Risk management: Article 7.4

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

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

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

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

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

4 Risk Management

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

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

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

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

Undestanding the measure

What is covered?

Core obligation

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

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

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

Ensuring a non-discriminatory approach to risk management

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

Treatment of high-risk and low-risk consignments

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

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

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

Selectivity criteria

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

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

What is not covered?

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

Benefits and opportunities for stakeholders

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

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

Implementation

Implementation checklist

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

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

Preparing a national implementation plan

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

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

Key challenges

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

Key factors for success

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

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

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

Box 2: International best practices for customs risk management systems

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

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

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

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

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

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

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

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

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