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## **1 ARTICLE 12 OF THE AGREEMENT ON TRADE FACILITATION**

### **1.1 Text of Article 1**

#### ***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>

*(footnote original)* <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.

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.

##### *2 Exchange of Information*

2.1 Upon request and subject to the provisions of this Article, Members shall exchange the information set out in subparagraphs 6.1(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 the Committee of 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 official language of the WTO or other mutually agreed language, including:

- (a) the matter at issue including, where appropriate and available, the number identifying 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 to whom the request relates, if known;
- (c) where required by the requested Member, confirmation<sup>15</sup> of the verification where appropriate;

*(footnote original)* <sup>15</sup> This may include pertinent information on the verification conducted under paragraph 3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

- (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 subparagraphs of paragraph 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 subparagraphs 6.1(b) or (c);
- (b) provide 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 subparagraphs of paragraph 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 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 a 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 its 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; or
- (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 paragraphs 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 if it 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 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*

A requested Member shall not be required to:

- (a) modify the format of its import or export declarations or procedures;
- (b) call for documents other than those submitted with the import or export declaration as specified in subparagraph 6.1(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; or
- (h) provide information that would prejudice the legitimate commercial interests of 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 subparagraphs (a) and (b).

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 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.

### **1.2 General**

1. Transparency notifications under section I of the TFA are to be provided by all WTO Members irrespective of their level of development in four particular areas. They are mandated under Articles 1.4, 10.4.3, 10.6.2, and 12.2.2.

**1.3 Article 12.2.2: Exchange of Information**

2. To date, one-hundred and eight (108) Members<sup>1</sup> have presented notifications under this provision. All types of notifications under the TFA can be found in document series: [WT/PCTF/N/\\*](#) and [G/TFA/N/\\*](#). They are also publicly accessible through the Trade Facilitation Agreement Database (<https://www.tfadatabase.org/>).

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Current as of: July 2022

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<sup>1</sup> This figure includes all European Union member States counted individually, as well as the European Union itself due to the existence of notifications made on behalf of the European Union as a whole.