

Customs Co-operation

Article 12 of the WTO Agreement on Trade Facilitation

Introduction

- The WTO Agreement on Trade Facilitation (ATF) recognizes the importance of Customs co-operation in order to ensure effective Customs control while promoting voluntary compliance that would allow traders to self-correct without inviting penalties.
- Article 12 of the WTO ATF provides for the exchange of information (as contained in the import or export declaration and the available accompanying documents such as the commercial invoice, packing list, certificate of origin and bill of lading) upon request, for the purpose of verification of an import or export declaration in identified cases where there are reasonable grounds to doubt their truth or accuracy and after the requesting Member has conducted the appropriate verification, including the inspection of available documents.
- In other words, Article 12 of the WTO ATF refers to the exchange of information as available, in respect of any consignment presented as legitimate trade. It does not cover the exchange of information about smuggling or other forms of illicit trade. Neither does it require the requested Member to verify the accuracy of information, conduct any enquiry/investigation, or call for additional information/documents. The exchange of information on an automatic or spontaneous basis is not envisaged in the Article.
- The Article does, however, allow Member States flexibility to enter into or maintain bilateral, plurilateral or regional agreements for sharing or exchanging Customs information and data, including advance information.

WCO Instruments and Tools

- The WCO has developed a comprehensive portfolio of instruments and tools for promoting co-operation between and among Customs administrations, including the Revised Kyoto Convention (RKC), the SAFE Framework of Standards, the Nairobi Convention, the Model Bilateral Agreement, the Johannesburg Convention (not yet entered into force), the Guide to the Exchange of Customs Valuation Information and the Globally Networked Customs

(GNC) Feasibility Study, together with various WCO Recommendations on mutual co-operation and administrative assistance.

- In addition, the WCO has also developed the Customs Enforcement Network (CEN) and its suite of applications for the collation and dissemination of data/information and intelligence. A global network of 11 Regional Intelligence Liaison Offices (RILOs), covering the WCO's six regions, has also been set up as a support for intelligence exchange and for the dissemination of intelligence analysis amongst WCO Members.
- WCO instruments and tools provide support for the comprehensive exchange of information between Customs, and go far beyond Article 12 of the WTO ATF. They are not limited to the exchange of information for the purpose of verifying a declaration, but encompass a wide range of issues including commodity smuggling, illicit trade, drug trafficking, IPR, hazardous waste and CITES enforcement.
- These WCO instruments and tools, including GNC, could support the implementation of Article 12 of the WTO ATF. GNC, including its legal toolbox, could be useful in providing standard legal templates for a systematic approach to the exchange of information between Members, including provisions for privacy, confidentiality and acceptable usage of the information exchanged. In order to have a globally harmonized approach and to avoid fragmentation, one potential step to initiate the implementation of ATF Article 12 could be the development of a tailor-made Utility Block (UB) for the exchange of the stipulated information, by interested and willing Members, under the enforcement track of GNC. This would also obviate the problem of non-standardization and the multiplicity of bilateral agreements in respect of information exchange, which naturally adds cost and complexity.

GNC Projects

- Certain Customs administrations are at different stages in the development of GNC UBs for the exchange of information, and Proof of Concept pilots are being conducted, such as: the AEO Mutual Recognition UB between the European Union and the United States; the Control Mutual Agreement UB between Switzerland and the European Union; Pre-arrival data from the SAFE Framework of Standards UB (SSTL) between China and the European Union; and the exchange of information pilot between South African Revenue Service (SARS) and Swaziland Revenue Authority (SRA).
- Another notable recent development is the decision by the Members of the Multilateral Agreement on Mutual Assistance for Customs of Latin America, Spain and Portugal (COMALEP) to regionally implement a network, based on the INDIRA Customs records system, which will facilitate the exchange of Customs information within the region. A GNC UB is currently being developed by Argentina and Ecuador.