

Technical note on the WTO Trade Facilitation Agreement

Article 7.9: Perishable goods

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Perishable goods: Article 7.9

Inadequate customs and logistics services at the border can hamper countries' connectivity to global value chains. This is particularly true for enterprises exporting perishable goods, as delays in clearance and inappropriate storage facilities at the border can lead to significant economic and product quality losses.

Members must provide for a quick release of perishable goods and provide appropriate storage for them pending their release.

As many developing countries and LDCs rely heavily on trade in agricultural products and other perishable goods, fast tracking the release and clearance of these goods is vital to increase their exports and linkages with regional and global value chains. Giving appropriate priority to their examination and adequate storage facilities at the border will prevent unnecessary damage.

Article 7.9 provides a framework for customs treatment of perishable goods and expands the scope of GATT Article VIII by providing specific rules pertaining to perishable goods.

For the purpose of the WTO TFA, perishable goods are goods that rapidly decay due to their natural characteristics, particularly in the absence of appropriate storage conditions. They may be more vulnerable to external shocks and require special storage conditions. Perishable goods include agricultural products, fruits and vegetables, fresh meat, fisheries, etc.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

9 Perishable Goods

9.1 With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:

- (a) under normal circumstances within the shortest possible time; and
- (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2 Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3 Each Member shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4 In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

Understanding the measure

What is covered?

Core obligation

WTO Members must allow the quick release of perishable goods, provided all the regulatory requirements have been met, within the shortest possible time. This means granting perishable goods appropriate priority when scheduling examinations and allowing for proper storage prior to release, including release at storage facilities where practicable.

Fast-tracking the release of perishable goods

Within regular business hours and normal circumstances, the process of releasing perishable goods must be completed as fast as possible by the relevant national authorities to prevent any loss in the goods' quality and characterizing features. Perishable goods must also be released outside normal business hours *under exceptional circumstances, where it would be appropriate to do so*. This means that – if deemed necessary – customs and other border control authorities must make efforts to ensure that perishable goods are released outside customs' business hours to prevent damage.

Prioritizing examination of perishable goods

WTO Members must give appropriate priority to perishable goods when scheduling any examination that may be required. In practical terms, this means that national border authorities would need to assess and provide for the release of perishable goods before any other merchandise waiting at the border.

Providing storage of perishable goods

Two options for the storage of perishable goods are available to WTO Members:

- (1) Members provide for storage of perishable goods pending their release, which implies storage facilities be made available near customs posts at borders or building new facilities dedicated to perishable goods; or
- (2) Allowing an importer to organize storage of perishable goods pending their release. In this case, each WTO Member has the discretion to require – that is, *may require* – that storage facilities arranged by the importer have to be approved or designated by its relevant national authorities.

In all cases, the movement of goods to storage facilities and authorization of the operator moving the goods may require approval by WTO Members' relevant authorities.

In addition, WTO Members have a binding obligation to allow the procedures for release to take place at storage facilities, if requested by the importer. However, this requirement is made flexible by use of the qualifying language 'where practicable' and 'consistent with domestic legislation.' This means that actual implementation of this specific provision depends on two factors:

- i. Whether the Member considers implementing the procedures for release of goods is feasible, i.e. whether the action can actually be performed by the relevant national authorities.
- ii. Whether the realization of the provision is consistent and compatible with domestic legislation.

Members are nonetheless expected to undertake some steps towards the implementation of this provision. The condition of consistency with domestic law is especially challenging in the case of federated states or other multi-layered government structures, in which central government may not be the sole authority.

Communicating reasons of delays

The importing Member ‘shall, to the extent practicable’ communicate on the reasons for any significant delay. This provision explicitly notes that the obligation to provide a communication on the reasons of the delay is subject to receipt of a written request.

What is not covered?

This measure remains silent on the definition of ‘exceptional circumstances’; therefore it is open to various and possibly diverging interpretations by different Members.

Even when exceptional circumstances exist and the release of perishable goods is made outside the business hours of customs and other relevant authorities, this provision does not mention whether extra fees apply or whether they need to be paid by the importer.

Benefits and opportunities for stakeholders

Faster procedures to release perishable goods will contribute to prevent or reduce unnecessary delays at the border, decrease the risk of damages, prevent business losses and increase the business competitiveness of traders, especially SMEs. Adequate storage facilities will also contribute to reduce avoidable product quality deterioration due to delays during clearance time at the border. This will help traders to preserve the products’ quality and improve relations with the buyers.

Traders and other economic operators will strengthen their ability to predict and plan for future trade activities, factoring in accurate times for clearance and release of perishable goods under a fast-track release system. This provision also offers an opportunity to improve storage facilities at the border for importers of perishable goods, or to launch new investments to build quality storage facilities at the border where perishable goods can be detained without losing quality.

Implementation

Preparing a national implementation plan

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

Implementation sequence	Actions suggested
	Preparatory phase
	Ascertain whether additions or amendments to legal and/or administrative frameworks are necessary to permit a facilitated procedure for speedy release of perishable goods.
	Hold preliminary consultations with all agencies involved in the examination and release of perishable goods to efficiently plan facilitated procedures.
	Practically identify paramount ‘exceptional circumstances’, e.g. probability of occurrence, functioning of offices outside working hours, required staff, estimated costs, etc.
	Set-up phase
	Implement within relevant border agencies the devised procedures for: <ul style="list-style-type: none"> • Facilitated release of perishable goods under ‘normal’ and ‘exceptional’ circumstances. • Working outside business hours under exceptional circumstances. • Authorizing storage and movement of perishable goods to arranged storage infrastructure provided by the importer. • Providing explanations for significant delay in release of perishable goods.
	Provide or improve customs storage facilities for perishable goods.
Prepare and undertake a robust public awareness campaign to inform the business community of the benefits of the measure.	

	Management and follow-up phase
	Train staff and provide them with necessary equipment/infrastructure.
	Follow up on compliance of the measure.
Average time for implementation	Between one to two years, depending on current status of infrastructure in the Member's territory.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency. The animal, plant and health agencies may also be expected to play a role in quality assurance.

Key challenges

Lack of robust inter-agency coordination among relevant agencies – customs, health, food, plants and other border control authorities – can jeopardize the implementation of the measure. Public authorities may charge a disproportionate and unjustifiable high fee for services rendered, impacting on the sustainability of the services provided.

The government staff may also face challenges on providing appropriate storage facilities with the necessary temperature control systems or the equipment needed for testing the quality of perishable goods.

Key factors for success

Harmonious coordination among the relevant agencies is the top success factor for the implementation of this measure. Staff training on changes in legislative/administrative frameworks and a system for regular monitoring are also essential to achieve success.