

Technical note on the WTO Trade Facilitation Agreement

Article 7.3: Separation of release from final determination of customs duties, taxes, fees and charges

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.

Separation of release from final determination of customs duties, taxes, fees and charges: Article 7.3

In many cases, customs authorities do not release goods until the clearance procedure has been completed, when all transactions have been terminated and due taxes and duties have been paid.

However, it often happens that the final clearance is delayed for various reasons, such as decisions pending on the classification and valuation of the goods, laboratory testing, missing documents or disputes against a customs decision. Such delays have a negative impact on traders' supply chains, as the goods are withheld from traders in customs-controlled facilities.

Members must establish or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees and charges.

To tackle this issue, Article 7.3 requires Members to allow the release of goods prior to the final determination of customs duties, taxes, fees and charges. Separating release from clearance means the goods can be released by customs prior to the payment of duties, taxes, fees and charges where the final classification of the goods, assessment of value or other transactions are pending.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

3.1 Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

3.2 As a condition for such release, a Member may require:

- (a) payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or
- (b) a guarantee in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.

3.3 Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

3.4 In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5 The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

3.6 Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

Understanding the measure

What is covered?

Core obligation

WTO Members are requested to establish or maintain a mechanism whereby the goods can be released prior to the final determination of customs duties, taxes, fees and charges.

Conditional release

To release goods before the final determination of duties, taxes, fees and charges, Members may prescribe the following conditions:

- (a) The payment of customs duties and other dues, determined prior to the arrival of goods or at the time of the arrival of the goods, and a guarantee for any amount not yet determined; or
- (b) A guarantee in the form of surety, deposit or other instruments, as provided in their laws and regulations.

The use of the verb 'may' indicates that Members have the discretion to make the release of goods conditional upon the two requirements listed above but it is not mandatory.

Scope of the guarantee

If a guarantee is requested, the amount of such guarantee must not be greater than the amount that would be required to pay any dues for the goods.

Once customs duties, taxes, fees and charges have been finally determined and paid – thus making the guarantee no longer necessary – the measure requires Members to promptly discharge such guarantee.

Members may also require a guarantee for penalties and fines which are imposed when an offence has been discovered. Again, the use of the verb 'may' indicates this is not mandatory.

The right to examine, detain, seize or confiscate goods

The last provision of Article 7.3 clarifies that the TFA does not touch upon Members' rights to examine, detain, confiscate or seize goods in a manner which is not inconsistent with WTO obligations. Members continue to have legitimate rights to examine or confiscate goods, if compatible with WTO commitments.

What is not covered?

No time limits have been prescribed, e. g. to finalize assessment of the final payable amount. Procedural details have been left to the relevant authorities. The measure does not also specify the amount of time for determining the dues 'as soon as possible' after the arrival of the goods, nor does it make clear the timing for discharging the guarantee.

Benefits and opportunities for stakeholders

The separation of release from clearance of goods will allow traders to avoid costly delays resulting from storage charges, demurrage, decay of perishable goods and loss of business for not being able to supply in time, etc. Reducing bottlenecks at entry points will enable a higher number of trade transactions to take place, increase customs revenues and lead to a more productive use of human and financial resources.

Implementation

Implementation checklist

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

- There is a national implementation framework that provides for the release of goods in case of delay in the final determination of duty, taxes, fees and charges.

- The national implementation framework specifies that the amount of guarantee required must be equivalent to the amount of dues for the goods covered by the guarantee.
- A system whereby the guarantee is discharged without delay when it is no longer required is set up.

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
	Determine whether a national legal and administrative mechanism exists to facilitate release of goods prior to the determination of all dues imposed on goods.
	If one or various mechanisms exist, determine its characteristics and scope of action, and align with the scope of this measure.
	Set-up phase
	If necessary, adopt a legal or administrative framework to implement the measure.
	Analyse and change existing workflows and business processes to allow release of goods upon submission of a sufficient guarantee.
	According to the scope of action and responsibilities of the mechanism, assign appropriate financial and human resources and, where possible, adopt ITC-enabled systems to manage records and provide for release of guarantees.
	Train staff and build capacity to comply with the measure.
	Undertake publicity to inform all traders and stakeholders about benefits and requirements of the new system.
	Management and follow-up phase
	Set up mechanisms to monitor and regularly evaluate efficient functioning of the system.
	Periodically review and implement modifications to the mechanism, where applicable.
Average time for implementation	Two years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Customs officials with a control mindset may consider the release of goods before the final determination of dues as very risky. This attitude not only impedes successful implementation of this measure but also hinders the implementation of other correlated trade reform measures, such as pre-arrival processing and risk management. Traders can struggle to obtain credible financial instruments to serve as guarantees especially in LDCs where access to finance might be extremely difficult.

Key factors for success

Changing customs authorities' work practices and attitudes are crucial to set up an efficient system which enables the release of goods before payment of dues. A robust monitoring mechanism will be beneficial to ensure continued review of the procedures in order to identify and set forth improvements.