

# Use of the ICT – WTO Agreement on Trade Facilitation

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## World Customs Organization

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## Use of the ICT – WTO Agreement on Trade Facilitation

- I. Information & Communication Technology (ICT) is critical for implementing the WTO Agreement on Trade Facilitation (TFA). This annex examines each measure contained in the Agreement in order to assess the potential for the use of modern tools of ICT. References have been made to the relevant portions of the Guidelines to Chapter 7 of the General Annex to the Revised Kyoto Convention (Kyoto ICT Guidelines).
- II. In doing the analysis for each Article, Members should bear in mind the strategic opportunity presented by this Agreement to give a new strategic direction to ICT, human resource and capacity building. Taken together, this agreement provides for the possibilities for Members to scale new levels of trade facilitation in terms of transparency, efficiency and predictability. ICT can contribute to improvements in a wide range of Customs and other border processes, and governments/Customs must prioritize based on its strategic goals and resource constraints. Aligning strategic goals with key performance indicators (KPIs) helps in developing sound planning for ICT projects. It might be an incentive for developing an overall strategic plan, and devising programme areas to cover the various measures contained in the Agreement. To this end, the WCO IT Guide for Executives provides information and insights into the strategic management processes concerning the use of ICT.

# Implementing TFA Measures

## Transparency

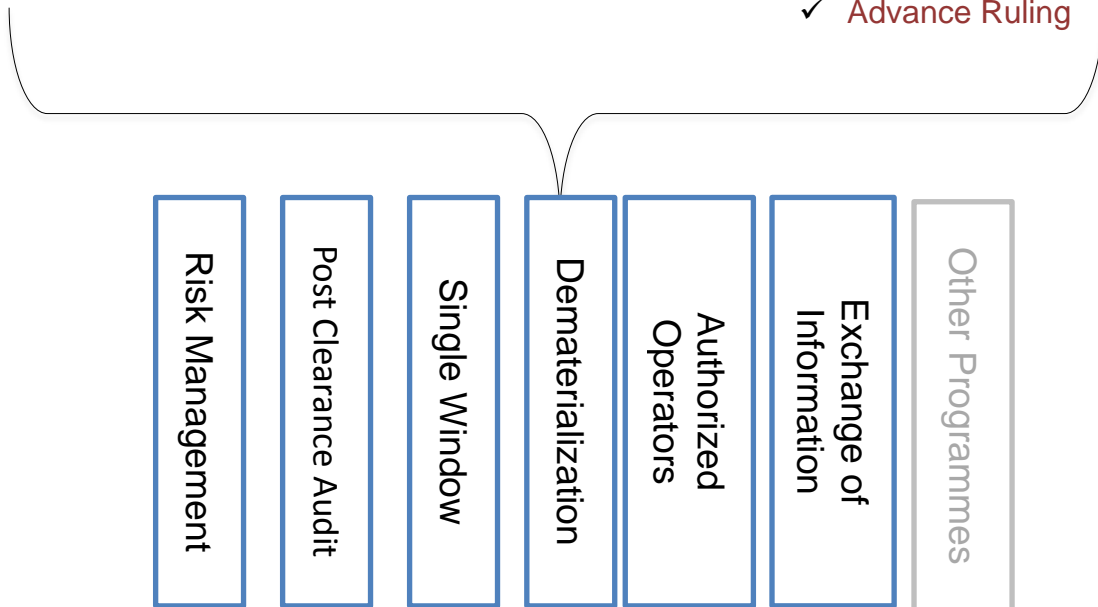
- ✓ Web Publication of compliance information
- ✓ Prior Consultation
- ✓ Enquiry points
- ✓ Notification of alerts

## Efficiency

- ✓ Electronic Processing
- ✓ Dematerialization
- ✓ Single Window
- ✓ International Standards
- ✓ Coordinated Border Management

## Predictability

- ✓ Pre-arrival processing
- ✓ Separation of Release & Clearance
- ✓ Authorised Operators
- ✓ Risk Management
- ✓ Post Clearance Audit
- ✓ Advance Ruling

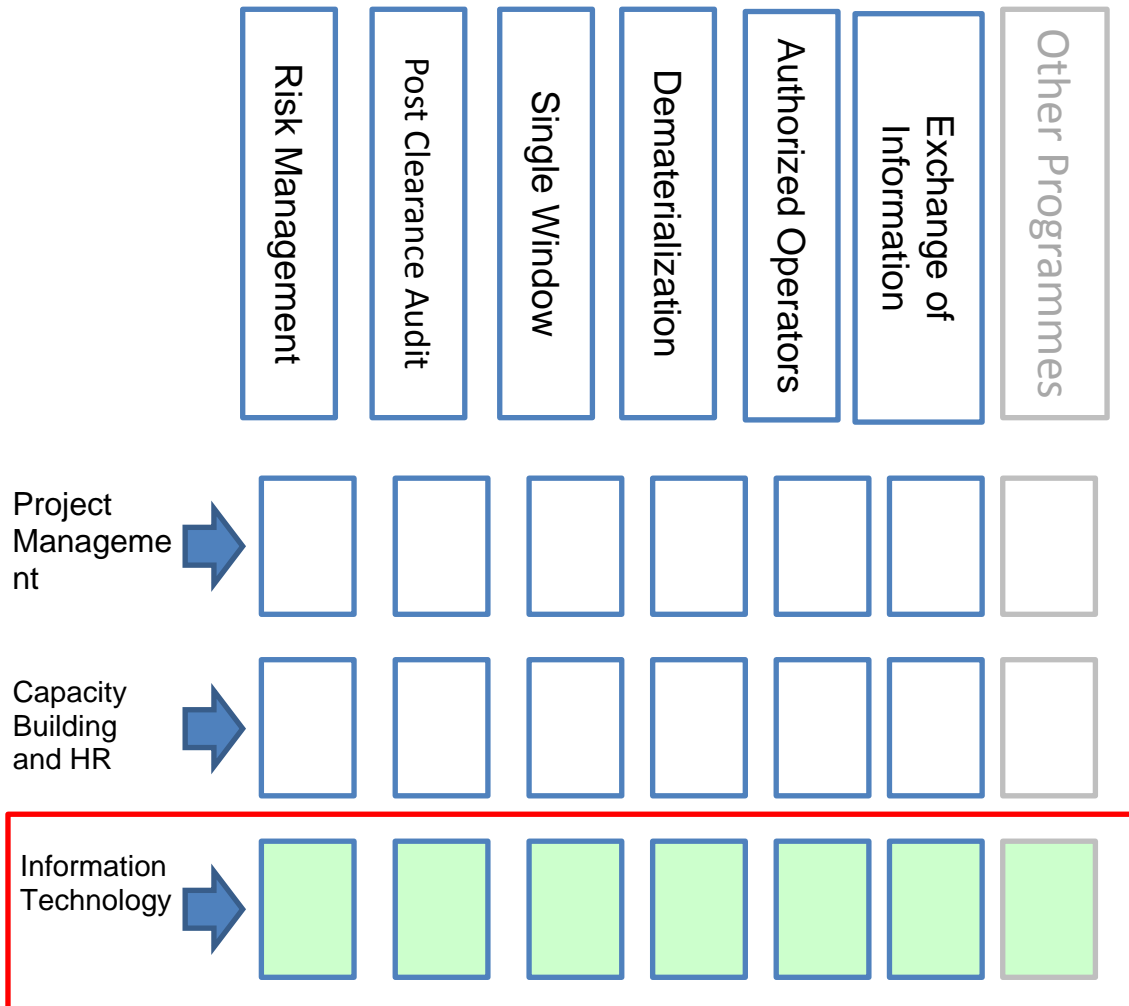


## Strategic Planning and Programme

- III. Each multi-year programme should be supported by a human resource and Capacity Building component. Likewise, there should be a component dealing with ICT for each programme area. Taken together, these programme areas will require strategic investments into ICT infrastructure.

# Aligning ICT Strategy

## Programmes for implementing the TFA



### Opportunity to make strategic investments into information Technology

- IV. There is a potential danger that the measures contained in the TFA will be treated as distinct projects that are run by individual departments. Such an approach would not lead to the desired outcome. There should be a corporate approach to preparing multi-year programs that could then be converted into the annual action plan for execution. The WCO has already developed some concrete performance indicators for each measure contained in the TFA.
- V. The requirements of the TFA call for the active involvement of the “corporate planning division” of the Member administrations. Through proper planning and sequencing, there is a need to develop and run distinct programmes for developing capabilities to support trade facilitation. To support these programmes, it is necessary to develop an organizational perspective on its ‘capabilities’ – i.e. a blueprint of its (i) business functions and (ii) how they are preformed (processes, skills and competencies, tools (IT) and equipment).

## Article wise Analysis

### ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

#### 1. Publication

1.1. Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them:

- a. Importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
- b. Applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- c. Fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- d. Rules for the classification or valuation of products for customs purposes;
- e. Laws, regulations and administrative rulings of general application relating to rules of origin;
- f. Import, export or transit restrictions or prohibitions;
- g. Penalty provisions against breaches of import, export or transit formalities;
- h. Appeal procedures;
- i. Agreements or parts thereof with any country or countries relating to importation, exportation or transit;
- j. Procedures relating to the administration of tariff quotas.

1.2. Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

#### 2. Information Available Through Internet

2.1. Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:

- a. A description<sup>1</sup> of its importation, exportation and transit procedures, including appeal procedures, that informs governments, traders and other interested parties of the practical steps needed to import and export, and for transit;
- b. The forms and documents required for importation into, exportation from, or transit through the territory of that Member;
- c. Contact information on enquiry points.

2.2. Whenever practicable, the description referred to in subparagraph 2.1 a. shall also be made available in one of the official languages of the WTO.

2.3. Members are encouraged to make available further trade related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

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<sup>1</sup> Each Member has the discretion to state on its website the legal limitations of this description.

### **3. Enquiry Points**

- 3.1. Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders and other interested parties on matters covered by paragraph 1.1 as well as to provide the required forms and documents referred to in subparagraph 1.1 a.
- 3.2. Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.
- 3.3. Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of its fees and charges to the approximate cost of services rendered.
- 3.4. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

### **4. Notification**

- 4.1. Each Member shall notify the Committee of:
  - a. The official place(s) where the items in subparagraphs 1.1 a. to j. have been published; and
  - b. The URLs of website(s) referred to in paragraph 2.1, as well as the contact information of the enquiry points referred to in paragraph 3.1.

### **Implications for Information Management**

1. Under this article, Members are required take action regarding the publication of information on government regulations and procedures affecting international trade. Governments must notify to traders and other interested parties the public channels through which such information is accessible. To support this process of managing publications and enquiry points in an efficient and sustainable manner, it is prudent to make extensive use of information and communications technologies.
2. It is absolutely essential to have an arrangement in place to identify the agencies responsible for the publication of trade information, to define the scope of their responsibilities and the mechanism to co-ordinate publication activities, so that traders and other interested parties can get coherent and contextualized information.
3. WTO Members are governments and this Article does not limit the requirement of publications and enquiry points on Customs alone. Therefore, it would perhaps be useful to consider a 'whole of government approach' when complying with the requirements contained in this Article, so that the traders and other interested parties do not have to visit multiple locations or navigate through different websites to find information about actions to be taken for release and clearance of goods. Chapter 2 - Volume 2 of the WCO Compendium on How to Build a Single Window Environment contains an approach for Initial Functional Assessment to systematically collect information about different government agencies dealing with cross-border regulation of trade. Templates contained in this chapter may be used in collating the required procedural, regulatory and compliance information.

## **Document life-cycle Management Systems**

4. Documents containing information about laws and procedures governing cross-border trade may originate from a wide variety of sources within government. It is necessary to unambiguously designate ownership of, and responsibility for, different types of information and content, the manner of their publication (online, government journals, official gazettes etc) and lay down clear lines of communication with the respective owners.
5. There are IT-based tools (called Document Management Systems) that can help the management of the documents through their entire life-cycle namely assignment of ownership, drafting-reviewing-publishing and archiving phases. These systems allow documents to be developed in a work group and allow controls to be implemented for accessing editorial rights to documents and for keeping track of document mark-ups and updates. Document Management Systems also help in automating hardcopy and web publication of content and maintain a secure, controlled and auditable environment for publications.
6. There are some laws and regulations that do not change very often, while others such as regulatory requirements for commodities, duties, taxes and fees etc are often subject to modification. Document Management Systems are useful in managing both types of information.

## **Content Management Systems**

7. Traditional websites involve running several applications to design, edit, stylize and publish content. With advancements in web publication technologies, it is now handled through a turn-key system known as Content Management System (or CMS). A CMS is a productivity tool.
8. Content Management Systems offer workflow automation to streamline the content of publishing procedures. This not only enforces accountability but also reduces the turnaround time. Content authors and editors can use the workflow to review the process regularly and reduce any lag between the finalization of documents and their publication. Content Management Systems take into account multiple content types (e.g., database, texts, images), multiple usage scenarios (internal and external users) and multiple access methods (web, mobile phone, kiosks, and officers), so that the right content is available to the right person at the right time.
9. Border Agencies have their own respective ways of publishing information. Traders and other interested parties, however, seek information based on their specific context. That context could be the commodity being traded, the Customs or regulatory procedure under which goods are to be placed, the applicable regime, the location-specific information etc. Customs and border agencies should organize information in such a way that it is available and easily navigable from the context. This calls for the use of Content Management Systems that can effectively manage the required content. As regards organizing the content of the website, the WCO Recommendation on the use of World Wide Web provides comprehensive information.

## **Publications should support traders' automated compliance environment**

10. An increasing number of traders are using automated systems to implement trade processes. In these processes, they seek to integrate regulatory requirements, such as integrated tariff, export controls, automated calculation of landed costs, Restricted
- 6.



Party lists, quotas and so forth. Professionally developed export and import compliance tools including drop-down menus can simplify the overall compliance process for these traders. While solutions vary from one another, they all depend on information published by governments. If compliance requirements are arranged in machine-readable formats and are published and shared in such formats, it will not only be useful for traders and their solution provider, but also to the government departments. If the underlying information that drives a government department's own automated systems for processing declarations is the same as those that traders use, overall compliance will improve.

## 11. Trade Hubs

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### ***Nigeria Trade Hub.***

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*The Nigeria Trade Hub (NTH) provides a comprehensive introduction to international trade in Nigeria. It is mainly a portal for the traders to get correct information to enable them to make your decisions about doing business in Nigeria.*

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*NTH provides information about all the Nigerian Regulatory Agencies, their contact details, processes, documents, fees and processing times that an Importer or Exporter will need to liaise with to obtain the necessary import permits and certificates that are required to ensure compliance. The NTH further provides contact details of organisation linked with trade in Nigeria.*

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*NTH also has a searchable Document Library providing all the necessary downloadable documents relevant to trade in Nigeria, from Official Publications to Legal Information, Regulatory Documents and Customs Procedures.*

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*Tools of the NTH include 'The HS Code Classification Tool' – an intuitive tool that assists the Importer with the correct classification of their products for both import and export. Once the correct HS Code for an importation product is obtained, the tool provides the necessary regulatory information about the product including Regulating Agencies, Control Measures, Prohibition Status, Ecomas Trade Liberation Scheme (ETLS) status depending on the Country of Origin, Document Requirements, Related Duties and Fees and Processing times. For export products, the exporter on selection of the Country of Export is presented with the Exportation Country's Market Access information including the relevant HS Code and the rates of duty it will attract upon entry.*

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***(Source: Nigeria Customs Service)***

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Trade Hubs are information web portals that represent a government-wide effort to provide online trade information. Trade Hubs are intended to provide information from a trader's perspective, starting from procedural information to helping with commodity classification, valuation and the determination of landed cost. Trade portals may even help find potential trade partners.

### **Solutions for Contact Centers (enquiry points)**

12. The provision regarding 'Enquiry points' would require governments to designate the authority responsible for setting-up and operating enquiry points, where different

models are possible. One where each border agency has its own enquiry point and another where there is a centralized agency that handles all enquiries or acts as a “switchboard” to the individual enquiry points. It would be an act of ‘non-facilitation’ if a trader’s question is repeatedly re-directed to different enquiry points.

13. Chapter 7 of the Kyoto IT Guidelines provides detailed information on the strategic role of enquiry points in Customs administrations and contains guidance on how to set-up helpdesks. The use of ICT in the area of Contact Centers is very significant. Contact Centers play a strategic role in the overall service delivery process in any organization. The officials operating the ‘enquiry points’ should have access to online information sources in order to support each type of call. This calls for the development of software applications to assist officers manning the enquiry points. It is often seen that such solutions become potential ‘user self-service’ facilities, allowing a trader access to the same information as that of an enquiry point official.
14. Telephonic enquiry points are often linked to interactive voice response (IVRs) systems. Along with IVRs web-based self-service options, enquiry points can become very effective tools for operating service-oriented border agencies. With the advancements in voice computing and artificial intelligence technologies, virtual ‘Voice Assistants’ (like Apple Siri and Amazon Echo) can handle and provide efficient enquiry services.

## **Conclusion**

15. The provisions of Article 1 of the TFA provide a real opportunity for countries put into place an integrated information system to support access to information about trade procedures and documentation. This Article is especially significant as it supports the implementation of the basic transparency provisions of the Agreement.
16. Design and management of web content is not a trivial matter. It touches the very core of the interaction between border agencies and the traders. In an automated environment, and when the mandate in the TFA is implemented, online interaction could represent the overwhelming proportion of the total interaction between government and traders. Success and failure of such interactions, and ‘customer experience’ would depend almost entirely on the quality of online information. That is where ICT can play a significant role.

## **ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION**

### **1. Opportunity to Comment and Information before Entry into Force**

1. Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit.
2. Each Member shall, to the extent practicable, and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit are published, or information on them made otherwise publicly available,

as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

3. Changes to duty rates or tariff rates, as well as measures that have a relieving effect or whose effectiveness would be undermined by prior publication, measures applied in urgent circumstances, or minor changes to domestic law and legal system are excluded from paragraphs 1.1 and 1.2 above.

## **2. Consultations**

Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory.

### **Implications for Information Management**

1. Under this article traders and interested parties must be given the opportunity and “reasonable” time to comment on proposals prior to the introduction of changes to laws and regulations governing international trade. Of course, each Member would have to notify its procedures for notification of proposed changes.
2. Of considerable importance is the manner in which the interested parties will be informed. There are several channels which could be used including publication on the internet, holding of public hearing, newspapers, office journals and registries etc. Mailing lists and social media may also be used for reaching out to the known stakeholders.
3. Formal consultation on proposed legal changes would involve maintaining an official window for receiving comments, keeping publicly accessible records of public hearings and comment logs. This can be facilitated through known ICT tools such as online discussion forums, social media websites, mailing lists etc.
4. This also ties with the Document Life-cycle Management Systems mentioned in the context of Article 1. Documents that are under active public consultation can also be maintained as part of such systems.
5. Endeavour should be to promote clear and easily accessible consultation mechanisms to facilitate SMEs’ participation in the policy framing and implementation process. Participation from SMEs can be encouraged through ‘virtual’ mode through the use of ICT, if they are unable to attend physically due to various constraints (cost, time). The WCO Customs-Business Partnership Guidance provides several such opportunities of consultation with businesses through the use of ICT.

### **ARTICLE 3: ADVANCE RULINGS**

1. Each Member shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
2. A Member may decline to issue an advance ruling to an applicant where the question raised in the application:
  - a. is already pending in the applicant's case before any governmental agency, appellate tribunal or court; or

- b. has already been decided by any appellate tribunal or court.
3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Where the Member revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.
5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling be binding on the applicant.
6. Each Member shall publish, at a minimum:
  - a. the requirements for the application for an advance ruling, including the information to be provided and the format;
  - b. the time period by which it will issue an advance ruling; and
  - c. the length of time for which the advance ruling is valid.
7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify or invalidate the advance ruling.<sup>2</sup>
8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

## **2. Definitions and scope:**

- a. An advance ruling is a written decision provided by a Member to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:
  - i. the good's tariff classification, and
  - ii. the origin of the good;<sup>3</sup>
- b. In addition to the advance rulings defined in subparagraph 3.9 a., Members are encouraged to provide advance rulings on:
  - i. the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
  - ii. the applicability of the Member's requirements for relief or exemption from customs duties;

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<sup>2</sup> Under this paragraph: a) a review may, before or after the ruling has been acted upon, be provided by the official, office or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and b) a Member is not required to provide the applicant with recourse to Article 4.1.1 of this Agreement.

<sup>3</sup> It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on the Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Rules of Origin Agreement in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

- iii. the application of the Member's requirements for quotas, including tariff quotas; and
  - iv. any additional matters for which a Member considers it appropriate to issue an advance ruling.
- c. An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.
  - d. A Member may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

### **Implications for Information Management**

1. A system of binding Advance Ruling helps in providing advance and predictable cargo release to the traders because it provides traders with the opportunity to settle with Customs any issue concerning the potential treatment of their goods at import and export before goods arrive at the point of entry or exit. The Agreement will specifically help avoid conditions that may cause dispute between traders and Customs on tariff headings and origin and could even extend to valuation, relief/exemptions, and tariff quota.
2. Consignments covered by a binding ruling would receive release based on advance pre-arrival electronic information if the information is integrated with the automated Customs clearance. The benefit of obtaining an advance binding ruling would be somewhat diminished if for each consignment, the trader must approach Customs with a paper copy of the ruling and to convince officers each time of the applicability of the ruling. There may be a way of inputting information contained in a binding ruling into electronic goods declarations in order to enable its automatic validation and application on eligible consignments, which aside from facilitation will address the possibility of manipulation.
3. Section 3.8 encourages Customs to make information on advance rulings publicly available where it is of significant interest to other interested parties, while taking into account the need for providing protection to a trader's commercially confidential information. When these rulings are made publicly available to trade on websites it provides further assurance regarding the general conditions under which the rulings would be applied. This provides an environment that is transparent and free of discretionary decision-making.
4. The WCO Data Model contains elements that allow traders to submit specific advance ruling information as part of goods declarations. These could be included as textual or coded additional statements [WCO ID Class 03A, WCO ID 225 & WCO ID 226]. Specifically with regard to rulings and decisions concerning standard classification of goods, WCO ID 448 may be used to report "Binding Tariff References", which may denote a national or a regional standard tariff classification of goods in the tariff nomenclature/statistics based on the Harmonized System.
5. Structured information regarding advance binding rulings provides a transparent basis for the trader to claim coverage for goods imported or exported under the ruling. Likewise, structured information also facilitates the application of the rulings in automated systems, providing full benefits to the traders who took pains to obtain them.

## **ARTICLE 4: APPEAL OR REVIEW PROCEDURES**

### **1. Right to Appeal or Review**

- 1.1. Each Member shall provide that any person to whom customs issues an administrative decision<sup>4</sup> has the right, within its territory to:
  - a. administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and/or
  - b. judicial appeal or review of the decision.
- 1.2. The legislation of each Member may require administrative appeal or review to be initiated prior to judicial appeal or review.
- 1.3. Members shall ensure that their appeal or review procedures are carried out in a non-discriminatory manner.
- 1.4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1.1 a. is not given either i. within set periods as specified in its laws or regulations or ii. without undue delay, the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority<sup>5</sup>.
- 1.5. Each Member shall ensure that the person referred to in paragraph 1.1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.
- 1.6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

### **Implications for Information Management**

1. While there are no obligations arising from this article to put in place an ICT-based solution, Customs administrations will benefit from using purpose-built systems or off the shelf packages. Article 4 provides guarantees for an orderly and timely management of disputes arising from administrative decision making by Customs, and preferably also by other border agencies, through an appeal or review procedures.
2. There are a number of information management challenges associated with the management of disputes so that actions taken are timely, risks in handling documentation is reduced, efficiency is increased and costs are controlled. Quick and effective resolution of disputes hinges on bringing together and presenting the material facts of the cases, technical details and legal commentary and analyses.

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<sup>4</sup> An administrative decision in this Article means a decision with a legal effect that affects rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Member's domestic law and legal system. For addressing such failure, Members may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1.1 a.

<sup>5</sup> Nothing in this paragraph shall prevent Members from recognizing administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

3. The rigour with which documentation and data is collected at the time of raising a dispute determines how orderly and efficient the downstream processes will be. The process of filing appeal and reviews can be facilitated using online applications (e-appeals), where basic details of the appellant, grounds of appeal could be lodged. In the course of adjudication, appeal and review, there are a number of challenges such as management of case records, contacts, appointments, and notification. To support these functions, there are a number of software applications for case management, with special features to deal with legal cases. Besides, online journals and case law repositories are also available which could be equally useful in deciding appeals in a legally transparent and consistent manner. The WCO tools relating to information management and paperless regulatory environment can be equally useful in the efficient implementation of this article through the use of ICT.

## **ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY**

### **1. Notifications for enhanced controls or inspections**

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination or suspension:

- a. each Member may, as appropriate, issue the notification or guidance based on risk.
- b. each Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply.
- c. each Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner.
- d. when a Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

### **2. Detention**

A Member shall inform the carrier or importer promptly in case of detention of goods declared for importation, for inspection by Customs or any other competent authority.

### **3. Test Procedures**

- 1.7. A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

- 1.8. A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity under paragraph 3.1.
- 1.9. A Member shall consider the result of the second test in the release and clearance of goods, and, if appropriate, may accept the results of such test.

### **Implications for Information Management**

1. Article 5.1 points to the need for rapid and effective communication within and between government agencies, and also between government agencies and traders. When an alert is sought to be issued owing to concerns for human, animal and plant health and safety, it needs to reach all stakeholders for timely and effective action. Likewise, when there is an “all clear” situation upon the expiration of the alert, it should also be promptly communicated.
2. In a dynamic global environment, threats and alerts can originate from many sources. To deal with them, there may be a need to build a globally accessible, instantaneous, ICT based communication system. An example of such a system is the EU EurRapid Alert System for Food and Feed (RASFF). This system was put in place to provide food and feed control authorities with an effective tool to rapidly interchange information about measures taken or to be taken responding to serious risks detected in relation to food or feed. The system helps EU members to take action in a quick and co-ordinated manner to a health threat caused by food or feed. The dissemination of information on alerts through a publicly accessible platform such as RASFF helps in building confidence among the stakeholders regarding the transparent and non-discriminatory nature of the system.
3. As regards notification of detention (Article 5.2), Response messages must build an option to indicate detention. Customs declaration processing systems may have status indicators called “Detained for further information” or “Detained for intervention by an ‘Other Government Agency’”. Such status-notifications indicate that goods have been facilitated for release but the Declarant is informed that the subject goods will undergo further intervention from a designated government agency.
4. Article 5.3 talks of the opportunity to be given to a trader for a second testing and transparency in regard to laboratories where tests are to be conducted.
5. Efficient management of information regarding authorized laboratories, samples, testing and test results is an important part of Customs clearance systems. Information management begins when an officer creates referrals for testing of goods. The rationale and purpose of testing is also captured. To maintain the integrity of the process of drawing (multiple) samples, officers ideally should have access to information regarding the safe and reliable methods of drawing, securing, sealing and assigning identification numbers to the samples. In collection and sending the samples for testing, the chain of custody information may also be captured. It also helps to have the results of testing, along with observations associated with tests. Such information should be available in an accessible data format for use in automated systems, to be used for providing release and clearance, and for subsequent analysis. The transaction cycle for managing samples ends when the tested samples are returned to the trader or otherwise duly disposed of.
6. ICT can also help in creating an online repository of test reports to facilitate clearance of goods where a periodic testing is required.



## **ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION**

### **1. General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation**

- 1.1 The provisions of paragraph 6.1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with importation or exportation of goods.
- 1.2 Information on fees and charges shall be published in accordance with Article 1 of this Agreement. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.
- 1.3 An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.
- 1.4 Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

### **2. Specific disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation**

- 2.1 Fees and charges for customs processing:
- i. shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and
  - ii. are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

### **3. Penalty Disciplines**

- 3.1 For the purpose of Article 6.3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs law, regulation, or procedural requirement.
- 3.2 Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.
- 3.3 The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
- 3.4 Each Member shall ensure that it maintains measures to avoid:
- i. conflicts of interest in the assessment and collection of penalties and duties; and
  - ii. creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.

3.5 Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

3.6 When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

3.7 The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

### **Implications for Information Management**

1. A logical, non-discretionary and reasonable method of calculation renders itself to automated computation of fees and charges. If calculation of fees and charges is based only on information contained in goods declarations, then it would be possible to adopt automated methods of calculation. This provides transparency and predictability for the traders, helps them in their estimation of landed costs, and enables them to pay all charges prior to the arrival of goods at the place of importation and exportation and facilitate release on arrival.
2. It would be convenient for traders if the facility of electronic payment of duties and taxes is also extended to the payment of fees, charges, fines and penalties by developing integrated e-payment solutions.
3. The publication of new or amended fees and charges before their entry into force via website and/or ICT enabled forums assists traders to adjust and better comply from the date of implementation of the new measure.
4. Additionally, information management of Regional Trade Agreements which sometime include provisions which either abolish Customs fees and charges between Members or freeze and prohibit the introduction of new such measures, is important to ensure their efficient implementation.

## **ARTICLE 7: RELEASE AND CLEARANCE OF GOODS**

### **1. Pre-arrival Processing**

3.1 Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

3.2 Members shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

## **Electronic Payment**

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges collected by customs incurred upon importation and exportation.

## **2. 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 other 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.

## **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 disguised restrictions to 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. Each Member may also select, on a random basis, consignments for such controls as part of its risk management.

4.4 Each Member shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, HS 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.

## **5. Post-clearance Audit**

- 5.1 With a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.
- 5.2 Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.
- 5.3 Members acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.
- 5.4 Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

## **6. Establishment and Publication of Average Release Times**

- 6.1 Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, inter alia, the WCO Time Release Study<sup>6</sup>.
- 6.2 Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

## **7. Trade Facilitation Measures for Authorized Operators**

- 7.1 Each Member shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such facilitation measures through customs procedures generally available to all operators and not be required to establish a separate scheme.
- 7.2 The specified criteria shall be related to compliance, or the risk of non-, with requirements specified in a Member's laws, regulations or procedures. The specified criteria, which shall be published, may include:
  - a. an appropriate record of compliance with customs and other related laws and regulations;
  - b. a system of managing records to allow for necessary internal controls;
  - c. financial solvency, including, where appropriate, provision of a sufficient security/guarantee; and

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<sup>6</sup> Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

- d. supply chain security.

The specified criteria to qualify as an operator shall not:

- a. be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
- b. to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3 The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least 3 of the following measures:<sup>7</sup>

- a. low documentary and data requirements as appropriate;
- b. low rate of physical inspections and examinations as appropriate;
- c. rapid release time as appropriate;
- d. deferred payment of duties, taxes, fees and charges;
- e. use of comprehensive guarantees or reduced guarantees;
- f. a single customs declaration for all imports or exports in a given period; and
- g. clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4 Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfillment of the legitimate objectives pursued.

7.5 In order to enhance the facilitation measures provided to operators, Members shall afford to other Members the possibility to negotiate mutual recognition of authorized operator schemes.

7.6 Members shall exchange relevant information within the Committee about authorized operator schemes in force.

## **8. Expedited Shipments**

8.1 Each Member shall adopt or maintain procedures allowing for expedited release of at least those goods entered through air cargo facilities to persons that apply for such treatment, while maintaining customs control<sup>8</sup>. If a Member employs criteria<sup>9</sup> limiting who may apply, the Member may, in published criteria, require that the applicant shall, as

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<sup>7</sup> A measure listed in sub-paragraphs a.-g. will be deemed to be provided to authorized operators if it is generally available to all operators.

<sup>8</sup> In cases where a Member has an existing procedure that provides the treatment in paragraph 8.2, this provision would not require that Member to introduce separate expedited release procedures.

<sup>9</sup> Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

conditions for qualifying for the application of the treatment described in paragraphs 8.2 a. – d. to its expedited shipments:

- a. provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments, in cases where the applicant fulfills the Member's requirements for such processing to be performed at a dedicated facility;
- b. submit in advance of the arrival of an expedited shipment the information necessary for release;
- c. be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2 a. – d.;
- d. maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;
- e. provide expedited shipment from pick-up to delivery;
- f. assume liability for payment of all customs duties, taxes, and fees and charges to the customs authority for the goods;
- g. have a good record of compliance with customs and other related laws and regulations;
- h. comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2 Subject to paragraphs 8.1 and 8.3, Members shall:

- a. minimize the documentation required for the release of expedited shipments in accordance with Article 10.1, and to the extent possible, provide for release based on a single submission of information on certain shipments;
- b. provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;
- c. endeavour to apply the treatment in sub-paragraphs 8.2 a. and b. to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods, such as documents; and
- d. provide, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

8.3 Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry to goods, or to carry out post-clearance audits, including

in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirements.

## **9. Perishable Goods<sup>10</sup>**

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

- a. provide for the release of perishable goods under normal circumstances within the shortest possible time; and
- b. provide for the release of perishable goods, 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.

### **Implications for Information Management**

1. In general, the provisions of Article 7 cannot be implemented without the effective use of ICT. The Revised Kyoto Convention, the SAFE Framework of Standards and the Immediate Release Guidelines provide clear guidance on the measures contained in Article 7. There are different sections in Kyoto ICT Guidelines devoted to each measure. The following table is useful in locating the relevant information.

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<sup>10</sup> For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

<b>Measure</b>	<b>Reference in Kyoto ICT Guidelines</b>	<b>Remarks</b>
1. Pre-arrival Processing	Section 6.4	Process and data requirements have been covered in the SAFE Framework of Standards and the WCO Data Model
2. Electronic Payment	Section 6.10	The section in the ICT Guidelines deals with Revenue Accounting and covers electronic payment and electronic funds transfer
3. Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges	Section 6.10	This section in the ICT Guidelines covers details regarding deferred payment and guarantee management
4. Risk Management	Section 6.8	This section in the ICT Guidelines covers selectivity and risk management. Besides, there is a wealth of information in the two volumes of the Risk Management Compendium
5. Post-clearance Audit	Section 13	The entire section in the ICT Guidelines focuses on the application of systems audit techniques both to external trading partner systems and to its own in-house applications. Besides, Guidelines for Post-Clearance Audit and Implementation Guidance provide very useful practical information provide more information on the use of ICT in the case selection and system audit.
6. Establishment and Publication of Average Release Times		Guide to Measure the Time Required for the Release of Goods (TRS) Version 2. The guide recommends a 3 phase approach: I. Preparation of the Study II. Collection and Recording of Data III. Analysis of Data and Conclusions In all three phases, it helps to use ICT. A new section on leveraging modern technologies in data collection, collation, and analysis for improving the TRS methodology will be added in the next version of the TRS Guide.
7. Trade Facilitation Measures for Authorized Operators	Section 6.15 & Section 9.3	The SAFE Package 2015 provides the entire technical know-how including the use of ICT in the establishment of AEO programme and its implementation in terms of efficient identification and grant of eligible benefits within a country and across borders through mutual recognition arrangements/agreements (MRAs)
8. Expedited Shipments		The WCO Immediate Release Guidelines that include data elements for the clearance and release of each category of shipments. This is supported by the WCO Data Model Information Package
9. Perishable Goods		Separate treatment on perishable goods is based on simplified procedures adopted on a



		number of commodities. It is possible to make such service requests in goods declarations for import and export using elements in the WCO Data Model.
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2. The challenges in the use of ICT in implementing this Article are numerous. Each of the nine measures listed in this Article is potentially a multi-year programme, with deep implication also for business processes and human resources management. Given the needs of the individual programmes, it would be desirable for a Member to develop a comprehensive ICT strategic plan.

## **ARTICLE 8: BORDER AGENCY COOPERATION**

1. A Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.
2. Members shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom they share a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:
  - i. alignment of working days and hours;
  - ii. alignment of procedures and formalities;
  - iii. development and sharing of common facilities;
  - iv. joint controls;
  - v. establishment of one-stop border post control.

### **Implications for Information Management**

1. Co-ordinated Border Management requires coordinated flows of information within and between organizations. Border Agencies within a government and across borders need to maintain and share up-to-date compliance information. Decisions to align working days and hours, and procedures and formalities should be reflected in the practical operations supported by ICT solutions leading to enhanced digital collaboration between and among border agencies. This would imply the movement towards Single Window solutions, which is a logical outcome of aligned procedures, coordinated and joint controls and one stop border facilities. Furthermore, interoperability of Single Windows would be a way forward to exchange regulatory information with partner government agencies. The WCO Compendiums on Coordinated Border Management and Single Window provide detailed ICT perspective in enhancing border agency cooperation.
2. Border agencies use a number of equipment types for enforcing controls at the border. There are many categories of equipment that can capture data. Therefore, links to electronic border protection equipment wherever feasible should be considered. To this end, interoperability of different non-intrusive inspection (NII) equipment from different manufacturers, as well as the exchange of images within and between Customs and other border agencies could be a potential way forward. The WCO together with relevant stakeholders is already working in this area to develop standards, with the 'unified file format' (UFF) being used as an interim solution for testing the sharing of images.

## **ARTICLE 9: MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT**

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

### **Implications for Information Management**

This Article seeks to facilitate the transportation of goods for import within the Customs territory. The broad principles are covered under Specific Annex E of the RKC and the WCO Transit Handbook. Such movements are sometimes referred as internal transit. Information technology may be used to facilitate internal transits. Given below are a few examples:

- (i) Re-using manifest and declaration information at the gateway Customs office. With the reuse of such data, the need for a separate declaration for movement of goods in transit can be avoided and the accounting of imported cargo is facilitated,
- (ii) Managing guarantee (financial security and surety) including its immediate release upon completion of a transit procedure in an automated environment, and
- (iii) Using cargo tracking devices (e.g., GPS enabled e-seals) to monitor the secure and timely movement of goods within the Customs territory.

## **ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION AND TRANSIT**

### **1. Formalities and Documentation Requirements**

1.1. With a view to minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information and business practices, availability of techniques and technology, international best practices and inputs from interested parties, each Member shall review such formalities and documentation requirements, and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements:

- a. are adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;
- b. are adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
- c. are the least trade restrictive measure chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
- d. are not maintained, including parts thereof, if no longer required.

1.2. The Committee shall develop procedures for sharing relevant information and best practices as appropriate.

## **2. Acceptance of Copies**

- 2.1. Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export or transit formalities.
- 2.2. Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.
- 2.3. A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.<sup>11</sup>

## **3. Use of International Standards**

- 3.1. Members are encouraged to use relevant international standards or parts thereof as a basis for their importation, exportation or transit formalities and procedures except as otherwise provided for in this Agreement.
- 3.2. Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.
- 3.3. The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

## **4. Single Window**

- 4.1. Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation or transit of good through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.
- 4.2. In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.
- 4.3. Members shall notify to the Committee the details of operation of the single window.
- 4.4. Members shall, to the extent possible and practical, use information technology to support the single window.

## **5. Pre-shipment Inspections**

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<sup>11</sup> Nothing in this paragraph precludes a Member from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods

- 5.1. Members shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.
- 5.2. Without prejudice to the rights of Members to use other types of pre-shipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.<sup>12</sup>

## **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 and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified to the Committee and published promptly.
- 6.3. With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

## **7. Common Border Procedures and Uniform Documentation Requirements**

- 7.1. Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.
- 7.2. Nothing in this Article shall prevent a Member from:
- a. differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;
  - b. differentiating its procedures and documentation requirements for goods based on risk management;
  - c. differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;
  - d. applying electronic filing or processing; or
  - e. differentiating its procedures and documentation requirements in a manner consistent with the Agreement on Sanitary and Phytosanitary Measures.

## **8. Rejected Goods**

- 8.1. Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

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<sup>12</sup> This sub-paragraph refers to pre-shipment inspections covered by the Pre-shipment Inspection Agreement, and does not preclude pre-shipment inspections for SPS purposes.

When such an option is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

## **9. Temporary Admission of Goods /Inward and Outward Processing**

### **a. Temporary Admission of Goods**

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into a customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into a customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

### **b. Inward and Outward Processing**

- I. Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations in force.
- II. For the purposes of this Article, the term "inward processing" means the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved totally or partially from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.
- III. For the purposes of this Article, the term "outward processing" means the Customs procedure under which goods which are in free circulation in a Customs territory may be temporarily exported for manufacturing, processing or repair abroad and then reimported.

## **Implications for Information Management**

1. To implement paras 1, 2 and 3 of this Article, Members should pursue the path of simplification of business processes, reduced requirements for information and documentation, and standardization of data elements. The WCO Data Model was developed precisely for this purpose, and during the implementation of this Agreement, Members have an opportunity to take measures to adopt this WCO instrument. Implementation of para 2 gives an opportunity for Customs administrations to implement comprehensive dematerialization of documents including supporting documents. The WCO Recommendation on Dematerialization of Supporting documents provides adequate guidance. Together with Single Window, the measures listed in this Article provide for an automated environment for the processing of cargo at the border. The acceptance of copies of documents as envisaged in para 2 is likely to be more efficient and foolproof in an electronic environment, potentially having direct access to databases of relevant authorities. Para 4 categorically encourages the use of information technology to support the single window.
2. As regards para 7, it is mainly through ICT-based solutions that it can effectively be ensured that Customs procedures and documentation requirements are applied uniformly to all goods.

3. Likewise, inward and outward processing processes (para 9) can be further enhanced with the use of ICT, particularly when it comes to the grant of full or partial exemption and efficient identification and correlation of imported and exported consignments and vice versa.
4. From the perspective of developing the ICT architecture and strategic ICT planning, this is a significant Article. Members should carefully consider the development of multi-annual programmes to implement the provisions of this Article.
5. The programme to manage the overall engagement with Customs Brokers will also benefit from the use of ICT. It is perhaps advantageous to use ICT-based solutions to maintain Customs Brokers profiles, their revenue accounting records, their compliance history, and profiles of individuals employed by the brokers to operate Customs procedures and access Customs and/or Single Window facilities. Depending upon the usage of Brokers in a country, consignments are cleared based on information supplied by the Brokers. It is, therefore, necessary to track and monitor the level of training, competencies and capacities of Customs brokers and their employees from a risk management perspective.

#### **ARTICLE 11: FREEDOM OF TRANSIT**

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not:
  - a. be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade restrictive manner,
  - b. be applied in a manner that would constitute a disguised restriction on traffic in transit.
2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
3. Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport consistent with WTO rules.
4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.
5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.
6. Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:

- a. identify the goods; and
  - b. ensure fulfillment of transit requirements
7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.
  8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit.
  9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.
  10. Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.
  - 11.1 Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary<sup>13</sup> instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.
  - 11.2 Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.
  - 11.3 Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.
  - 11.4 Each Member shall make available to the public the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.
  - 11.5 Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.
  12. Members shall endeavour to cooperate and coordinate with one another with a view to enhance freedom of transit. Such cooperation and coordination may include, but is not limited to an understanding on:
    - i. charges;
    - ii. formalities and legal requirements; and
    - iii. the practical operation of transit regimes.
  13. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

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<sup>13</sup> Nothing in this provision shall preclude a Member from maintaining existing procedures whereby the mean of transport can be used as a guarantee for traffic in transit

## **Implications for Information Management**

1. While this Article seeks to reiterate the rights of transit, which is established in the GATT, its efficient and effective implementation would be greatly facilitated by the implementation of an ICT-powered transit management systems. ICT-based systems help in the lodgement of documentation under a transit regime and facilitate the timely flow of information to all relevant Customs offices. Use of electronic information helps in the sharing of critical Customs information in real time. The effectiveness of control in transit operations is enhanced when participating countries exchange of electronic data on goods in transit.
2. Transit declaration data, when submitted electronically, can also be re-used as advance cargo and pre-arrival reporting. This information sharing enables Customs to carry out prior risk assessment and may facilitate release upon arrival. In any transit system, data matching of entry and exit of transit consignments is an important function, which can be performed effectively. It is also linked to effective management of transit guarantees including the immediate automated release of guarantees upon the completion of the transit process. In general, the use of IT in transit systems helps in reducing the administrative burden on traders, speeds-up border processes and reduces potential fraud.
3. The use of real-time tracking devices (including GPS enabled e-seals) helps in further enhancing the security and compliance aspects of transit operations. Real-time tracking services are being used in a number of transit regimes in different regions of the world.
4. The WCO Transit Handbook includes guidance and related examples/practices on the use of ICT in the efficient management of transit procedures.

## **ARTICLE 12: CUSTOMS COOPERATION**

### **1. Measures Promoting Compliance and Cooperation**

- 1.1. Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.<sup>14</sup>
- 1.2. Members are encouraged to share information on best practices in managing customs compliance, including through the Committee on Trade Facilitation. Members are encouraged to cooperate in technical guidance or assistance in building capacity for the purposes of administering compliance measures, and enhancing their effectiveness.

### **2. Exchange of Information**

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<sup>14</sup> Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.



2.1. Upon request, and subject to the provisions of this Article, Members shall exchange the information set out in paragraph 6 b. and/or c. for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

2.2. Each Member shall notify to the Committee the details of its contact point for the exchange of this information.

### **3. Verification**

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

### **4. Request**

4.1. The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed WTO or other language, including:

- a. the matter at issue including, where appropriate and available, the serial number of the export declaration corresponding to the import declaration in question;
- b. the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons about which the request relates, if known;
- c. where required by the requested Member, provide confirmation<sup>15</sup> of the verification where appropriate.
- d. the specific information or documents requested;
- e. the identity of the originating office making the request;
- f. reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information and personal data;

4.2. If the requesting Member is not in a position to comply with any of the sub-paragraphs of 4.1, it shall specify this in the request.

### **5. Protection and confidentiality**

5.1. The requesting Member shall, subject to paragraph 5.2:

- a. hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under paragraphs 6.1 b. and 6.1 c.;

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<sup>15</sup> This may include pertinent information on the verification conducted under paragraph 12.3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

- b. provide the information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;
- c. not disclose the information or documents without the specific written permission of the requested Member;
- d. not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;
- e. respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and
- f. upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2. A requesting Member may be unable under its domestic law and legal system to comply with any of the sub-paragraphs of 5.1. If so, the requesting Member shall specify this in the request.

5.3. The Requested Member shall treat any request, and verification information, received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested member to its own similar information.

## **6. Provision of information**

6.1. Subject to the provisions of this article, the requested Member shall promptly:

- a. respond in writing, through paper or electronic means;
- b. provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;
- c. if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;
- d. confirm that the documents provided are true copies;
- e. provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2. The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement it should specify this to the requested Member.

## **7. Postponement or refusal of a request**

- 7.1. A requested Member may postpone or refuse part or all of a request to provide information, and shall so inform the requesting Member of the reasons for doing so, where:
- a. it would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member.
  - b. its domestic law and legal system prevents the release of the information. In such case it shall provide the requesting Member with a copy of the relevant, specific reference.
  - c. the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding.
  - d. the consent of the importer or exporter is required by domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information or personal data and that consent is not given.
  - e. the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.
- 7.2. In the circumstances of paragraph 4.2, 5.2 or 6.2 execution of such a request shall be at the discretion of the requested Member.

## **8. Reciprocity**

If the requesting Member is of the opinion that it would be unable to comply with a similar request in case such a request was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

## **9. Administrative burden**

- 9.1. The requesting Member shall take into account the associated resource and cost implications for the requested Member's administration in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.
- 9.2. If a requested Member receives an unmanageable number of requests for information, or a request for information of unmanageable scope from one or more requesting Member(s), and is unable to meet such requests within a reasonable time it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually-agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

## 10. Limitations

Requested Members shall not be required to:

- a. modify the format of their import or export declarations or procedures;
- b. call for documents other than those submitted with the import or export declaration as specified in paragraph 6 c.;
- c. initiate enquiries to obtain the information;
- d. modify the period of retention of such information;
- e. introduce paper documentation where electronic format has already been introduced;
- f. translate the information;
- g. verify the accuracy of the information;
- h. provide information that would prejudice the legitimate commercial interests of
- i. particular enterprises, public or private.

## 11. Unauthorized use or disclosure

11.1. In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information, and:

- a. take necessary measures to remedy the breach;
- b. take necessary measures to prevent any future breach; and
- c. notify the requested Member of the measures taken under sub-paragraphs a. and b. above.

11.2. The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

## 12. Bilateral and regional agreements

12.1. Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.

12.2. Nothing in this Article shall be construed to alter or affect Members' rights or obligations under such bilateral, plurilateral or regional agreements or to govern the exchange of customs information and data under such other agreements.

## Implications for Information Management

1. The WCO Feasibility Study on Globally Networked Customs (GNC) captures the implications for information management arising from the exchange of information between countries. This Article defines the rights and obligations of members and the

conditions under which information exchange could occur. The WCO Feasibility Study contains detailed discussions regarding ICT Architecture, data standards, interoperability challenges, security concerns and data management issues (storage access and retention).

2. The Feasibility Study put forth the concept of Utility Blocks, which represent the standardized way of effecting a purposeful exchange of information between Customs administrations. Members would gain by following the process under which the WCO is developing and standardizing the Utility Blocks in the current proof-of-concept phase. One potential course to initiate implementation of the Article could be developing a tailor-made Utility Block for the exchange of stipulated information under the enforcement track of GNC, by interested and willing Members.
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