



ITC

TRADE IMPACT
FOR GOOD

50
YEARS

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Categorizing the TFA provisions

National Workshop, June 17-18, 2014, Dushanbe, Tajikistan
“Implementing the WTO Trade Facilitation Agreement”



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Art.2.2 - Consultations

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Measure description

Consult, on a **regular basis**, border agencies, traders and stakeholders within **national territory**¹

Nature of Obligation

“**Shall, as appropriate**”
obliged to implement but flexibility on implementation methods

What is not covered

Specific **issues subject to consultations** are not specified, neither are the **means or channels** to be used or the **frequency** of the consultation

Measure does not require the **adoption of any specific legislation**

- Obligation can be reached through an established practice, or through/within the NTFC

Implementation checklist

There is a **national implementation framework**² to ensure the regular consultation between border agencies and other stakeholders

In practice, border agencies and stakeholders within the Member's territory have **regular consultations**

Key questions

- 1 Is Tajikistan already implementing this measure?
- 2 Do you need external assistance to implement this measure?
- 3 What could be the appropriate category for this measure?
- 4 How much time would be required to implement the measure?
- 5 What would be the resources required to implement this measure?
- 6 Which Ministry / department is best suited to lead and ensure implementation of the measure?
- 7 How important is the implementation of this measure for the overall national development strategy?

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Art.3 – Advance rulings

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Measure description

Provider traders, **upon written request, authoritative and binding information** about various customs disciplines¹ **before importation/exportation**

Ruling is **issued in a timely manner** and **valid**, unless revoked, for **a reasonable period of time**²

Requirements for requesting such ruling, the **time required** for its issuance and **time of its validity** are **published**

The ruling is **binding for the customs authorities**³

Nature of Obligation

“Shall”

Obligated to implement as per description

1. Two disciplines are mandatory, other are upon Member state discretion (see next slide)

2. Reasonable period of time to be determined by the national authorities

3. And for the applicant at Member State discretion

Note : Members are allow to decline to issue an AR under two situations

Art.3 – Advance rulings

Measure description

Traders are **notified** if authorities refuse to issue a ruling¹ or decide to revoke or amend a ruling

Rulings² are reviewed upon trader written request

Make **publicly available** any information on AR that considers important for interested parties

Nature of Obligation

“Shall”

Obligated to implement as per description

“Shall endeavor to”:

implementation is not obligatory, but making efforts to implement the measure is mandatory

Art.3 – Customs disciplines on which advance ruling should be provided

-  Good's tariff classification
 -  Origin of goods
- “Shall”
Obligated to implement
as per description

-
-  Appropriate method or criteria for determining customs value
 -  Requirements for relief of exemption from customs duties
 -  Requirements for quotas, including tariff quotas
 -  Any additional matters in Member's opinion for such ruling
- “Encouraged to”:
Best endeavor measure

Art.3 – Advance rulings

What is not covered

The measure does not require necessarily **establishing a separate functional unit** with dedicated staff

- i.e. rulings can be issued by the existing unit and staff

Measure does not require having such unit at **every (customs) office**

- It could be done by local, regional or central customs office

Implementation checklist

Advance rulings are issued timely, upon written request of an applicant related to the goods tariff classification and the origin of the goods¹

Advance ruling are **valid for a reasonable period of time**

Written **notice are issued** to the applicant when the advance ruling is refused revoked, modified or invalidated **with explanations on the decision rational**

The advance ruling is **binding for the customs administration**

Applicant are entitled to a review of the advance ruling, or the decision to revoke, modify or invalidate the advance ruling

Requirements for advance rulings application (information and format), delay to issuance the advance rulings and the period of validity are **published**

Efforts are undertaken to make information related to advance rulings **publicly available**

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Art.4 - Procedures for appeal or review

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Measure description

Provide any person within its territory the **right to administrative Review (appeal)** and/or to **judicial appeal** of decisions made by Customs authority

Procedures are carried out in a **non-discriminatory manner**

Petitioner is provided with the rationale of the administrative decision

In cases of delay the appellant has the right to **bring the case to the next higher administrative level** or judicial appeal

Appeal or review procedures are applicable to an administrative decision issued by **any border agency** other than customs

Nature of Obligation

“Shall”

Obligated to implement as per description

“Encouraged to”:

Best endeavor measure

Art.4 - Procedures for appeal or review

What is not covered

Obligation to release goods involved in a decision **subject to appeal against the provision of financial guarantee**

Penalties that may be applied if exercising the right of appeal.

Decision of administrative and judicial tribunals **shall govern the practice of customs** and other relevant border agencies throughout their jurisdiction¹

Legislation provides rights to any aggrieved person within the country' territory **for administrative and/or judicial appeal** against administrative decisions made by Customs and other border agencies

Those procedures are carried out in a **non-discriminatory** manner

In case of undue delay or decision time exceeding the indicated time, the appellant have the **right to bring the case to the higher administrative level or judicial appeal.**

Customs or other **border agencies provide**, upon request, the **reasoning of the decision** to the appellant, as well as the applicable appeal procedures available

Implementation checklist

Key questions

- 1 Is Tajikistan already implementing this measure?
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Art.5.1 – Notification for enhanced controls or inspections

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Measure description

Enhanced levels of controls and inspections following a Member State notification / guidance to its border agencies **are terminated as soon as:**

- Rational no longer exists
- Risk can be managed in a way less prejudicial for traders

Information about the **termination or suspension** of enhanced controls/inspections is **published** in a **easily accessible** and **non-discriminatory** manner

Issue the notification or guidance based on **risk**

Issue a notification applicable uniformly **only to those points of entry affected**

Nature of Obligation

“**Shall**”

Obligated to implement as per description

“**Shall, as appropriate**”

obliged to implement but flexibility on implementation methods

“**May**”:

Country has the discretion to implement the item

Art.5.1 – Notification for enhanced controls or inspections



Not applicable to all Members but only to those applying or intending to apply enhanced notification or guidance. **Scope** of the provision **is limited** to foods, beverages or feedstuffs with an objective to protect human, animal or plant life or health

Measure description

Issue the notification or guidance based on **risk**

Issue a notification applicable uniformly **only to those points of entry affected**

Information about the **termination or suspension** of enhanced controls/inspections is **published** in a **easily accessible** and **non-discriminatory** manner

Enhanced levels of controls are **terminated** as soon as the **rational no longer exists** or the risk can be managed in a way less prejudicial for traders

Nature of Obligation

“May”:

Country has the discretion to implement the item

“**Shall, as appropriate**” obliged to implement but flexibility on implementation methods

“**Shall**”

Obliged to implement as per description

Art.5.1 – Notification for enhanced controls or inspections

What is not covered

Does not necessarily require to have an enhanced notification / guidance system in place

Does not require notifications to be applied uniformly on all territory but only to those points of entry where relevant or necessary

Implementation checklist

Enhanced controls/inspection are **terminated as soon as** the underlying risk no longer exist or if it can be managed in a more efficient manner

Information regarding the termination or suspension of enhanced controls/inspection **are published in a non-discriminatory and easily accessible manner**

If enhanced notification/guidance system is in place it may (preferably) be **based on risk**

Key questions

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Art.5.2 – Detention

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Measure description

Promptly inform the importer or his authorized representative **in case of detention** of imported goods **for regular inspection**¹

- Concerns customs and all the border agencies carrying out inspection of goods
- Detention does not cover seizure or confiscations
- Verbal communication suffice to comply

Nature of Obligation

“Shall”

Obligated to implement as per description

What is not covered

No obligation to inform the competent authority of the exporting countries

Implementation checklist

There is a **national implementation framework** in place to ensure importers (or representatives) are inform in case of detention

In practice, importers are informed in a timely manner when their goods are put in detention for inspection by customs or any other competent authority

Key questions

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Art.5.2 – Test Procedures

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 Only applicable when the results of the first test are in variance with the declaration

Measure description

Provide, upon request, an opportunity for a **confirmatory (second) test**

- In case of discrepancy between the first test and the declaration of good for importation

Publish in an easily accessible manner **the contact information of any laboratory** where the second test can be carried out

Consider the result of the second test in the release and clearance of goods

Accept the results of such test (if any) for the release and clearance of goods

Nature of Obligation

“May”

Country has the discretion to implement the item

“Shall”

Obligated to implement as per description

“May, as appropriate”

Country has the discretion to implement the item

Art.5.2 – Test Procedures

What is not covered

The need of carrying out the confirmatory test in **accredited** laboratories

The obligation to undertake the second test in a **different laboratory** than the first test was done

It is not required to **establish a laboratory** to reach compliance

Implementation checklist

There is a **national implementation framework** in place providing the right to the trader for second test

Contact information of any laboratory where the second test can be done is **published and easily accessible**

The **findings** of confirmatory test are **considered** for the release and clearance of goods

If appropriate, findings of the confirmatory test may be accepted and valid throughout the country

Key questions

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Art.6.1 – General disciplines
on fees and charges imposed
on or in connection with
importation and exportation

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Measure description

Fees and charges imposed on or in connection with importation and exportation are **published** in accordance with Art.1.1 (“Publication”)¹

Fees and charges are **applicable after a reasonable period since their official publication**²

Fees and charges are **periodically reviewed** with the goal to reduce their number and diversity

Nature of Obligation

“Shall”

Obligated to implement as per description

Implementation checklist

The **required information** on fees and charges connected to importation, exportation and transit **is published**

Fees and charges are applied a **reasonable time** after the publication

Fees and charges are **regularly reviewed** to reduce their number and diversity

Key questions

- 1 Is Tajikistan already implementing this measure?
- 2 Do you need external assistance to implement this measure?
- 3 What could be the appropriate category for this measure?
- 4 How much time would be required to implement the measure?
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Art.6.2 – Specific disciplines on fees and charges for customs processing imposed on or in connection with importation exportation

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Measure description

The amount of fees and charges for **customs processing** should be **limited to the costs of service rendered**

Nature of Obligation

“Shall”

Obligated to implement as per description

What is not covered

Text does not specify **the elements relevant in determining the costs of services**¹

- Generally, “ad valorem” based on the value of consignment are not considered a good reflection of service rendered

Text is silent on how the payments should be made.

Implementation checklist

Fees and charges for customs processing are only imposed for **services rendered**

Key questions

- 1 Is Tajikistan already implementing this measure?
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- 3 What could be the appropriate category for this measure?
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Art.6.3 – Penalty disciplines

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Measure description

Imposes disciplines on penalties for breaches of a customs law, regulation, or procedural requirement¹

Penalties are imposed on the **person responsible** for the breach

Penalties are based on **the facts and circumstances of each case** and **proportionate** to the degree and severity of the breach

Conflict of interest for the governmental official assessing and collecting penalties **are avoided**

A **written information** is provided on the nature of the breach and the basis for determining the amount of the penalty

Nature of Obligation

“Shall”

Obligated to implement as per description

Art.6.3 – Penalty disciplines

Measure description (con'd)

Voluntary disclosure is accepted as a potentially mitigating factor

Nature of Obligation

“Encouraged to”
Best endeavor measure

What is not covered

Text is silent on fixing the **time limit** for initiating penalty procedures and on **how the payment should be made**

Implementation checklist

Customs administration penalties are only **imposed on the persons responsible for the breach**

Penalties are defined in regard and proportionate with the specific facts and **circumstances of the breach**

Measures **preventing conflict of interest** in the assessment and collection of penalties are implemented

Written explanations are provided to the offender including the nature of the breach and rational for the penalty amount

Substantive efforts are undertaken to ensure that **voluntary disclosure** of a breach is accepted as a potentially **mitigating factor**

Key questions

- 1 Is Tajikistan already implementing this measure?
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Art.7.1 – Pre-arrival processing

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Measure description

Set-up or maintain a **mechanism** providing traders the facility **to submit import documents prior to arrival of goods**

Allow for the **advance lodging** of documents in **electronic format**

Nature of Obligation

“Shall”

Obligated to implement as per description

“Shall, as appropriate”

obliged to implement but flexibility on implementation methods

Art.7.1 – Pre-arrival processing

What is not covered

Members may require **additional documents/data necessary** or useful for purposes of risk management

The measure does not affect Member's **right to examine, seize, detain, confiscate** or deal with goods in any manner, otherwise WTO consistent.

The measure does not require necessarily **establishing a separate functional unit** with dedicated staff.

Implementation checklist

There is a **national implementation framework** that provides for submission of import documents required by customs or other borders agencies for clearance and release, prior to arrival of the goods

The **legislation allows electronic submission** of goods declarations and required supporting documents

The procedures of customs and other border agencies have a **workflow** which ensures that such pre-arrival declarations are processed.

Key questions

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Art.7.2 – Electronic payment

Art.7.2 – Electronic payment

Measure description

Set-up or maintain a mechanism permitting traders to **submit electronic payments** for : **Duties, Taxes, Fees and charges**

- Only customs are targeted by this measure
- Electronic payment can take any form (i.e. credit card, online payment, bank transfer, mobile solutions...)

Nature of Obligation

“Shall to the extent practicable”

undertake all practicable steps towards implementation

What is not covered

Fees and charges related to **transit traffic**

Implementation checklist

There is a **national implementation framework** (i.e. legislation, administrative provision, procedures) in place for adopting electronic payment for duties, taxes, fees and charges upon import and export

The electronic payment implementation framework **takes into account** aspects such as **legislation for late payment restrictions, simplification and standardization of payment procedures, and accessibility to trade finance instruments**

Key questions

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Art.7.3 - Separation of Release from Final Determination and Payment of Customs Duties, Taxes and Fees

Art.7.3 - Separation of Release from Final Determination and Payment of Customs Duties, Taxes and Fees

Measure description

Establish or maintain procedures allowing the **release** of goods **prior to the final determination** of customs duties, taxes, fees and charges

- Does not restrain Member States' right to examine, detain, seize, confiscate the cargo

Nature of Obligation

“Shall”

Obligated to implement as per description

Good release can be conditioned upon:

- Payment of customs duties, taxes, fees and charges based on a preliminary estimation
- Guarantees whose level should be consistent with the customs duties, taxes, fees and charges that will be claimed for the goods (and/or envisaged fines and penalties if relevant)

“May”

Country has the discretion to implement the item

Art.7.3 - Separation of Release from Final Determination and Payment of Customs Duties, Taxes and Fees

What is not covered

The importers cannot **ask release** of any goods **against guarantee**

Implementation checklist

There is a **national implementation framework** in place that:

- Provides for **release of goods**, against sufficient guarantee, **in case of delay in final determination** of duty and taxes
- Specifies that the amount of **guarantee** required would be **equivalent to duty and taxes involved** determined by customs
- The guarantee is **discharged without delay** when it is no longer required

Key questions

- 1 Is Tajikistan already implementing this measure?
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Art.7.4 – Risk management

Art.7.4 – Risk management

Measure description

Set-up or maintain a risk management system for exercising customs control for import, export and transit of goods

Management system provides for objective, non-discriminatory and non-arbitrary controls

Focus customs (and other border agencies) controls on **high-risk consignment** and quickly release low-risk consignment

Assess risk on **selectivity criterion**

- HS code, goods nature / description, country of origin, country from which the goods are shipped, value of the goods, compliance record of traders, and type of means of transport

Nature of Obligation

“Shall to the extent possible”
undertake all practicable steps towards implementation

“Shall”
Obligated to implement as per description

“Shall”
Obligated to implement as per description

“Shall”
Obligated to implement as per description

Art.7.4 – Risk management

What is not covered

The measure neither require that customs processing is **automated** nor necessarily require establishing a **separate functional unit** with dedicated staff

Implementation checklist

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 **allow Customs** (and other border agencies) the discretion **to exercise controls on a selective basis**

The risk management is designed and applied **to avoid arbitrary or unjustifiable discrimination** or disguised restrictions to international trade

Any provisions in National implementation framework which **requires inspection of goods of 100% consignment** would be inconsistent with this provision

Key questions

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