

Use of customs brokers: Article 10.6

In many countries, the use of customs brokers is mandatory to facilitate the process of import, export and transit, and to assist traders in ensuring compliance. However, practice shows that – apart from the high cost of their service – customs brokers are often part of vested interest groups, presenting obstacles rather than facilitating trade.

In many other countries where laws do not require the use of customs brokers, their use for clearance operations has also become a common practice.

To help reduce this burdensome practice, the TFA obliges WTO Members not to make the use of customs brokers mandatory from entry into force of the Agreement.¹⁵ Moreover, it requires Members to apply transparent and objective licensing rules.

Members are requested not to make the use of customs brokers mandatory.

When Members have measures in place on, or introduce changes to, the use of customs brokers, they must promptly publish them.

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

6 Use of Customs Brokers

6.1 Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not introduce the mandatory use of customs brokers.

6.2 Each Member shall notify the Committee and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.

6.3 With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

Understanding the measure

What is covered?

Core obligation

From the date of entry into force of the TFA (22 February 2017), WTO Members must not introduce or continue the mandatory use of customs brokers in their national legislative framework.

However, this requirement is not retroactive. Members whose legislation on the use of customs brokers was issued prior to the entry into force of the Agreement are allowed to keep it in place.

Publish and notify the WTO Committee on Trade Facilitation about the use of customs brokers

Members must notify the WTO Committee on Trade Facilitation on measures regulating the use of customs brokers, as well as any further modification occurring to such measures. Members are also required to publish promptly any subsequent amendments to the measures governing the use of customs brokers, within a reasonable period of time, to ensure quick access for businesses.

¹⁵ This discipline is contained in standards 8.1 through 8.7 of the Revised Kyoto Convention of June 1999, which entered into force, for WCO members, on 3 February 2006.

http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/~/_link.aspx?_id=82FA2162B4854C889840E503CD881FA3&_z=z

Licensing requirements

Members must put in place objective and transparent rules for the licensing of customs brokers. This provision is aimed at overcoming weak regulatory regimes in many LDCs where legal instruments regulating the use of customs brokers are either absent or not applied in a full and consistent manner.

What is not covered?

The measure does not require the elimination of the customs brokers profession altogether. Instead, it implies that the use of customs brokers can be optional. The measure does not determine the criteria for the licensing of customs brokers; it only requires that these rules be transparent and objective in order to avoid any misuse or abuse.

Benefits and opportunities for stakeholders

Eliminating the mandatory use of customs brokers can help businesses reduce the time and cost of trade transactions based on 'value for money' considerations. Public availability of information regarding the use of customs brokers will enhance transparency and predictability, allowing traders to have easy access to information without losing time. This measure will also help the government to increase efficiency of processing times and accountability by eliminating the blame for non-performance when customs brokers hinder a quick clearance of customs formalities for vested interests.

Implementation

Implementation checklist

The following checklist may be used to guide compliance with the measure:

- No legislation subsequent to the entry into force of the TFA makes the use of customs brokers mandatory.
- The legislation or administrative acts does not forbid traders to fill in and submit their customs declaration themselves.
- No practical issue or obstacle exists that in practice renders the use of customs brokers inevitable.
- Existing rules and amendments on the use of customs brokers are published and notified to the WTO Committee on Trade Facilitation.
- Licensing rules of customs brokers are formulated in an objective and transparent manner.

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 existing legal frameworks, including the regulatory regime governing the licensing of customs brokers, procedures and business processes, to determine how to implement this measure.
	Determine changes required to legal instruments, procedures and business processes to enable successful implementation.
	Set up a committee with a clear terms of reference to implement the measure.
	Set-up phase
	Implement necessary changes in national legal, regulatory, administrative frameworks.
	Notify the rules and regulations pertaining to the use of customs brokers as soon as possible.
	Foster change management in government authorities by providing appropriate training.
	Update business processes to bring these in compliance with the measure.
	Carry out a public awareness campaign.
	Management and follow-up phase
	Implement periodic review and monitor prompt publication and notification of modifications.
Incorporate feedback from private sector into a review mechanism.	
Average time for implementation	Two years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Lack of an appropriate national regulatory and administrative framework that can facilitate the clearance of goods without the use of customs brokers is a major challenge. In the absence of an electronic SW system, the trader may find the process of clearing goods particularly cumbersome without the assistance of customs brokers.

The mindset of customs authorities can also be a key challenge. Over time, customs brokers have become part of the port 'ecosystem' and customs staff may be more comfortable working with professional customs brokers.

Another challenge may be the inability of governments to identify transparent and objective criteria for the licensing of customs brokers.

Key factors for success

An enabling regulatory and administrative framework which encourages a mindset change among government authorities, especially customs officials, is a key factor which will determine successful implementation.

The adoption of automated risk management, post-clearance audits and SW systems will also contribute to success, fostering a transparent disclosure of information while, at the same time, allowing traders to manage procedural formalities.