WTO Agreement on Trade Facilitation
UNCTAD Trade Facilitation Technical Note No. 12

ARTICLE 7.4: RISK MANAGEMENT

A. BACKGROUND

> ***Applying risk management and using appropriate selectivity criteria on a non-discriminatory basis for controlling imports, exports and transit of goods, including means of transport***

Given the high number of exports, imports and transit transactions, Customs administrations daily face the challenge of facilitating the movement of passengers and cargo while applying controls to detect Customs fraud and other offences (UNCTAD, 2011).

As a consequence, many Customs administrations apply risk management systems to determine which persons, goods and means of transport should be examined and to what extend (Standards 6.3 and 6.4 of the WCO Revised Kyoto Convention). The World Customs Organization (WCO) defines "risk management" as "the systematic application of management procedures and practices which provide Customs with the necessary information to address movements or consignments which present a risk" (WCO, 2010).

This measure allows reducing the time required for clearance while improving controls. Indeed, risk management is one of the key measures contained in the Agreement on Trade Facilitation (TFA) of the World Trade Organization (WTO). It reflects a "win-win" solution for government control of goods and the businesses involved.

B. THE MEASURE

WTO Agreement on Trade Facilitation

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.

C. UNDERSTANDING THE MEASURE

1. What is covered?

Core obligation

The measure aims at achieving effective Customs controls at borders through a reasonable and equitable balance between ensuring compliance and reducing costs and time to businesses. The measure also allows for a better allocation of human resources, increases Customs revenues, and improves compliance with laws and regulations (UNCTAD, 2011).

Pursuant to Article 7.4, WTO Members are bound to set up or maintain a risk management system. Nonetheless, this obligation is neutralized by adding the term "to the extent possible". In light of this wording, WTO Members are compelled to set the broadest scope and the greatest content for risk management systems as far as their national resources allow.

Once established, risk management systems shall operate on a non-discriminatory basis. In practice, WTO Members may differentiate goods, including means of transport, through risk analysis and selectivity criteria but, in any case, this process shall lead to an arbitrary or unjustifiable discrimination, or disguise restrictions to international trade. The rule seeks to ensure the application of risk management in good faith, avoiding abuse or misuse of this provision.

Consequently, any requirement in Members' legislation for Customs to examine 100%, a fixed number or a minimum percentage of consignments, would generally not be compatible with risk management principles.

Scope

The application of risk management systems established under this Agreement is limited to Customs control. Pursuant to the Revised Kyoto Convention, "Customs control" means measures applied by the Customs to goods and means of transport in order to ensure compliance with Customs law. Nonetheless, this provision asks, at the same time, WTO Members to coordinate, to the extent possible, Customs controls with other controls at borders in order to focus on high risk consignments.

Even though the agreement does not set the geographical scope of the measure, an effective risk management system requires a holistic approach. Thus, Customs should apply risk management and undertake an ongoing assessment of potential risks at national level.

High risk consignments

After undertaking the risk evaluation and analysis stages, Customs administrations identify different degrees of risk and classify consignments from high to low risk, according to its quantification, assessment of its potential consequences, and a determination of its likelihood. For this purpose, Customs administration may understand risk as the potential for non-compliance with Customs laws (WCO, 2010).

The TFA requests WTO Members to concentrate Customs control, including resources, energy and time, on high risk consignments. By the same token, WTO Members must expedite the release of low risk consignments. The aim of this measure is to ensure the efficient allocation of resources, improve compliance and expedite clearance and release. It would not be cost effective to treat all risks equally.

As a complement to risk-based management, WTO Members may also select, on a random basis, consignment for Customs control. Random controls help avoid non-compliance by companies that are aware of Customs risk assessment methods. Because of these unexpected controls, Customs authorities remain alert and updated as risk continually evolves over time.

Criteria

The TFA provides an indicative but not exhaustive list of selectivity criteria to be used during the assessment of risks. Article 7.4.4 lists the following criteria: 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 means of transport.

2. What is not covered?

Risk management can be applied with success through manual/paper based processing or automated clearance systems. Nevertheless, the TFA does not rule on the adoption of a specific type of risk management system. Thus, it is up to each WTO Member to make this decision.

A risk management system does not necessarily require establishing a separate functional unit with dedicated staff. Thus, the risk management system can be applied by the existing functional unit(s) and staff already working in the administration. In any case, the application of this measure may require: a) having a functional or administrative team or unit in place which designs, disseminates, and regularly reviews and updates the risk management system, and b) preferably a common or compatible Risk Management system for the whole country.

Although the measure does not mention the alignment of risk management systems among Customs authorities, this coordination may be possible through Border Agency Cooperation. Therefore, Article 7.4 on Risk Management should be read together with Article 8 on Border Agency Cooperation.

Unlike the General Annex of the Revised Kyoto Protocol, the TFA does not recommend the adoption of a compliance measurement Strategy to support risk management.

D. IMPLEMENTATION ISSUES

UNCTAD Study

In a recent study entitled *"The new frontier of competitiveness in developing countries: Implementing Trade Facilitation"*, UNCTAD analysed the implementation status of TF measures in 26 developing countries, including least-developed countries (LDCs), middle-income developing countries, landlocked countries, transit developing countries, and small island economies in Africa, Asia, the Caribbean and Latin America (UNCTAD, 2014).

Out of twenty six participating countries, ten countries (38%) reported a satisfactory level of this measure's implementation, while thirteen countries (50%) reported a partial implementation and three countries (12%) considered that the measure was not implemented at all.

The main reason for non-implementation, according to the stakeholders in the participating countries was the lack of resources (quoted by 61 % of the countries), but also non application of risk management by other agencies than Customs or for other purposes such as fiscal evasion (50%), and inability to apply in a homogenous manner at the national level (39 %).

Implementation Check List

The following list may be used as guidance when estimating 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 principles is in place.
- ☐ The legislation/policy allows Customs (and other border agencies) the discretion to exercise controls on a selective basis.
- ☐ There is a common risk management system for the whole country to apply controls using selectivity criteria to import, export and transit goods.
- ☐ The risk management is designed and applied to avoid arbitrary or unjustifiable discrimination or disguised restrictions to international trade.
- ☐ Customs control concentrates on high risk consignments.
- ☐ Customs complements its risk management with random controls.

Preparing a national implementation plan

The following table may be used as a basis for the national implementation plan for this measure.

	Actions required
Implementation sequence	1. Put in place a national implementation framework, including legislation, administrative instructions, regulations and procedures to apply risk management to import, export and transit goods for Customs control purposes. Ensuring that there is nothing in Customs regulation that requires examination of all consignments, a fixed number or a minimum percentage.
	2. Map Customs and other administrations' needs on changes of their current control procedures and IT equipment, in view of implementing a common risk management system.
	3. Design an integral, standardized and common risk management system for customs control: based upon an appropriate selectivity criterion (allowing Customs the discretion to apply control on a selective basis); applied commonly across the country, designed and applied to avoid arbitration or unjustifiable discrimination.
	4. Implement the risk management system, including its: Procedures, Work system, Selectivity criterion, Method for communicating, exchanging and accessing risk related information among concerned staff, System monitoring procedures and periodic reviewing of risk criterion.
	5. Undertake awareness courses and extensive communication efforts to accompany the implementation of the risk management system within Customs and other agencies involved and also for traders.
	6. Assign the sufficient staff and training for development and review of risk management.
	7. Put a procedure in place for cooperation with other trading partners in the domain of risk management
Time for implementation	8. The estimated implementation time is around two and a half years, on average.
Leading implementation agency	9. Customs are most commonly chosen as the leading implementation agency.

References

- UNCTAD, Technical Notes on Trade Facilitation Measures, Geneva: United Nations, 2011 p.61.
- UNCTAD, The new frontier of competitiveness in developing countries: Implementing trade facilitation, 2014.
- WCO, Revised Kyoto Convention Guidelines on the Revised Kyoto Convention General Annex, 2010 p.52.
- WCO, Customs Risk Management Compendium, Volume 1.

The Technical Notes have been produced by a technical expert contracted by UNCTAD under different Trade Facilitation projects financed by the Governments of Norway, Sweden, Switzerland and Spain as well as the European Union. Their purpose is to assist policy makers and other Trade Facilitation

stakeholders to better understand the scope and implications of the various trade facilitation measures included in the WTO Trade Facilitation Agreement (TFA) and prepare for their implementation. The opinions expressed in the Technical Notes may not necessarily coincide with those of the organization or the donors of the Trust Fund. The Technical Notes have not been formally edited. For comments and enquiries please contact TF@UNCTAD.org.

All Technical Notes are available via http://www.unctad.org/technicalnotes.