



WCO WORKING GROUP ON
THE WTO
TRADE FACILITATION
AGREEMENT
-
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TFA ARTICLE 12: CUSTOMS COOPERATION

(Item VIII of the Agenda)

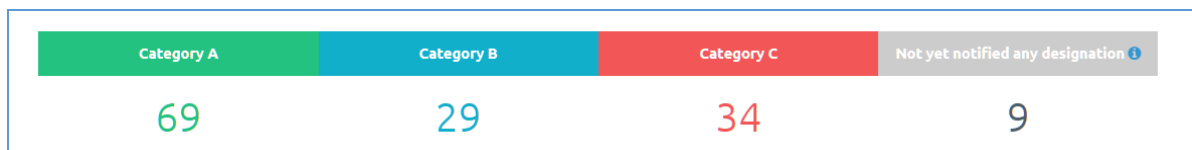
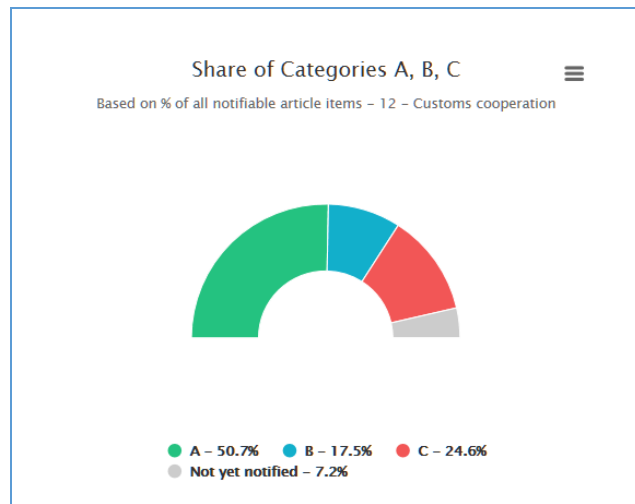
Introduction

1. Article 12 on Customs Cooperation was one of the articles that proved to be one of the most challenging to negotiate in the run up to the conclusion of the WTO Trade Facilitation Agreement (TFA). Equally, this article has not yet been discussed in the TFAWG under a separate agenda item. It was therefore felt to be opportune to share Members' experiences as well as information on existing instruments and tools that support implementation of the provisions on compliance and Customs cooperation.
2. The aim of this Agenda item is to discuss Article 12 through a number of presentations on WCO instruments and tools which support implementation and Members' experiences to date. Additionally, a break-out session will address the challenges faced and will identify a number of recommendations for the future.

Article 12 on Customs cooperation

3. According to WTO statistics in the TFA Database¹, to date 69 (50.7%) of its Members have placed this commitment under category A and should therefore already be implementing it, 29 (17.5%) have notified it as category B and therefore require time for full implementation, 34 (24.6%) have notified it as category C and therefore require both time and technical assistance and capacity building in order to achieve compliance, while 9 (7.2%) have not yet notified this commitment to the WTO.

¹ www.tfadatabase.org



Source: WTO TFA Database (www.tfadatabase.org)

4. As is outlined in the WCO's Analysis of Section I of the TFA², the antecedents of this measure can be found in discussions of WTO Members in the late 1990's concerning difficulties encountered by developing countries in implementation of the WTO Valuation Agreement and, particularly, the effective prevention of valuation fraud. These led to proposals by Members to establish a "multilateral solution that enables Customs administrations of importing countries to seek and obtain information on export values contained in the export declaration to the Customs administrations of exporting countries, in a time-bound manner, in doubtful cases."³
5. Apart from providing WTO Members with a certain enhanced ability to combat fraud, an important benefit foreseen for a multilateral mechanism for information exchange is that it can enhance and deepen Customs cooperation between WTO Members. It would also lead to sharing of information on best practices in managing Customs compliance, as well as enhanced cooperation in technical guidance or assistance and support for capacity building for the purposes of administering compliance measures and enhancing their effectiveness.
6. Provisions of Article 12 could be clustered into three distinctive parts:
 - I. Article 12.1 which relates to voluntary compliance;
 - II. Articles 12.2-12.11 which relate to exchange of specific data between Customs administrations; and,
 - III. Article 12.12 which relates to exchange of data based on bilateral, plurilateral and regional agreements that could be broader in scope.

Measures Promoting Compliance and Cooperation (Article 12.1.)

7. According to Article 12.1, 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.

² <http://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/mercator-programme/overall-track/wco-instruments-and-tools/analysis-of-section-i.aspx>

³ WT/GC/W/227 (5 July 1999) (Communication from India)

Members are encouraged to share information on best practices in managing Customs compliance, including through the Trade Facilitation Committee. Article 12.1 reads as follows:

“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.(14)

1.2 Members are encouraged to share information on best practices in managing customs compliance, including through the Committee. Members are encouraged to cooperate in technical guidance or assistance and support for capacity building for the purposes of administering compliance measures and enhancing their effectiveness.”

WCO instruments and tools

8. Standard 1.3 of the General Annex (GA) of the Revised Kyoto Convention (RKC) foresees Customs to institute and maintain formal consultative relationships with the trade to increase cooperation and to facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements. Standards in Chapter 3 of the RKC GA encourage voluntary compliance providing opportunities to traders to amend Goods declarations under certain conditions. Accompanying guidelines provide more information about voluntary compliance.
9. Additionally, the WCO Voluntary Compliance Framework provides guidance on Voluntary Disclosure Programmes, which give clients a chance to correct inaccurate or incomplete information or to disclose information that clients have not reported during previous dealings with Customs authorities, without penalties in the appropriate circumstances. The Voluntary Compliance Framework helps traders comply voluntarily and correctly with Customs law, regulations or requirements.

Exchange of Information (Article 12.2 – 12.12)

10. The purpose of the information exchange, as stipulated under Article 12, is to allow the requesting country to “verify an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy” by comparing the documents normally presented to Customs in the country of import with those normally presented to Customs in the country of export with respect to the same goods.
11. Article 12.2 foresees that Members shall exchange the information set out in paragraphs 6.1 (b) and/or (c) for the purpose of verifying an import or export declaration, namely providing specific information as set out in the import or export declaration, or the declaration itself, and if requested specific information as set out in the documents submitted in support of the import or export declaration (i.e. commercial invoice, packing list, certificate of origin and bill of lading, etc). Members shall notify the Committee on the details of its contact point for the exchange of information.
12. Important elements of information exchange, such as verification, request form, type of information exchanged, protection of information and confidentiality, provision of information, refusal/postponement of request, reciprocity, administrative burdens, limitations and unauthorized use or disclosure are all further elaborated in articles 12.3 to 12.11.
13. Lastly, Article 12.12 allows Members to have in place bilateral, plurilateral or regional agreements for the 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. Members may enter into or maintain such agreements. Article 12.12 reads as follows:

“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 as altering or affecting a Member’s rights or obligations under such bilateral, plurilateral, or regional agreements, or as governing the exchange of customs information and data under such other agreements.”

WCO instruments and tools

14. There are a myriad of WCO instruments and tools that support implementation of the exchange of information, as stipulated under Article 12 (12.2-12.12) of the TFA (the list is in-exhaustive):
- Revised Kyoto Convention⁴ (General Annex, Chapter 6 (6.7) and Chapter 7 (7.1));
 - Nairobi Convention⁵;
 - Johannesburg Convention⁶;
 - Model Bilateral Agreement;
 - Recommendations on Mutual Administrative Assistance of 1953;
 - Recommendation of the Customs Co-operation Council Concerning Bilateral Agreements on Mutual Administrative Assistance (June 1995);
 - Recommendations on the Pooling of Information concerning Customs Frauds of 1967;
 - Declaration on the improvement of Customs Cooperation and Mutual Administrative Assistance (The Cyprus Declaration) of 2000;
 - Guide to the Exchange of Valuation Information;
 - SAFE Framework of Standards⁷;
 - Globally Networked Customs Handbook;
 - Customs Enforcement Network Global Application (CEN);
 - National Customs Enforcement Network Application (nCEN);
 - Customs Enforcement Network Communication Platform (CENcomm).
15. The WCO instruments and tools listed above support implementation of both the exchange of information as stipulated under Article 12.2, as well as potentially broader in scope information exchanges such as those foreseen under Article 12.12.
16. In terms of the type of information to be exchanged, the WTO TFA text primarily focuses on information exchange for the purposes of verifying import/export declarations. It refers to the exchange of available information in respect of a consignment presented as legitimate trade. It does not envisage the exchange of information on commodity smuggling, drug trafficking, IPR, CITES and Hazardous waste enforcement, investigative assistance, backtracking investigations, etc.
17. On the other hand, the Nairobi Convention is broader in scope than the TFA and includes “any intelligence, documents or other information communicated or obtained” (Article 5).

⁴ Entered into force in 2006 and has 120 contracting parties.

⁵ Entered into force in 1980 and has 52 contracting parties.

⁶ Three contracting parties and seven signatories without ratification. Five contracting parties are required for entry into force.

⁷ 169 Members have signed the Letter of Intent to implement the SAFE.

18. The scope is also broader under the Model Bilateral Agreement and its Article 1 which specifies that “information” means any data, whether or not processed or analyzed, and documents, reports and other communications in any format including electronic, or certified or authenticated copies thereof. Article 4, Paragraph 1 of the Model Bilateral Agreement refers to providing information to assist the requesting administration that has reasons to doubt the truth or accuracy of a declaration, which is in line with TFA Paragraph 6.1 (b). This falls under “Information for the Assessment of Customs Duties”, while articles 5, 6 and 7 further include exchange of information relating to Customs offences, automatic exchange of information and advance exchange of information. Furthermore, Chapter IV of the Model Bilateral Agreement covers special types of assistance (spontaneous assistance, notification, recovery of Customs claims, surveillance of information etc). This type of assistance is not envisaged under Article 12.2, but could fall under the scope of Article 12.12.
19. Standard 6.7 of the RKC General Annex stipulates that Customs shall seek to cooperate with other Customs administrations and seek to conclude Customs mutual assistance agreements (CMAA) to enhance Customs control. Chapter 7 of the RKC GA further encourages the use of information technologies to support Customs operations.
20. Based on the Nairobi Convention and Model Bilateral Agreement a number of bilateral, regional and plurilateral CMAAs/MOUs are successfully working in terms of the exchange of information and provision of investigative assistance on a wide range of issues, therefore going far beyond the requirements of the TFA.
21. Lastly, in terms of contact points for Customs cooperation, according to the TFA, they will be notified to the TF Committee, but the TFA does not specify who the contact point for such exchange of information should be. However, the Nairobi Convention (Article 6) stipulates direct communication between Customs and so does the Johannesburg Convention (Article 3). Article 19 of the Model Bilateral Agreement also provides for communication of the requests for assistance to be addressed directly to the designated contact points of Customs administrations.
22. Globally Networked Customs and the Customs Enforcement Network are two relevant examples of WCO tools/initiatives that could provide effective support in implementing exchanges of information as stipulated under both Article 12.2 and 12.12 of the TFA.

Globally Networked Customs (GNC)

23. The Feasibility study carried out by the WCO for a Globally Networked Customs (GNC) recognized that through the GNC, there could be a systematic approach to exchange of information between Members based upon protocols, standards and guidelines. So-called Utility Blocks (UBs) define the specific protocols standards and guidelines that are applicable for that type of exchange. GNC could be a good tool to effectively facilitate exchange of information in identified cases as envisaged in Article 12 of TFA, by adopting a tailor made UB and legal architecture.
24. The WCO GNC Handbook contains detailed information regarding ICT architecture, data standards, interoperability challenges, security concerns and data management issues (storage access and retention) etc.

WCO Customs Enforcement Network (CEN)

25. The Customs Enforcement Network (CEN) is a global depository of non-nominal enforcement-related information with, at its core, a database of seizures and offences

covering various areas of Customs' competence. Additionally, the CEN contains a communication component, namely an internal email system, a forum, and a dedicated website which are all conceived to facilitate information exchanges between Customs officers on a more general basis, whether it be for bilateral exchanges or exchanges under the scope of a regional agreement. Furthermore, a list of contact details for people responsible for Mutual Administrative Assistance is available to users on the CEN Website.

26. The national Customs Enforcement Network (nCEN) is a tool for the collection of nominal data on seizures and offences, suspected persons, and business entities on a national level. Although like the CEN it has an internal email system and forum for the exchange of information, this is restricted to the national level. The nCEN however has a special information communication interface which allows for the exchange of seizure information with other countries that are also using the nCEN. This type of exchange is based on bilateral agreements.
27. The Customs Enforcement Network communication platform (CENcomm) was conceived to enable secure and timely information exchange between a group of users, especially during cross border operations. It provides the opportunity, though the use of the standardized templates available in the system, to exchange the kind of information mentioned in paragraph 12.12.1.

Break-out session

28. The delegates are invited to discuss, through a break-out session a number of questions, with the aim of shedding more light on the challenges and lessons learnt in implementing Article 12:
- a. What are the programmes Members have put in place to ensure a higher level of compliance of economic operators?
 - b. What are the legal and procedural obstacles in achieving the successful exchange of information for verifying an import/export declaration?
 - c. To what extent could a GNC initiative and the CEN boost implementation of Article 12? What are the expectations from Members?
 - d. What are the key challenges and lessons learnt in exchanging information between/amongst Customs administrations?
29. Based on the outcomes of these discussions, the break-out groups will be invited to put together a number of practical recommendations for improving compliance with Article 12.

Action requested

30. The TFAWG is invited to:
- discuss in a break-out session the challenges and lessons learnt in implementing Article 12 of the TFA; and,
 - provide practical recommendations for improving compliance with Article 12.
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