

Technical note on the WTO Trade Facilitation Agreement

Article 12: Customs cooperation

This document is an extract from
"Getting down to business: Making the Most of the WTO Trade Facilitation Agreement",
published by the International Trade Centre in partnership with UNCTAD and UNECE.

CHAPTER 12 INSTITUTIONAL ARRANGEMENTS

Customs cooperation: Article 12

The WCO, known as the Customs Cooperation Council (CCC) until 1994, is one of the oldest multilateral institutions established to streamline trade flows. The CCC Convention was ratified and came into force in 1952 with the objective of studying and resolving all questions relating to cooperation in customs matters.¹⁹ The Harmonized System of tariff classification; development and adoption of the Automated System for Customs Data; and standard formats for documentation are all achievements of CCC/WCO which have enhanced trade flows through country cooperation in customs matters.

Members shall improve cooperation among customs services of Members to foster compliance by businesses and enable freer trade.

One of the objectives of the WCO Council is to formulate provisions, standards and best practices for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues. Other objectives are to clarify and improve relevant aspects of GATT 1994 Articles V, VIII and X, and enhance technical assistance and support for capacity building in trade facilitation.

Customs cooperation at the international level improves control of trade flows and enforcement of applicable laws and regulations through exchange of information on export and import declaration data, trader-related information, origin and valuation-related information.²⁰ Examples of customs cooperation include customs unions and regional trade agreements.

The measure

ARTICLE 12	CUSTOMS COOPERATION
1	Measures Promoting Compliance and Cooperation
1.1	Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders. ²¹
1.2	Members are encouraged to share information on best practices in managing customs compliance, including through the Committee. Members are encouraged to cooperate in technical guidance or assistance and support for capacity building for the purposes of administering compliance measures and enhancing their effectiveness.
2	Exchange of Information
2.1	Upon request and subject to the provisions of this Article, Members shall exchange the information set out in subparagraphs 6.1(b) and/or (c) for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

¹⁹ http://www.jus.uio.no/english/services/library/treaties/09/9-04/wco_customs_council.xml

²⁰ <http://tfig.unece.org/contents/custom-cooperation.htm>

²¹ Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.

2.2 Each Member shall notify the Committee of the details of its contact point for the exchange of this information.

3. Verification

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

4. Request

4.1 The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed official language of the WTO or other mutually agreed language, including:

- (a) the matter at issue including, where appropriate and available, the number identifying the export declaration corresponding to the import declaration in question;
- (b) the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons to whom the request relates, if known;
- (c) where required by the requested Member, confirmation²² of the verification where appropriate;
- (d) the specific information or documents requested;
- (e) the identity of the originating office making the request;
- (f) reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information and personal data.

4.2 If the requesting Member is not in a position to comply with any of the subparagraphs of paragraph 4.1, it shall specify this in the request.

5. Protection and Confidentiality

5.1 The requesting Member shall, subject to paragraph 5.2:

- (a) hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under subparagraphs 6.1(b) or (c);
- (b) provide information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;
- (c) not disclose the information or documents without the specific written permission of the requested Member;

²² This may include pertinent information on verification conducted under paragraph 3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

- (d) not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;
- (e) respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and
- (f) upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2 A requesting Member may be unable under its domestic law and legal system to comply with any of the subparagraphs of paragraph 5.1. If so, the requesting Member shall specify this in the request.

5.3 The requested Member shall treat any request and verification information received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested Member to its own similar information.

6. Provision of Information

6.1 Subject to the provisions of this Article, the requested Member shall promptly:

- (a) respond in writing, through paper or electronic means;
- (b) provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;
- (c) if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;
- (d) confirm that the documents provided are true copies;
- (e) provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2 The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement, it should specify this to the requested Member.

7. Postponement or Refusal of a Request

7.1 A requested Member may postpone or refuse part or all of a request to provide information, and shall inform the requesting Member of the reasons for doing so, where:

- (a) it would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member;
- (b) its domestic law and legal system prevents the release of the information. In such a case it shall provide the requesting Member with a copy of the relevant, specific reference;
- (c) the provision of the information would impede law enforcement or otherwise interfere with an ongoing administrative or judicial investigation, prosecution or proceeding;

- (d) the consent of the importer or exporter is required by its domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information or personal data and that consent is not given; or
- (e) the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

In the circumstances of paragraphs 4.2, 5.2, or 6.2, execution of such a request shall be at the discretion of the requested Member

8. Reciprocity

If the requesting Member is of the opinion that it would be unable to comply with a similar request, if it was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

9. Administrative Burden

9.1 The requesting Member shall take into account the associated resource and cost implications for the requested Member in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.

9.2 If a requested Member receives an unmanageable number of requests for information or a request for information of unmanageable scope from one or more requesting Member(s) and is unable to meet such requests within a reasonable time, it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

10. Limitations

A requested Member shall not be required to:

- (a) modify the format of its import or export declarations or procedures;
- (b) call for documents other than those submitted with the import or export declaration as specified in subparagraph 6.1(c);
- (c) initiate enquiries to obtain the information;
- (d) modify the period of retention of such information;
- (e) introduce paper documentation where electronic format has already been introduced;
- (f) translate the information;
- (g) verify the accuracy of the information; or
- (h) provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

11. Unauthorized Use or Disclosure

11.1 In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information and:

- (a) take necessary measures to remedy the breach;

- (b) take necessary measures to prevent any future breach; and
- (c) notify the requested Member of the measures taken under subparagraphs (a) and (b).

11.2 The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

12. Bilateral and Regional Agreements

12.1 Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.

12.2 Nothing in this Article shall be construed as altering or affecting a Member's rights or obligations under such bilateral, plurilateral, or regional agreements, or as governing the exchange of customs information and data under such other agreements.

Understanding the measure

What is covered?

Core obligation

This measure aims at improving cooperation among customs administrations of WTO Members. The measure sets out the scope of cooperation and principles on which such cooperation must be provided.

Compliance and cooperation

This measure will raise traders' awareness of rules and regulations of trade transactions so that businesses become more compliant through self-correction. It is intended that strict enforcement measures are applied only in cases of strong non-compliance.

This measure also sets out the need for cooperation among customs organizations, to share information on best practices in managing customs compliance and to cooperate in technical guidance or assistance in capacity building.

Exchange of information and documents

Members must notify the WTO Committee on Trade Facilitation on details of their contact points for exchange of information. When there are reasonable grounds to doubt the truth or accuracy of an import or export declaration, the Member would make a request through the contact points.

The requested Member must exchange the information, subject to other provisions of Article 12. Members' obligations are limited to provide only specific information, to the extent it is available, as set out in declarations filed with customs including invoices, packing lists, certificates of origin and bills of lading.

Members shall carry out appropriate internal verification procedures for declarations and other relevant documents before making the request to ensure that the information being requested is not already available with the requesting customs administration.

Request

Each Member will submit a written request in one of the official WTO languages (English, French or Spanish) or a mutually acceptable language to both countries with the following information:

- Matter at issue and reasons for the request;
- Specific information and/or documents requested;
- Purpose of information requested;

- Identity and the legal mandate of the official making the request;
- Applicable legal provisions in its domestic law, including provisions relating to confidentiality.

This part of the measure is mandatory and has to be implemented as described in the Article text.

Protection and confidentiality

Each Member is required to treat any received information as confidential:

- Provide at least the same level of protection and confidentiality as that provided under the domestic law and legal system of the requested Member;
- Not disclose information to third parties without the specific permission of the requested country;
- Use the information received in reply solely for the requested purposes unless mutually agreed otherwise and only share information with the authority concerned.

This is a mandatory provision and is required to be implemented as described in the Article text.

Provision of information

The requested Member shall provide a response in writing, on paper or electronically. The measure identifies the following documents which can be provided in original or copy, to the extent available:

- Declaration
- Commercial invoice
- Packing list
- Certificate of origin
- Bill of lading

The requested Member must confirm that the documents provided are true copies of the documents, and must, to the extent possible, respond to the request within 90 days from the date of the request. The requested Member may require an assurance that the information provided will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If such use is expected, then the requesting Member shall set this out in the request.

Postponement or refusal of a request

The requested Member may postpone or refuse part or all of the request in the following cases:

- If its domestic law and legal system prevents release of the information or legislation (e.g. information confidentiality);
- If contrary to the public interest as reflected in domestic law or legislation;
- If it impedes law enforcement or otherwise interferes with an ongoing administrative/judicial proceeding, prosecution or proceedings;
- If the consent of the importer or exporter is required to waive confidentiality of information, and consent is not given;
- If the request is submitted after expiration of the legal requirement for retention of documents.

Reciprocity

The requesting Member must only submit requests it would be able to comply with if similarly requested. If not, the requesting Member should state this fact in the request. The requested Member can choose to execute the request or not. This is a mandatory provision and should be implemented as described in the Article.

Administrative burden

When submitting a request, the requesting Member should balance its fiscal interest and the effort to be made by the requested Member to gather relevant information.

If a Member receives an unmanageable number of requests for information or information of unmanageable scope from one or more requesting Members, and the requested Member cannot meet such requests within a reasonable time, they may request one or more of the requesting Members to prioritize requests. In the absence of an agreement, the executions of requests shall be at the discretion of the requested Member.

This is a mandatory provision and should be implemented as described in the Article.

Limitations

The requested Member shall not be required to meet the following requests:

- Modify the format of their declarations or procedures;
- Call for documents other than those submitted with the declaration;
- Initiate inquiries to obtain the information;
- Modify the period of retention of such information;
- Introduce paper documentation where electronic format has already been introduced;
- Provide any information for which disclosure is not permissible under their domestic laws and regulations; or
- Translate the information and/ or documents.

Unauthorized disclosure

In the event of any breach of the condition of use or disclosure of information exchanged, the requesting Member must:

- Inform the requested country about the breach in detail;
- Take necessary measures to remedy the breach; and
- Take measures necessary to prevent any future breach.

The requested Member may suspend its obligation to the requesting Member until the remedy/prevention measures are in place. This is a mandatory measure.

Bilateral and regional agreements

Members have the option to enter into or maintain bilateral, plurilateral or regional agreements to share or exchange customs information and data, in a secure and rapid basis such as on an automatic basis or in advance of arrival of the consignment.

The TFA cannot affect the Members' rights and obligations under these agreements. This is a mandatory measure and has to be implemented as described in Article 12.

Benefits and opportunities for stakeholders

Improving customs cooperation by clearly outlining the roles and responsibilities of both the requesting and requested Members and providing opportunities for exchange of data and information can play a key role in improving the credibility and predictability of trade transactions.

Notification of a contact point to WTO provides clarity about the appropriate channel in each country for this measure. The principle of reciprocity is helpful in ensuring mutually agreeable transactions for exchange of information, documents and data. Ensuring confidentiality and protection of information is critical and the measure does not force a requested country to share information in the event of any breach of the conditions of use or disclosure of information.

Streamlining trade traffic will lead to more effective and efficient deployment of government resources and transactions.

Implementation

Implementation checklist

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

- A contact point for exchange of information and/or documents is notified to WTO.
- The procedure for responding to other customs administration is clearly defined.
- Confidentiality issues are clearly addressed.

Preparing a national implementation plan

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

Implementation sequence	Actions suggested
	Preparatory phase
	Review legal and administrative measures to identify what needs to change in existing systems to implement this measure fully
	Align all legislation to support customs cooperation.
	Information on compliance obligations are easily available for businesses and the public.
	Nominate and publish a contact point for customs cooperation.
	Set-up phase
	Conduct thorough business process analysis of existing procedures and documentation to ensure implementation.
	Put in place protocols for coordination among all relevant national/domestic agencies so that documents and data may be shared with international customs agencies.
	Assign sufficient trained staff, if required.
	Where possible, implement processes using ICT-enabled solutions.
	Undertake a robust public awareness campaign.
	Management and follow-up phase
	Conduct reasonable and regular reviews of formalities, business processes and documentation requirements for ensuring compliance.
Average time for implementation	Between two to three years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency, working with NTFC.

Key challenges

Lack of an appropriate legal and administrative framework at the national level is a key challenge. The nature of diplomatic relations between countries may impact on the successful implementation of this measure.

Lack of trust and a culture of not sharing information among national agencies and customs agencies across countries is also a critical challenge. The agencies may not want to work together, share data, documents or information. There may be no existing procedures for information sharing with customs agencies of other Members. In such cases, new legal instruments, business processes and systems need to be devised and institutionalized.

Government staff may not have the capacity to implement the measure, including development of new protocols for coordination.

Key factors for success

Positive diplomatic relations between neighboring countries will contribute to successful implementation. A system of positive engagement among all national stakeholders to address political economy or diplomatic challenges among the countries is essential.

An enabling legal and administrative framework which embraces and encourages implementation of the measure in a transparent and consistent manner is another key success factor. The nomination of a focal person can help address the challenges of working with multiple agencies. Using existing structures and fora such as the Joint Committee of Customs Cooperation may be helpful.

Building the technical capacity of customs to implement the measure is critical. A culture of accepting ICT as a key means of communication and operation in government institutions is important. Allocation of appropriate funds for building requisite systems and staff training will be necessary. In some cases, technical assistance may be required. A system of regular review and monitoring of implementation progress also needs to be put in place so that the measure is not misused or abused.