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TECHNICAL NOTES ON TRADE FACILITATION MEASURES

Towards the end of 2004, the members of the World Trade Organization (WTO) formally launched negotiations on trade facilitation on the basis of the modalities set out in Annex D of the July Package adopted in 2004. This mandate instructed members to clarify and improve three articles of the General Agreement on Tariffs and Trade (GATT), namely, article V on freedom of transit, article VIII on fees and formalities connected with importation and exportation, and article X on the publication and administration of trade regulations.

To support these negotiations, the United Nations Conference on Trade and Development (UNCTAD) created a trust fund, with contributions from the Governments of Sweden and Spain. This fund has been used to develop a series of seminars and meetings and to produce a total of 20 technical notes on specific trade facilitation measures. These notes cover in particular facilitation measures that are topics of specific proposals that were made during WTO negotiations. This edition of the FAL Bulletin summarizes several of these technical notes, focusing mainly on customs-related issues.

The complete technical notes and other additional notes can be downloaded from <http://r0.unctad.org/ttl/technical-notes.htm>. If you require further details or wish to send comments or suggestions, contact Jan Hoffmann, Trade Facilitation Section, UNCTAD, Geneva, Switzerland, jan.hoffmann@unctad.org.

A. The use of automated systems in customs (Technical note no. 3)

Automated systems in customs provide one of the most useful tools for facilitation of international trade procedures. As a complement to customs reform, automation becomes a catalyst for modernization of the customs and a stimulus for increased use of information and communications technology (ICT) by other governmental departments and private sector stakeholders, whose activities involve customs operations. These parties should actively participate in an automation initiative. Customs automation mainly results in increased transparency in the assessment of duties and taxes, substantial reduction in customs clearance times and predictability, all leading to direct and indirect savings for both government and traders.

Automation replaces the manual processing of customs documents by computer-assisted treatment of electronically transmitted information. Reform and modernization are not only a vector for the introduction of international standards and recommended best practices related to information and communications technology (ICT), but also an opportunity for reviewing and aligning customs procedures to international standards, conventions and other instruments; for example, the World Customs Organization (WCO) adopted the Protocol of Amendment to the International Convention on the simplification and harmonization of Customs procedures (revised Kyoto Convention) in 1999.

Experience shows that technical assistance for implementation of the UNCTAD Automated System of Customs Data Entry, Control and Management (ASYCUDA) may cost between US\$ 0.5 million and several

millions of US\$ and take about two years. Delays can occur due to revision of legislation, construction of new office buildings, procurement of hardware and other factors. Successful implementation of the customs automation systems can be achieved only if a number of conditions are met from the outset:

- Political will and support from the government and customs management of reforms and modernisation
- Transparent and collaborative approach by project management to generate support from staff and external users, including brokers and agents
- Phased implementation of the customs automation systems
- Introduction of international conventions, standards and other instruments, including
- a national customs tariff based on the Harmonized System and a declaration based on the United Nations Layout Key and the Single Administrative Document (SAD)
- Review and amendment of the customs law and other related legal instruments to ensure compatibility with the new procedures, notably electronic lodgement of clearance data and introduction of the SAD
- ICT systems must be in place for countries to provide electronic connectivity.

B. Release of goods in event of appeal (Technical note no. 4)-

This measure is aimed at enhancing the customs clearance system by securing the payment of customs fees by traders through the introduction of a financial guarantee and by allowing traders to take possession of the goods while an appeal is pending. Such a measure would improve transparency, predictability and the speedy administration of customs procedures.

While neither Article VIII nor Article X expressly addresses the issue of providing for a financial guarantee to effectuate the release of goods, a relevant requirement exists in the context of Article 13 of the WTO Agreement on Implementation of Article VII (Customs Valuation Code –CVA), which states as follows: “If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.”

The proposed measure seeks to ensure that in the event of an appeal goods are released against the provision of financial security. WTO Members are invited to “consider commitments,” or “maintain a system” for such release prior to payment of duties. This means that if the measure were to be adopted, WTO Members would need to include this requirement in their national legislations.

Customs authorities do not normally release goods until all issues are resolved and any duties and taxes are paid. Delays in receiving goods due to customs clearance are a matter of concern for any company, particularly SMEs, under the pressing demands of today's market. Such delays can arise for various reasons, including valuation problems and others not currently regulated by WTO rules, for example, classification problems, tariff heading determination, missing documents, lack of certificates of origin or health certificates, and delays caused by payment procedures.

The WCO International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention, 1999) contemplates the possibility of offering a financial guarantee to obtain release of the goods. Standard 3.41 of this Convention provides as follows: “If the Customs are satisfied that the declarant will subsequently accomplish all the formalities in respect of clearance they shall release the goods, provided that the declarant produces a commercial or official document giving the main particulars of the consignment concerned and acceptable to the Customs, and that security, where required, has been furnished to ensure collection of any applicable duties and taxes.” The Revised Kyoto Convention entered into force in

February 2006.

C. Post-clearance audit (Technical note no. 5)

Post Clearance Audit means customs control or audit performed subsequent to the release of cargo from customs custody. Such audit may take into account individual transactions or cover imports/exports undertaken over a certain period. The audit can take place either at a customs office or on the premises of a company. Implementation of post clearance audit is a major simplification of customs control and thus provides facilitation for the traders. Time previously spent waiting for customs clearance will be reduced to a minimum, and traders can dispose of their goods quickly after arrival in the country.

In traditional customs procedures, goods are subject to control upon arrival at the border or in the port of entry. The goods will normally be stored in a warehouse or on a wharf pending presentation by the importer or his clearing agent of the declaration and supporting documents for clearance at a customs office. The process may take several days, sometimes weeks, if disputes or irregularities occur. However, goods remain in customs custody until all checks have been performed and requirements fulfilled, including payment of duty and taxes.

In applying risk management techniques and audit-based control, customs is able to release the vast majority of shipments and retain only consignments matching the risk profiles. Non-selected cargo will be released immediately but may be subject to a *posteriori* control, that is, post clearance audit. Such audit will focus on the supporting documents as well as books, records and observations at the premises of the importing company.

This control method is normally implemented as part of a modernisation project in customs under which a number of *customs best practices* are put in operation. The key international instrument on customs reform is the Revised International Convention on Simplification and Harmonization of Customs Procedures (revised Kyoto Convention). The Kyoto Convention sets out a large number of recommended standards relating to all aspects of customs procedures. Chapter 6, Customs Control, recommends use of risk management methods and audit-based control, among others.

Post clearance audit allows customs to change the approach from a purely transaction-based control to a more comprehensive company-oriented control. Customs audit can benefit from a broader picture of the transactions over a longer period. Details for comparison will flow from local or national databases compiling information from each customs declaration registered. By comparing prices and tariff headings for identical or similar commodities related to different companies, inconsistencies may indicate fraud. A targeted approach is more efficient and results in savings for customs.

D. Risk management in customs procedures (Technical note no. 12)

Proposals related to clarification and improvements of Article VIII, inter alia, consider introduction of risk management techniques in customs procedures, which would minimize customs interventions for legitimate trade.

A common characteristic of customs work is the high volume of transactions and the impossibility of checking all of them. Customs administrations therefore face the challenge of facilitating the movement of legitimate passengers and cargo while applying controls to detect customs fraud and other offences. Customs services find themselves increasingly under pressure from national governments and international organizations to facilitate the clearance of legitimate passengers and cargo while concurrently responding to increases in transactional crime. These competing interests mean that it is necessary to find a balance between facilitation and enforcement.

The purpose of all customs controls is to ensure that the movement of all vessels, vehicles, aircraft, goods and persons across international borders occurs within the framework of laws, regulations and procedures that comprise the customs clearance process. Against this backdrop, the solution to passenger and cargo examination is best found in the development of customs controls that are based on risk assessment, profiling and selectivity.

In the importing environment, the three levels of Customs controls are pre-clearance, clearance and post-clearance audit. These controls are intelligence-led and focused on the identification of high risk commercial activity. Risk identification is crucial to the process and this is achieved by identifying risks that are a serious threat to customs enforcement activities and the consideration of existing customs controls and their vulnerabilities, determining why weaknesses exist and establishing risk indicators which may increase or decrease the degree of risk. Risk indicators may relate to a particular commodity code, country of origin, value, etc.

Risk assessment is an analytical process that is used to determine both actual and acceptable level of risk and involves the assessment of the probability that goods subject to customs control may not have been declared or fully declared. Risk assessment factors will include import patterns, duty and tax rates, type of goods, previous examination results and routes and modes of transport. The risk assessment process then is given effect by a procedure involving the building of profiles, which are simply a group of characteristics displayed by unlawful consignments (or offending passengers) at a specific location and which are matched against day-to-day Customs transactions.

The development of profiles relies heavily on the gathering, charting and analysis of information from the WCO database, Regional Intelligence Liaison Office database (RILO database), national seizure reports, other administrations acting under the Nairobi Convention or bilateral agreements. It seeks patterns in such indicators as the method of concealment, type of conveyances used, place and time of seizure, offender biographical data and the origin or routing of the goods or passenger. These profiles then drive inspection selectivity programmes.

Inspection selectivity programmes analyse the data declared and select the shipments on the basis of risk parameters or criteria pre-assessed according to the potential risks involved in specific consignments. Depending on the selected risk level, goods are routed through lanes or channels:

- Green Channel = Immediate release without examination
- Yellow Channel = Documentary check
- Red Channel = Physical examination of goods and documents
- Blue Channel = Examination at a later stage (post audit).

Changing the control procedure entails a fundamental shift in the traditional way of thinking in customs. While many people believe that 100 percent control is the ultimate objective, modern customs philosophy has proven that risk management provides a much more efficient approach. Hence, successful implementation and operation of these new techniques require a good deal of preparatory activities with a view to creating awareness and understanding of the system.

E. Pre-arrival customs clearance (Technical note no. 15)

In today's global trade, delays caused by customs clearance and cumbersome control should be eliminated or minimized to give way to modern trade and transport procedures such as e-commerce and just-in-time operations. This need has been recognised and motivated governments throughout the world. The vision for customs is twofold, namely to ensure and protect national revenue effectively, and to expedite clearance and release of the goods.

Certain groups of goods are particularly sensitive to the earliest possible release from customs, i.e. air-borne shipments that involve high freight costs for traders. Similarly, urgent consignments of newspapers, medicine and hospital equipment, perishables etc, need to be released immediately after arrival at the port of entry. This applies equally to express consignments with spare parts, samples etc. In applying pre-arrival clearance, traders and carriers may clear the goods through customs with little or no delay.

WCO has addressed the traders' need for early release in the "Guidelines for the Immediate Release of

Consignments by Customs” (see www.wcoomd.org). According to the guidelines, various types of goods are divided into four categories for which *immediate release* can be permitted according to simplified requirements.

Customs clearance can be further expedited, when traders and carriers are linked to customs systems for electronic lodgement of data. In countries using modern ICT systems, traders can submit clearance data to customs ahead of the goods arriving in the country. Customs systems will process the data automatically, including screening through risk management profiles, calculation of duties and taxes and release the goods on line – even before actual arrival of the goods. In case the goods are selected for physical inspection, the importer will be advised on line, so he can arrange in advance for the goods to be presented to customs without delay.

When a business company has proven to be a trustworthy and accountable entity, partnership with customs could be established aiming at close cooperation to the benefit of both parties. Provided the trader meets certain criteria a Memorandum of Understanding specifying the facilitated procedures could be agreed.

F. Separating release from clearance procedures (Technical note no.19)

Separating release from clearance means that goods are cleared by Customs prior to payment of duties and taxes in cases where final classification of the goods, assessment of value and other transactions are pending. A surety in the form of a deposit or bond is usually required. The adoption of separate release procedures should go hand in hand with the introduction of other modern customs tools, including risk assessment and financial security arrangements. Advance clearance on the basis of documentation approved prior to the arrival of goods and other pre-arrival procedures would allow traders to pick up goods upon arrival and constitute time and money savings.

Traditionally, customs authorities do not release goods until all issues are resolved and duties and taxes due are paid. Tariff classification of goods is sometimes difficult to finalize on the spot, as is the case for chemical substances, which may require lengthy laboratory analysis. Also, establishing the correct assessment of the value may be a lengthy process. Such concerns and similar issues holding up the final payment and release have a negative impact on the trader’s competitiveness and should be eliminated or minimized to the extent possible. In other words, separating the release of goods from clearance procedures would be a significant time and cost saving measure.

Putting in place financial mechanisms for securing payment and compliance by traders is a prerequisite for the advance release of goods. Once a trader has posted a surety or guarantee with customs, a number of simplified procedures can be made available. It would therefore be a useful service to traders if governments took necessary steps to implement such security options in national legislation. Security instruments can take several forms, including cash deposits, surety by banks or insurance companies, bonds or other legally binding obligations confirming final payment of duties and taxes. The security can cover a single transaction or be of a general nature, i.e., it covers a number of transactions.

G. Other technical notes

Other topics covered by the Technical notes and not summarized in this edition of the FAL Bulletin are:

- Publication of Trade Regulations and their Uniform Administration (Technical Note no.1)
- Single National Enquiry Points (Technical note no.6)
- Maintenance and Reinforcement of Integrity and Ethical Conduct among Officials (Technical note no.7)
- Freedom of Transit and Regional Transit Arrangements (Technical note no.8)
- Documentation Requirements in Maritime Transport (Technical note no.9)

- Right of Appeal against Customs and Other Agency Rulings and Decisions (Technical note no.10)
 - Border Agency Coordination/Cooperation (Technical note no.14)
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