



Brussels, 24 January 2020

SEPARATION OF RELEASE FROM FINAL DETERMINATION OF CUSTOMS DUTIES, TAXES, FEES AND CHARGES (ARTICLE 7.3)

(Item X of the Agenda)

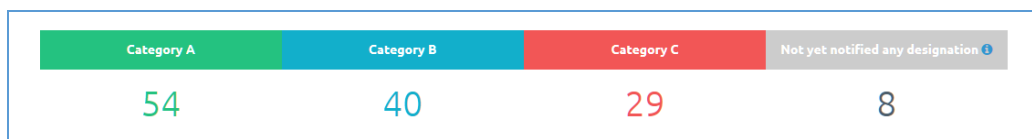
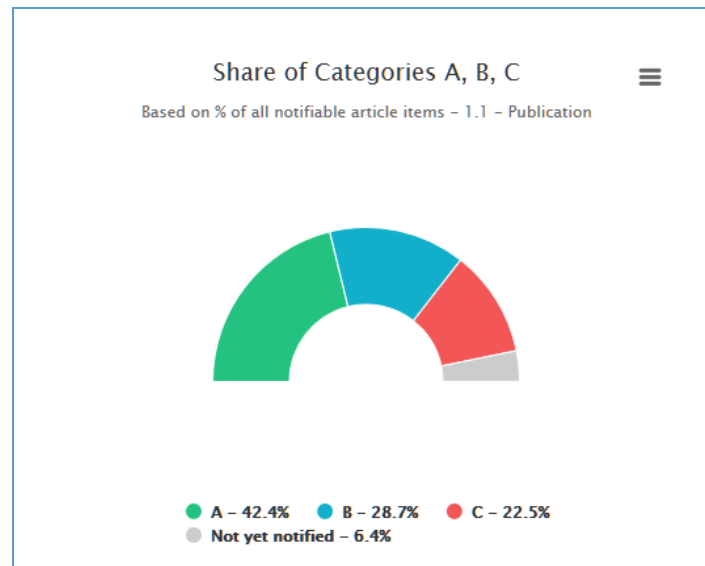
Introduction

1. Article 7.3 on separation of release from final determination of Customs duties, taxes, fees and charges represents another technical measure under the WTO Trade Facilitation Agreement (TFA) that has not yet been separately discussed in the TFAWG.
2. The aim of this item is to discuss Article 7.3 and its requirements, WCO instruments and tools which support their implementation and to allow delegates to share Members' experiences to date, success stories, the challenges faced and to identify a number of useful takeaways.

Separation of release from final determination (Article 7.3)

3. According to the statistics in the WTO TFA Database¹, 54 (42.4%) of the WTO Members are already implementing this measure, 40 (28.7%) require a period of time and another 29 (22.5%) require both time and assistance before achieving compliance; another 8 (6.4%) of the Members have not yet notified the WTO of how they have categorized this commitment.

¹ www.tfadatabase.org



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

4. Article 7.3 requires Members to adopt or maintain procedures allowing the release of goods prior to the final determination of Customs duties, taxes, fees and charges. It also determines possible requirements as a condition for such a release (payment or guarantee).
5. This measure is triggered when there is a delay in Customs assessment of imported goods. More specifically, the TFA measure provides that WTO Members shall have procedures to allow release of imported goods where a final determination of duties, taxes, fees and charges is not done “as rapidly as possible after arrival” of the goods, if not before arrival.
6. The measure thus applies in those cases where Customs is unable to complete an assessment “rapidly” because, for example, information or documents required by Customs for valuation, tariff classification or preferential origin of goods are not immediately available or Customs requires time to test the goods to determine their appropriate classification, to verify the authenticity of a preferential origin certificate, to verify the declared transaction value, or in other cases. This is in particular common in situations when new commodities are being cleared, when the laboratory that is determining the classification of goods is taking more time than usual or when only a proforma invoice is available.
7. The TFA measure provides that release shall be conditioned on compliance with “all other regulatory requirements.” That is, release requires a determination that the goods are not subject to prohibitions and that any restrictions of Customs or other border authorities, such as license or approvals or packaging or marking requirements, have been complied with.
8. The TFA measure recognizes that Customs may require a guarantee to ensure payment, once duty, taxes, fees and charges are finally determined. The guarantee may be in the form of a surety, deposit or other appropriate instrument as provided by the laws and regulations of the particular WTO Member.

9. It further allows WTO Members the option of requiring a guarantee for the full amount owed on the goods or requiring the declarant to pay a portion that can be determined immediately, and provide a guarantee for the balance.
10. The TFA measure imposes certain disciplines on WTO Members' use of guarantees for these purposes. In particular:
- the amount of the guarantee shall not exceed the amount the Member requires to ensure payment of Customs duties, taxes, fees and charges ultimately due;
 - a guarantee may be required for payment of penalties and fines, where an offense is detected;
 - the guarantee shall be discharged when it is no longer required.
11. This measure could be viewed in synergy with Article 7.1 (pre-arrival processing), as pre-arrival processing may, in some countries, allow for release of goods prior to their arrival, with the final determination of Customs duties, taxes, fees and charges to be carried out at a later stage.

Relevant WCO instruments and tools

12. According to the WCO Analysis of Section I (2016), these provisions are compatible with WCO instruments and tools, such as the Revised Kyoto Convention² (RKC) and its Guidelines, the SAFE Framework of Standards³ (SAFE) and the Immediate Release Guidelines.
13. Under the **RKC**, according to Standards 3.13, 3.14, 3.17 and 3.40 of the General Annex where, for reasons deemed valid by the Customs, the declarant does not have all the information required to make the Goods declaration, a **provisional or incomplete Goods declaration** shall be allowed to be lodged, and the release of these goods shall not be delayed, with an opportunity for some of the supporting documents to be provided within a specified period; the goods shall be released as soon as Customs have examined them or decided not to examine them, with examinations to take place as soon as possible after the goods declaration has been registered and provided that certain criteria have been met (i.e. no offence found, import/export licence acquired and similar). These are often referred to as simplified Customs procedures.
14. Furthermore, Standard 3.41 allows the **release of goods based on an invoice or similar document** confirming the purchase or despatch of the goods, but only when they are satisfied that all the formalities, including the lodgement of a complete Goods declaration, will be carried out after the goods have been released, and if a guarantee, where required, has been furnished.
15. In addition, Transitional Standard 3.32 of the General Annex to the RKC provides the possibility for **authorized traders** who met criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, to have their goods released on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final goods declaration enabling, among others, the calculation of duties and taxes and the collection of trade statistics.
16. In terms of duties and taxes due, Chapter 4 of the General Annex provides a framework for their collection and payment, including **deferred and periodic payment**,

² Entered into force in 2006 and has 120 contracting parties.

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

as well as repayment. RKC Chapter 5 provides standards and guidance on the **use of guarantees** which may be required in cases of separation of release from determination, while Section 6.10 of the RKC ICT Guidelines cover details regarding automation of deferred payment and guarantee management.

17. Furthermore, Standard 1 (Integrated Supply Chain Management) of the **SAFE** and the Guidelines on Integrated Supply Chain Management foresee that Customs administrations should generally grant rapid release to all consignments, which have met the conditions laid down by Customs and for which the necessary information required by national legislation is communicated, preferably by electronic means, at a stipulated time prior to arrival (i.e. pre-arrival processing). It further provides that AEOs who meet criteria specified by the Customs should reasonably expect to participate in simplified and rapid release procedures on the provision of minimum information.
18. Lastly, the **Immediate Release Guidelines** (IRG) provide that the Customs will generally grant immediate release/clearance to all consignments, provided that the conditions laid down by Customs are met and that the necessary information required by national legislation is communicated at a stipulated time before the consignments arrive. The advance communication of that information is facilitated, in particular, through exchange of data electronically. The IRG provide specific conditions for each of the four categories of shipments identified in the Guidelines.

Action requested

19. The TFAWG is invited to:
 - discuss and share experiences on implementation of Article 7.3, success stories and challenges faced; and
 - identify a number of takeaways for successful implementation.
