

Technical note on the WTO Trade Facilitation Agreement

Article 10.8: Rejected goods

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Rejected goods: Article 10.8

The rejection of merchandise due to unmet standards is a common issue faced by traders. When goods are found not in compliance with safety regulations, they often get confiscated and destroyed by customs.

However, this is seen as an unfair practice, as both the importer and the exporter are denied the opportunity to dispose of the goods and decide how to alternatively place them in other markets with less stringent safety regulations.

Article 10.8 seeks to limit the discretion of border authorities to destroy goods against traders' will by allowing non-compliant goods to be re-consigned or returned to the exporter.

Members must allow the importer to re-consign or return to the exporter the goods rejected on grounds of failure to comply with technical or sanitary and phytosanitary standards.

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

8 Rejected Goods

8.1 Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

8.2 When such an option under 8.1 is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

Understanding the measure

What is covered?

Core obligation

For goods rejected by competent authorities because of non-compliance with technical or sanitary and phytosanitary requirements, WTO Members are required to allow the importer to re-consign the merchandise or return the same to the exporter or another person who has been designated by the exporter.

The expression 'shall, subject to and consistent with its laws and regulations' indicates that implementation of this provision is mandatory in principle; however, it is conditional upon consistency with national laws and regulations of the importing Member.

Failing to return the goods within reasonable time

If the importer fails to return or to re-consign the rejected goods to the exporter within a reasonable period of time, the competent authority has the discretion to undertake a different course of action.

The provision to return the goods within reasonable time will depend on each case. Goods cannot remain at a port or a warehouse for an unlimited period of time. Thereafter, the Member will take action to dispose of the goods in accordance with national laws and regulations.

What is not covered?

The measure does not specify what is a 'reasonable period of time', leaving the expression to the interpretation of Members. There are no details on treatment of rejected goods if these are not returned or re-consigned within such reasonable period of time.

Furthermore, the text is silent on whether the exporting country has an obligation to accept the goods rejected by the competent authorities of the importing country.

Benefits and opportunities for stakeholders

The measure limits the discretion of border authorities to destroy goods against the importer's/exporter's wishes by providing a right of re-export or return of the goods. This means that traders have an opportunity to salvage the shipment rather than taking a total loss.

Moreover, this measure allows trans-shipment of goods that do not meet national technical regulations to a third country with different standards, enabling traders to be able to place their goods on other markets where national regulations do not impede importation of goods.

Implementation

Implementation checklist

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

- A national implementation framework is in place ensuring that importers have the opportunity to return rejected goods or re-consign them to the exporter within a reasonable period of time.
- Steps are taken towards periodic review of relevant processes to ensure compliance and future improvements.
- Regular monitoring and evaluations are carried out to assess if the measure is correctly implemented.

Preparing a national implementation plan

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

	Actions suggested
Implementation sequence	Preparatory phase
	Undertake review of legal and administrative frameworks to assess if amendments are needed to allow return or re-consignment of rejected goods.
	If needed, take specific legal or administrative measures to introduce the obligation across all borders.
	Create a forum for inter-agency cooperation to coordinate implementation of the measure.
	Set-up phase
	Conduct thorough legal, administrative and business process analysis of existing procedures and required documentation to ensure standardization across all borders.
	Set up systems and procedures for systematically implementing the measure, linked with risk management systems, if possible.
	Assign sufficient trained staff.
	Carry out public campaigns to raise awareness of the measure.
	Management and follow-up phase
	Conduct regular reviews of formalities and customs procedures to ensure compliance.
	Enable users to give feedback and evaluation.
Average time for implementation	Between one to two years.

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Leading implementation agency	Customs, with the NTFC, is most commonly chosen as the leading implementation agency.

Key challenges

Lack of inter-agency cooperation and lack of trust among border agencies are key challenges as approval or rejection of goods requires compliance checks by a number of agencies at entry points. In some instances, countries may not be familiar with testing and compliance-checking provisions.

Border agencies may face difficulties to develop new protocols to regulate the return or re-consignment of rejected goods. Appropriate training, as well as additional financial and human resources, may be required to ensure full application of the measure.

Key factors for success

A system of regular review and monitoring to verify whether competent authorities facilitate the return or re-consignment of rejected goods to the exporter will contribute to the successful implementation of the measure. Monitoring and responsible advocacy from the business community will help maintain pressure on border agencies to comply with this TFA provision.