedom of transit, and the more precise and explicit traffic rights are thus complementary norms regulating transit traffic.

various national regulations, including traffic and transport laws, licenses requirements, vehicle safety, environmental laws and immigration.

*Bilateral, regional and plurilateral agreements*

Numerous bilateral transit and transport agreements have been signed. They generally make reference to existing international practice and rules and contain provisions determining the scope of application of the freedom of transit (e.g. including or not the persons), designating transit routes (limited to certain routes or not), regulating permits/quotas, procedures and documents, visas, driving licences, cross-border cooperation, dispute settlement, technical specifications of vehicles and technical certifications, motor vehicle third-party insurance, customs transit issues, etc.

There is a recent trend in bilateral agreements to include provisions on road safety and security with a view to mitigate the risks of accidents, nuisance to population, and secure financial liability in case of accidents.

In parallel to the bilateral agreements, the trend in the recent years point towards more comprehensive solutions at the regional level with a view to establishing or enhancing integrated and harmonized transit and transport systems in view of supporting regional economic integration. These regional agreements cover some elements such as regional harmonization of Customs transit procedures and documents, regional cooperation between authorities in particular at border posts and regional Customs transit guarantee systems.

Examples of regional agreements include the ASEAN Framework Agreement on the Facilitation of Goods in Transit; the ECO Transit Transport Framework Agreement, the SADC transport protocol and SACU Memorandum of Understanding on Road transportation.

*Transit corridor arrangements*

A complementary approach to transit agreements which has evolved during recent years is transit corridor and cluster arrangements. Although limited to a certain geographical area, they tend to be inclusive and across-the-board approaches which allow for the development of a good physical infrastructure and harmonized and simple procedures along a transit corridor between several countries , including all stake holders, public and private. The Walvis Bay corridor and the Maputo Corridor are examples of existing cross-border corridor arrangements aiming at increasing cooperation amongst corridor users and service providers.

*General restrictions of freedom of transit*

It is recognised that based on existing international law, freedom of transit and the freedom of access to the sea can not be absolutely restricted by the transit state. Absolute restrictions are only considered lawful if they are applied on a temporary and exceptional basis – justified by war and civil unrest.

Furthermore, it is possible to restrict access for certain categories of goods on the ground of protection of public health and security (Barcelona Statute) and public moral, plant and animal diseases (New York Convention). Such restrictions on goods in transit may include traffic in weapons and drugs.

Freedom of transit also covers the means of transportation. Whilst some conventions and legal texts exhaustively list means of transports, the GATT Article V don’t. It is therefore understood that states can include in the respective bilateral or regional agreements,

restrictions on the means of transport enjoying freedom of transit; such as excluding inland waterways. Implicitly, this also means that transit in the GATT context, also extends to modes such as pipelines, gas lines and electricity grids.

# Bonded Customs Transit

## Background

Customs transit regimes are one type of the wider concept of bonded Customs Regimes. Therefore, they are also sometimes referred to as bonded transit regimes. Other examples of bonded Customs regimes include, inter alia, temporary admission, transport of duty free goods, warehouses or Customs free zones, processing under Customs supervision, inward processing regimes, and outward processing regimes.

A common denominator of bonded Customs regimes is the fact that under such regimes it is normally required that the economic operator, benefiting from the Customs procedure in question, has posted a bond, i.e. a financial guarantee or a surety with the authorities to ensure that all fiscal obligations towards the country are met.

### *Benefits*

Customs transit regimes simplify the process of goods crossing the Customs territory of a third country. Operators benefit from standardized procedures and avoidance to pay import and export taxes and duties on transit goods, provided that a guarantee is furnished. Using a bond as a guarantee offers benefits to traders as it does not involve using owns money during the transit operation. On the other hand guarantees provide greater reliability to Customs securing of revenues as it is a bank or financial institution that is liable for the payment of the guaranteed amount.

### *Customs transit*

Customs transit is defined in the Revised Kyoto Convention, 1999 (RKC) managed by the World Customs Organization (WCO) as a “Customs procedure under which goods are transported under Customs control from one Customs office to another”. Unlike Art.V of GATT 1994 which limits the definition of traffic in transit to the so-called through-transit i.e. across a Customs territory from the entry border post to the exit border post, the WCO definition of Customs transit regimes also covers inward transit (from a Customs office of entry to an inland Customs office), outward transit (from the inland Customs office to the Customs office of exit) and interior transit (from one inland Customs office to another in the same country).

A distinction has to be made between national and international Customs transit procedures. A national Customs transit procedure covers only transit in one Customs territory with the offices of entry and departure in the same Customs territory. Multilateral transit procedures (bilateral, regional or international) on the other hand cover transit across several Customs territories, for example, either through a fully integrated regime such as the EU community transit system, or through a harmonization of certain aspects of

transit operations such as the TIR system so that, for example, a uniform document and/or guarantee can be used for the entire transit operation across several countries.

Customs transit regimes normally also contain provisions regarding the sealing of loading units and other security measures, standardized and required documentation, and mutual recognition of authorized traders. (See Annex E of the RKC for Standards and recommended practices for Customs transit procedures).

It is general practice that, with a view to securing the duties and taxes of goods in transit, thereby reducing the risk of the goods being diverted for inland consumption without duty and tax payment, a financial guarantee/surety is required by Customs authorities when permitting a transit operation to be carried out.

*Transit guarantee requirements:*

Guarantee requirements are defined by the national regulations of the transit country or alternatively in the framework of regional or international agreements. These regulations clarify amongst others the amount of the guarantee required, persons responsible to furnish the guarantee, and the form of the guarantee.

In some countries, cash deposits are accepted, although this form of guarantee is neither practical nor recommended. In the case of cash deposits the transit operator is the directly liable debtor towards the Customs authorities. Otherwise, guarantees can have various forms. In the context of national transit regimes, transit guarantees are often sold at the border of entry by national insurance or financial institutions, e.g. the Iranian transit guarantee scheme. Such guarantees cover only the transit liabilities in one country. In the context of multilateral transit schemes the transit guarantee is often purchased in advance of the transit operation, although it will only be activated once the transit operation is commenced. This is for instance the case with the EU Community guarantee system and the TIR system.

In general, it is the transit operator who is required to obtain the guarantee from a third party. It customarily can be provided by a bank, insurance company or other financial institution, who, thus, is becoming the principal debtor for the guarantee. The beneficiary of the guarantee is normally the national Customs authorities.

Guarantees are considered either individual or comprehensive. An individual guarantee covers one single transit operation. It normally covers the full amount of taxes and duties applicable to the goods in the transit country. The calculation of the guarantee is based on the highest rates of duties and taxes applicable to the goods according to the Customs' classification of the goods.

A comprehensive guarantee, on the other hand, is a running guarantee that can be reused and that covers several transit operations carried out by the same operator up to a given reference amount fixed by Customs. The reference amount is usually calculated on the basis of the total amount of duties and taxes that an operator may incur for the estimated number of transit operations that he would carry out during a specified period of e.g. one week or one month. Under certain conditions, guarantee obligations can be if the transit operator fulfils certain operational and financial criteria, e.g. under schemes such as "Authorized Economic Operator" (AEO).

Alternatively, some Customs transit guarantee systems, e.g. the TIR system, operate with a flat rate guarantee amount per transit operation. In the case of the TIR system the amount covering duties and taxes is equal to US$ 50,000 per TIR transit.

In other cases, for example, when state owned companies act as transit operators, Customs exceptionally dispense with the guarantee requirement, as such companies are considered to be self-insured. Some countries further operate with the concept of “bonded carriers”, i.e. carriers that are approved to carry out transit operations or transport operations with duty-free goods based on a general authorization, normally backed by a comprehensive guarantee or guarantee dispensation.

Customs transit operations are terminated when the goods are presented at the office exit of a Customs territory or the office of final destination, where Customs authorities should verify that no unauthorized interference with the goods happened. Customs authorities normally only release the operator from his financial liability subsequently, when it has been verified that the transit operation has actually been correctly terminated and discharged. In case of detected irregularity, interference or fraud national transit legislation normally require that the responsibilities of the persons involved in the transit operation has to be determined and lost duties and taxes subsequently recovered, principally from the person(s) engaged in the unlawful practice or, at the latest resort, from the guarantee.

## Implementation Issues

The proper operation of a Customs transit regime and a transit guarantee system requires that proficient legislation is implemented and applied. The lack of implementation and correct application has been seen in a number of cases to undermine the usefulness of Customs transit systems both for the public and private sector.

The posting of a financial guarantee/surety, which should normally be a requirement, remains a challenge in terms of implementation. It pre-supposes a relatively mature financial market or a banking infrastructure which can sustain the issuance of guarantee. The lack of the latter often means that countries are asking for the deposit of full duties and taxes to cover the transit operation.

*Example: TIR system*

In terms of Customs transit, it is worth noting that the TIR Convention is the most broadly used international Customs transit system currently available. The TIR Convention provides that goods carried under the TIR procedure in approved and sealed road vehicles and containers, are exempt from Customs examination, unless irregularities are suspected. The Convention reduces the regular requirements of national transit procedures, while avoiding the need for physical inspection en route during transit, other than checking of the transit document (TIR Carnet) and checking of 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 as the so-called TIR Carnet provides for an internationally recognised document with a guarantee included. One of the major challenges that remain in respect of efficiency gains from the TIR Convention is the full implementation of information technology at international level.

# REFERENCES


*World Trade Organisation*

"The Decision adopted by the General Council on 1 August on the Doha Work Programme" (WT/L/579, 2 August 2004).

This decision, also referred to as "July 2004 Framework", contains in the Annex D the modalities for the negotiations on trade facilitation.

The draft consolidated negotiating text (TN/TF/W/165, 14 December 2009) and its revisions. All negotiations documents of the Negotiating Group on Trade Facilitation can be found here: http://www.wto.org/english/tratop_e/tradfa_e/tradfa_negoti_docs_e.htm

*World Customs Organization*

International Convention on the Simplification and Harmonization of Customs Procedures (as amended) – Revised Kyoto Convention of 1999.

WCO SAFE Framework of Standards, June 2007.

The text of these and further international conventions, agreements, and documents by the WCO can be found at: http://www.wcoomd.org/home_about_us_conventionslist.htm

*OECD*

The following OECD publications provide useful information. They can be accessed through the OECD Web site at:

http://www.oecd.org/topic/0,3373,en_2649_36363445_1_1_1_1_37431,00.htmlwww.oecd.org/ech/tradepolicy/facilitation.

OECD (2005), The economic impact of trade facilitation, TD/TC/WP(2005)12/FINAL

OECD (2004), The cost of introducing and implementing trade facilitation measures: Interim Report, TD/TC/WP(2004)36/FINAL

OECD (2003), The role of automation in trade facilitation, TD/TC/WP(2003)21/FINAL

OECD (2003), Trade Facilitation Reforms in the Service of Development, TD/TC/WP(2003)11/FINAL

OECD (2003), Quantitative Assessment of the Benefits of Trade Facilitation, TD/TC/WP(2003)31/FINAL

*UNECE instruments*

The United Nations Layout Key for Trade Documents (UNLK, ISO 6422, see www.unece.org/cefact)

The United Nations Trade Data Elements Directory (UNTDED, ISO 7372, see www.unece.org/cefact)

The United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT see www.unece.org/trade/untdid/welcome.html)

Furthermore relevant standards are the UN/CEFACT Single Window Rec. 33, (see www.unece.org/cefact/recommendations/rec_index.htm)

The International Convention on the Harmonization of Frontier Controls of Goods (see www.unece.org/trans)

*World Bank*

Luc de Wolf, Jose B. Sokol (2005), Customs Modernization Handbook; World Bank Trade and Development Series. The Customs Modernization Handbook provides operational guidelines to deal with issues such a Customs valuation, rules of origin, duty relief and exemptions, transit and security issues, and the use of ICT.

World Bank (2009), Border Management Modernization: A Practical Guide for Reformers, World Bank: Washington. The recent Border Management publication by the World Bank provides practical insights on trade facilitation reforms and the role of the private sector in it.

World Bank (2006), The transit regime for landlocked States; Law, Justice and Development Series. This World Bank publication provides a comprehensive study of the theoretical and operational aspects of freedom of transit in international law.

*UNCTAD*

The UNCTAD Expert Meeting 2006 was organized on the topic of ICT solutions to facilitate trade at border crossings and ports.

UNCTAD (2006), ICT Solutions to facilitate trade at border crossings and in ports, TD/B/COM.3/EM.27/2, Geneva.

This and other documents, conference proceedings, and presentations on trade facilitation can be found on the website of the Trade Logistics Branch of the UNCTAD at: www.unctad.org/ttl

*GFP*

The Global Facilitation Partnership: www.gfptt.org