Alignment of Ukraine’s Customs Code with the WTO TFA

May 2015
Executive Summary

On November 27, 2014, the General Council of the World Trade Organization formally agreed to open the new Trade Facilitation Agreement for acceptance. Once two-thirds of the WTO membership notifies its acceptance, the agreement will enter into force.

This new agreement contains approximately 35 technical measures provisions that will impose obligations on Ukraine’s “border authorities;” that is, those governmental authorities that have responsibilities at the border for supervision of import, export or transit goods. As the lead authority at the border, Ukraine’s customs administration will be responsible for implementation of the largest number of measures of the new agreement.

To determine its implementation strategy, it will be important for Ukraine to assess the alignment of its current laws, policies, and practices and procedures to the requirements of this new agreement; identify the gaps; and determine what measures must be taken, and what technical support or other resources it will require, to close those gaps.

To assist Ukraine in that process, we assessed the Customs Code of Ukraine to determine the level of alignment of the Customs Code to the technical measures of the new agreement. The assessment considered whether the Customs Code provided a legal basis to allow or require implementation of each of the Trade Facilitation Agreement measures.

This review found that the legal alignment of the Customs Code to the technical measures of the agreement is high (fully or substantially aligned).

The results of that assessment, and the changes we suggest should be made to the Customs Code where Code provisions are not fully aligned, are summarized in the table below.

<table>
<thead>
<tr>
<th>TFA article</th>
<th>Level of TFA alignment</th>
<th>Key points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1. Publication*</td>
<td>Substantial</td>
<td>• Customs Code does authorize publication of information, but the TFA principles regarding manner of publication (“promptly” and in an “easily accessible manner”) are not clearly set out</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Ukraine’s legislation relating to transparency and publication of laws, regulations and government information should be reviewed</td>
</tr>
<tr>
<td>1.2. Information Available through Internet</td>
<td>Partial</td>
<td>• Internet publication is authorized, however there are no provisions requiring Customs to develop, publish and keep up to date on the internet practical, step by step descriptions of import, export and transit processes and procedures</td>
</tr>
<tr>
<td>1.3. Enquiry Points*</td>
<td>Full</td>
<td>• Customs Code provides general basis for responding to requests for information</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Ukraine’s legislation relating to transparency and publication of laws, regulations and government information should be reviewed</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>TFA article</th>
<th>Level of TFA alignment</th>
<th>Key points</th>
</tr>
</thead>
</table>
| 2.1 Opportunity to Comment and Information before Entry into Force* | Not Aligned | • There are no provisions that provide stakeholders with a right to comment on new or proposed changes to customs regulations  
• The conditions under which Customs may enforce new or changed regulations directly upon their publication, rather than only after a delay period, are not defined |
| 2.2 Consultations* | Partial | • The law does not contain a clear obligation on the part of Customs to hold regular stakeholder consultations |
| 3. Advance Rulings | Substantial | • The definition of persons who may apply for advance rulings is limited to declarants or their representatives (rather than any person with a justifiable cause); otherwise the Code is fully aligned |
| 4. Procedures for Appeal or Review* | Substantial | • The Customs Code does not appear to generally require persons to be given reasons for adverse Customs decisions or actions so that they may make an effective appeal (this right might be provided by other legislation) |
| 5.1 Notifications for Enhanced Controls or Inspections | Not Applicable | • This measure concerns systems that would be maintained by the food safety authority and, possibly, the standards authority rather than Customs; accordingly, legislation of those authorities should be reviewed. |
| 5.2 Detention | Full | • Legal provisions are fully aligned |
| 5.3 Test Procedures | Substantial | • The law would 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  
• There are no provisions in the Code concerning publication of laboratories where second tests may be conducted or procedures where first and second test conflict |
| 6.1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation* | Not Aligned | • There are no specific provisions in the Code requiring information about customs fees to be published  
• There are no specific provisions in the Code that would prevent new or changed customs fees from taking effect immediately upon publication, even in the absence of any urgent circumstances  
• There are no specific provisions in the Code that would require periodic reviews of customs fees and charges for purposes of reducing their number or diversity or other reasons |
<p>| 6.2 Specific Disciplines on Fees and Charges for Customs Processing Imposed on or in Connection | Not Applicable | • The Customs Code does not provide for a customs processing fee of the kind described in the TFA measure |</p>
<table>
<thead>
<tr>
<th>TFA article</th>
<th>Level of TFA alignment</th>
<th>Key points</th>
</tr>
</thead>
<tbody>
<tr>
<td>with Importation and Exportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.3 Penalty Disciplines</td>
<td>Partial</td>
<td>• The Customs Code does not clearly authorize/require Customs officials to set amounts of fines based on particular facts and circumstances of individual cases</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• There are no specific provisions in the law to allow/require Customs to mitigate the amount of fines where a prior disclosure is made</td>
</tr>
<tr>
<td>7.1 Pre-arrival Processing</td>
<td>Full</td>
<td>• Legal provisions are fully aligned</td>
</tr>
<tr>
<td>7.2 Electronic Payment</td>
<td>Full</td>
<td>• Legal provisions are fully aligned</td>
</tr>
<tr>
<td>7.3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges</td>
<td>Substantial</td>
<td>• The law does not appear to allow release of imported goods under a guarantee where duty and tax cannot be finally determined on arrival in those situations where the declarant is unable to provide on arrival all required declaration information or supporting documents required for assessment</td>
</tr>
<tr>
<td>7.4 Risk Management</td>
<td>Full</td>
<td>• Legal provisions are fully aligned</td>
</tr>
<tr>
<td>7.5 Post-clearance Audit</td>
<td>Substantial</td>
<td>• The law does not appear to incorporate the TFA principle that audit should be used as a risk management tool to facilitate compliant traders (rather than a tool only for enforcement and revenue collection)</td>
</tr>
<tr>
<td>7.6 Establishment and Publication of Average Release Times</td>
<td>Full</td>
<td>• Legal provisions are fully aligned</td>
</tr>
<tr>
<td>7.7 Trade Facilitation Measures for Authorized Operators</td>
<td>Full</td>
<td>• Legal provisions are fully aligned</td>
</tr>
<tr>
<td>7.8 Expedited Shipments</td>
<td>Full</td>
<td>• Legal provisions are fully aligned</td>
</tr>
<tr>
<td>7.9 Perishable Goods</td>
<td>Substantial</td>
<td>• The Customs 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</td>
</tr>
<tr>
<td>8 Border Agency Cooperation</td>
<td>Full</td>
<td>• Legal provisions are fully aligned</td>
</tr>
<tr>
<td>9 Movement of Goods Intended for Import Under Customs Control</td>
<td>Full</td>
<td>• Legal provisions are fully aligned</td>
</tr>
<tr>
<td>10.1 Formalities and Documentation Requirements*</td>
<td>Not Aligned</td>
<td>• There are no specific provisions in the Customs Code that require Customs to review new or existing documentation and formalities in order to assess trade facilitation impacts (note, however, such provisions are typically found in</td>
</tr>
<tr>
<td>TFA article</td>
<td>Level of TFA alignment</td>
<td>Key points</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| 10.2 Acceptance of Copies         | Partial                | - 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  
- 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 |
| 10.3 Use of International Standards | Full                   | - Legal provisions are fully aligned                                                                                                      |
| 10.4 Single Window                | Substantial            | - The Customs Code restrictions on sharing confidential commercial information with other border authorities may complicate implementation of a single window system |
| 10.5 Preshipment Inspection       | Full                   | - Legal provisions are fully aligned                                                                                                      |
| 10.6 Use of Customs Brokers       | Full                   | - Legal provisions are fully aligned                                                                                                      |
| 10.7 Common Border Procedures and Uniform Documentation Requirements | Full                   | - Legal provisions are fully aligned                                                                                                      |
| 10.8 Rejected Goods               | Full                   | - Legal provisions are fully aligned                                                                                                      |
| 10.9 Temporary Admission of Goods and Inward and Outward Processing | Full                   | - Legal provisions are fully aligned                                                                                                      |
| 11. Freedom of Transit            | Full                   | - Legal provisions are fully aligned                                                                                                      |
| 12. Customs Cooperation           | Substantial            | - 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 |

It is important to note that this study examined only the Customs Code and therefore does not provide a complete picture of alignment of Ukraine’s legislation to the WTO Trade Facilitation Agreement. For that, it will be necessary to examine the primary legislation of other border authorities and the relevant implementing legal measures.

Moreover, certain of the measures of the WTO agreement would be typically implemented in national legislation through general administrative laws rather than the customs law; these measures are marked
with an asterix (*) in the chart above. The relevant general legislation of Ukraine should also be reviewed to determine alignment to the agreement.
Contents

I. INTRODUCTION ................................................................................................................................. 1

II. WTO TFA ALIGNMENT ..................................................................................................................... 3

   Article 1.1 Publication .......................................................................................................................... 4
   Article 1.2 Information Available Through Internet ............................................................................ 5
   Article 1.3 Enquiry Points .................................................................................................................... 5
   Article 2.1 Opportunity to Comment and Information before Entry into Force .............................. 6
   Article 2.2 Consultations ..................................................................................................................... 7
   Article 3 Advance Rulings ................................................................................................................... 7
   Article 4 Procedures for Appeal or Review ............................................................................................ 9
   Article 5.1 Notifications for Enhanced Controls or Inspections ....................................................... 10
   Article 5.2 Detention ............................................................................................................................ 10
   Article 5.3 Test Procedures ................................................................................................................ 11
   Article 6.1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation .............................................................................................................. 12
   Article 6.2 Specific disciplines on Fees and Charges for Customs Processing Imposed on in Connection with Importation and Exportation .......................................................................................... 13
   Article 6.3 Penalty Disciplines ............................................................................................................ 14
   Article 7.1 Pre-Arrival Processing ...................................................................................................... 15
   Article 7.2 Electronic Payment .......................................................................................................... 16
   Article 7.3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges .............................................................................................................................................. 16
   Article 7.4 Risk Management ............................................................................................................ 18
   Article 7.5 Post-Clearance Audit ...................................................................................................... 18
   Article 7.6 Establishment and Publication of Average Release Times .............................................. 20
   Article 7.7 Trade Facilitation Measures for Authorized Operators ................................................. 20
   Article 7.8 Expedited Shipments ....................................................................................................... 21
   Article 7.9 Perishable Goods ............................................................................................................. 22
   Article 8 Border Agency Cooperation ................................................................................................ 24
   Article 9 Movement of Goods Intended for Import under Customs Control .................................. 25
   Article 10.1 Formalities and Documentation Requirements ............................................................... 25
   Article 10.2 Acceptance of Copies ..................................................................................................... 26
| Article 10.3 | Use of International Standards | 27 |
| Article 10.4 | Single Window | 28 |
| Article 10.5 | Preshipment Inspection | 29 |
| Article 10.6 | Use of Customs Brokers | 29 |
| Article 10.7 | Common Border Procedures and Uniform Documentation Requirements | 30 |
| Article 10.8 | Rejected Goods | 30 |
| Article 10.9 | Temporary Admission of Goods and Inward and Outward Processing | 31 |
| Article 11 | Freedom of Transit | 31 |
| Article 12 | Customs Cooperation | 32 |

III. CONCLUSION

34
I. INTRODUCTION

On December 7, 2013, World Trade Organization (WTO) members concluded negotiations on an agreement on trade facilitation (the “TFA”). The TFA was formally opened for signature by decision of the WTO General Council of November 27, 2014. It will enter into force once 2/3 of the WTO membership notifies its acceptance.

Section I of the Agreement contains approximately 35 technical measures generally related to the import, export and transit movement of goods. Although the measures affect all border authorities, as the lead authority at the border, the national customs administration will likely be responsible for implementation of the largest number of measures of the agreement.

In order to assist Ukraine determine its strategy for implementation of the WTO agreement, we assessed the alignment of the current Customs Code of Ukraine\(^1\) to the terms of each of these 35 technical measures. The purpose of the assessment was to determine whether the provisions of the Customs Code authorized or allowed implementation of the relevant TFA measures, and to suggest what changes should be made to the law where gaps were found.

The 36 technical measures of the WTO TFA include both mandatory and “best efforts” provisions. Under these “best efforts” provisions, a country cannot be considered in default if it fails to implement the measure, but is merely “encouraged” or, in certain cases, required “as appropriate” or “to the extent practicable” or “possible” to do so.

These “best efforts provisions include the following:

<table>
<thead>
<tr>
<th>Article</th>
<th>Provision</th>
<th>Qualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2</td>
<td>Information Available through Internet</td>
<td>Internet publication of trade-related information</td>
</tr>
<tr>
<td>1.3</td>
<td>Enquiry Points</td>
<td>Establish enquiry points</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Provide information for free</td>
</tr>
<tr>
<td>2.1</td>
<td>Opportunity to Comment</td>
<td>Provide opportunities to comment</td>
</tr>
<tr>
<td>Information before Entry into Force</td>
<td>Publish laws/regulations before their entry into force</td>
<td>“to the extent practicable”</td>
</tr>
<tr>
<td>2.2</td>
<td>Consultation</td>
<td>Provide regular consultation</td>
</tr>
<tr>
<td>3</td>
<td>Advance Rulings</td>
<td>Provide rulings on subjects other than tariff classification and origin</td>
</tr>
</tbody>
</table>

\(^1\) Customs Code of Ukraine as last amended by Law of Ukraine No 588-VII of 19.09.2013
<table>
<thead>
<tr>
<th>Article</th>
<th>Provision</th>
<th>Qualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Administrative Appeals</td>
<td>Provide for appeals against decisions by border agencies other than Customs</td>
</tr>
<tr>
<td>6.3</td>
<td>Penalty Disciplines</td>
<td>Consider voluntary disclosure as a mitigating factor</td>
</tr>
<tr>
<td>7.1</td>
<td>Pre-Arrival Processing</td>
<td>Allow advance lodging of documents in electronic format</td>
</tr>
<tr>
<td>7.2</td>
<td>Electronic Payment</td>
<td>Allow electronic payment</td>
</tr>
<tr>
<td>7.4</td>
<td>Risk Management</td>
<td>Adopt risk management</td>
</tr>
<tr>
<td>7.5</td>
<td>Post-clearance Audit</td>
<td>Use audit results in risk management</td>
</tr>
<tr>
<td>7.6</td>
<td>Establishment and Publication of Average Release Times</td>
<td>Measure and publish average release times</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Share TRS experiences with Committee</td>
</tr>
<tr>
<td>7.7</td>
<td>Trade Facilitation Measures for Authorized Operators</td>
<td>Develop authorized operator scheme on basis of international standards</td>
</tr>
<tr>
<td>7.9</td>
<td>Perishable Goods</td>
<td>Give reasons for delay in release</td>
</tr>
<tr>
<td>8</td>
<td>Border Agency Cooperation</td>
<td>Cross-border cooperation</td>
</tr>
<tr>
<td>9</td>
<td>Movement of Goods Intended for Import under Customs Control</td>
<td>Allow national transit</td>
</tr>
<tr>
<td>10.2</td>
<td>Acceptance of Copies</td>
<td>Accept copies of original supporting documents</td>
</tr>
<tr>
<td>10.3</td>
<td>Use of International Standards</td>
<td>Use international standards</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Take part in international standards organizations</td>
</tr>
<tr>
<td>10.4</td>
<td>Single Window</td>
<td>Establish a single window</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Use IT to support single window</td>
</tr>
<tr>
<td>10.5</td>
<td>Pre-Shipment Inspection</td>
<td>Not introduce PSI</td>
</tr>
</tbody>
</table>
For purposes of this assessment, we considered all such “best efforts” measures as if they were mandatory. That is, we determined whether or not the Customs Code allowed or required implementation of these measures, and considered it a gap if it did not. This approach provides a clearer picture of Ukraine’s current alignment under the agreement.

As a final preliminary matter, the Customs Code refers to the customs administration in terms of its function (the “revenue and duties authorities”). For purposes of simplicity, the term “Customs” is used in this evaluation in place of the term “the revenue and duties authorities.”

II. WTO TFA ALIGNMENT

This section contains the results of an assessment of alignment of Ukraine’s customs law to the 35 technical provisions of the TFA.

This section is organized according to the provisions of the TFA. Under each provision we have provided-

- an assessment of level of legal alignment of the Customs Code to the TFA measure (“not aligned,” “partial,” “substantial,” or “fully”);
- a summary of the main gaps in the law found;
- a detailed description of the relevant Customs Code provisions vis-à-vis the particular TFA measure;
- the suggested changes to be made to align Ukraine’s Customs Code to the TFA provision, where gaps were found;
- any other Issues to Note

<table>
<thead>
<tr>
<th>Article</th>
<th>Provision</th>
<th>Qualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Freedom of Transit</td>
<td>Make available physically separate infrastructure for transit traffic</td>
</tr>
</tbody>
</table>

Cooperate and coordinate with other members on transit | “shall endeavour” |
Article 1.1 Publication

A. Level of Legal Alignment: Substantially Aligned

B. Main Gaps:

1. The TFA obligations that publication shall be promptly made and “easily accessible” are not clearly set out in the Customs Code

C. Relevant Customs Code Provisions:

This TFA measure requires publication of certain specified categories of information promptly and in “an easily accessible manner.”

The Customs Code requires Customs to provide information as follows -

- Article 19 requires Customs to “inform all persons concerned on the application of customs rules as prescribed by law”;
- Article 69 requires decisions by Customs on the classification of goods to be published “in the manner prescribed by law.”
- Article 20 requires Customs to make available summary information on the underlying provisions of the customs legislation at the customs offices, in the Ukrainian language, in the official language of neighboring countries, as well as “other foreign languages recognized as the dominant spoken languages” (Art. 20.3).
- Article 19.2 provides that Customs shall use information technology to facilitate access to information of the type described in Article 19.

The general obligation of Article 19 “to inform all persons concerned” provides a legal basis for Customs implementation of this TFA measure. However, the TFA requirements concerning the manner of publication (“promptly” and “easily accessible”) are not clearly set out in the law.

(The law does state that Customs shall use information technology to facilitate access to information, but this manner of publication may or may not be “easily accessible” to all stakeholders).

The Code refers to other legislation as determining the manner of providing information (“as prescribed by law”; “in the manner prescribed by law”). This other legislation should be reviewed to determine alignment to the TFA.

Assuming this other legislation does not require a manner of publication consistent with the TFA, the TFA principle that publication should be “easily accessible” should be incorporated in the Code or that other legislation.

D. Suggested Changes:

1. Review Ukraine legislation on publication, transparency and disclosure of information to determine if manner of publication consistent with TFA principles is incorporated and, if not, make conforming changes

E. Other Issues to Note:

None
Article 1.2  Information Available Through Internet

A. Level of Legal Alignment: Partially Aligned

B. Main Gaps:

1. The law does not contain any provisions requiring Customs to develop, publish and keep up to date on the internet practical, step by step descriptions of import, export and transit processes and procedures

C. Relevant Customs Code Provisions:

This TFA measure requires governments to develop and publish on the internet practical guides to their import, export and transit procedures, in English, Spanish or French if possible. Governments should also publish on the internet required forms and documents and, if possible, trade related information.

The publication provisions of the Code are described under Article 1.1, above. As noted, Article 20 requires Customs publish “summaries” of customs legislation in Ukrainian and other languages, and Article 19.2 requires Customs to use information technology to inform stakeholders.

However, there are no provisions that authorize or require Customs to develop, publish and keep up to date practical, step by step descriptions of import, export and transit processes and procedures as described by the TFA measure, on the internet or otherwise.

D. Suggested Changes:

1. Incorporate the TFA obligation to develop and publish practical guides, required forms and documents, and other trade-related information on the internet

E. Other Issues to Note:

None

Article 1.3  Enquiry Points

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:

None

C. Relevant Customs Code Provisions:

This TFA measure requires governments to establish one or more trade enquiry points to answer questions and provide required forms and documents within a reasonable period of time.

There are no provisions in the Customs Code that specifically authorize or require Customs to establish a trade enquiry point. However, as noted under Article 1.1 (“Publication”), Article 19 requires Customs to “inform all persons concerned on the application of customs rules as prescribed by law.” This general obligation “to inform all persons concerned” provides a legal basis for Customs implementation of the TFA measure.
Article 19 refers to other legislation with respect to the manner of informing (“as prescribed by law”). That other legislation should also be reviewed to ensure that there are no conditions or restrictions on implementation of a trade enquiry point consistent with the TFA measure.

D. Suggested Changes:

None

E. Other Issues to Note:

- Other legislation of Ukraine relating to transparency and publication or disclosure of laws, regulations and government information should be reviewed to determine (i) if there is a legal basis for establishment of trade enquiry point and (ii) whether any legal provisions setting out conditions or restrictions on provision of information are consistent with TFA principles.

Article 2.1  Opportunity to Comment and Information before Entry into Force

A. Level of Legal Alignment:  Not Aligned

B. Main Gaps:

1. There are no provisions in the Code that provide stakeholders with a right to comment on new or proposed changes to customs-related regulations.

2. The conditions under which Customs may enforce new or changed regulations directly upon their publication, rather than only after a delay period, are not defined in the Code.

C. Relevant Customs Code Provisions:

- Opportunity to Comment on Proposed Regulations

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.

The Code does not contain any such provisions (but see “Other Issues to Note,” below).

- Delayed Effective Date of New/Changed Regulations

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.

The Customs Code does not strictly conform to these requirements. In particular, Article 2 of the Code states that customs laws and customs regulations issued by the Cabinet and central executive authority come into force 45 days of 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 law does not specify the conditions under which the government may enforce a new or changed regulation directly upon publication.
D. Suggested Changes:

1. Unless otherwise provided by general administrative law, amend the Customs Code (or general administrative law) to require Customs and other border authorities to provide traders and other interested persons with notice and opportunity to comment on new or changed regulations, subject to the exceptions described in the TFA measure.

2. Clarify the Customs Code provisions on the effective date of new or changed laws and regulations consistent with the TFA measure.

E. Other Issues to Note:

- Typically, legal obligations of government administrative bodies to publish proposed rules and regulations for public comment, as described in this TFA measure, would be found in general administrative law, rather than the customs law. Accordingly, Ukraine’s general administrative legislation also should be reviewed to determine alignment to this TFA measure.

Article 2.2 Consultations

A. Level of Legal Alignment: Partially Aligned

B. Main Gaps:

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

C. Relevant Customs Code Provisions:

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.

D. Suggested Changes:

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

E. Other Issues to Note:

None

Article 3 Advance Rulings

A. Level of Legal Alignment: Substantially Aligned

B. Main Gaps:

1. Persons who may apply for advance rulings are limited to “declarants” or their representatives.
**C. Relevant Customs Code Provisions:**

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

Consistent with the TFA, **Article 23** provides:

- the ruling shall be issued prior to importation of the goods *(Art. 23.1)*
- the ruling will be binding on Customs *(Art. 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 authorisation to place goods under a customs procedure *(Art. 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 *(Art. 23.5)*
- rulings shall remain valid for three years *(Art. 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 *(Art. 23.12)*

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

**D. Suggested Changes:**

1. Expand definition in Article 2.1 of persons who may apply for advance rulings.

**E. Other Issues to Note:**

None

---

2 The different periods may be due to differences in the WTO agreements
Article 4  Procedures for Appeal or Review

A. Level of Legal Alignment: Substantially Aligned

B. Main Gaps:

1. 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 (this right might be provided by other legislation)

C. Relevant Customs Code Provisions:

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)(Art. 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 (Art. 25). The “legally established term” does not appear to be defined in the Customs Code (this may refer to another law). Nevertheless, because the Code does provide the person has a right to make a judicial appeal, even during the pendency an administrative appeal, this requirement of the TFA appears to be met.

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). It may, however, be incorporated in other legislation of Ukraine, such as general administrative laws.

D. Suggested Changes:

1. If not incorporated in other applicable legislation of Ukraine, the Customs Code should require Customs to provide persons with reasons for adverse decisions or actions.

E. Other Issues to Note:

- Review and revise as necessary legal acts of border authorities other than Customs to ensure administrative and/or judicial right of appeal
Article 5.1 Notifications for Enhanced Controls or Inspections

**A. Level of Legal Alignment:** Not Applicable

**B. Main Gaps:**
Not applicable

**C. Relevant Customs Code Provisions:**
There are no provisions in the Customs Code that are relevant to this TFA measure.

**D. Suggested Changes:**
Not applicable

**E. Other Issues to Note:**
- The TFA measure concerns systems that are typically maintained by the food safety authority and, possibly, the standards authority.

Article 5.2 Detention

**A. Level of Legal Alignment:** Fully Aligned

**B. Main Gaps:**
None

**C. Relevant Customs Code Provisions:**
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 (Art. 356.7);
- where Customs selects goods for examination, Customs may require the presence of the declarant or his representative (Art. 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 (Art. 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.

**D. Suggested Changes:**
None

**E. Other Issues to Note:**
• To ensure full and consistent compliance with this TFA measure, the “central executive authority” should issue a rule or other administrative act defining conditions and content of the detention notice, if it has not already done so.

Article 5.3 Test Procedures

A. Level of Legal Alignment: Substantially Aligned

B. Main Gaps:

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

C. Relevant Customs Code Provisions:

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 provisions are set out in Articles 356 and 357. 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” (Art. 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 (Art. 357.11). Similarly, in cases where there is “unjustified opinion or any doubts,” re-testing by another expert may be initiated (Art. 357.12). The law provides that these additional tests are to be initiated “following the standard procedure” (Art. 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 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.
The Customs Code provisions on sampling and testing concern tests undertaken to determine compliance with the customs laws. In order to determine compliance with TFA requirements, laws concerning testing of imported goods by other border authorities (e.g., the food safety, standards, plant and animal quarantine authorities) should also be reviewed.

D. Suggested Changes:

1. Revise Articles 356-357 to provide importer with a right to a second test, to require publication of 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.

E. Other Issues to Note:

- The legislation of the food safety authority (which is the main focus of this TFA measure) and other border authorities, including plant and animal quarantine, should also be reviewed for alignment to this TFA measure.

Article 6.1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

A. Level of Legal Alignment: Not Aligned

B. Main Gaps:

1. There are no specific provisions in the Code requiring information about customs fees to be published

2. There are no specific provisions in the Code that would prevent new or changed customs fees from taking effect immediately upon publication, even in the absence of any urgent circumstances

3. There are no specific provisions in the Code that would require periodic reviews of customs fees and charges for purposes of reducing their number or diversity or other reasons

C. Relevant Customs Code Provisions:

The Code refers to certain fees and charges for customs related services, including -

- fees for conducting customs formalities away from the offices of the Customs authority or outside normal working hours (Article 250);

- payment of certain unspecified fees as a condition for release of goods (Article 266);

- reimbursement of costs incurred in a customs offense case that must be paid by the person imposed with the administrative penalty (Article 520); and

- reimbursement of costs for storage in Customs warehouses (Article 239).

- Publication of Fees and Charges
The TFA requires information concerning fees and charges imposed on or in connection with imports and exports to be published, including the amount, the reasons for the fee and when and how payment is made.

As noted under Article 1.1 (“Publication”), there are no specific provisions in the Customs Code that require information on customs fees to be published.

- **Delayed Effective Date of New/Amended Fees and Charges**

  The TFA requires a period of delay between the date the new or changes fees are published and the date they enter into effect, except in cases of urgent circumstances.

  As noted under Article 2.1 (“Opportunity to Comment and Information before Entry into Force”), there are no specific provisions in the Customs Code that would prevent new or changed fees from taking effect immediately upon publication, even in the absence of any urgent circumstances. As such, the Code does not strictly conform to the TFA measure.

- **Periodic Review of Fees and Charges**

  The TFA requires the government to undertake a periodic review of import and export related fees and charges with a view to reducing their number and diversity where practicable.

  As further discussed under Article 10.1 (“Formalities and Documentation Requirements”) there are no specific provisions in the Customs Code that would require such periodic reviews of regulations, including those imposing fees and charges, for purposes of reducing their number or diversity or other reasons. However, as also noted under that Article, Ukraine’s general administrative law should be reviewed to determine whether these requirements might be incorporated in those laws rather than the Customs Code.

**D. Suggested Changes:**

1. Review legal acts imposing the fees referenced in the Customs Code to determine alignment to the TFA

2. Take the actions described in this paper in connection with Article 2.1 (“Opportunity to Comment and Information before Entry into Force”) and Article 1.1 (“Publication”)

**E. Other Issues to Note:**

None

**Article 6.2 Specific disciplines on Fees and Charges for Customs Processing Imposed on in Connection with Importation and Exportation**

**A. Level of Legal Alignment:** Not Applicable

**B. Main Gaps:**

Not applicable

**C. Relevant Customs Code Provisions:**

There are no provisions in the Code concerning fees or charges for customs processing.
**D. Suggested Changes:**
Not applicable

**E. Other Issues to Note:**
None

**Article 6.3 Penalty Disciplines**

**A. Level of Legal Alignment:** Partially Aligned

**B. Main Gaps:**
1. Law does not clearly authorize/require Customs officials to set amounts of fines based on particular facts and circumstances of individual cases
2. There are no specific provisions in the law to allow/require Customs to mitigate the amount of fines where a prior disclosure is made

**C. Relevant Customs Code Provisions:**

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 (Art. 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” (Art. 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.

**D. Suggested Changes:**

1. Clarify law 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. Clarify law that a prior voluntary disclosure, as defined in the TFA, shall be taken as a mitigating factor in determining amounts of administrative fines

**E. Other Issues to Note:**

None

**Article 7.1 Pre-Arrival Processing**

**A. Level of Legal Alignment:** Fully Aligned

**B. Main Gaps:**

1. None

**C. Relevant Customs Code Provisions:**

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 necessity of presentation of 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 (Art. 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 (Art. 259) allows the declarant the option to make the advance declaration, whereas the other provision (Art. 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).

**D. Suggested Changes:**

None

**E. Other Issues to Note:**

None
Article 7.2  Electronic Payment

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:

1. None

C. Relevant Customs Code Provisions:

**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.”

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 law would allow payments by means of electronic bank transfer.

D. Suggested Changes:

None

E. Other Issues to Note:

- The other “laws of Ukraine” referenced in Article 298, which are outside the scope of this study, should be reviewed to determine what restrictions, if any, apply to electronic payment of customs charges.
- Actual implementation of this measure would appear to require Ukraine’s banking network to establish the necessary legal and technical infrastructure to allow bank clients to make payments via electronic debit.

Article 7.3  Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

A. Level of Legal Alignment: Substantially Aligned

B. Main Gaps:

1. The law does not appear to allow release under guarantee where duty and tax cannot be finally determined on arrival in cases where the declarant is unable at that time to provide all required declaration information or all required supporting documents

C. Relevant Customs Code Provisions:

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.

---

3 The situations where cash only payments are allowed under the Customs Code include deposits to a pre-payment account (Art. 299) and a deposit for purposes of establishing a financial guarantee (Art. 309).
The Code does not provide a declarant with an absolute right to release of goods under guarantee prior to final determination of duty and tax where all other regulatory requirements are met. However, the law does contain a number of provisions that appear intended to ensure rapid release.

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.”

Apart from this guarantee of release within 4 hours (subject to exceptions), the law includes a “temporary” customs declaration procedure (known as a “provisional” or “incomplete” declaration under WCO and EU regimes). Under Article 260, where the declarant does not have all the particulars needed to complete a standard customs declaration, the declarant may submit a temporary customs declaration with the essential information needed to determine whether the goods can be released under the declared procedure, and obtain release of the goods subject to submission of an “additional” declaration within a period of 45 days. However, it appears that to obtain release, the declarant shall be required to pay the duty and tax calculated at the highest rate applicable to the goods, if the missing information relates to duty and tax computation.

To more closely align to the TFA measure, this “temporary” declaration procedure might be improved if (i) rather than requiring payment of duty and tax to obtain release, the declarant is permitted to submit a guarantee, and (ii) the temporary declaration procedure is extended to cover cases of missing supporting documents (rather than, as now, missing declaration information).

**D. Suggested Changes:**

1. Expand the “temporary” declaration procedure (i) to allow for release under guarantee and (ii) to allow the procedure to be used for missing required supporting documents

**E. Other Issues to Note:**

None
Article 7.4  Risk Management

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:
None

C. Relevant Customs Code Provisions:

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” (Art. 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 (Art. 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 (Art. 363.2). A random selection factor is also to be applied (Art. 363.3).

D. Suggested Changes:
None

E. Other Issues to Note:
None

Article 7.5  Post-Clearance Audit

A. Level of Legal Alignment: Substantially Aligned

B. Main Gaps:

1. 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

C. Relevant Customs Code Provisions:

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” (Art. 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 (Art. 346.6);
- the audit to be competed within 30 working days, with extensions of not more than 15 days for certain, limited reasons only (Art. 346.8);
- the auditee to be given written notification of any temporary suspension in the audit (Art. 346.12);
- the auditee to be informed of the provisions of laws relating to the audit issues, on request (Art. 347.2); and,
- the auditee to be provided with the grounds for the audit and the audit order (Art. 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 (Art. 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 (Art. 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.
**D. Suggested Changes:**

1. Review 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

**E. Other Issues to Note:**

None

**Article 7.6 Establishment and Publication of Average Release Times**

**A. Level of Legal Alignment:** Fully Aligned

**B. Main Gaps:**

None

**C. Relevant Customs Code Provisions:**

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. Customs authority under these provisions would appear to cover the conduct of a time release study.

There are no provisions in the Code that would prevent Customs from publication of results of time release studies. Although the Code prohibits the disclosure of confidential information, it expressly provides that the “the provision of impersonalized summary information for statistic purpose, impersonalized analytical data, [and] information on the common issues of customs information” is not subject to the prohibition ([Article 11](#)).

**D. Suggested Changes:**

None

**E. Other Issues to Note:**

None

**Article 7.7 Trade Facilitation Measures for Authorized Operators**

**A. Level of Legal Alignment:** Fully Aligned

**B. Main Gaps:**

None

**C. Relevant Customs Code 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 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)

D. Suggested Changes:

None

E. Other Issues to Note:

None

Article 7.8   Expedited Shipments

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:

None

C. Relevant Customs Code Provisions:

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 (Art. 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 (Art. 233.3-4)
- allow customs clearance to be conducted at the central sorting station or place of location of the carrier (Art. 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) (Art. 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 (Art. 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 (Art. 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.

**D. Suggested Changes:**

None

**E. Other Issues to Note:**

None

**Article 7.9 Perishable Goods**

**A. Level of Legal Alignment:** Substantially Aligned

**B. Main Gaps:**

1. 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

**C. 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. The article further provides that

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. This interpretation should be verified.

**D. Suggested Changes:**

1. Clarify, if necessary, right of declarant to written explanation, where perishable goods are not released within four hours

**E. Other Issues to Note:**
• 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 these other border authorities. The legislation and procedures of these other authorities must therefore be reviewed to ensure alignment with the TFA measure.

• Although there is a legal basis for temporary storage of perishable goods at cold storage or other appropriate facilities, it should be determined whether such facilities exist in fact in Ukraine and, if not, the reasons they have not been established.

**Article 8 Border Agency Cooperation**

**A. Level of Legal Alignment:** Fully Aligned

**B. Main Gaps:**

None

**C. Relevant Customs Code Provisions:**

• **National Coordination**

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

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.

• **Cross-Border Cooperation**

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.

**D. Suggested Changes:**

None

**E. Other Issues to Note:**

None

**Article 9   Movement of Goods Intended for Import under Customs Control**

**A. Level of Legal Alignment:** Fully Aligned

**B. Main Gaps:**

None

**C. Relevant Customs Code Provisions:**

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).

**D. Suggested Changes:**

None

**E. Other Issues to Note:**

None

**Article 10.1   Formalities and Documentation Requirements**

**A. Level of Legal Alignment:** Not Aligned

**B. Main Gaps:**

1. There are no specific provisions in the Customs Code that require Customs to review new or existing documentation and formalities in order to assess trade facilitation impacts (note: such provisions are typically found in other legislation, not the customs law)
C. Relevant Customs Code Provisions:

There are no specific provisions in the Customs Code 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.

D. Suggested Changes:

1. Other legislation of Ukraine should be reviewed to determine alignment to this TFA measure, particularly legislation on administrative rules (such as any legislation requiring regulatory impact analyses)

E. Other Issues to Note:

- This TFA measure is typically not implemented in the customs law, but in general administrative law applicable to all government authorities (it is not Customs-specific)

Article 10.2 Acceptance of Copies

A. Level of Legal Alignment: Partially Aligned

B. Main Gaps:

1. 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

2. 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

C. Relevant Customs Code Provisions:

- Use of Copies

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” (Art. 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 (Art. 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.

- **Prohibition against Requiring Export Customs Declaration**

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).

**D. Suggested Changes:**

1. Extend the authority to submit certified copies of documents, as described in Article 264, to all documents described in Article 335

2. Remove obligation to provide original or copy of the customs declaration from the country of departure

**E. Other Issues to Note:**

None

**Article 10.3 Use of International Standards**

**A. Level of Legal Alignment:** Fully Aligned

**B. Main Gaps:**

None

**C. Relevant Customs Code Provisions:**

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.”

More generally, it appears that many of the provisions of the Code itself are based on or implement internationally 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.
Article 10.4  Single Window

A. Level of Legal Alignment:  Substantially Aligned

B. Main Gaps:

1. Restrictions on sharing confidential commercial information with other border authorities may complicate implementation of a single window system

C. Relevant Customs Code Provisions:

There are no specific provisions in the Customs Code concerning implementation or operation of a single window system. However, as noted above (in connection with Article _), 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.

D. Suggested Changes:

1. 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

E. Other Issues to Note:

The “other laws of Ukraine” concerning disclosure of confidential information, referred to in Article 11, must also be reviewed to determine limits on Customs sharing information with other authorities.
Article 10.5  Preshipment Inspection

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:

None

C. Relevant Customs Code Provisions:

Article 327 generally authorizes Customs to engage specialists and experts in customs supervision, if necessary. However, 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.

D. Suggested Changes:

None

E. Other Issues to Note:

None

Article 10.6  Use of Customs Brokers

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:

None

C. Relevant Customs Code Provisions:

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.”

D. Suggested Changes:

None
E. Other Issues to Note:

- The Law of Ukraine on Licensing Certain Types of Activities should be reviewed to ensure conformity with the TFA obligation that licensing of brokers shall be transparent and objective.

Article 10.7 Common Border Procedures and Uniform Documentation Requirements

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:

None

C. Relevant Customs Code Provisions:

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.

D. Suggested Changes:

None

E. Other Issues to Note:

None

Article 10.8 Rejected Goods

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:

None

C. Relevant Customs Code Provisions:
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.

D. Suggested Changes:
None

E. Other Issues to Note:
- Legislation of sanitary/phytosanitary and standards authorities should be examined to determine alignment with the TFA measure.

Article 10.9 Temporary Admission of Goods and Inward and Outward Processing

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:
None

C. Relevant Customs Code Provisions:
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.

D. Suggested Changes:
None

E. Other Issues to Note:
None

Article 11 Freedom of Transit

A. Level of Legal Alignment: Fully Aligned

B. Main Gaps:
None

C. Relevant Customs Code Provisions:
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-

- provide 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 (Art. 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.\(^4\)

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.

**D. Suggested Changes:**

None

**E. Other Issues to Note:**

None

**Article 12 Customs Cooperation**

**A. Level of Legal Alignment:** Substantially Aligned

**B. Main Gaps:**

1. 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

**C. Relevant Customs Code Provisions:**

\(^4\)“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.”
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. **Article 11** 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.”

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 Ukraine customs administration’s ability to provide information requested by other customs administrations.

**D. Suggested Changes:**

1. If not provided in other laws of Ukraine, 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.

**E. Other Issues to Note:**

None

---

5 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.
III. CONCLUSION

In this paper, we assessed the alignment of the Customs Code of Ukraine to the WTO Agreement on Trade Facilitation, with the purpose of determining whether the current Code provides a legal basis for implementation of the approximately 35 technical measures of the WTO agreement.

Overall, the assessment determined that there is a very high level of alignment between the Code and the new agreement. Even where a discrepancy was found, the gap is minor (that is, alignment in most cases is “substantial” where gaps were found).

There are certain important caveats to this study that should be emphasized:

- This study examined only the Customs Code to determine whether there was a legal basis for implementation of the WTO measures; it did not determine whether these measures are implemented in fact. For that purpose, the implementing rules, procedures and actual operations should be reviewed to determine gaps as well as what measures (and what external technical assistance and capacity building support) may be required to overcome those gaps.

- Certain measures of the WTO agreement will be implemented by border authorities other than or in addition to the customs administration, such as the food safety, standards, plant and animal quarantine and ports authorities. To assess alignment to the TFA, legislation of those authorities should also be reviewed.

- Certain measures of the WTO agreement are typically implemented though general administrative law, rather than the Customs Code or the enabling laws of the border authorities. These measures include those concerning transparency (publication), rule-making procedures, and appeals. This general legislation should also be reviewed to determine alignment.