USAID | UKRAINE
FROM THE AMERICAN PEOPLE

TRADE POLICY PROJECT (TPP)

WTO Trade Facilitation Agreement Conformity Assessment for Ukraine (DRAFT)

July 15, 2015
This publication was produced by International Development Group LLC, for review by the United States Agency for International Development.

TRADE POLICY PROJECT (TPP)

WTO Trade Facilitation Agreement Conformity Assessment for Ukraine

Prepared for the United States Agency for International Development, USAID Contract IDIQ-AID-OAA-I-12; Task Order # AID-121-TO-15-00002

This WTO Trade Facilitation Agreement Conformity Assessment for Ukraine was prepared by Economic Integration Forum Inc. (EIF) under subcontract to International Development Group (IDG) on the USAID Trade Policy Project in Ukraine. The main author Mr. Farhat Youwakim Farhat, Senior Trade/WTO Advisor prepared this document with support from Mr. Viktor Dovhan, Senior Trade Attorney, IDG and Mr. Brian O'Shea, Senior International Trade/Customs Attorney, EIF.

DISCLAIMER
The author's views expressed in this publication do not necessarily reflect the views of the U.S. Agency for International Development or the United States Government.

LIST OF ACRONYMS

AEO	Authorized Economic Operators
CIS	The Commonwealth of Independent states
CMU	Cabinet of Ministers of Ukraine
EIF	Enter Into Force
GVC	Global Value Chains
OECD	Organization For Economic Cooperation and Development
SFS	Ukraine State Fiscal Service
SME	Small and Medium Size Businesses
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TFA	Trade Facilitation Agreement
USAID	United states Agency for International Development
UTPP	Ukraine Trade Policy Program
WTO	World Trade Organization

TABLE OF CONTENTS

SUMMARY 6

ANALYSIS 24

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION 24

1.1 PUBLICATION 24

1.2 INFORMATION AVAILABLE THROUGH INTERNET 28

1.3 ENQUIRY POINTS 29

1.4 NOTIFICATION 30

ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE, AND CONSULTATIONS 31

2.1 OPPORTUNITY TO COMMENT AND INFORMATION BEFORE ENTRY INTO FORCE 31

2.2 CONSULTATIONS 33

ARTICLE 3: ADVANCE RULINGS 34

ARTICLE 4: PROCEDURES FOR APPEAL OR REVIEW 37

ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON DISCRIMINATION AND TRANSPARENCY 40

5.1 NOTIFICATIONS FOR ENHANCED CONTROLS OR INSPECTIONS 40

5.2 DETENTION 41

5.3 TEST PROCEDURES 42

ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES 44

6.1 GENERAL DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION 44

6.2 SPECIFIC DISCIPLINES ON FEES AND CHARGES FOR CUSTOMS PROCESSING IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION 45

6.3 PENALTY DISCIPLINES 46

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS 47

7.1 PRE-ARRIVAL PROCESSING 47

7.2 ELECTRONIC PAYMENT 48

7.3 SEPARATION OF RELEASE FROM FINAL DETERMINATION OF CUSTOMS DUTIES, TAXES, FEES AND CHARGES 48

7.4 RISK MANAGEMENT 50

7.5 POST-CLEARANCE AUDIT 51

7.6 ESTABLISHMENT AND PUBLICATION OF AVERAGE RELEASE TIMES 53

7.7 TRADE FACILITATION MEASURES FOR AUTHORIZED OPERATORS 54

7.8. EXPEDITED SHIPMENTS 56

ARTICLE 8. BORDER AGENCY COOPERATION 59

ARTICLE 9. MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT 61
ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT 61
10.1 FORMALITIES AND DOCUMENTATION REQUIREMENTS 61
10.2 ACCEPTANCE OF COPIES 63
10.3 USE OF INTERNATIONAL STANDARDS 64
10.4 SINGLE WINDOW 65
10.5 PRESHIPMENT INSPECTION 67
10.6 USE OF CUSTOMS BROKERS 67
10.7 COMMON BORDER PROCEDURES AND UNIFORM DOCUMENTATION REQUIREMENTS 68
10.8 REJECTED GOODS 69
10.9 TEMPORARY ADMISSION OF GOODS/INWARD AND OUTWARD PROCESSING 70
ARTICLE 11. FREEDOM OF TRANSIT (EXCEPT FOR ARTICLE11.3, ARTICLE11.4, ARTICLE11.5, ARTICLE11.6, ARTICLE11.7, ARTICLE11.8, ARTICLE11.10) 70
ARTICLE 12: CUSTOMS COOPERATION 72
12.1 MEASURES PROMOTING COMPLIANCE AND COOPERATION 72
12.2 EXCHANGE OF INFORMATION 73
12.3 VERIFICATION 73
12.4 REQUEST 73
12.5 PROTECTION AND CONFIDENTIALITY 73
12.6 PROVISION OF INFORMATION 74
12.7 POSTPONEMENT OR REFUSAL OF A REQUEST 74
12.8 RECIPROCITY 75
12.9 ADMINISTRATIVE BURDEN 75
12.10 LIMITATIONS 75
12.11 UNAUTHORIZED USE OR DISCLOSURE 76
12.12 BILATERAL AND REGIONAL AGREEMENTS 76
ARTICLE 23: INSTITUTIONAL ARRANGEMENTS 77
23.2 NATIONAL COMMITTEE ON TRADE FACILITATION 77

SUMMARY

On December 7, 2013, World Trade Organization (WTO) members concluded negotiations on an agreement on trade facilitation (the "TFA"). On November 27, 2014, the General Council of the World Trade Organization formally agreed to open the new Trade Facilitation Agreement (TFA) for acceptance. Once two-thirds (108) of the WTO membership notifies its acceptance, the agreement will Enter Into Force (EIF). As of today, five WTO Members have notified the acceptance of the TFA. These are Hong Kong, Malaysia, Mauritius, Singapore, and the United States.

If Ukraine is among the initial 2/3 WTO Members to ratify then Ukraine's Category A notification will come into force on the date of WTO EIF of the TFA. There is a grace period of two years after WTO EIF before any disputes can be invoked regarding notified Category A provisions. If Ukraine is among the remaining 1/3 WTO members, then EIF for Ukraine's Category A will be the date of its notification of acceptance of the TFA.

For provisions not included in Category A notification, notifications (B & C) must occur on the date of WTO EIF. Ukraine will have however one year after EIF to decide on Category B[1] definitive implementation dates and 2.5 years for Category C[2] provisions. These periods will start from the date of WTO EIF even if Ukraine is not one of the initial 2/3 Members.

It is strongly recommended that Ukraine be among the initial 2/3 WTO Members, preferably in the top 20 initial members. Such will be a major step in improving the image of Ukraine at the WTO. In addition, it will send a positive signal to the international trade and investment community about the seriousness of Ukraine in improving its trade and investment framework. This is crucial at this stage of economic development in Ukraine.

This TFA conformity report was conducted based on examination of relevant Ukrainian legislation and discussions with relevant officials at the Ukrainian State Fiscal Service (SFS), the Ministry of Economic Development, and the State Veterinary and Phytosanitary Service as well as knowledgeable private sector experts.

The economic argument in favor of trade facilitation is well known. Reform of border procedures is said to have positive effects on increasing trade flows, government revenue, and foreign direct investment as well as improving the conductions small and medium size businesses (SMEs) and reducing corrupt practices.

The overall gains for the economy of Ukraine and economic gains by Ukrainian stakeholders in the private sector far outweigh the compliance costs with the TFA.

Level of Conformity with the WTO TFA

Ukraine submitted its Category A Notification on August 1, 2014. This report examines the level of conformity of Ukraine's foreign trade regime with the provisions notified under Category A and suggests an action plan for greater conformity with Category A by the end of June 2016. Please see Exhibit 1 for summary of compliance level with Category A provisions and Exhibit 2 for suggested action plan.

There are around 40 substantive areas in the WTO TFA. Ukraine notified 12 substantive areas under Category A. Please see list in Attachment A. Analysis shows:

- Full compliance with five areas;

[1] Category B Notification covers provisions requiring transition without need for technical assistance.
[2] Category C Notification covers provisions requiring with need for technical assistance.

- Substantial compliance with three areas; and
- Partial compliance with four areas.

In addition, this report identifies the level of conformity with non-category A provisions. The Government of Ukraine will need to decide which of these provisions will fall under Category B or Category C. Exhibit 3 summarizes the level of conformity with these provisions. There are 28 substantive areas. Analysis shows:

- Full compliance with six areas;
- Substantial compliance with nine areas;
- Partial compliance with eight area;
- No compliance with four areas; and
- Non Applicable for Ukraine is one area (pre-shipment inspection)

Other than lack of acceptance of copies of key trading documents, the three other areas of non-compliance are administrative in nature and can be easily implemented:

- Notification to the WTO Committee on Trade Facilitation;
- Establishment and publication of average release times; and
- Establishment of National Trade Facilitation Committee.

A summary of overall compliance with the TFA is provided in Table 1 below. Ukraine is either fully or substantially in conformity with over half of the TFA provisions. Ukraine is partially compliant with 12 provisions.

Table 1 – Summary of Ukraine's Conformity with the WTO TFA

Level of Conformity	Category A	Category B & C	Overall
Full	5	6	11
Substantial	3	9	12
Partial	4	8	12
No		4	4
N/A		1	1
Total	12	28	40

The current level of conformity by Ukraine with the WTO TFA is estimated to be in the range of 60-65% based on the number of provisions.

Costs of Conformity with the TFA

The key remaining reforms to comply with TFA are summarized in Table 2 below under the following categories: legal, institutional, procedural, fees, IT/Web systems, and infrastructure.

Table 2 – Nature of Remaining reforms for full TFA Conformity

Nature of reforms	Main Measures for Conformity
Legal	1. Amendments to the Customs Code 2. Amendments to the 3 SPS laws (food safety, veterinary medicine, and plant quarantine) 3. Amendments to the Law on Foreign Economic Activities No. 959-XII of April 16, 1991 4. Amendments to CMU Resolution No. 408 of May 22, 2005 "On WTO Notifications and Enquiry Center» 5. New CMU Resolution for National Committee on Trade Facilitation

Nature of reforms	Main Measures for Conformity
Institutional	6. Establishment of National Trade Facilitation Committee 7. Unit within SFS to administer Authorized Economic Operators (AEO) 8. Designation of a National Transit Coordinator
Procedural	9. Procedure under MEDT Center for Processing of Requests and Notifications of the WTO to notify WTO TFA Committee 10. Procedure for pre-processing of declaration (including e-declaration) prior to arrival of goods 11. Procedures for implementing AEO 12. Procedures and manuals for implementing post-clearance audit system 13. Procedures for proper implementation of legislation and efficient clearance of perishable goods by the Veterinary and Phytosanitary service
Fees	14. Review trade and customs related fees for reflecting approximate costs of services rendered
IT/Web systems	15. Modernizing MEDT website to centralize trade information in easily accessible manner, preferably in English* 16. Modernization of Customs IT risk management system** 17. Database and tracking system for Post-Clearance Audit 18. Single Window*** 19. SFS webpages describing practical procedures for administrative appeal and advance rulings* 20. Webpages at MAIL and MEDT describing practical procedures for administrative appeals*
Infrastructure	21. Joint border controls/single border posts with neighboring countries**

*this is not a strict WTO TFA requirement
** to the extent possible or practicable
*** shall endeavor

In addition, capacity and awareness building about proper and effective implementation will be required. Ukraine can benefit from donor support as committed by WTO Members to build the capacity of its public sector and awareness of stakeholders.

Many of the aforementioned remaining reforms for conformity with the TFA have already been announced by the current government including AEO, Single Window, and joint border controls.
The most expensive reforms are those related to IT/web systems and infrastructure. Note however that most of these are not strict TFA requirements or required to some extent.

According to OECD, the costs of implementing all provisions of the TFA range from USD 5 to USD 25 Million. Ukraine has largely implemented over half of the TFA provisions. Note that donors, including WTO developed economies, are prepared to support developing countries and Least Developed Countries which are interested in achieving compliance with TFA within a reasonable period. According to OECD, around US 670 Million was committed in 2013 worldwide by donors for supporting trade facilitation reforms and border modernization. Ukraine can benefit from donor support to fully implement the WTO TFA.

The costs of acceptance of the TFA by Ukraine are essentially legal, institutional, and procedural reforms many of which have been completed by Ukraine and others are underway at various stages of preparation, development, and adoption. The reforms envisioned by Government of Ukraine are consistent with the provisions of the TFA, particularly those related to improving the business environment, streamlining government operations, and reducing corruption. In addition, most of the provisions of the TFA are consistent with Ukraine's commitments to implement the Revised Kyoto Convention standards of the World Customs Organization to which Ukraine is a signatory.

The implementation of the TFA will enable greater integration with EU countries in practical terms.

Implementation of the TFA should not be viewed as a cost but rather as an opportunity to modernize, improve the business environment, and reduce corruption.

Note further than none of TFA provisions present any concerns in connection with lack of current government control over certain border crossing points with the Russian Federation. The agreement states that WTO Members shall cooperate *to the extent possible* with other WTO Members with whom they share common borders.

Benefits of the WTO TFA

Generally speaking, the TFA improves, by reducing trading costs and delays, efficiency of border procedures and help in streamlining and cutting costs of government operations.

Exhibit 4 below summarizes the potential benefits of compliance with the WTO TFA provisions for Ukraine. Table 3 below list the key potential TFA benefits and corresponding TFA provisions.

Table 3 – Key Potential TFA Benefits and corresponding TFA Provisions

Potential Benefits	TFA Provisions	Out 0f 40
Reduction in corrupt practices	3, 4, 5.1, 5.2, 6.1, 6.2, 6.3, 7.1, 7.2, 7.3, 7.4, 7.5, 7.7, 7.8, 7.9, 8, 10.1, 10.3, 10.4, 10.8, 11, 12	22
Efficient government operations	2.2, 3, 5.1, 5.3, 6.1, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 8, 10.1, 10.2, 10.3, 10.4, 10.7, 12, 23.2	22
Reduction in clearance time and costs	3, 5.2, 6.1, 6.2, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 8, 10.1, 10.2, 10.3, 10.4, 10.5, 10.7, 11	21
Increase in transparency	1.1, 1.2, 1.3, 1.4, 2.1.a, 2.1.b, 2.2, 5.1, 5.3, 6.1, 6.3, 7.6, 7.9, 8, 10.1, 10.3, 10.4, 10.8, 23.2	19
Improvement in fiscal revenue	3, 4, 6.3, 7.1, 7.2, 7.3, 7.4, 7.5, 7.7, 9, 10.3, 10.4, 10.7, 12	14
Greater cooperation among stakeholders in private sector and public sector	1.3, 1.4, 2.1.a, 2.1.b, 2.2, 7.3, 7.4, 7.7, 8, 10.3, 10.4, 10.5, 23.2	13
Greater cooperation with other countries	1.3, 1.4, 2.1.a, 2.1.b, 2.2, 10.3, 10.7, 10.8, 11, 12	10

Source: Economic Integration Forum Inc.

There are 21 provisions which will contribute to reduction in clearance costs and time and 22 which will contribute reduction in opportunities for corruption. Reduction in clearance costs and time and corrupt practices will be benefit all Ukrainian producers (including farmers) who will reap tangible benefits from reduced steps and paperwork and rapid movement of perishable goods. Reduction in the cost of doing business will increase competitiveness of domestic producers by reducing costs of imports necessary for production and cost of exporting final goods. This will make Ukrainian products more competitive in international markets and increase exports. Additionally, increase in transparency will reduce opportunity costs for businesses.

There are 14 provisions which will contribute to improving fiscal revenue and 22 which will contribute to making government operations more efficient. Both will have positive impact for Ukraine's treasury.

The ratification and implementation of the TFA will dramatically contribute to Ukraine's aim to increase exports, attract investment, and integrate in EU Value Chains and Global Value Chains (GVCs). GVCs are critical for diversification of economies and increasing export. GVCs account for 80 per cent of global trade. Economic production linked to Global Value Chains has been enormous and on the rise during recent years. High trading costs and delays hinder he ability of Ukraine to participate in GVCs. Table 4 below provides a snapshot of economic growth production linked to GVCs in select countries.

Table 4 - Production Linked to Global Value Chains (in Billions of USD)

Country	1995	2008
China	277	1114
Czech Republic	14	41
India	114	229
Indonesia	83	113
Poland	33	86
Turkey	73	122
World	6,586	8,684

Source: G20 Estimates

Ukraine's ranking on trade issues by OECD and World Doing Business Indicators has been sliding and is not encouraging for international traders and investors alike. OECD's Trade Facilitation Indicators have ranked Ukraine overall at 0.94 in 2015 versus 1.35 in 2012 (scale of 0.0 to 2.0 with 2.0 being best).

Ukraine's rank under the Trading across Borders Indicators by the World Bank Doing Business Indicators was 154 out of total of 188 surveyed countries in 2014. During the same year, Ukraine ranked as 22 out of 26 neighboring countries in Central/Eastern European and CIS countries.

The ratification and implementation of the TFA by Ukraine will improve both OECD and World Bank Doing Business rankings for Ukraine and send a positive signal to the international trade and investment community that Ukraine has established an efficient and transparent trade environment with curtailed opportunities for corrupt practices.

World Experience

An OECD study estimated the reduction in trading costs by implementing the WTO TFA. According to OECD, the potential cost reduction from full implementation of the TFA is 16.5% of total costs for low income countries, 17.4% for lower-middle income countries, 14.6% for upper-middle income countries and 11.8% for OECD countries.

Table 5 - Trade Cost Reduction from Implementing certain Trade Facilitation measures

Trade Facilitation Measures	Trade Cost Reductions
Harmonizing and Simplifying Trade Documents	2.7%
Streamlining Border Procedures	2.2%
Automating Trade and customs Processes	2.1%
Making Trade–related Information Available	1.4%
Implementing Advance Rulings	1.5%
Total Savings	10%

Source: OECD

The benefits of trade facilitation reforms are apparent in certain economies according to OECD. For example:

- In Tunisia, a reduction in cargo delays from ten days to 3.3 days helped in generating over 50,000 jobs in the firmed benefiting from such reductions.

- In Costa Rica, single window helped in reducing clearance time for dairy products from 10 to 1.5 hours, and for agrochemicals from 27.5 to 2.2 hours.

Recent case studies collected by the WTO in connection with the 2015 Aid for Trade Global Review demonstrate specific benefits that have been realized by WTO members through implementation of measures of the type described by the TFA (WTO 2015). For example,

- Implementation of a *single window* system in a WTO Member country reduced clearance times from 2 days to less than one day and total declaration costs for authorized economic operators from $350 to $65.
- Potential benefits of implementation of *simplified cargo clearance processes* in terms of annual savings to the another WTO economy range between US$ 150 million and US$250 million during the first three years.
- Implementation of an enhanced *automated customs clearing system, an authorized operator scheme, and an electronic cargo tracking system* in another WTO country reduced the average time to clear and move goods from 18 days to 4 days, with resulting increase in trade volumes (e.g., fuel imports increased from 32.1 million liters to 108 million liters) and estimated total savings for business of US$373 million per annum.

Exhibit 1 – Summary of Level of Conformity with Notified Category A Provisions

Ukraine's Category A Provisions	Level of Conformity	Note
Article 1.1 Publication	Full	None
Article 1.2 Information Available Through Internet	Substantial	Information is not regularly updated or organized in an easy to access manner or at a centralized website It is desirable to publish information in a WTO language (preferably English)
Article 7.1 Pre-arrival Processing	Partial	Although pre-arrival and electronic declaration can be filed, Customs does not start processing until after arrival of goods.
Article 7.4 Risk Management (except for Article 7.4.1, Article7.4.2, Article7.4.3)	Partial	The legal framework is fully compliant. Ukraine has a good IT-based system for risk management which could be further modernized to include full supply chain coverage. The SFS needs to train its customs officers at border posts on using this system and encourage them to act in accordance with the outcome of automated risk assessment.
Article 7.7 Trade Facilitation Measures for Authorized Operators	Partial	The Customs Code provides an adequate level framework. There is a need to develop implementing procedures as called for in the Customs Code and establish an Authorized Economic Operators (AEO) program. Effort has been launched to develop a pilot AEO for a limited number of companies initially. It will be essential to build awareness of private sector on Ukraine's AEO pilot program once in place.
Article 7.8 Expedited Shipments	Full	None
Article 7.9 Perishable Goods (except for Article 7.9.1, Article7.9.2)	Partial	The text in the customs code is largely compliant. The main gap is that the Code provisions concerning the time period in which goods shall be released or refused clearance should be reviewed and, if necessary, clarified to ensure that the importer has a right to a written explanation in all cases where goods are not released within the prescribed period. Ukraine's SPS legislation adequately covers the handling of perishable goods. The state of the practice however by the Veterinary and Phytosanitary service is questionable. Significant delays are usually encountered by traders as result of unnecessary and complicated sampling and testing procedures at the border.
Article 8 Border Agency Cooperation	Article 8.1: Full Article 8.2: To the extent possible and practicable (partial)	With respect to Article 8.2, hours of border post operations are aligned with all neighboring countries. Procedures and formalities are aligned to some extent. There are joint controls at certain border crossing points with Moldova and Poland. There is no sharing of common facilities or one-stop border post control with any

Ukraine's Category A Provisions	Level of Conformity	Note
		of the neighboring countries. Note that Article 8.2 is to be implemented to extent possible and practicable. There is room however for improvement with friendly neighbors regarding harmonization of procedures and formalities and other joint controls, sharing of facilities and one-stop border controls.
Article 9 Movement of Goods under Customs Control Intended for Import	Full	None.
Article 10.8 Rejected Goods (except for Article 10.8.2)	Partial	The Customs Code and the Veterinary Medicine Law are compliant whereas the other laws (quarantine, market surveillance, and food safety) are not compliant with this provision.
Article 10.9 Temporary Admission of Goods/Inward and Outward Processing	Full	None.
Article 11 Freedom of Transit (except for Article11.3, Article11.4, Article11.5, Article11.6, Article11.7, Article 11.8, and Article 11.10)	Substantial	There is no national transit coordinator to whom all enquiries and proposals by other Members relating to the good functioning of transit operation can be addressed. The agreement states that Members "shall endeavor" to appoint a national transit coordinator.

Exhibit 2 – Suggested High Level Action Plan for Greater Conformity with Category A Provisions of Ukraine

Ukraine's Category A Provisions	Suggested Target Date	Action
Article 2.1 Information Available Through Internet	March 2016	• Upgrade and restructure the website of the Ministry of Economic Development and Trade to centralize all required information by the TFA with easy access and greater clarity • Make as much information as possible available in English
Article 7.4 Risk Management (except for Article 7.4.1, Article7.4.2, Article7.4.3)	June 2016	• Modernize Ukraine's IT risk management system to reflect full supply chain • Train field customs officers on proper use of the system • Amend the Customs Code to exempt customs officers from any liability in case of full reliance on the IT risk management system
Article 7.7 Trade Facilitation Measures for Authorized Operators	January 2016	• Develop required sub-legal acts to implement the Authorized Economic Operator (AEO) • Develop an AEO pilot program • Build awareness of private sector regarding Ukraine's AEO program
Article 7.9 Perishable Goods (except for Article 7.9.1, Article7.9.2)	December 2015	• Clarify that importers have a right to a written explanation in all cases where goods are not released within the prescribed period • Take necessary measures to ensure proper implementation of legislation and efficient clearance of perishable goods by the Veterinary and Phytosanitary service
Article 8 Border Agency Cooperation	June 2016	• With Hungary, Moldova, Poland, Romania, and Slovak Republic: • Harmonize fully customs documents and formalities • Gradually increase joint border cooperation with the aim toward a one-boder-stop and joint use of facilities at key border crossing points within 3-5 years.
Article 10.8 Rejected Goods (except for Article 10.8.2)	June 2016	Amend the following three laws to allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter: o Law on Safety and Quality of Food Products No. 771/97 of December 23, 1997 o Law on Plant Quarantine No. 33/48-XII of June 30, 1993 o Law On Market Surveillance and Control of Non-Food Products No. 2735-IV of December 2, 2010
Article 11 Freedom of Transit (except for Article11.3, Article11.4, Article11.5, Article11.6, Article11.7, Article 11.8, and Article 11.10)	December 2015	Appoint a national transit coordinator to whom all enquiries and proposals by other Members relating to the good functioning of transit operation can be addressed.

Exhibit 3 – Summary of Level of Conformity with Non-Category A TFA Provisions

Ukraine's non-Category A Provisions	Level of Conformity	Note
Article 1.3 Enquiry Points	Full	A centralized enquiry point, established by legislation, is operational at MEDT in line with WTO requirements.
Article 1.4 Notification	No[3]	This is a mere notification to the WTO Committee on Trade Facilitation as to where information under Article 1.1 is published, the link for internet website, and contact information for enquiry points. This is a simple requirement to meet.
Article 2.1a Opportunity to Comment	Full	There are legal requirements for opportunity to comment. The state of practice is positive.
Article 2.1b Information before Entry into Force	Substantial	The Customs Code and other trade framework laws (SPS and TBT laws) need to be amended to indicate the condition(s) under which related legal acts may come into force upon publication.
Article 2.2 Consultations	Substantial	Consultations between border agencies and traders/other stakeholders exist in practice but are not clearly required by law. There is a need to amend the Customs Code and SPS laws to impose positive obligation.
Article 3 Advance Rulings	Substantial	Minor amendments to the Customs Code are needed to revise the definition as who has the right to apply for advance rulings. In addition, clear information (procedural requirements) on advance rulings is not organized in an easy to read/access manner on SFS website. Although not strict TFA requirement, Ukraine may want to consider expanding advance rulings to cover valuation.
Article 4 Procedures for Appeal and Review	• Substantial: SFS • Partial: other border agencies	Customs: The Customs Code needs to be amended to provide reasons for adverse decisions or actions to enable persons to make an effective appeal. Other Border Agencies: Although all natural and legal persons have the right for access to administrative court under the Code of Administrative proceedings, administrative appeal is not provided to businesses by law. SVPS in practice allow admin appeal but to only provide clarifications with no authority to overrule border inspectors. There are no published practical procedures for administrative appeal. Although not required under the TFA, it is suggested for greater efficiency to establish web-based admin appeal processes

[3] One simple action is required.

Ukraine's non-Category A Provisions	Level of Conformity	Note
Article 5.1 Notifications for Enhanced Controls or Inspections	Substantial	SPS laws (veterinary medicine law, food law, and plant quarantine) need to be amended to require by law notifications to border posts and related rules and to require eliminations or suspension of measures/notifications when circumstances giving rise no longer exist, or if changed circumstances can be addressed in a less trade-restrictive manner.
Article 5.2 Detention	Partial	It is recommended that the Customs Code *specifically* require Customs to inform the importer or carrier if imported goods are detained for inspection by Customs or another authority. In addition, an administrative act defining conditions and content of the detention notice to be transmitted to declarant or representative whenever goods are stopped for inspection for a period longer permitted one under legislation. It is important to provide the importer more info in the notice - who stopped the goods (customs or other authority), reasons for stopping, contact person, date and time.
Article 5.3 Test Procedures	Partial	For SPS and TBT, the arbitration second tests must be taken at one designated state laboratory. A neutral laboratory is more appropriate for the second test. The Customs Code does not provide outright access to a second test. It is left to the discretion of customs. There are no provisions concerning publication of laboratories where second tests may be conducted or procedures where first and second test conflict. Although sampling methods and procedures in Ukraine are largely consistent with those recommended by international organizations, traders complain about excessive samples taken for testing. No second test is allowed for express tests for fresh fruits and vegetables at entry points.
Article 6.1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	Substantial	There are no provisions in any of the laws governing Ukraine's foreign trade regime (including the Customs Code and the Law on Foreign Trade Activity) which require periodic review of fees and charges and reducing their number and diversity. Although, it is a common practice to review fees from time to time taking into account inflation or operational changes, making a legal requirement will bind state bodies to periodically review fees including their reduction where appropriate.
Article 6.2 Specific Disciplines and Charges for Customs Processing Imposed on or in connection with	Partial	Although most fees appear to be reflective of approximate costs of services rendered, there is no legal requirement (except in the law of Economic Activity concerning import/export licensing) for setting fees reflective of costs of services

Ukraine's non-Category A Provisions	Level of Conformity	Note
Importation and exportation		rendered. Al existing fees need to be evaluated using best accounting practices to ensure that fees are reflective of approximate costs of services rendered.
Article 6.3 Penalty Disciplines	Partial	There is a need to clarify in the Customs Code that fine amounts are maximums and that Customs shall determine fine amounts commensurate with facts and circumstances of individual cases, subject to that maximum. There is need to clarify in the Customs Code that a prior voluntary disclosure, as defined in the TFA, shall be taken as a mitigating factor in determining amounts of administrative fines.
Article 7.2 Electronic Payments	Full	Ukraine has an operational system for payments of duties, taxes, and fees via banks
Article 7.3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges	Substantial	The guarantee is only allowed for the difference in customs value estimated by declarant (or representative) and that estimated by Customs. There is no legal requirement as to the period for discharging the guarantee.
Article 7.5 Post-Clearance Audit	Partial	The legal framework needs minor amendments to use audit results in risk assessment. However no post-clearance audit unit has been established within Customs and no system has been put in place including appropriate database, audit scheduling and tracking system, and reporting system
Article 7.6 Establishment and Publication of Average Release Times	No	Ukraine does not have by law or in practice a system for computing/tracking average release time.
Article 10.1 Formalities and Documentation Requirements	Substantial	Although it is performed in practice, Ukraine needs to include provisions in its key laws to require periodic reviews, analyses, and surveys of stakeholders with the aim of continuously improve and reduce/streamline trade formalities and documents. There are no legal requirements to have the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question.
Article 10.2 Acceptance of Copies (2.1)	Partial	There is a limited acceptance of copies (only if certified). On most cases however, originals are required including SPS certificates.
Article 10.2 Acceptance of Copies (2.2)	No	The Customs Code should not require the declarant to provide a copy of the customs export declaration submitted to the country of departure, including in cases where there is doubt about the declared customs value. The TFA requires that needed information should be sought through Customs- Customs

Ukraine's non-Category A Provisions	Level of Conformity	Note
		Cooperation.
Article 10.3 Use of International Standards	Full	Ukraine follows standards and participates in the work of the World Customs Organization and other international organizations
Article 10.4 Single Window	Partial	There is a need to develop the legal basis for single window to mandate and allow cooperation and sharing/exchange of information among customs and other border agencies. The current single window pilot needs to be further developed to ensure compatibility and integration with Ukraine's customs IT system (Single Automated Information System).
Article 10.5 Preshipment Inspection	N/A[4]	N/A
Article 10.6 Use of Customs Brokers	Full	The use of customs brokers is not mandatory in Ukraine
Article 10.7 Common Border Procedures and Uniform Documentation Requirements	Full	The Customs Code provides a legal basis to enforce uniform and consistent application of the customs laws throughout the customs territory, in accordance with the requirements of the TFA measure. In practice, Ukraine applies common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.
Article 12 Customs Cooperation	Substantial	The Customs Code might be improved by permitting Customs to exchange information with other customs administrations, on request, subject to agreements ensuring protection of confidential information. Some fine tuning to the Customs Code may be necessary to fully align with TFA Article 12.
Article 23.2 National Committee on Trade Facilitation	No	Ukraine needs to formally establish its National Committee on Trade Facilitation with clear mandate from the Government to coordinate and ensure implementation of this agreement.

[4] Ukraine does not have or intend to have mandatory Preshipment Inspection.

Exhibit 4 – Summary of Potential Benefits from Implementing the WTO TFA Provisions[5]

TFA Provisions	Potential Benefits
Article 1.1 Publication	Increase in transparency
Article 1.2 Information Available Through Internet	Increase in transparency
Article 1.3 Enquiry Points	• Increase in transparency • Greater cooperation among stakeholders in private sector and public sector • Greater cooperation with other countries
Article 1.4 Notification	• Increase in transparency • Greater cooperation among stakeholders in private sector and public sector • Greater cooperation with other countries
Article 2.1a Opport`unity to Comment	• Increase in transparency • Greater cooperation among stakeholders in private sector and public sector • Greater cooperation with other countries
Article 2.1b Information before Entry into Force	• Increase in transparency • Greater cooperation among stakeholders in private sector and public sector • Greater cooperation with other countries
Article 2.2 Consultations	• Efficient government operations • Increase in transparency • Greater cooperation among stakeholders in private sector and public sector • Greater cooperation with other countries.
Article 3 Advance Rulings	• Reduction in clearance time and costs • Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations
Article 4 Procedures for Appeal and Review	• Reduction in corrupt practices • Efficient government operations
Article 5.1 Notifications for Enhanced Controls or Inspections	• Reduction in corrupt practices • Efficient government operations

[5] Grey color are Ukraine's Category A provisions.

	• Increase in transparency
Article 5.2 Detention	• Reduction in clearance time and costs • Reduction in corrupt practices • Efficient government operations • Increase in transparency
Article 5.3 Test Procedures	• Reduction in clearance time and costs • Reduction in corrupt practices • Efficient government operations • Increase in transparency.
Article 6.1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	• Reduction in clearance time and costs • Reduction in corrupt practices • Efficient government operations • Increase in transparency
Article 6.2 Specific Disciplines and Charges for Customs Processing Imposed on or in connection with Importation and exportation	• Reduction in clearance time and costs • Reduction in corrupt practices
Article 6.3 Penalty Disciplines	• Improvement in fiscal revenue • Reduction in corrupt practices • Increase in transparency
Article 7.1 Pre-arrival Processing	• Reduction in clearance time and costs • Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations
Article 7.2 Electronic Payments	• Reduction in clearance time and costs • Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations
Article 7.3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges	• Reduction in clearance time and costs • Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations

	• Greater cooperation among stakeholders in private sector and public sector
Article 7.4 Risk Management	• Reduction in clearance time and costs • Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations • Greater cooperation among stakeholders in private sector and public sector.
Article 7.5 Post-Clearance Audit	• Reduction in clearance time and costs • Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations
Article 7.6 Establishment and Publication of Average Release Times	• Reduction in clearance time and costs • Efficient government operations • Increase in transparency.
Article 7.7 Trade Facilitation Measures for Authorized Operators	• Reduction in clearance time and costs • Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations • Greater cooperation among stakeholders in private sector and public sector
Article 7.8 Expedited Shipments	• Reduction in clearance time and costs • Reduction in corrupt practices • Efficient government operations
Article 7.9 Perishable Goods	• Reduction in clearance time and costs • Reduction in corrupt practices • Efficient government operations • Increase in transparency.
Article 8 Border Agency Coordination	• Reduction in clearance time and costs • Reduction in corrupt practices • Efficient government operations • Increase in transparency • Greater cooperation among stakeholders in private sector and public sector
Article 9 Movement of Goods under Customs Control	Improvement in fiscal revenue

Intended for Import	
Article 10.1 Formalities and Documentation Requirements	• Reduction in clearance time and costs • Reduction in corrupt practices • Efficient government operations • Increase in transparency
Article 10.2 Acceptance of Copies	• Reduction in clearance time and costs • Efficient government operations
Article 10.3 Use of International Standards	• Reduction in clearance time and costs • Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations • Increase in transparency • Greater cooperation among stakeholders in private sector and public sector • Greater cooperation with other countries
Article 10.4 Single Window	• Reduction in clearance time and costs • Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations • Increase in transparency • Greater cooperation among stakeholders in private sector and public sector
Article 10.5 Preshipment Inspection	N/A
Article 10.6 Use of Customs Brokers	• Reduction in clearance time and costs • Greater cooperation among stakeholders in private sector and public sector
Article 10.7 Common Border Procedures and Uniform Documentation Requirements	• Reduction in clearance time and costs • Improvement in fiscal revenue • Efficient government operations • Greater cooperation with other countries.
Article 10.8 Rejected Goods	• Reduction in corrupt practices • Increase in transparency • Greater cooperation with other countries.
Article 10.9 Temporary Admissions of Goods/inward	N/A

and Outward Processing	
Article 11 Freedom of Transit	• Reduction in clearance time and costs • Reduction in corrupt practices • Greater cooperation with other countries
Article 12 Customs Cooperation	• Reduction in corrupt practices • Improvement in fiscal revenue • Efficient government operations • Greater cooperation with other countries.
Article 23.2 National Committee on Trade Facilitation	• Efficient government operations • Increase in transparency • Greater cooperation among stakeholders in private sector and public sector

Source: Economic Integration Forum Inc.

ANALYSIS

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

1.1 PUBLICATION

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them:

(a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;

(b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

(c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(d) rules for the classification or valuation of products for customs purposes;

(e) laws, regulations, and administrative rulings of general application relating to rules of origin;

(f) import, export or transit restrictions or prohibitions;

(g) penalty provisions for breaches of import, export, or transit formalities;

(h) procedures for appeal or review;

(i) agreements or parts thereof with any country or countries relating to importation, exportation, or transit; and

(j) procedures relating to the administration of tariff quotas.

1.2 Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

The Law of Ukraine on Access to Public Information No.2939-VI of January 13, 2011 provides that information shall be regularly and promptly disclosed in official publications and on official websites.

The information required for publication under Article 1.1 must be contained in laws and other legal acts. These come into force after mandatory publication in Ukrainian language:

- Laws must be published in the Official Gazette of Ukraine and newspaper "Voice of Ukraine", "Vidomosti of the Verkhovna Rada of Ukraine
- Cabinet of Ministers of Ukraine (CMU) resolutions must be published in Governmental Courier newspaper
- Presidential Decrees must be published in the Official Gazette of the President of Ukraine
- Ministerial Orders must be published in Governmental Courier
- International agreements or parts thereof must be published in Official Gazette of Ukraine and the Collection of Effective International Treaties of Ukraine (Ministry of Foreign Affairs)

The publication of legislation is required by the Presidential Decree of Ukraine on the Order of the Official publication of Legal Acts and their Entry Into Force No. 503/97 of June 10, 1997. Before the official

publication, legislation is subject to state registration by the Ministry of Justice. All legal acts of Ukraine shall be published in the official publications no later than fifteen days after adoption.

The Law of Ukraine On International Treaties of Ukraine No. 1906-IV of June 29, 2004 requires the publications of international treaties.

Access to these publications is widely available without any discrimination.

Below is a summary of key legal acts where the information required for publication under TFA Article 1.1 can be found:

(a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents. Key legislation include:

- Customs Code of Ukraine No. 4495-VI of March 13, 2012
- Law on Foreign Economic Activities No. 959-XII of April 16, 1991
- Order of Ministry of Finance "On Customs Formalities" No. 657 of May 31, 2012
- Order of Ministry of Finance "On Customs Declarations" No. 651 of May 30, 2013
- Order of Ministry of Finance "On Single Administrative Document" No. 631 of May 30, 2013
- Law on Safety and Quality of Food Products No. 771/97 of December 23, 19976
- Law on Veterinary Medicine No. 24/98-XII of June 25, 1992
- Law on Plant Quarantine No. 33/48-XII of June 30, 1993
- Order of State Department of Veterinary Medicine, Ministry of Agrarian Policy of Ukraine On Veterinary Requirements to Import into Ukraine of Objects of State Veterinary - Sanitary Control and Supervision No. 71 of June 14, 2004
- CMU Resolution "On Issues related to the customs declarations" No. 450 of May 21, 2012;
- CMU Resolution On Some Issues related to Provision of Services by the State Veterinary and Phytosanitary Service of Ukraine, Bodies and Institutions within its Administration No. 1348 of December 28, 2012
- Law on Technical Regulations and Conformity Assessment No. 124-VIII of January 15, 2015
- Law on Transit of Cargoes No. 1172-XIV of October 20, 1999

(b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation. Key legislation include:

- Tax Code of Ukraine No. 2755-VI of December 2, 2010 (concerning taxes)
- Law on Customs Tariff of Ukraine No. 584-VII September 19, 2013 (concerning duties)

(c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit. Key legislation include:

- CMU Resolution on Charges for Customs Formalities Carried outside Location of Customs Houses No. 93 of January 18, 2003
- Order of Customs Service On Procedure for Collecting Fee for Storage of Goods and Transportation Vehicles at Customs Warehouses and Introduction of Changes to Some Decrees of State Customs Service of Ukraine No. 821 of July 29, 2008

[6] This was recently amended by Law of Ukraine "On Quality and Safety of Food Products" No. 1602-VII of July 22, 2014 (to come into force on September 20, 2015)

- CMU Resolution On Some Issues related to Provision of Services by the State Veterinary and Phytosanitary Service of Ukraine, Bodies and Institutions within its Administration No.1348 of December 28, 2012
- CMU Resolution of June 9, 2011 No. 641 "On the List of Administrative Services provided by State Veterinary and Phytosanitary Service, Agencies and Institutions under its Jurisdiction, and Charged Fees"
- Order of the Ministry of Agrarian Policy and Food of Ukraine of 13.02.2013 No.96 "On Approving the Fees for Services on Veterinary Medicine, Plant Protection, Protection of Plant Varieties' Rights Provided by Agencies and Institutions under the Jurisdiction of State Veterinary and Phytosanitary Service of Ukraine"
- CMU Resolution of August 27, 2003 No. 1351 "On Approving the Tariffs (fees) for Works and Services Provided and Rendered by Institutions and Establishments of Sanitary-Epidemiological Service
- CMU Resolution of October 15, 2002 No.1544 "On Approving the List of Works and Services in the Sphere of Ensuring Sanitary and Epidemiological Welfare of Population and Charged Fees Thereof"
- CMU Resolution on Amendments to Some CMU Resolutions concerning Ecological Control at the Check Points across the State Border No.704 of June 28, 1997
- Order of the Ministry of Agrarian Policy On Approval of Phytosanitary Rules of Importation from Abroad, Transportation Inside the Country, Transit, Exportation, Procedure for Processing and Sale of Materials Subject to Phytosanitary Control No. 414 of August 23, 2005
- Order of the Ministry of Agrarian Policy and Food of Ukraine On Approval of Instructions of Completion, Storage, Cancellation of Veterinary Documents and Requirements to their Recording No. 288 of August 1, 2014
- Order of the Ministry of Infrastructure of Ukraine on Port Fees No. 316 of 27.05.2013
- Order of State Standards Committee On Rules for Calculation of Fees for Works on Certification of Goods and Services No. 100 of March 10, 1999

(d) rules for the classification or valuation of products for customs purposes. Key legislation include:

- Customs Code of Ukraine No. 4495-VI of March 13, 2012 (concerning valuation)
- Law on Customs Tariff of Ukraine No.584-VII September 19, 2013 (concerning classification)
- CMU Resolution On regulation of Customs Declaration No. 450 of May 21, 2012
- Order of Customs Service On guidelines for the work of customs officials from the analysis, identification and assessment of risks in accuracy control of customs value of goods crossing the customs border of Ukraine No. 362 of July 13, 2012
- Order of Customs Service On the approved decision on the adjustment of customs valuation, rules of filling a decision on the adjustment of customs value and additional components to the contract price No. 598 of May 24, 2012
- Order of Customs Service On approval of the declaration of customs value and rules for filling No. 599 of May 24, 2012
- Order of Ministry of Income and Charges On approval of the explanations for Ukrainian goods classification of foreign economic activity No. 15 of January 14, 2014

(e) laws, regulations, and administrative rulings of general application relating to rules of origin. Key legislation include:

- Customs Code of Ukraine No. 4495-VI of March 13, 2012

- CMU Resolution On the procedure for establishing and applying ad valorem rules No. 1765 of December 20, 2006
- CMU Resolution On approval of the verification of certificates of origin from Ukraine No. 1861 of December 12, 2002
- Order of Ministry of Finance On approval of procedure for acceptance, recall the preliminary decision of the country of origin, approval of the form of preliminary decision on the country of origin No. 737 of June 19, 2002

Administrative rulings of general nature relating to rules of origin are registered at Ministry of Justice and published in newspaper Government Courier

(f) import, export or transit restrictions or prohibitions. Key legislation include:

- CMU Resolution On approval of list of goods export and import subject to licensing and quotas (issued once per year) No. 1 of January 14, 2015
- CMU Resolution On approval of lists of goods, which have restrictions to cross the customs border of Ukraine No. 436 of May 21, 2012
- Law on Transit of Cargoes No. 1172-XIV of October 20, 1999
- Law on Safety and Quality of Food Products No. 771/97 of December 23, 1997
- Law on Veterinary Medicine No. 24/98-XII of June 25, 1992
- Law on Plant Quarantine No. 33/48-XII of June 30, 1993
- Law On Narcotic Drugs, Psychotropic and Substances and Precursors No. 60/95-BP of February 15,1995

(g) penalty provisions for breaches of import, export, or transit formalities. Key legislation include:

- Customs Code of Ukraine No. 4495-VI of March 13, 2012
- Tax Code of Ukraine No. 2755-VI of December 2, 2010
- Criminal Code of Ukraine No. 2341-III of April 5, 2001
- Code on Administrative Offenses of Ukraine No. 8073-X of December 07, 1984

(h) procedures for appeal or review. Key legislation include:

- Customs Code of Ukraine No. 4495-VI of March 13, 2012 (concerning customs procedures - administrative appeal and administrative court[7])
- Tax Code of Ukraine No. 2755-VI of December 2, 2010 (concerning customs duties and taxes – administrative appeal and administrative court)
- Law on Application of Citizens No. 393/96 dated October 2, 1996 (concerning administrative appeal re any action taken by state bodies)
- Code of Administrative proceedings No. 2747-IV of July 06, 2005 (concerning administrative courts)
- Article 55 of the Constitution of Ukraine provides the right to challenge the decisions, actions or omissions of public authorities, local governments, their officials and officers. (concerning administrative court).

Note that these legal acts provide rights for appeal or review. There are however no practical procedures developed by Ukraine for various administrative appeal processes or a web-based appeal process. These

[7] Challenges acts of state bodies.

should be addressed as part of compliance with TFA Article 4 which will fall under Category B or C.

(i) agreements or parts thereof with any country or countries relating to importation, exportation, or transit. Key legislation include:

- Texts are available through the Ministry of Foreign Affairs Collection of Effective International Treaties of Ukraine
- Regional trade agreements available on the website of Ministry of Economic Development and Trade (http://www.me.gov.ua/Documents/MoreDetails?lang=uk-UA&title=RegionalniTorgovelniUgodi)

(j) procedures relating to the administration of tariff quotas. Key legislation include:

- Order of Ministry of Finance on Approval of Order of Control and Allocation of Tariff Quota No. 1203 of December 11, 2014

***

1.2 INFORMATION AVAILABLE THROUGH INTERNET

2.1 Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:

(a) a description[8] of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested parties of the practical steps needed for importation, exportation, and transit;

The Law of Ukraine on Access to Public Information No.2939-VI of January 13, 2011 provides that information shall be regularly and promptly disclosed in official publications and on official web sites.

Procedures for importation, exportation, and transit are adopted in laws and other legal acts as mentioned under Article 1.1 above. Note that relevant laws (see Section I above; item 1.2.h) provide the rights for appeal or review. There are however no practical procedures developed by Ukraine for various administrative appeal processes or web-based appeal process. These should be addressed as part of compliance with TFA Article 4 which will fall under Category B or C.

Ukraine has a centralized database where the texts of all laws, Cabinet of Ministers resolutions, presidential decrees, ministerial orders are available through internet. This centralized website is administered by the Verkhovna Rada. (rada.gov.ua) – Legislation page.

CMU Resolution on the Procedure for Promulgation in the Internet of Information on Activities of Executive Authorities No. 3 of January 4, 2002 provides for the establishment of single governmental portal (http://www.kmu.gov.ua). It further requires that central and local bodies of executive power disclose the information of their activities and adopted public documents on official websites. The governmental portal provides links to websites of ministries and state bodies.

The following websites provides access to procedures for importation, exportation, and transit:

[8] Each Member has the discretion to state on its website the legal limitations of this description

- Website of Ministry of Economic Development and Trade of Ukraine (http://www.me.gov.ua/Tags/DocumentsByTag?lang=ukUA&tag=ZovnishnoekonomichnaDiialnist) regarding trade procedures.
- Website of State Fiscal Service of Ukraine (http://sfs.gov.ua/baneryi/mitne-oformlennya/subektam-zed/) regarding customs procedures.
- Website of State Veterinary and Phytosanitary Service of Ukraine (http://www.vet.gov.ua/resetreksport) regarding veterinary, phytosanitary, and food safety procedure)

The information however is not organized in an easy to access manner or centralized at one website.

(b) the forms and documents required for importation into, exportation from, or transit through the territory of that Member;

- Website of Ministry of Economic Development and Trade of Ukraine (http://www.me.gov.ua/Tags/DocumentsByTag?lang=ukUA&tag=ZovnishnoekonomichnaDiialnist) regarding licensing and registration forms.
- Website of the State Fiscal Service of Ukraine (http://sfs.gov.ua/elektronni-formi-dokumentiv/mito/) regarding customs import, export and transit forms.
- Website of State Veterinary and Phytosanitary Service of Ukraine (http://vet.gov.ua/node/672, http://vet.gov.ua/node/1204) regarding veterinary and Phytosanitary certificates.

(c) contact information on its enquiry point(s).

Ukraine has a centralized WTO enquiry and notification Point at the Ministry of Economic Development and Trade (Center for Processing of Requests and Notifications of the WTO and its Countries' Members- the "Center") which responds to enquiries in accordance with Ukraine's obligations to the WTO and requirements in the WTO agreements. The Center coordinates with other ministries. The link to the Center is provided at the Ministry of Economic Development Website: http://www.me.gov.ua/Documents/MoreDetails?lang=uk-UA&title=ObrobkaZapitivINotifikatsiiSot. Contact details (name, address, phone, fax, email address) on Ukraine's enquiry point are posted on the website of the Ministry of Economic Development and Trade.

2.2 Whenever practicable, the description referred to in subparagraph 2.1(a) shall also be made available in one of the official languages of the WTO.

None of the websites provides information in English. Although this is not a strict requirement for conformity with the WTO TFA, publishing in a WTO language (preferably English) the information under subparagraph 2.1 (a) will increase transparency for greater trade with WTO Members.

2.3 Members are encouraged to make available further trade-related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

This is largely covered as explained under 1.2.1 above.

***

1.3 ENQUIRY POINTS

3.1 Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested parties on

matters covered by paragraph 1.1 and to provide the required forms and documents referred to in subparagraph 1.1(a).

Ukraine has a centralized WTO enquiry and notification Point at the Ministry of Economic Development and Trade (Center for Processing of Requests and Notifications of the WTO and its Countries' Members- the "Center") which responds to enquiries in accordance with Ukraine's obligations to the WTO and requirements in the WTO agreements. The Center coordinates with other ministries.

3.2 Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

Not applicable presently for Ukraine.

3.3 Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of their fees and charges to the approximate cost of services rendered.

Ukraine does not charge any fees for responding to WTO related enquiries.

3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

The time limits and procedures for replying to enquiries are guided by WTO documents including:

- G/TBT/1/Rev.11 Committee on Technical Barriers to Trade – Decisions and recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995 – Note by the Secretariat – Revision
- G/SPS/33 Committee on Sanitary and Phytosanitary Measures – Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members - Decision by the Committee – 27 October 2004
- WT/L/671 General Council – Transparency Mechanism for Regional Trade Agreements – Decision of 14 December 2006

***

1.4 NOTIFICATION

Each Member shall notify the Committee on Trade Facilitation established under paragraph 1.1 of Article 23 (referred to in this Agreement as the "Committee") of:

(a) the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published;

(b) the Uniform Resource Locators of website(s) referred to in paragraph 2.1; and

(c) the contact information of the enquiry points referred to in paragraph 3.1.

Ukraine intends to centralize the information concerning items in subparagraphs 1.1(a) to (j) on the website of the Ministry of Economic Development and Trade.

This is a mere notification to the WTO Committee on Trade Facilitation as to where information under Article 1.1 is published, the link for internet website, and contact information for enquiry points. Ukraine may notify on such items as soon as possible.

***

ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE, AND CONSULTATIONS

2.1 OPPORTUNITY TO COMMENT AND INFORMATION BEFORE ENTRY INTO FORCE

1.1 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit.

The TFA measure requires that traders and other interested parties be given an opportunity and an appropriate time period to comment on the proposed introduction or amendment of laws and regulations relating to movement, release and clearance of goods.

Article 9 of the Law on the Principles of Regulatory Policy in Economic Activity № 1160-IV dated September 11, 2003 requires publication of draft regulatory acts (laws, resolutions, orders) to obtain comments and suggestions. Each draft regulatory act shall be published in order to receive comments and suggestions from individuals and legal entities, and their associations. Notice on the publication of the draft regulatory act in order to obtain comments and suggestions shall be published in official mass media and webpage of the developer (Ministry, Government or Parliament).

The draft regulatory act together with corresponding analysis, including regulatory impact assessment, shall be published no later than five working days after publication of the notice of the publication of the draft regulatory act. The Notice of publication of the draft regulatory act must contain:

- a summary of the content of the draft;
- postal and e-mail, if available, for the developer of the draft in order to send comments and suggestions;
- information about the publication of the draft regulatory act and appropriate regulatory impact analysis (mass media and / or webpage);
- information on the period during which comments are accepted and suggestions from individuals and legal entities, and their associations; and
- information on how to provide comments and suggestions by physical and legal persons, and their associations.

The period for the comments and suggestions shall not be less than one month and more than three months from the date of publication of the draft regulatory act and the relevant regulatory impact analysis. All comments and suggestions on the draft regulatory act and appropriate regulatory impact analysis obtained during the deadline are subject to mandatory review by developer of the draft. Publication of the draft regulatory act in order to obtain comments and suggestions does not substitute for public hearings and any other form of open discussions of the draft regulatory act.

The Law of Ukraine "On Rules of Procedure of the Verkhovna Rada" № 1861-VI of February 10, 2010 provides detailed procedure on development, publication of drafts (Verkhovna Rada website), regulatory and legal analysis, introduction of comments and amendments for the 3 readings and adoption of the laws (Article 89 - 140). The comments and amendments to the draft law are evaluated in the relevant parliamentary committee and then can be considered in the parliamentary hearing.

CMU Resolution "On Ensuring the Involvement of Civil Society in Elaboration and Exercising State Policy" No. 996 of November 3, 2010 requires ministries and other state bodies of executive power to consult with civil society in the form of public discussions regarding draft regulatory acts. CMU Resolution No. 996 of November 3. 2010 applies to any draft legislation developed by the state bodies of executive power, which includes draft laws, regulations, resolutions, orders, decrees etc.

All aforementioned legislation are properly applied in Ukraine.

1.2 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

The TFA measure requires new and amended laws and regulations concerning movement, release and clearance of goods to be published or information about them to be made publicly available, as early as possible before their entry into force. Exceptions can be made for changes to duty rates, measures that have a "relieving effect" (*e.g.*, provide benefits/reduce burdens), measure required for urgent circumstances, minor changes, and measure that would be undermined if announced in advance.

Article 2 of the Customs Code states that customs laws and customs regulations issued by the Cabinet and central executive authority come into force 45 days after their official publication. However, this article also provides that the law or regulation can provide otherwise, and that such laws and regulations may enter into force directly upon publication.

The Customs Code does not specify the conditions under which the government may enforce a new or changed law or regulation directly upon publication. In addition, there is no official interpretation of this clause. In practice, customs legislation comes into force 45 days after publication unless otherwise stated in the adopted legislation.

The Constitution of Ukraine and the Presidential Decree of Ukraine " On the Order of the Official publication of Legal Acts and their Entry Into Force" No. 503/97 dated June 10, 1997 both provide that normative acts shall enter into force in 10 days after its the official publication unless otherwise specified in the normative act.

There are no provisions in SPS and TBT related laws or the Law on Foreign Economic Activities stipulating a minimum period for coming into force after the publication of legislation related to SPS ad TBT. In practice, trade related legislation including SPS and TBT comes into effect in 10 days after publication unless otherwise provided in the new legislation.

Ukraine generally confirms to this requirement. For greater transparency and predictability, it would be necessary to introduce amendments to trade related laws to specify the conditions as to when legal acts under each respective area may come into force upon publication.

1.3 Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraphs 1.1 or 1.2, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from paragraphs 1.1 and 1.2.

There is no obligation under this clause.

***

2.2 CONSULTATIONS

2.1 Each Member shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.

A clear obligation on the part of Customs to hold regular consultations with its stakeholders is not set out in the Code.

Article 19 requires Customs to "inform all the persons concerned on the application of customs rules as prescribed by law." This provision – which may require only that Customs respond to requests for information - does not fully comply with the intention of the TFA measure. The intention is that Customs shall have a positive obligation to engage with its stakeholders, and do so on a regular basis.
However, to ensure proper implementation of TFA and avoid doubts, Article 19 might be modified to impose a positive obligation on Customs authorities to consult with their stakeholders on a "regular" basis.

Modify Article 19 to impose a clear obligation on Customs to consult with its stakeholders on a regular basis.

In practice, however, a Public Council at the State Fiscal Service exists within the SFS and involves representatives from private sector. According to the Rules[9] of Procedure of November 11, 2014 the Public Council meets on a regular quarterly basis, and as needed to discuss any changes to or new legislation, policies and strategies (including customs clearance issues raised by traders). The notices of the composition, work and agenda of the Public Council are published at the homepage of the SFS http://www.sfs.gov.ua/pro-sfs-ukraini/gromadska-rada. The decisions of the Public Council are mandatory for consideration of the SFS. CMU Resolution No. 996 of November 3, 2010 "On ensuring of public participation in the formulation and implementation of state policy" makes all the decisions of public councils mandatory for consideration of its oversight state authorities.

The Public Council at State Veterinary and Phytosanitary Service of Ukraine was established according to Rules/procedures (posted at http://vet.gov.ua/node/162) which are not formally signed by the Head of SVPS. It is a standing advisory body established for coordination activities related to organization of public control and cooperation of NGOs with the State Veterinary and Phytosanitary Service of Ukraine, ensuring transparency of activities of SVPS, taking into account public opinion in preparation and implementation of

[9] Rules are not legally binding and are valid only for Public Council.

decisions of SVPS. The public council meets as needed but not less frequently than once every three months. Ad hoc meetings of Public Council can be called on the initiative of one third of members.

***

ARTICLE 3: ADVANCE RULINGS

3.1 Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

3.2 A Member may decline to issue an advance ruling to the applicant where the question raised in the application:

- **(a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or**
- **(b) has already been decided by any appellate tribunal or court.**

3.3 The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts, or circumstances supporting that ruling have changed.

3.4 Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

3.5 An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.

3.6 Each Member shall publish, at a minimum:

- **(a) the requirements for the application for an advance ruling, including the information to be provided and the format;**
- **(b) the time period by which it will issue an advance ruling; and**
- **(c) the length of time for which the advance ruling is valid.**

3.7 Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling.[10]

[10] Under this paragraph: (a) a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and (b) a Member is not required to provide the applicant with recourse to paragraph 1 of Article 4.

3.8 Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

3.9 Definitions and scope:

(a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:

(i) the good's tariff classification; and
(ii) the origin of the good.[11]

(b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on:

(i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
(ii) the applicability of the Member's requirements for relief or exemption from customs duties;
(iii) the application of the Member's requirements for quotas, including tariff quotas; and
(iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.

(c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.

(d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

Ukraine is substantially compliant with the TFA provisions on advance rulings. These provisions are mainly reflected in Article 23 of the Customs Code of Ukraine. In addition, the following Ministry of Finance Orders support the implementation of these provisions:

- Ministry of Finance Order "On Approving the Procedure for Issuing, Revoking of Advance Rulings on the Country of Origin of Goods, Approval of the Form of Advance Rulings on the Country of Origin of Goods" No. 737 of June 19, 2012; and
- Ministry of Finance Order "On Approving the Procedure for Operation of Division on Customs Charges, Division on Customs Clearance of the Customs Body and Customs Post Addressing the Issues of Classification of Goods Moved across the Customs Border of Ukraine" No. 650 dated May 30, 2012.

Article 23 of the Customs Code authorizes the issuance of advance rulings on request.

[11] It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Agreement on Rules of Origin in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

Consistent with the TFA, **Article 2**3 provides:

- the ruling shall be issued prior to importation of the goods (Article 23.1)
- the ruling will be binding on Customs (Article 23.2)
- the subject matter of the ruling includes tariff classification of goods and country of origin of goods; in addition, rulings may be issued on questions of authorization to place goods under a customs procedure (Article 23.4)
- rulings shall be issued within 150 days in the case of country of origin issues, and 30 days in other cases, with the possible extension of up to 15 days (Article 23.5)12
- rulings shall remain valid for three years (Article 23.6)
- where rulings are revoked or modified, Customs is required to provide written notice, and such revocation shall not have retroactive effects unless the ruling incorrect material information provided by the applicant (Arts.7-11)
- rulings shall be published, other than information that is deemed confidential (Article 23.12)

In addition, the Code specifically authorizes the central executive authority to establish the form and procedures for advance rulings (**Article 23.1**).

The Code provisions on appeal (see **Article 4**, below) generally provide a right of appeal to any person who believes that a decision, including rulings, or omission by Customs "infringes his rights, freedoms or interests." These would appear to allow appeals to be made against Customs rulings, refusal to issue a ruling, or a decision to revoke a ruling consistent with the TFA.

On the other hand, the Code provides that only "declarants" or persons acting in their name may apply for the ruling. Technically, this appears to be incorrect, as a declarant is defined as the person who makes the declaration, whereas an advance ruling is requested before the declaration is made (and, it may be that depending on the results of the ruling, no declaration will be made and therefore no "declarant" will exist).

Moreover, the TFA defines the applicant more expansively as "an exporter, importer or any person with a justifiable cause or a representative thereof." This expansive definition might include not only the declarant of the goods, but other persons with a direct interest in the import or export transaction, such as the ultimate consignee or purchaser.

Ukraine's SFS presently issues advance rulings only on classification and country of origin. There is no specific unit at SFS dealing with advance rulings. These are handled by Unit on Customs Duties.

Persons who may apply for advance rulings are limited to "declarants" or their representatives. There is need to expand definition in Article 2.1 of persons who may apply for advance rulings to include an exporter, importer or any person with a justifiable cause or a representative thereof.
For greater transparency, create a webpage on SFS website centralizing and detailing requirements and procedures for advance rulings with a facility to submit e-application for advance rulings. The following should be available on this webpage:

- the requirements for the application for an advance ruling, including the information to be provided and the format;
- the time period by which it will issue an advance ruling; and
- the length of time for which the advance ruling is valid.

[12] The different periods may be due to differences in the WTO agreements

The TFA encourages members to provide advance rulings related to valuation, exemption from customs duties, tariff quotas, and other matters that members consider appropriate. Ukraine does not currently provide advance ruling with respect to these areas. Although not mandatory under the TFA, providing advance rulings on valuation will speed up clearance, reduce disputes, reduce corruption with valuation, and improve collection of customs duties and taxes. It is recommended that consider extending current advance ruling to cover customs valuation.

***

ARTICLE 4: PROCEDURES FOR APPEAL OR REVIEW

4.1 Each Member shall provide that any person to whom customs issues an administrative decision[13] has the right, within its territory, to:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;

and/or

(b) a judicial appeal or review of the decision.

4.2 The legislation of a Member may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

4.3 Each Member shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

4.4 Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:

(a) within set periods as specified in its laws or regulations; or

(b) without undue delay

The petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.[14]

4.5 Each Member shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review where necessary.

---

[13] An administrative decision in this Article means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Member's domestic law and legal system. For addressing such failure, Members may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1(a).

[14] Nothing in this paragraph shall prevent a Member from recognizing administrative silence on appeal or review as a decision in favor of the petitioner in accordance with its laws and regulations.

4.6 Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

Ukraine is substantially in compliance for Customs and partially compliant for other border agencies with the TFA provisions on procedures for appeal or review.

Both administrative and judicial appeal processes are available for traders in connection with customs issues in a non-discriminatory manner.

Businesses are not provided legal rights for administrative appeal or review in areas other than customs.

The following legislation provides for appeals as indicated:

- Customs Code of Ukraine No. 4495-VI of March 13, 2012 (concerning customs procedures - administrative appeal and administrative court[15])
- Tax Code of Ukraine No. 2755-VI of December 2, 2010 (concerning customs duties and taxes – administrative appeal and administrative court)
- Law on Application of Citizens No. 393/96 dated October 2, 1996 (concerning administrative appeal re any action taken by state bodies)
- Code of Administrative proceedings No. 2747-IV of July 06, 2005 (concerning administrative courts)
- Article 55 of the Constitution of Ukraine provides the right to challenge the decisions, actions or omissions of public authorities, local governments, their officials and officers. (concerning administrative court).

These provisions are mainly reflected in Article 24-30 of the Customs Code of Ukraine and Article 56 of the Tax Code. In addition, Order of Ministry of Finance on Approval of the Form and Procedure for Claims submitted by Taxpayers No. 848 dated December 25, 2013 further details procedures for appealing under Article 56 of the tax code in the case of disputes related to duties and taxes.

Customs Code:

Articles 24 to 30 of the Code provide rights of appeal against decisions, acts or omissions of Customs. Consistent with the TFA, these articles:

- provide for both a right of administrative and judicial appeal (**Arts. 25 and 29**);
- allow persons to make judicial appeal directly (subject to dismissal of the administrative appeal if a judicial appeal is made at the same time); and
- provide for the administrative appeal to be heard by an authority within Customs that is at a higher level than the authority that made the decision (*i.e.*, executive of the customs office, where the decision is made by the customs station; the central executive authority, where the decision is made by the customs office)(**Article 25**)

The TFA requires that where decisions on administrative appeal are not made within a reasonable time or within periods established by law, the person shall have the right to an appeal to a higher appeal or judicial authority.

The Code provides that a "duly substantiated written reply within the legally established term" shall be made by the authority responsible for deciding the appeal (**Article 25**).

[15] Challenges acts of state bodies.

Finally, to enable effective appeal, the TFA requires that persons be given the reasons for decisions that are taken against them. This TFA principle of explanation of reasons for adverse decisions does not appear to be specifically incorporated in the Customs Code as a general rule (it does appear in connection with penalties).

The Customs Code does not appear to require Customs to provide reasons for adverse decisions or actions to enable persons to make an effective appeal. Although customs officers, in practice, provide in most cases the reasons for adverse decisions, Customs Code should be amended to require Customs to provide persons with reasons for adverse decisions or actions.

Article 26 of the Customs Code states that appeals should be considered in accordance with the Law on Application of Citizens No. 393/96 dated October 2, 1996. This law requires authorities to act within one month. The decision may be extended for 15 days if additional information is required.

Tax Code:

Decisions may be appealed within an administrative or judicial procedure. Appeal to the higher regulatory authority shall be executed in writing (if necessary — with a duly certified copies of documents, calculations and evidence) within 10 calendar days following the date of receipt by the taxpayer of a tax decision notice or other decision of the regulatory authority, which is being appealed. The regulatory authority, which considers the appeal of a taxpayer is obliged to take a reasoned decision and send it within 20 calendar days following the date of receipt of the appeal, to the taxpayer by mail, with return receipt requested, or hand it over to him against receipt. The head (his deputy or other authorized officer) of the relevant regulatory authority may decide to extend the period of examination of a taxpayer's appeal beyond the 20-day period, but not more than 60 calendar days.

If a reasoned decision on the appeal of the taxpayer is not sent to the taxpayer during the 20- day period or within the period as extended by the decision of the head (deputy head or other authorized officer), such an appeal is deemed to be fully satisfied in favor of the taxpayer on the day following the last day of the specified terms. The appeal is also deemed to be fully satisfied in favor of the taxpayer, if the decision of the head (deputy head or other authorized officer) as to an extension of the consideration has not been sent to the taxpayer until expiry of the 20-day period.

The decision of the central executive authority responsible for the formation and implementation of national tax and customs policy, which was adopted to address a taxpayer's appeal is final and is not subject to further administrative appeal, but may be challenged in court.

Ministry of Finance Order No. 848 of 2013 envisages the explanation of reasons for adverse decision of state bodies.

Other Laws:

The TFA encourages that administrative appeal and review be available to challenge decisions made by other relevant border agencies. All natural and legal persons have the right for access to administrative court under the Code of Administrative proceedings No. 2747-IV of July 06, 2005.

The Law on Application of Citizens No. 393/96 dated October 2, 1996 permits administrative appeal by citizens (not legal persons) for any action by state bodies.

As for SPS and TBT specific laws:

- Law on Veterinary Medicine No. 24/98-XII of June 25, 1992 provides appeal to administrative court. There is no provision for administrative appeal.
- Law on Safety and Quality of Food Products No. 771/97 of December 23, 1997 does not provide for any appeals.
- Law on Plant Quarantine No. 33/48-XII of June 30, 1993 does not provide for any appeals.
- Law on Technical Regulations and Conformity Assessment No. 124-VIII of January 15, 2015 allows for administrative and court appeal for conformity assessment.

Legal persons do not appear to have legal rights for administrative appeal in connection with SPS measures. In practice, legal persons are allowed to appeal as per the Law on Application of Citizens. According to the SVPS, although appeals are accepted from both natural and legal persons, the decision of the border inspector is never overturned. The central office of the SVPS provides only additional clarifications to the trader regarding the decision made by the inspector.

Although the Customs Code and the Law on Citizens provide rights for appeal or review, there are however no practical procedures developed by Ukraine for most administrative appeal processes or a web-based appeal process. These should be addressed as part of compliance with TFA Article 4 which will fall under Category B or C.

Finally, according to private sector, appeals resulting in decisions to refund traders are difficult to enforce.

For Customs, it is suggested to:

- Dedicate a web page under the SFS website to make traders aware of their rights to appeal and the practical procedure and forms.
- Amend Customs Code to require Customs to provide persons with reasons for adverse decisions or actions.
- Institute web-based appeal process to allow appeal from any location

For other agencies, it is suggested to:

- Amend SPS laws to allow for administrative appeal
- Dedicate a web page under the SVPS website to make traders aware of their rights to appeal and the practical procedure and forms
- Institute web-based appeal process to allow appeal from any location

***

ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON DISCRIMINATION AND TRANSPARENCY

5.1 NOTIFICATIONS FOR ENHANCED CONTROLS OR INSPECTIONS

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages, or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination, or suspension:

(a) the Member may, as appropriate, issue the notification or guidance based on risk;

(b) the Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply;

(c) the Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade-restrictive manner; and

(d) when the Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

SPS measures in Ukraine are adopted in legislation which comes into force after or upon publication. Revocation and suspension of measures are also adopted in the form of legislation. Traders (Ukrainian importers and exporters in other countries) or their representatives have non-discriminatory access to official publications and websites of concerned authorities where such measures are also posted.

There is no official form for notices. Central authorities notify respective authorities and customs authorities at entry points electronically (by email) and paper copy (usually legislative act) about newly adopted measures or suspended/terminated existing measures. This is broadcasted uniformly to all entry points.

SPS measures are issued in accordance with Ukraine SPS related laws which require following standards, guidelines, and recommendations of international organizations. Scientific risk-based analysis is conducted only when the measure calls for a level of protection higher than international standards.

SPS laws do not require prompt termination or suspension of the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade-restrictive manner. In practice, the State Veterinary and Phytosanitary Service of Ukraine promptly terminates notifications when no longer needed.

***

5.2 DETENTION

A Member shall promptly inform the carrier or importer in case of detention of goods declared for importation, for inspection by customs or any other competent authority.

Ukraine partially complies with this provision.

The Code does not contain provisions that *specifically* require Customs to inform the importer or carrier if imported goods are detained for inspection by Customs or another authority. *However*, this obligation may be implied by other provisions of the Code. These include-

- the declarant has the right to be present if samples are taken of goods by Customs or other public authorities (**Article 356.7**);
- where Customs selects goods for examination, Customs may require the presence of the declarant or his representative (**Article 249**).

To implement these provisions, the declarant would necessarily have to be notified by Customs that the goods have been detained or selected for sampling or examination.

In addition, the "central executive authority" is authorized to determine the customs formalities of customs clearance, unless otherwise provided in the Code (**Article 246**). Pursuant to this authority, the central executive authority may specify, by rule or other administrative act, the requirement of a detention notice, including the circumstances under which it shall be provided and its content.

Ukraine needs to amend its Customs Code to fully align with the TFA provision on detention by making it explicitly stated in the Customs Code.

By law (which law), customs clearance must be completed in 4 hours. If not, the customs broker is informed. In practice, declarants or their representatives (brokers) are informed about detention and reasons normally by phone communication.

To ensure full and consistent compliance with this TFA measure, the "central executive authority" (Customs) should issue a rule or other administrative act defining conditions and content of the detention notice to be transmitted to declarant or representative whenever goods are stopped for inspection for a period that is longer than permitted under the legislation. It is important to provide the importer more information in the notice - who stopped the goods (customs or other authority), the reasons for stopping, a contact person, the date and time, etc.

***

5.3 TEST PROCEDURES

3.1 A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

3.2 A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity provided under paragraph 3.1.

3.3 A Member shall consider the result of the second test, if any, conducted under paragraph 3.1, for the release and clearance of goods and, if appropriate, may accept the results of such test.

SPS

If the trader is not satisfied with test results, s/he is granted upon request an opportunity for a second test. The second test is the arbitration test. Its results are final and must be accepted by the trader and the relevant authorities.

The relevant SPS authorities inform the trader where the second test must be taken:

- For veterinary-related tests, the second test must be conducted at the State Scientific Research Institute's Laboratory Diagnostics and Veterinary-Sanitary[16] Expertise located at Donetska St. 30

[16] It is a structural subdivision of State veterinary and phytosanitary service

Kyiv 03151 Ukraine. Information on the second test is available on the Institute's webpage http://vetlabresearch.gov.ua.

- For Phytosanitary-related tests, the second test must be performed at the State Central Phytosanitary Laboratory (state enterprise), located at Koloskova St. 7, Kyiv 03138 Ukraine. The information on the second test is available on the Central Laboratory's webpage http://www.cfl.gov.ua.
- For Sanitary-Epidemiological tests, the tests are conducted on the basis of Order of Ministry of Protection of Health No. 247 of October 09, 2000 by accredited laboratories. If the trader is not satisfied with test results, s/he is granted upon request opportunity for a second test at the State Scientific Research Institute of Laboratory Diagnostics and Veterinary-Sanitary Expertise located at Donetska St. 30 Kyiv 03151 Ukraine.

Inspectors together with the trader select samples and send them to the relevant laboratory for the second test within 48 hours.

Express tests for fresh fruits and vegetables at entry points are conducted according to the Order of Ministry of Agrarian Policy No. 715 of November 26, 2006. No second tests are allowed.

Although sampling methods and procedures in Ukraine are largely consistent with those recommended by international organizations, traders complain about excessive samples taken for testing purpose.

Customs:

Ukraine is partially aligned with this article. The major gaps are the following:

1. The law might be more closely aligned to the objectives of the TFA measure if the importer were provided a legal right to a second test, rather than permitted one in the discretion of Customs
2. There are no provisions concerning publication of laboratories where second tests may be conducted or procedures where first and second test conflict.

This TFA measure provides that border authorities may allow a second text of imported goods, on request, where the initial test of the sample taken was adverse; that the contact details of the laboratories where any such second test shall be published; and that the border authority should consider the results of that second test in determining whether to release the goods.

The Customs Code provisions on sampling and testing are set out in **Articles 356 and 357**. The Customs Code provisions on sampling and testing concern tests undertaken to determine compliance with the customs laws (e.g. classification).

Testing of samples drawn from imports is generally to be undertaken by the "specialized expert examination and testing agency of the central executive authority" (*e.g.*, the customs laboratory). However, on request of the declarant or his representative, Customs *may* allow testing by an independent institution or organization in order to "confirm or refute the results of testing" (**Article 357.3**). This appears to provide Customs with discretion to allow a second test on request of the importer where there is disagreement about the results of the initial test.

These articles also establish rules for confirmatory testing by the institution that conducts the initial test. These state that in cases of "lack of clarity and completeness of the expert opinion," additional testing by the same or another expert may be initiated (**Article 357.11**). Similarly, in cases where there is "unjustified opinion or any doubts," re-testing by another expert may be initiated (**Article 357.12**). The law provides that

these additional tests are to be initiated "following the standard procedure" (**Article 357.13**), which appears to be a reference to ISO or other laboratory standards that define procedures for confirmatory tests.

However, these articles -

- do not clearly provide a right of the importer to obtain a second or confirmatory test (it is subject to Customs discretion) or provide other procedures to refute initial test results;
- do not contain any provisions requiring publication of the name and addresses of laboratories where the importer can obtain a second or confirmatory tests;
- do not contain provisions to resolve cases where there is a conflict between the results of the initial and second test.

It is suggested that Ukraine revise Articles 356-357 to provide importers with a right to a second test, to require publication of the names and addresses of accredited/approved laboratories, and to incorporate general principles for resolution of discrepancies between the first and second test consistent with international standards.

***

ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES

6.1 GENERAL DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION

1.1 The provisions of paragraph 1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with the importation or exportation of goods.

1.2 Information on fees and charges shall be published in accordance with Article 1. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

Fees and charges in connection with importation and exportation of goods are specified in legislative acts which must be published. These acts usually mention about the fee, its purpose, and the responsible authority. Most of these legal acts do not specify when and how payment is to be made.

1.3 An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

As discussed under Article 2 above, customs related legislation shall be published 45 days before it comes into effect unless otherwise specified in the new or amended legislation. Legislation specifying fees imposed by other trade related agencies come into force 10 days upon publication unless otherwise mentioned in the new or amended legislation.

1.4 Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

There are no provisions in any of the laws governing Ukraine's foreign trade regime (including the Customs Code) which require periodic review of fees and charges and reducing their number and diversity. It is however a common practice to review fees from time to time taking into account inflation or operational changes.

6.2 SPECIFIC DISCIPLINES ON FEES AND CHARGES FOR CUSTOMS PROCESSING IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION

Fees and charges for customs processing:

(i) shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and

(ii) are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

Most laws governing Ukraine's foreign trade regime (including the Customs Code) do not require that fees must reflect the approximate costs of services rendered. An exception is the Law on Foreign Economic Activity which requires that licensing fees reflect the costs of services rendered. In practice, most formal fees charged by Ukraine authorities with respect to trade are reasonable and within the approximate costs of services rendered.

Ukraine eliminated in 2008 customs processing fees, but retained fee for processing goods outside customs location and beyond normal working hours of customs. These fees are specified in Order of the Ministry of Revenue and Duties of Ukraine of "On Approving the Procedure for Charging the Fee for Customs Formalities by the revenue and duties authority away from the place of location of the authorities or beyond the working hours fixed for them" 804 dated December 16, 2013 as follows:

- Fee for customs formalities outside the place of customs body location (EUR per hour):
  - working day: 20
  - night and non-working time: 40
  - public holidays: 50
- Fees for customs formalities within the place of customs body location (EUR per hour):
  - night and non-working time 40
  - public holidays 50

These fees seem excessive and not reflective of approximate cost of services rendered. The fee structure provides opportunity/incentive for rent-seeking behaviour and for customs to prolong the clearance processing time in order to charge more hours.

It is recommended that:

- Current fees be revised and set per transaction using sound cost-accounting methodology. The fees should be fixed and the same for all declarations regardless of value or type of imported goods.
- Customs code be amended to reflect the provisions of WTO TFA Article 6.2

6.3 PENALTY DISCIPLINES

3.1 For the purpose of paragraph 3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs laws, regulations, or procedural requirements.

3.2 Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

3.3 The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

3.4 Each Member shall ensure that it maintains measures to avoid:

(a) conflicts of interest in the assessment and collection of penalties and duties; and

(b) creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.

3.5 Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

3.6 When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

3.7 The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

Ukraine's Customs Code and legal acts are partially compliant with this TFA Article.

Administrative offenses and procedures are defined in **Articles 458 to 542**.
These articles define the acts or omissions that will considered an offense and the administrative sanction to which persons will be subject if they commit such offenses. Certain of these articles provide for a sanction in the form of a warning or a fine of a specified amount; others provides for only a fine (there are also provisions that authorize confiscation of goods and means of transport involved in the offense).

Consistent with the TFA, the Code penalty procedures require a written explanation to be provided to persons who are assessed fines, specifying the applicable law and the penalty amount for the breach (**Article 494**).

Also consistent with the TFA, the Code does not appear to include provisions that would give rise to a conflict of interest in the assessment and collection of penalties (*e.g.*, there do not appear to be any provisions that allow Customs officers to obtain a share of the penalty amount).

Under the TFA, the amount of an administrative fine of the kind included in the Code are required to be commensurate with the degree and severity of the breach, taking into account the facts and circumstances of the individual case. The relevant Code provisions do not clearly incorporate this principle. Penalty amounts are stated as specific amounts (**Arts.468-485**), and not as a range or as a maximum. As such, it appears that Customs officials may have authority to decide between giving a warning or assessing a fine for certain offenses, but it is not clear that the law allows officials to assess a fine less than the specified amount where justified by the circumstances in the individual case.

The law does require the Customs official deciding the case to determine whether there are "mitigating and/or aggravating circumstances" (**Article 489**), but it is not clear whether the presences of such mitigating or aggravating circumstances has a bearing on the amount of the fine (it may, for example, have a bearing only on the decision to give a warning or impose a fine).

In addition, the Code provisions do not clearly provide for mitigation or cancellation of fines based on a voluntary prior disclosure as suggested by the TFA, except as just mentioned under **Article 489**.

It is recommended that the following be implemented:

1. The Customs Code does not clearly authorize/require Customs officials to set amounts of fines based on particular facts and circumstances of individual cases. There is a need to clarify in the Customs Code that fine amounts are maximums and that Customs shall determine fine amounts commensurate with facts and circumstances of individual cases, subject to that maximum.
2. There are no specific provisions in the Customs Code to allow/require Customs to mitigate the amount of fines where a prior disclosure is made. There is need to clarify in the Customs Code that a prior voluntary disclosure, as defined in the TFA, shall be taken as a mitigating factor in determining amounts of administrative fines.

***

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

7.1 PRE-ARRIVAL PROCESSING

1.1 Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

The legal provisions in the 2012 Customs Code are fully aligned with TFA Article 7.1 provision.

Pre-arrival processing of goods declarations is authorized under Article 259. The declarant may file an "advance customs declaration" prior to importation of the goods to Ukraine for purposes of "conducting risk analysis and accelerating customs formalities." The procedure includes the possibility of release of the goods, within 4 hours of crossing the Ukraine border point, without the necessity of presenting the goods to Customs for clearance.

Consistent with the TFA, Article 259 allows the declaration and supporting documents required for advance customs declaration to be submitted in electronic form (Article 259.8).

Separate from the provision on advance customs declaration, the law requires the advance submission of a notification of an intention to import goods into Ukraine (Articles 194 and 335.4). Article 194 states that the "declarant" is required to submit the notice prior to the arrival in the form of a goods declaration, which may be submitted electronically. This notification appears to create duplication and inconsistency in the law: one provision (Article 259) allows the declarant the option to make the advance declaration, whereas the other provision (Article 194) states that an advance declaration is mandatory. However, it appears that an amendment has been recently proposed to correct and clarify this inconsistency. Under the proposed amendment, it is the carrier that will be required to submit the advance notification. As amended, this notification requirement is consistent with international standards (particularly, the WCO Safe Framework).

1.2 Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

Ukraine permits electronic declaration. Presently, 94% of declarations are submitted in electronic form. Although pre-arrival and electronic declaration can be filed, Customs does not start processing until after arrival of goods.

***

7.2 ELECTRONIC PAYMENT

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.

Article 298 provides that customs charges shall be paid by the taxpayer to a single treasury account either in cash over the counter of the Customs authority or financial institution or "via bank transfer through a financial institution except as provided by this Code and the laws of Ukraine."[17] Similarly, **Article 291** provides that liability for customs charges are deemed discharged upon deposit of money to the bank cash desk or upon "debiting of money from a taxpayer's bank account."
Accordingly, except as may be provided by other laws of Ukraine, the Customs Code would allow payments by means of electronic bank transfer. There are no restrictions imposed in any of the other existing laws regarding electronic payments.

Further, Order of Ministry of Finance "On procedure of payment of the customs duties by the citizens" № 581 of May 22, 2012 does not restrict the payment via banks.

Ukraine has presently an operating system for payments via banks of duties, taxes, and fees. Credit cards or checks are not allowed.

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

3.1 Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior

[17] The situations where cash only payments are allowed under the Customs Code include deposits to a pre-payment account (Article 299) and a deposit for purposes of establishing a financial guarantee (Article 309).

to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

3.2 As a condition for such release, a Member may require:

(a) payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or

(b) a guarantee in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.

3.3 Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

3.4 In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5 The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

3.6 Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

The TFA measure requires a procedure for release of goods under guarantee where the final determination of the amount of duty and tax cannot be made on arrival, or as rapidly as possible thereafter.

Article 52 (3) of the Customs Code allows thee declarant or representative to have the declared goods released for free circulation in cases where:

- the revenue and duties authority accepts the declared customs value of goods provided that the customs charges are paid on the basis of the declared customs value;
- the declarant or the person authorised by him agrees with the decision taken by the revenue and duties authority to adjust the customs value of goods provided that the customs charges are paid on the basis of the customs value determined by the revenue and duties authority;
- the declarant or the person authorised by him disagrees with the decision taken by the revenue and duties authority to adjust the customs value of goods provided that the customs charges are paid on the basis of the declared customs value and guarantees are provided in accordance with Title X of the Code to the extent determined by the revenue and duties authority under Section 7 of Article 55 of the Code;

Article 55 (7) states that if the declarant or the person authorised by him disagree with the decision taken by the revenue and duties authority to adjust the declared customs value, the revenue and duties authority shall, upon request of the declarant or the person authorised by him, release the declared goods for free circulation provided that the customs charges are paid on the basis of the customs value of such goods stated by the declarant or the person authorised by him and the payment of the difference between the amount of customs charges calculated on the basis of the customs value determined by the declarant or the person authorised by him and that calculated on the basis of the customs value determined by the revenue and duties authority is ensured by providing guarantees under Section X of this Code. The validity term of such guarantees shall not

exceed 90 calendar days from the date when the goods were released.

Article 55(8) states that the declarant or the person authorised by him may provide the revenue and duties authority with additional documents to confirm the customs value of goods declared by them within 80 days from the date when the goods were released.

In particular, **Article 255** requires customs clearance to be completed within 4 hours of the presentation of the goods and submission of all required documents and information to the clearance office, subject to certain 7 specific exceptions. These exceptional cases, where release of goods may be delayed, include situations where

- a violation is found,
- samples are taken of the goods,
- Customs has reason to doubt the declared customs value,
- the importer has requested clearance processing away from the customs office, or
- goods are suspected of intellectual property violations

In certain of these exceptional cases, the law does provide for release under guarantee pending final determination if the goods are not required (e.g., disputes concerning customs valuation, cases where samples are taken, and cases where a violation is found). However, in other cases, the law does not appear to allow for release. This includes most notably cases of missing supporting documents where "the declarant…commits in writing to present additional documents or information."

According to Customs, the guarantee is released in practice within five working days from the date the decision is made re value of goods. There is no clear provision in the Customs Code as to when the guarantee is discharged. Amendments to the Customs Code are needed to ensure prompt release of guarantee.

***

7.4 RISK MANAGEMENT (except for Article 7.4.1, Article7.4.2, Article7.4.3)

4.1 Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

4.2 Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

4.3 Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments. A Member also may select, on a random basis, consignments for such controls as part of its risk management.

4.4 Each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia,* the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

Ukraine's customs code is fully aligned with TFA Articles 7.4.1, 7.4.2, and 7.4.3 and partially with Article 7.4.4.

Articles 361 to 363 require Customs to establish, apply and maintain a risk management system to identify goods, transport, documents and persons that shall be subject to customs supervision, as well as the type and scope of controls to be applied. Consistent with the requirements of the TFA, the law requires risk management to be applied to ensure, among other objectives, "facilitating customs clearance of goods" (Article 361.3).

Similarly, Article 320 requires the form and scope of customs controls that are applied at or following customs clearance operations to be selected on the basis of risk management, and that where goods are not selected by the risk management system, then such goods may be cleared without examination or, possibly, without presentation to the customs clearance office (Article 320.3).

In determining risk analysis "objects", the law requires Customs to take into consideration characteristics of the goods and transport means, nature of the foreign economic operations, and characteristics of the entities engaged in the transaction (Article 363.2). A random selection factor is also to be applied (Article 363.3).

Ukraine developed its own automated risk management system which has been operational since 2006 (Inspector 2006). The system technology needs to be upgraded and additional risk profiling rules need to be developed to reflect the full supply chain. The current system needs to be expanded to handle preliminary declarations and, although not TFA related, SPS and TBT risk factors. This will require cooperation with State Veterinary and Phytosanitary Service and other technical control agencies to develop appropriate risk profiles.

Customs officers of Ukraine however tend not to always follow Inspector 2006 and override it by requiring unnecessary inspections. Many customs inspectors are concerned with officers responsibilities/liabilities and professional accountability.[18] It is suggested that relevant articles in the Customs Code (Article 30) be amended to relieve customs officers from personal/professional responsibilities in case of full reliance on institutionalized risk management system. There is a need in addition to (i) build awareness among customs inspectors about the importance and benefits of applying Inspector 2006; and (ii) train customs inspectors on proper and effective application of Inspector 2006 and development of risk management profiles based on sound best practice methodologies.

***

7.5 POST-CLEARANCE AUDIT

5.1 With a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

5.2 Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations, and the reasons for the results.

[18] Penalty could include 5-8 years imprisonment and prohibition to assume certain positions or work in certain areas for a period of up to 3 years

5.3 The information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

5.4 Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

The TFA measure requires Customs to use post-clearance audit to ensure compliance with customs and related laws "with a view to expediting the release of goods." Audit targets are to be selected on the basis of risk, and audits are required to be conducted in a transparent manner. Persons are required to be informed of audit results and their rights and obligations. Audit results should be used in applying risk management.

The Code provisions on post-clearance audit appear to largely conform to these requirements. Authority to conduct post-release audits is set out in **Articles 344-355**. These provisions describe a "desktop audit" that is undertaken for compliance purposes consistent with the TFA measure to verify that–

(i) the customs declarations and declarations of customs value are correctly filled out,
(ii) the declared data is reliable,
(iii) importation/exportation (transfer) of goods into/from the customs territory of Ukraine or the territory of free customs zone is legitimate, and
(iv) customs charges are assessed and paid on time, in full and in an accurate manner.

The Code states that "desktop audits" may be undertaken on site, at the premises of the auditee, or offsite at customs offices, and may be scheduled or unscheduled. Consistent with the TFA measure, the Code provides that on-site scheduled audit targets are to be determined taking into account the results of risk-based analysis of foreign economic operations of entities" (**Article 346.3**).
In terms of transparent procedures in conduct of the audit, the Code requires-

- the auditee to be given written notice 10 calendar days prior to the start date of a scheduled desktop audit (**Article 346.6**);
- the audit to be completed within 30 working days, with extensions of not more than 15 days for certain, limited reasons only (**Article 346.8**);
- the auditee to be given written notification of any temporary suspension in the audit (**Article 346.12**);
- the auditee to be informed of the provisions of laws relating to the audit issues, on request (**Article 347.2)**; and,
- the auditee to be provided with the grounds for the audit and the audit order (**Article 350**).

The Code requires audit results to be documented by Customs in a report (if violations are found) or a statement (if no violations are found), a copy of which is provided to the auditee within 3 working days after the report or statement is registered by the auditors with Customs (**Article 354**). The Code defines an appeal process whereby the auditee can raise written objections to the report within a specified period and obtain a hearing on those objections before Customs. Following that, if a tax notice for underpayment is given, the auditee has rights of appeal under the Tax Code ((**Article 354.15**)

Finally, to the extent that there is any discrepancy between the Code and the TFA measure, it concerns the use of audit results in risk assessment. The TFA measure states that post-clearance audit should be undertaken "with a view to expediting the release of goods." For example, those auditees who are determined to comply, and found through audit to have sufficient systems and internal controls to ensure continued compliance, should be considered low risk and their goods should clear with lower levels of customs intervention. This principle linking audit and risk management does not appear to be incorporated in the Code provisions on risk management or audit. Rather, audit appears to be primarily or solely defined for purposes of revenue collection and penalty assessment, rather than as a tool to enable facilitation.

Customs has not yet developed any regulations, procedures, or audit manuals for implementing the PCA provisions of the 2012 Customs Code. In addition, no post-clearance audit unit has been established within Customs and no system has been put in place including appropriate database, audit scheduling and tracking system, and reporting system. Further, no link with Inspector 2006 has been established.
Post-clearance audit of traders has been traditionally conducted by tax authorities in Ukraine. This is performed in accordance with Articles 75 - 86 of the Tax Code № 2755-VI of December 02, 2010. With the lack of action to implement the 2012 Customs Code provisions and the recent merger between Customs and Tax authorities under the State Fiscal Service, there does not appear to be any political decision on whether Customs will exercise its PCA authority.

The Code contains provisions authorizing customs post-release "desktop" audit for purposes of verifying the accuracy of customs declarations, but the TFA principle that audit should be used as a risk management tool to facilitate compliant traders does not appear to be incorporated. Ukraine needs to Rrview and revise the audit and/or risk management provisions of the Code as necessary to ensure that post clearance audit results are incorporated in risk assessment.

***

7.6 ESTABLISHMENT AND PUBLICATION OF AVERAGE RELEASE TIMES

6.1 Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, *inter alia*, the Time Release Study of the World Customs Organization (referred to in this Agreement as the "WCO").[19]

6.2 Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

There are no specific provisions in the Code on time release studies. However, the Code provides Customs with the general authority and responsibility to take measures to "create favorable conditions to facilitate trade and transit, increase turnover and passenger flow through the customs border of Ukraine" (Article 544). Moreover, Article 450 authorizes Customs to collect and disseminate "special customs statistics" that reflect the activities of Customs in administering the state customs affairs.

Average release times are estimated from time to time and published by customs. These figures are however challenged by traders who do not concur with these figures. There is no institutionalized process in place using tools such as, *inter alia*, the Time Release Study of the World Customs Organization (referred to in this Agreement as the "WCO") monitor improvements and identify bottlenecks for addressing to increase efficiency.

Amend the Customs Code to clearly require system and institutionalize WCO Time Release Study.

***

[19] Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

7.7 TRADE FACILITATION MEASURES FOR AUTHORIZED OPERATORS

7.1 Each Member shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

7.2 The specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures.

(a) Such criteria, which shall be published, may include:

(i) an appropriate record of compliance with customs and other related laws and regulations;

(ii) a system of managing records to allow for necessary internal controls;

(iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and

(iv) supply chain security.

(b) Such criteria shall not:

(i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

(ii) to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3. The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least three of the following measures:

(a) low documentary and data requirements, as appropriate;
(b) low rate of physical inspections and examinations, as appropriate;
(c) rapid release time, as appropriate;
(d) deferred payment of duties, taxes, fees, and charges;
(e) use of comprehensive guarantees or reduced guarantees;
(f) a single customs declaration for all imports or exports in a given period; and
(g) clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4 Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

7.5 In order to enhance the trade facilitation measures provided to operators, Members shall afford to other Members the possibility of negotiating mutual recognition of authorized operator schemes.

7.6 Members shall exchange relevant information within the Committee about authorized operator schemes in force.

The 2012 Custom Code is compliant with the Article 7.6 of the TFA. However, Ukraine does not yet have an Authorized Economic Operator program which implements these provisions.

Articles 12 to 18 provide the legal basis for implementation of an authorized operator program of a kind intended by the TFA. The Code's provisions appear to be closely based on the EU legislation.

Consistent with the TFA measure, the Code provisions specify the criteria that must be met to qualify as an AEO (Article 14), as well as the additional trade facilitation benefits that are available to an AEO.

The specified AEO eligibility criteria include a record of compliance, a satisfactory recordkeeping system, and no customs charges, penalties or taxes owed.

Following the EU legislation, the Code provides for three types of AEO benefits (facilitations with regard to customs controls; facilitations relating to safety and security; and facilitations related to both) (Article 12). The TFA requires WTO members to provide at least 3 trade facilitation measures from a list of seven. The Code sets out a list of 10 measures (Article 15), at least 3 of which are from the TFA list. These include –

- periodic declaration
- customs clearance at the facilities of the AEO
- "preferential customs control"
- waiver of guarantee for transit (other than excise goods)

Also similar to the EU legislation, a person who wishes to apply for AEO status must be "an entity incorporated under the legislation of Ukraine"[20] and meet certain defined criteria related to compliance, solvency, auditability and (if relevant) practices related to safety and security (Article 13). The Code provides for the establishment of an AEO database (Article 12.2).

The Code also includes provisions defining the manner in which the AEO program shall be implemented by the customs administration, such as -

- definition of the benefits that can be offered to persons that qualify as an AEO (Article 15);
- the information to be supplied by an applicant for AEO status (Article 13);
- the roles and responsibilities of the customs offices when processing the application (Article 13); and
- the conditions under which AEO status may be suspended or revoked.

As indicated in the Code itself, additional implementing measures are required to be formulated and published by the customs administration or the Cabinet of Ministers. These include:

- forms and templates for the AEO application, decisions, and AEO certificate (Article. 13)
- specific procedures and conditions to be fulfilled by the applicant to demonstrate compliance with AEO eligibility criteria (Article 13.13)
- definition of the particular simplified procedures and formalities to be used by the operator and Customs (Article 15.6).

CMU Resolution on the Procedure for Application of Special Facilitation and Simplifications granted to Authorized Economic Operator No. 447 of May 21, 2013. Resolution No. 447 covers to some extent the implementation of Article 15.6 of the Customs Code.

In addition, there is a need to further elaborate the criteria for AEO in accordance with EU legislation (as required per DCFTA). This may be achieved through either amending the 2012 Customs Code or developing implementing regulations.

There is a need to build private sector awareness about AEO.

***

[20] "Entity" is defined in the Code to include sole proprietor as well as a legal entity, and therefore would not appear to preclude an individual from obtaining AEO status.

7.8. EXPEDITED SHIPMENTS

8.1 Each Member shall adopt or maintain procedures allowing for the expedited release of at least those goods entered through air cargo facilities to persons who apply for such treatment, while maintaining customs control. If a Member employs criteria limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraph 8.2 to its expedited shipments:

(a) provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments in cases where the applicant fulfils the Member's requirements for such processing to be performed at a dedicated facility;

(b) submit in advance of the arrival of an expedited shipment the information necessary for the release;

(c) be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2;

(d) maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;

(e) provide expedited shipment from pick-up to delivery;

(f) assume liability for payment of all customs duties, taxes, fees, and charges to the customs authority for the goods;

(g) have a good record of compliance with customs and other related laws and regulations;

(h) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations, and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2 Subject to paragraphs 8.1 and 8.3, Members shall:

(a) minimize the documentation required for the release of expedited shipments in accordance with paragraph 1 of Article 10 and, to the extent possible, provide for release based on a single submission of information on certain shipments;

(b) provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;

(c) endeavour to apply the treatment in subparagraphs (a) and (b) to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods such as documents; and

(d) provide, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

8.3 Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a

Member from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

With respect to air express shipments, the TFA measure requires governments to adopt or maintain procedures to allow release under normal circumstances as soon as possible after arrival; minimize documentation requirements; provide for release, to the extent possible, on the basis of a single submission of information for certain shipments; and, to the extent possible, waive collection of duties and taxes where the amount or the shipment value is minimal.

The Customs Code provisions for facilitation of air express shipments are set out under Articles 233-237, which concerns customs procedures for the import or export of goods by international mail and express mail. These are consistent with the TFA measure.

Operations with express mail (unpacking, repacking, presentation for examination, *etc.*) and their storage for release for free circulation or return to senders shall be carried out under customs supervision at the places designated and equipped by the express carrier, agreed upon with the central executive authority (Article 233.5).

Consistent with the TFA measure, with respect to goods other than express mail, these Code articles include the following facilitations–

- express cargo to be released from the Ukraine checkpoint on the border "at the earliest opportunity" for movement to the internal customs clearance office under cover of the single transport document, without being subject to controls for non-tariff measures at the border checkpoint (Article 233.3-4)
- allow customs clearance to be conducted at the central sorting station or place of location of the carrier (Article 233.14)
- where the total value of the consignment sent by express mail does not exceed EUR 300, duties are waived (other than excisable goods) (Article 234)
- where the goods sent by express mail are not subject to duty, as well as letters and other documents, they may be declared orally under cover of the transport document (Article 236)(other goods require a written declaration).

With respect to expedited release, the Code does not contain provisions specific to express consignments. However, as discussed in connection with TFA Article 7.3 ("Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges") above, the Customs Code provides that all goods, whether carried by express carrier or otherwise, shall be released within four hours of submission of the declaration (Article 255).

Finally, the Customs Code provides that the terms and procedures for supervision and clearance of goods moved by express mail shall be elaborated by the central executive authority; this provides a legal basis for implementation of additional facilitations consistent with the TFA measure through rules.

***

7.9 Perishable Goods (except for Article 9.1, Article9.2)

9.1 With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:

(a) under normal circumstances within the shortest possible time; and

(b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2 Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3 Each Member shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4 In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

The 2012 Customs Code is substantially aligned with TFA Article 9.

The Main Gaps is that the Code provisions concerning the time period in which goods shall be released or refused clearance should be reviewed and, if necessary, clarified to ensure that the importer has a right to a written explanation in all cases where goods are not released within the prescribed period (4 hours).

Relevant Customs Code Provisions:

- *Examinations*

The TFA requires perishable goods priority in scheduling any examinations.

Consistent with that obligation, Article 360 provides that specified categories of goods that are perishable (namely, "live animals, organs and other anatomical human materials required for purposes of transplantation, goods with limited shelf life or special storage treatment")shall be subject to "priority customs treatment" in terms of control and supervision. Moreover, the same article provides that such goods shall be subject to re-examination and sampling only under exceptional circumstances.

- *Storage Pending Release*

The TFA measure also requires appropriate storage facilities of such goods pending their release (*e.g.*, cold storage facilities), which may be facilities provided by the government or by economic operators; to allow goods to be moved to and released at such storage facilities; and to allow release of perishable goods outside normal business hours in exceptional circumstances, where appropriate.
The Code appears to provide a legal basis for implementation of these procedures. Article 201 provides that imported goods may be held at a public or private temporary storage warehouse or a public or private customs warehouse pending their release (a customs warehouse is defined as "a specially equipped storage facility, reservoir, refrigerator or freezer, indoor or outdoor site intended for storage of goods under customs supervision" (Article 424)).

Article 247 provides that, on written request of the declarant or his agent, Customs may carry out customs formalities at places outside the location of customs offices as well as outside customs normal working hours,

which would thus appear to allow clearance operations to be conducted at the storage facility and during off hours.

- *Rapid Release/Right to an Explanation*

Finally, the TFA measure requires perishable goods to be released under normal circumstances within the shortest possible time and, if there are significant delays, the declarant should have the right to a written explanation on request.

Although there are no specific provisions for expedited release of perishable goods, Article 255 contains the general requirement that customs clearance shall be completed within 4 hours of submission of the declaration and specified supporting documents, subject to 7 specified exceptions.

There are no specific provisions in the Code to provide the declarant with the right to a written explanation, on request, where release is delayed beyond four hours. However, Article 256 does provide that where Customs refuses to allow clearance, written explanation shall be given with the period defined in Article 255 (i.e., within four hours of acceptance of the declaration). Accordingly, Articles 255-256, taken together, appear to provide that perishable goods shall be released without delay (within four hours) or clearance shall be refused and written reasons given within the same period. As such, this appears to comply with the TFA obligations.

The Customs Code provisions requiring clearance to be completed within 4 hours of declaration appear to concern release of goods *for customs purposes only*. Even if customs clearance is completed, release of the goods may nevertheless be withheld until approval is given by other border authorities.
Perishable goods (such as agricultural and food products) are typically regulated by other border authorities Ukraine's SPS legislation adequately covers the handling of perishable goods.[21] The state of the practice however by the Veterinary and Phytosanitary service is questionable. Significant delays are usually encountered by traders as result of unnecessary and complicated sampling and testing procedures at the border.

Temporary storage of perishable goods at cold storage or other appropriate facilities is provided for in Ukrainian legislation. Such facilities exist at major entry points designated for allowing admission of perishable goods.

***

ARTICLE 8. BORDER AGENCY COOPERATION

8.1 Each Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

The TFA measure requires governments to ensure that its border authorities "cooperate with one another and coordinate their activities in order to facilitate trade."

[21] Note that Ukraine's SPS legal regime is undergoing reform to comply with DCFTA with EU. There is a need to ensure that the legal regime continues to be in line with the WTO Sanitary and Phytosanitary Agreement (SPS).

This TFA principle is implemented in the Customs Code. Article 319 of the Customs Code sets out detailed procedures for coordination of controls between Customs and the other border authorities where goods crossing the border are subject to regulation of those other authorities. These coordination measures include delegation to Customs to perform the documentary checks on behalf of the SPS authorities at the border checkpoints where goods enter the country; use of "unified information and telecommunication systems" to share information among the authorities; establishment of an agreed and comprehensive list of goods, classified under the tariff schedule, that are subject to prohibitions or restrictions of the other border authorities; and obligations to inform and communicate information and control results among the authorities.

Ukraine's Customs, in addition, executes at border crossing points the functions for ecological control and conformity certification in the form of preliminary documentary control based on information and guidelines of authorized state agencies.

These functions were authorized under CMU Resolution "On Certain Issues of Exercising Preliminary Documentary Control at Check Points across the State Border of Ukraine No. 1030 of October 5, 2011. Essentially, one-stop-shop exists at all key entry points for purpose of documentary control.

***

8.2 Each Member shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:

(a) alignment of working days and hours;

(b) alignment of procedures and formalities;

(c) development and sharing of common facilities;

(d) joint controls;

(e) establishment of one stop border post control.

The TFA provides that countries who share a common border shall to the extent possible and practicable cooperate with a view to facilitating trade, including through such measures as alignment of working hours and procedures, use of common facilities, exercising joint controls, and/or establishing one-stop border posts.

The Customs Code also enables the implementation of this TFA measure. Article 328 authorizes Customs to undertake joint customs supervision with the customs authorities of neighboring states at Ukrainian border checkpoints in accordance with "international treaties." Similarly, Article 565 provides that international agreements may allow cooperation with other customs authorities of neighboring countries with respect to conduct of joint customs supervision, mutual recognition of documents, exchange of information, and approval, as prescribed by law, of time for customs supervision, control and clearance, among other matters.

There are 7 countries with which Ukraine share common borders (neighboring countries) are: Belarus, Hungary, Moldova, Poland, Romania, Russia, and the Slovak Republic. Cooperation and coordination with the neighboring countries is conducted on the basis of legislation, agreements and memoranda of understanding. Attachment B provides the list. Although many such legal instruments (see list below) have been signed, application within the meaning of this article is as follows:

Forms of Cooperation	Current Situation
Alignment of working days and hours	In effect with all neighboring countries
Alignment of procedures and formalities	To some extent
Development and sharing of common facilities	None
Joint controls	Certain border crossing points with Moldova and Poland
Establishment of one stop border post control	None

Note that Article 8.2 is to be implemented to extent possible and practicable. There is room, however, for improvement with friendly neighbors regarding harmonization of procedures and formalities and other joint controls, sharing of facilities and one-stop border controls.

***

ARTICLE 9. MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Consistent with the TFA measure, the Code allows goods intended for import to be moved from a border checkpoint to another customs office within Ukraine from where the goods are cleared. Specifically, the Code provides for this operation under internal customs transit procedure. The transit procedure is defined in Articles 90 -102.

These provisions allow goods to be moved "from one point of entry (checkpoint) into the customs territory of Ukraine to the [Customs] authority located in the customs territory" without payment of any customs charges or being subject to any non-tariff measures, subject to provision of a guarantee. Goods moving under the transit procedure are deemed to remain under customs supervision.

With respect to road traffic, delivery to the destination point is required within a 10-day period.
The transit procedure is discharged upon delivery of the goods intact to Customs at the destination point, where the goods may be declared for another customs procedure, including import (release for free circulation).

***

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

10.1 FORMALITIES AND DOCUMENTATION REQUIREMENTS

1.1 With a view to minimizing the incidence and complexity of import, export, and transit

formalities and to decreasing and simplifying import, export, and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Member shall review such formalities and documentation requirements and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements are:

(a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;

(b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;

(c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and

(d) not maintained, including parts thereof, if no longer required.

1.2 The Committee shall develop procedures for the sharing by Members of relevant information and best practices, as appropriate.

There are no specific provisions in Ukraine's laws (including the Customs Code) governing Ukraine's foreign trade regime that would require Customs or other governmental authorities to review or assess new import/export documentation or formalities, or to periodically review existing documentation and formalities, to ensure that such requirements are –

(a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;
(b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
(c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
(d) not maintained, including parts thereof, if no longer required.

During the last decade, Ukraine has gradually undertaken reforms to simplify trading requirements. This was done in the context of WTO accession and adoption of new customs code largely in line with EU and Revised Kyoto Convention.

Based on USAID analysis, for example, Ukraine eliminated 21 documents related to import and export. The process of streamlining trading requirements and eliminating unnecessary procedures and documents is aggressively being pursued under the new government. CMU Resolution No. 1031 of October 5, 2011 on Approving the List of Goods Subject to State Control (including documentary control) during their Movement Across the Customs Border of Ukraine invalidated Order No. 265/211/191/210/14/147/326 of March 27.2009 of State Customs Service of Ukraine Administration of State Border Guard Service of Ukraine Ministry of Agrarian Policy of Ukraine Ministry of Environmental Protection of Ukraine Ministry of Health of Ukraine Ministry of Culture and Tourism of Ukraine Ministry Transport and Communication of Ukraine on Approving the List of Goods Subject to Mandatory Sanitary, Veterinary, Phytosanitary, Radiological, Ecological Control, and Control Over Transportation of Cultural Valuables at the State Border Check-Points. CMU Resolution No. 1031 eliminated many goods from control and limited control in many cases to documentary checks only.

Annually, the Cabinet of Ministers issues CMU Resolution "On approval of list of goods export and import subject to licensing and quotas" No. 1 (most recent January 14, 2015). This resolution annually reviews list of goods subject to export and import licensing and quotas with the aim of reducing the list.

Ukraine's key essential trade documents are based on international recommended ones including Single Administrative Documents, UN Key Layout documents, and SPS certificates (veterinary and Phytosanitary certificates) in line with those recommended by Office of International Epizootics and International Plant Protection Convention.

In practice, however, Ukraine needs to include provisions in its key laws to require periodic reviews, analyses, and surveys of stakeholders with the aim of continuously improve and reduce/streamline trade formalities and documents.

***

10.2 ACCEPTANCE OF COPIES

2.1 Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities.

2.2 Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

The Code allows certified copies of documents required for clearance of goods to be submitted in place of originals, but similar authority is not given in the Code for the use of copies in connection with other customs formalities, such as documents required for entry and departure of means of transport
Documents required by Customs in connection with clearance of goods and means of transport are specified in **Article 335**. Under **Article 264**, a declarant (or his agent) who submits a customs declaration for clearance of goods must provide the invoice and, if requested by Customs, the other documents listed in Article 355. The declarant or his agent shall present "the originals of such documents or duly certified copies thereof, unless the filing of originals is stated by law" (Article 254.2).

Accordingly, the Code is aligned to the TFA measure with respect to documents required in connection with customs declarations for the clearance of goods. However, the Code also requires documents to be submitted to Customs in connection with the arrival and departure of transport vehicles (air, rail, road and water) as well as goods imported or exported by pipeline or power supply lines (Article 355). In contrast to Article 254.2, there is no specific provision to allow certified copies of such documents to be submitted in lieu of the original.

The original copies of the following essential documents are required for clearance of goods:

- Certificate of origin
- Veterinary certificate
- Phytosanitary certificate
- Conformity certificate
- Import and export licenses

To comply with this Article, Ukraine needs to amend legislation to allow acceptance of copies.

2.3 A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.[22]

The Code requires the declarant to provide a copy of the customs declaration issued by the country of departure in cases where there is doubt about the declared customs value.

The TFA states that Customs "shall not require an original or copy of export declarations submitted to customs authorities of the exporting [country] as a requirement of importation."

Article 53 of the Code states that where there are discrepancies or lack of information concerning a declared customs value, the declarant "shall provide...within 10 calendar days" of a written request of Customs "a copy of the customs declaration issued by the country of departure."
This obligation to provide the export declaration is inconsistent with the TFA requirement (note that TFA Article 12 "Customs Cooperation" will allow Customs to obtain this export declaration information directly from the exporting country, subject to certain conditions and compliance with certain procedures).

Ukraine needs to remove the obligation to provide an original or copy of the customs declaration from the country of departure.

***

10.3 USE OF INTERNATIONAL STANDARDS

3.1 Members are encouraged to use relevant international standards or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement.

3.2 Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.

3.3 The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate.

The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

The TFA measure "encourages" governments to use relevant international standards or parts thereof as the basis for their import, export or transit formalities."

The Code provides the legal basis for implementation of this principle in **Article 7.2**. That article provides that "State Customs affairs shall be administered in compliance with internationally accepted forms of declaring goods, methods for determination of customs value, systems of goods classification and coding, system of customs statistics, and other generally accepted practices and standards."

[22] Nothing in this paragraph precludes a Member from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods.

More generally, it appears that many of the provisions of the Code itself are based on or implement international standards and best practices for customs administration, including the EU customs legislation, the Revised Kyoto Convention, and the provisions of the WTO customs-related agreements.

Ukraine is a member of the World Customs Organization (WCO).

Ukraine's SFS actively participates in the work of WCO.

Ukraine ratified in 2006 the WCO Revised Kyoto Convention (RKC): the International Convention on the Simplification and Harmonization of Customs procedure.

Ukraine updates its tariff nomenclature to remain consistent with the latest version of the WCO Harmonized System.

Ukraine is a member of Codex Alimentarius, the Office of International Epizootics, and the International Plant Protection and actively participate in the activities of these three sister SPS organizations.

Ukraine's SPS laws (dealing with food safety, veterinary medicine, and phytosanitary) of Ukraine calls for basing Ukraine's SPS measures with standards, recommendations, and guidelines of these three sister organizations. Specifically:

- Article 44 of Law "On Quality and Safety of Food Products" No. 771/97 of December 23, 1997 provides that the list of products subject to control at the border shall be approved on the basis of Codex Alimentarius recommendations;
- Article 108 of the Law "On Veterinary Medicine" No. 2498-XII of June 25, 1992 provides for cooperation with International Epizootic Office and harmonization of veterinary standards;
- Presidential Decree "On acceding to the International Plant Protection Convention" No. 81/2006 of January 31, 2006 incorporated the provisions of international treaty in the legislation of Ukraine.

***

10.4 SINGLE WINDOW

4.1 Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3 Members shall notify the Committee of the details of operation of the single window.

4.4 Members shall, to the extent possible and practicable, use information technology to support the single window.

There are no specific provisions in the Customs Code concerning implementation or operation of a single window system. **Article 319** of the Code does appear to provide for a shared electronic database defining in terms of tariff codes the goods that are subject to prohibitions or restrictions under laws of other border authorities.

Customs relationships with other government authorities are generally defined in Chapter 77 of the Customs Code, including law enforcement agencies, National Bank, local state administrations and other executive authorities. These generally provide that Customs shall interact with these other authorities "in accordance with the legislation of Ukraine" (*i.e.*, laws other than the Customs Code). There are no specific provisions concerning exchange of information for clearance of goods.

Article 11 prohibits Customs from disclosing information obtained during the course of its activities that pertains to specific natural person or legal entity and constitutes a commercial secret to any person, including other government authorities "save as otherwise set out in the Code and other laws of Ukraine."

The Customs Code does not appear to "otherwise" include other provisions that would allow Customs to exchange such information with other border authorities. This flat prohibition against exchange of commercial secret information with other border authorities, such as commercial invoice information submitted to Customs in or with the customs declaration, may complicate the implementation of a single window system among the border authorities for sharing information required for clearance.
It is suggested that some amendments be made to the Customs Code to explicitly allow single window and address aforementioned. There is a need to review and possibly revise Customs Code provisions on confidential information to enable sharing information among border authorities in the context of a single window system, subject to measures to ensure non-disclosure.

A preliminary assessment of the current electronic Single Window, developed with the support of the Ukraine chapter of the International Chamber of Commerce, indicates that

(i) the current Single Window simply serves as advance information (scanned declaration and supporting documents) for customs and other control agencies;
(ii) it is not compatible or integrated with the information technology system of the SFS. There is a need to develop compatible software and provide legal authority to allow integration.
CMU Resolution No. 451 of May 21, 2012 "On the Issues of crossing the state border of persons, road, water, rail and air transport carriers and goods" approves the technological scheme and obliges the customs authority to use the data of Information System of Port Community. Customs or other agencies do not in practice consider the information submitted through the Single Window. Customs and other agencies do nor pre-process declarations and supporting documents prior to arrival of goods.
(iii) Customs and other border agencies nonetheless continue to request that declarants submit information in the order provided by SFS and other border agencies.

There is a need to mandate the use of Single Window by law in order for Customs and other agencies to cooperate and process data and documentation received through single window. Also, a comprehensive legal analysis is required to ensure that laws governing operations of border agencies and e-signature are amended to permit operations of single window and sharing/exchange of information.

***

10.5 PRESHIPMENT INSPECTION

5.1 Members shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.

5.2 Without prejudice to the rights of Members to use other types of preshipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.[23]

There are no provisions in the Code that require use of pre-shipment inspection services in relation to tariff classification and customs valuation or in connection with any other customs formality. To the contrary, **Articles 54 and 69** indicate that Customs has the exclusive responsibility to oversee and verify customs valuation and tariff classification of goods. Moreover, there are no provisions in the Code that require presentation of a Clean Report of Findings or similar documents of a PSI company in connection with customs clearance.

Ukraine does not presently require PSI.

Ukraine has no plans to introduce PSI in the future.

***

10.6 USE OF CUSTOMS BROKERS

6.1 Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not introduce the mandatory use of customs brokers.

6.2 Each Member shall notify the Committee and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.

6.3 With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

The Code does not require mandatory use of customs brokers. Rather, the provisions on customs clearance (**Articles 246 to 269**) indicate throughout that clearance and declaration of goods can be made by either by the "declarant" himself or by "the person authorized by him" (such as a customs broker). Moreover, in defining the obligations, rights, and liability of the declarant and the person authorized by him (**Article 266**), the law expressly distinguishes cases of "self-declaration" of goods (declaration made by the declarant himself) and cases of declarations made on behalf of the declarant by persons authorized by him.

The Code refers to another law of Ukraine that contains the procedural rules for the licensing of customs brokers. In particular, Article 408.2 provides that "customs brokerage licenses shall be issued in the manner and under the terms and conditions specified by the Law of Ukraine on licensing of certain types of activities."

[23] This paragraph refers to preshipment inspections covered by the Agreement on Preshipment Inspection, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

The new Law "On Licensing of Certain Types of Economic Activity" № 222-VIII of March 02, 2015 (enters into force on June 28, 2015) eliminates the licensing of customs brokers.

***

10.7 COMMON BORDER PROCEDURES AND UNIFORM DOCUMENTATION REQUIREMENTS

7.1 Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2 Nothing in this Article shall prevent a Member from:

- **(a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;**
- **(b) differentiating its procedures and documentation requirements for goods based on risk management;**
- **(c) differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;**
- **(d) applying electronic filing or processing; or**
- **(e) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on the Application of Sanitary and Phytosanitary Measures.**

This measure requires Customs to apply common customs procedures and uniform documentation requirements for release and clearance of goods at all of its customs offices throughout Ukraine (with justified exceptions, such as those based on differences in types of goods or means of transport or risk factors).

The Customs Code defines customs procedures and documentation requirements that are applicable to customs processing at all customs offices throughout the customs territory. Pursuant to **Article 8**, a basic principle of state customs affairs is to ensure "uniform procedure of the movement of goods and means of transport across the customs border of Ukraine."

Uniformity in application of the law is to be enforced by the "central executive authority." **Article 545** of the Code thus requires the central executive authority to direct, coordinate and supervise the activities of customs offices." **Article 546** provides that customs offices shall be subordinate to the central executive authority and shall report to it.

Accordingly, the Code provides a legal basis to enforce uniform and consistent application of the customs laws throughout the customs territory, in accordance with the requirements of the TFA measure.

This measure requires Customs to apply common customs procedures and uniform documentation requirements for release and clearance of goods at all of its customs offices throughout Ukraine (with justified exceptions, such as those based on differences in types of goods or means of transport or risk factors).

The Customs Code defines customs procedures and documentation requirements that are applicable to customs processing at all customs offices throughout the customs territory. Pursuant to **Article 8**, a basic principle of state customs affairs is to ensure "uniform procedure of the movement of goods and means of transport across the customs border of Ukraine."

Uniformity in application of the law is to be enforced by the "central executive authority." **Article 545** of the Code thus requires the central executive authority to direct, coordinate and supervise the activities of customs offices." **Article 546** provides that customs offices shall be subordinate to the central executive authority and shall report to it.

Accordingly, the Customs Code provides a legal basis to enforce uniform and consistent application of the customs laws throughout the customs territory, in accordance with the requirements of the TFA measure.

In practice, Ukraine applies common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

***

10.8 REJECTED GOODS (except for Article 10.8.2)

8.1 Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

8.2 When such an option under paragraph 8.1 is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

The 2012 Customs Code is fully aligned with Article 10.8 of TFA.

The Code provides a "re-export" customs procedure for return of imported goods that are rejected due to failure to comply with sanitary or phytosanitary regulations or technical regulations.
Article 86 thus states that foreign goods that remain under customs supervision and are not placed under a customs procedure, "including due to prohibitions or restrictions on the import of such goods into the customs territory of Ukraine." This procedure would appear to allow the re-export of imported goods, the entry of which has been rejected by food safety or other border authority.

The conditions for customs clearance under the re-export procedure include observation of any prohibitions or restrictions on exportation established by legislation, such as restrictions under legislation of other borders authorities on re export of goods failing technical or sanitary/phytosanitary requirements.

Articles 90-91 of the Law on Veterinary Medicine No. 24/98-XII of June 25, 1992 provide that if the international veterinary certificate is not acceptable or in case of particularly dangerous disease, the goods must be returned to a country of export or destroyed at the expense of the owner or carrier of the goods.
Article 58 of Law on Safety and Quality of Food Products No. 771/97 of December 23, 1997 allows re-export of such products during 60 days. The dangerous products shall be destroyed only if such re-export is not possible or after expiry of 60 days with the consent of owner of the products
Article 42 of the Law Plant Quarantine No. 33/48-XII of June 30, 1993 provides that the import and transit cargoes, which are infected by the quarantine organisms, shall be destroyed after informing the owner of the goods.

Article 40 of the Law On Market Surveillance and Control of Non-Food Products No. 2735-IV of December 2, 2010 provides that products, which present serious risk and are under customs control, with the written permission of customs body and the relevant body of market surveillance, may be placed under the customs regime of destruction, if the relevant authorities deem it necessary and proportionate.

The Customs Code and the Veterinary Medicine Law are compliant whereas the other laws (quarantine, market surveillance, and food safety) are not compliant with this provision.

***

10.9 TEMPORARY ADMISSION OF GOODS/INWARD AND OUTWARD PROCESSING

9.1 Temporary Admission of Goods

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into its customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

9.2 Inward and Outward Processing

(a) Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re- imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations.
(b) For the purposes of this Article, the term "inward processing" means the customs procedure under which certain goods can be brought into a Member's customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing, or repair and subsequent exportation.
(c) For the purposes of this Article, the term "outward processing" means the customs procedure under which goods which are in free circulation in a Member's customs territory may be temporarily exported for manufacturing, processing, or repair abroad and then re-imported.

The Customs Code establishes a temporary import procedure (Articles 103-112), an inward processing procedure (Articles 147-161); and an outward processing procedure (Articles 162-174). These customs procedures appear to be generally based on the EU Community Customs Code and are consistent with the definitions set out in the TFA.

***

ARTICLE 11. FREEDOM OF TRANSIT (EXCEPT FOR ARTICLE11.3, ARTICLE11.4, ARTICLE11.5, ARTICLE11.6, ARTICLE11.7, ARTICLE11.8, ARTICLE11.10)

11.1 Any regulations or formalities in connection with traffic in transit imposed by a Member shall

not be:

(a) reasonably available less trade-restrictive manner;

(b) applied in a manner that would constitute a disguised restriction on traffic in transit.

11.2 Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

11.9 Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.

11.11 Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary[13] instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.

11.12 Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

11.13 Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.

11.14 Each Member shall make publicly available the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.

11.15 Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.

11.16 Members shall endeavour to cooperate and coordinate with one another with a view to enhancing freedom of transit. Such cooperation and coordination may include, but is not limited

a) charges;

(b) formalities and legal requirements; and

(c) the practical operation of transit regimes.

11.17 Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

The Customs Code provides a basis for implementation of a transit regime consistent with TFA principles and requirements.

Goods under the transit procedure are not subject to "customs charges" (Articles 90 and 286.6), a defined term that means import duties, excise tax and VAT (Article 4.1(27)).

Consistent with the TFA measure, the Customs Code:

- provides for advance filing and processing of transit documentation and data prior to the arrival of goods (Article 259);
- allows for prompt termination of the transit operation at the customs office where the goods exit Ukraine, if transit requirements are met (Article 102);
- limits the amount of guarantees required for transit to the amount of customs charges due on the goods if released for free circulation (Article 308);
- allows for use of multiple and general guarantees (Article 309)
- provides for release of guarantees within 2 hours of receipt of proof of completion of the transit operation (Article 307);
- provides that goods moving under transit shall not be subject to "non-tariff regulation of foreign economic activity" (Article 90), such as technical regulations and conformity assessment procedures.[24]

There are no provisions in the Code that specify the use of customs convoys or escort of transit operations. There are no provisions in the Code authorizing imposition of fees or charges on customs transit operations.

There is no national transit coordinator to whom all enquiries and proposals by other Members relating to the good functioning of transit operation can be addressed. The agreement states that Members "shall endeavor" to appoint a national transit coordinator.

As for the transit of SPS goods, only document checking is required. The epizootic status of the country of origin is checked. Transit consignments originating in countries with disease status are prohibited.

***

ARTICLE 12: CUSTOMS COOPERATION

12.1 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.[25]

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.

---

[24]"Non-tariff regulation of foreign economic activity" is a defined term that means "any prohibitions and/or restrictions that are not associated with imposing duties on goods crossing the customs border of Ukraine, laid down by the law, and are aimed at protecting domestic market, public order and safety, public morality, health and safety of humans and animals, protection of environment, the rights of consumers of goods imported into Ukraine as well as protection of national cultural and historical heritage."

[25] 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.

12.2 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.

12.3 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.

12.4 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[26] of the verification where appropriate;**
- **(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.

12.5 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);**

[26] 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.

(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.

12.6 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.

12.7 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.

12.8 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.

12.9 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.

12.10 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.

12.11 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.

12.12 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.

Customs cooperation between Ukraine and other countries has been traditionally defined in specific bilateral agreements on mutual assistance. Many of the TFA provisions on customs cooperation are normally reflected in these agreements. These include procedures for sharing and provision of information and confidentiality.

Ukraine currently has MAA with the following countries: Armenia, Belarus, GUAM (Georgia, Ukraine, Azerbaijan and Moldova), Italy, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Libya, Netherlands, Norway, Romania, Russia, Slovak Republic, Slovenia, Syrian, Turkmenistan, and Uzbekistan. The complete list is provided in Attachment C.

The TFA measure sets out procedures for exchange of information between national customs administrations 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, including measures to ensure that information received is protected against unauthorized use or disclosure.
The Code generally provides a legal basis for implementation of these TFA procedures for exchange of information.

Articles 564 and 565 authorize the central executive authority for Customs to "conclude appropriate interdepartmental agreements with [foreign customs authorities] as prescribed by law," and to exchange information (including through use of information technology and systems) with customs authorities of neighboring countries." Moreover, **Article 567** provides that, in a manner that may be prescribed by international treaties, customs may interact with foreign authorities on matters related to smuggling and customs offenses.

Moreover, as noted above (see discussion related to Single Window) the Code contains strong provisions for protection of confidential information. **Article11** prohibits disclosure of information obtained by Customs in its operations that pertains to specific persons or entities and constitutes commercial secret, including disclosure to public authorities, without permission of the person or authority that provided it, except as otherwise provided by law.

Similarly, **Article 56** prohibits disclosure of information relating to customs valuation of goods imported to or exported from Ukraine, including disclosure to other public authorities, "without the prior special consent of the person or authority supplying it save as otherwise stated by the Code or other laws of Ukraine."[27]

These strong provisions on protection of information provide a basis for implementation of the measures under the TFA with respect to information *received* from other customs administrations, particularly information concerning customs valuation, which is the main focus of this TFA measure. However, because these provisions prohibit disclosure without permission of the person who supplied the information, they would also appear to constrain the Ukrainian customs administration's ability to provide information *requested* by other customs administrations.

The Customs Code prohibitions against disclosure of valuation and other commercial information, without permission of importer or exporter who provided it, may constrain Customs ability to provide information requested by foreign customs administration under the TFA measure. The Customs Code might be improved by permitting Customs to exchange information with other customs administrations, on request, subject to agreements ensuring protection of confidential information. Some fine tuning to the Customs Code may be necessary to fully align with TFA Article 12.

ARTICLE 23: INSTITUTIONAL ARRANGEMENTS

23.2 NATIONAL COMMITTEE ON TRADE FACILITATION

Article 23.2 requires each WTO Member to establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.

[27] Under **Article 1** of the Code, the terms of international treaties ratified by the Verkhona Rada take precedent over any conflicting provisions of the Customs Code. However, an agreement between Customs and other foreign customs administrations under authority of Articles 564 and 565 is not so ratified and, therefore, the Code rules prohibiting disclosure of valuation or other confidential information to those foreign administrations would appear to apply.

Ukraine does not presently have a formal National Committee on Trade Facilitation. An informal council on trade facilitation exists which is co-chaired by the State Fiscal Service and the Ukrainian Chapter of the International Chamber of Commerce.

It is recommended that Ukraine formally establishes its National Committee on Trade Facilitation with clear mandate from the Government to coordinate and ensure implementation of this agreement.

Attachment A

WTO TFA provisions notified by Ukraine under Category A

1. Article 1.1 Publication
2. Article 1.2 Information Available Through Internet
3. Article 7.1 Pre-arrival Processing
4. Article 7.4 Risk Management (except for Article 7.4.1, Article7.4.2, Article7.4.3)
5. Article 7.7 Trade Facilitation Measures for Authorized Operators
6. Article 7.8 Expedited Shipments
7. Article 7.9 Perishable Goods (except for Article 7.9.1, Article7.9.2)
8. Article 8 Border Agency Cooperation
9. Article 9 Movement of Goods under Customs Control Intended for Import
10. Article 10.8 Rejected Goods (except for Article 10.8.2)
11. Article 10.9 Temporary Admission of Goods/Inward and Outward Processing
12. Article 11 Freedom of Transit (except for Article11.3, Article11.4, Article11.5, Article11.6, Article11.7, Article 11.8, and Article 11.10)

Attachment B

List of Agreements with Neighboring Countries Concerning Border Cooperation

The following is the list of agreements which currently exist concerning cooperation with neighboring countries within the meaning of TFA Article 8.2:

Belarus

- Agreement between the Government of Ukraine and the Government of Belarus on the Check Points of December 17, 1992.
- Agreement between the Government of Ukraine and the Government of the Republic of Belarus on Organization of Joint Control at the Check Points on Ukraine-Belarus State Border of December 14, 1995

Hungary

- Agreement between the Cabinet of Ministers of Ukraine and the Government of Hungary on Control of Border Movement at the Check Points across the State Border for Automobile and Railway Connection of December 26, 1993.

Moldova

- Agreement between the Government of Ukraine and the Government of the Republic of Moldova on Organization of Joint Control at the Check Points on Ukraine-Moldova State Border of September 11, 1998
- Agreement between the Government of Ukraine and the Government of Moldova on the Check Points across Ukraine-Moldova State Border and Simplified Access of Citizens Residing in Border Rayons of March 11, 1997.

Poland

- Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on Cooperation in the Event of Control of Individuals, Means of Transport and Goods Crossing Ukraine-Poland State Border of June 25, 2001
- Agreement between the Government of Ukraine and the Government of Poland on the Check Points across the State Border of May 18, 1992.

Romania

- Agreement between the Cabinet of Ministers of Ukraine and the Government of Romania on the Check Points across Romania-Ukraine State Border March 29, 1996
- Agreement (in the form of note exchange) between the Cabinet of Ministers of Ukraine and the Government of Romania on Opening the Check Points for International Communication November 26, 2006.

Russian Federation

- Agreement between the Government of Ukraine and the Government of Russian Federation on the Check Points across the State Border between Ukraine and Russian Federation of February 08, 1999
- Agreement between the Cabinet of Ministers of Ukraine and the Government of Russian Federation on Cooperation in the Event of Joint Control of Individuals, Means of Transport and Goods at Ukraine-Russia State Border of October 18, 2011

Slovak Republic

- Agreement between the Government of Ukraine and the Government of Slovak Republic on the Check Points across the Joint State Border of June 15, 1995
- In addition to the aforementioned agreement, CMU Resolution on Establishment of Delegation for Participation in Negotiations on Conclusion an Agreement between the Cabinet of Ministers of Ukraine and the Government of Slovak Republic on the Organization of Joint Control at the Check Points across Ukraine-Slovak State Border" No. 668 of December 27, 2006.

Attachment C

Ukraine's Mutual Assistance Agreements

1. Agreement between Ukraine and Kingdom of Netherlands on mutual administrative assistance in customs matters of June 7, 2006

2. Agreement between Cabinet of Ministers of Ukraine and Government of Jordan on mutual assistance in customs matters of November 30, 2005

3. Agreement between Cabinet of Ministers of Ukraine and Government of Norway on mutual assistance in customs matters of June 15, 2004

4. Agreement between Cabinet of Ministers of Ukraine and Government of Libya on mutual assistance in customs matters of April 6, 2004

5. Agreement between Cabinet of Ministers of Ukraine and Government of Slovenia on mutual assistance in customs matters of February 4, 2004

6. Agreement between Cabinet of Ministers of Ukraine and Government of Lebanon on mutual assistance in customs matters of July 8, 2003

7. Agreement between governments of states members to GUAM (Georgia, Uzbekistan, Azerbaijan and Moldova) on mutual assistance in customs matters of July 4, 2003

8. Agreement between Cabinet of Ministers of Ukraine and Government of Syria on mutual assistance in customs matters of June 5, 2003

9. Agreement between Cabinet of Ministers of Ukraine and Government of Italy on mutual assistance in customs matters of March 13, 2003

10. Agreement between Cabinet of Ministers of Ukraine and Government of Belarus on mutual assistance in customs matters of September 22, 2000

11. Agreement between Cabinet of Ministers of Ukraine and Government of Romania on mutual assistance in customs matters of June 19, 2000

12. Agreement between Cabinet of Ministers of Ukraine and Government of Kazakhstan on mutual assistance in customs matters of September 17, 1999

13. Agreement between Cabinet of Ministers of Ukraine and Government of Slovak Republic on mutual assistance in customs matters of June 15, 1995

14. Agreement between Cabinet of Ministers of Ukraine and Government of Armenia on mutual assistance in customs matters of October 7, 1994

15. Agreement between Cabinet of Ministers of Ukraine and Government of Russian Federation on mutual assistance in customs matters of June 24, 1993

16. Agreement between Customs Committee of Ukraine and Customs Committee of Turkmenistan on mutual assistance in customs matters of February 25, 1993

17. Agreement between Customs Committee of Ukraine and Customs Committee of Kyrgyzstan on mutual assistance in customs matters of February 23, 1993