



WCO WORKING GROUP
ON THE WTO
AGREEMENT ON TRADE
FACILITATION

PT0005E1a

-
1st Meeting

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11 – 12 March 2014

Brussels, 12 February 2014.

**ANALYSIS OF TRADE FACILITATION MEASURES IN THE ATF COMPARED TO WCO
INSTRUMENTS AND TOOLS:**

Analysis of Trade Facilitation measures in Section I of the ATF

(Item VII (a) of the Agenda)

Background

1. The December 2013 Policy Commission welcomed the WTO Agreement on Trade Facilitation (ATF) adopted at the WTO's Ninth Ministerial Conference in Bali (Indonesia) held from 3 to 7 December 2013, by issuing the Dublin Resolution¹. Full implementation of the Trade Facilitation Agreement will contribute to economic growth and recovery, improved revenue collection and alleviation of poverty.
2. The Ministerial Decision highlights the role of the WCO in implementation and administration of the Trade Facilitation Agreement. As Customs is the key implementing agency of the ATF, it is therefore essential that the WCO and its Members collectively ensure smooth, effective and harmonized implementation of the ATF.
3. The purpose of this document is to provide more information on the role of Customs and the WCO in implementing the ATF, and the possible implications in terms of implementation guidance provided through the draft Analysis of trade facilitation measures embodied in Section I of the ATF.

¹ The Dublin Resolution can be found on the WCO web site:
<http://www.wcoomd.org/en/media/newsroom/2013/december/policy-commission-resolution.aspx>

The role of Customs and the WCO in implementation of the ATF

4. Customs is the key border agency responsible for all international trade transactions and is the central government administration responsible for implementing the WTO Agreement on Trade Facilitation. With that in mind, the WCO has continuously in the past, and especially through the Permanent Technical Committee, encouraged its Members to take an active approach towards the WTO Trade Facilitation negotiations, both at national level (i.e. through trade facilitation committees) and in Geneva where the negotiations took place.
5. Customs administrations of many WTO Members have made positive contributions to the WTO Trade Facilitation negotiations finalized with the conclusion of the Agreement on Trade Facilitation. Engagement of Customs in the negotiating process has ensured that the WTO Agreement is consistent with WCO tools and programmes on trade facilitation and compliance which they have been developing and implementing in the past years. Those include the amended International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention, RKC), but also the Data Model, the Time Release Study, etc. The mentioned instruments and tools, including many more, are now embodied in the WCO Economic Competitiveness Package.
6. Article 13.2 of the ATF requires each Member to establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of ATF provisions. Having in mind the central role of Customs, it is necessary to ensure appropriate level of involvement and competencies in this committee. The ability of the Customs administrations to successfully implement ATF provisions will depend largely on their direct engagement, agility and cooperation with other Customs administrations.
7. Many of the WCO Members can rightfully say they have already implemented trade facilitation measures now agreed at the WTO. However, the ATF will now bring the necessary level of political will to further progress the trade facilitation agenda, especially in terms of bringing together all relevant border agencies and ensuring efficient Coordinated Border Management.

Coming into force of the ATF

8. In accordance with the WTO Ministerial Decision of 7 December 2013 (Decision), the Ministerial Conference established a Preparatory Committee on Trade Facilitation (Preparatory Committee) under the General Council, open to all WTO Members, to perform such functions as may be necessary to ensure the expeditious entry into force of the Agreement and to prepare for the efficient operation of the Agreement on Trade Facilitation (ATF) upon its entry into force. In particular, the Preparatory Committee is expected to conduct the legal review of the Agreement, receive notifications of Category A commitments, and draw up a Protocol of Amendment (Protocol) to insert the Agreement into Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).
9. Furthermore, the Decision envisages that the WTO General Council shall meet no later than 31 July 2014 to annex to the ATF notifications of Category A commitments, to adopt the Protocol drawn up by the Preparatory Committee, and to open the Protocol for

acceptance until 31 July 2015. The Protocol (i.e. the ATF) shall enter into force in accordance with Article X:3 of the WTO Agreement, i.e. for the Members that have accepted it upon acceptance by two thirds of the WTO Members (and thereafter for each other Member upon acceptance).

10. The first meeting of the Preparatory Committee was held on 31 January 2014 under the Chairmanship of the Philippine Ambassador to the WTO Mr. Esteban Conejos Jr.

WCO Working Group on the WTO ATF

11. In accordance with the ATF (Article 13.1 of Section I), the WTO Trade Facilitation Committee will maintain close contact with the World Customs Organization with the objective of securing the best available advice for the implementation and administration of the ATF and in order to ensure that unnecessary duplication of effort is avoided.
12. The WCO Policy Commission in December 2013 decided to establish a Working Group on the ATF (WGATF) which will be taking up the practical aspects of meeting expectations arising from the ATF, and ensuring a harmonized approach by Customs in implementing the Agreement.
13. The first meeting of the WGATF will be held on 11 and 12 March 2014. Through the WGATF, the WCO will be able to share experience on implementation of the ATF among its Members, as well as with the donor community. It will ensure the right level of coordination with the Policy Commission and the key technical committees, such as the Permanent Technical Committee and Capacity Building Committee.

The Analysis of Section I

14. The ATF consists of two sections. Section I contains trade facilitation measures embodied in 12 articles, and Article 13 which focuses on administrative arrangements. Section II contains 10 articles on Special & Differential Treatment providing a range of flexibilities for developing and LDC Members when implementing the ATF, including sufficient time and mechanisms for technical and donor assistance and support for capacity building.
15. The Analysis of trade facilitation measures in Section I (attached to this document) was developed to provide relevant information and guidance in terms of implementation of the ATF provisions by using WCO instruments and tools, to ensure a harmonized approach by Customs administrations.
16. The draft Analysis is based on the WTO Trade Facilitation Toolkit already presented to the PTC. The Analysis deals with the 12 trade facilitation articles and contains the following information classified in six columns:
- “Article of the WTO Agreement on Trade Facilitation (WT/MIN(13)/36, WT/L/911)”;
 - “WCO Instruments, Tools, Guidelines (non exhaustive)”: The WCO instruments and tools developed over the past years provide ample standards and guidance adequate for implementing the ATF provisions. In this column, references to the

relevant Chapters of the RKC General Annex and Specific Annexes, as well as to other instruments, tools and guidelines, have been indicated.

- “Remarks”: The information in this column is an attempt to shed more light on how the WTO provisions relate to the WCO instruments and tools, as well as which and to what extent they can be used to implement the WTO provisions.
- “Possible implications”: Some areas have been identified as possibly needing more guidance or examples of national practices. Those are indicated in this column.
- “WCO Body concerned”: The comprehensive WCO structure provides the ideal forums for discussions on any issues and for sharing Members’ experiences. This column indicates WCO bodies which could be discussing the same WTO provisions from different perspectives and with different profiles of delegates, ensuring a coherent approach in implementing the individual ATF provisions.

17. The Analysis also contains remarks regarding Article 13 on institutional arrangements.
18. The Analysis will serve as a starting point of WCO’s activities in terms of supporting Customs administrations in implementing the ATF, as well as a basis for an interactive Implementation Guidance web tool, which the Secretariat is currently developing. It will also be discussed in the PTC and other relevant WCO bodies.
19. The Analysis is considered to be a living document, as new instruments are being developed, the existing ones updated and as Members’ experiences are being explored.

Conclusion

20. Delegates to the WGATF are invited to carefully examine the draft Analysis and provide guidance in terms of possible improvements and its further use.
21. The WGATF is also requested to approve the draft Analysis to be further explored by other relevant WCO bodies including the PTC.

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WTO AGREEMENT ON TRADE FACILITATION

- Analysis of trade facilitation measures in Section I based on the WTO TF Toolkit and potential implications on WCO -

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION				
1. Publication	<ul style="list-style-type: none"> Revised Kyoto Convention² (RKC), General Annex (GA) Chapter (§) 9; Recommendation (1999) on the Use of World Wide Web sites by Customs administrations; Revised Arusha Declaration (paragraph 3); Recommendation (2001) on the application of HS Committee Decisions; Customs Valuation Compendium. 	<p>Provision compatible with WCO instruments, which cover most of the points raised in Article 1.1.</p> <p>Guidelines to Chapter (§) 9 of the RKC General Annex (GA) already contain sufficient information to support implementation of Article 1.1.</p> <p>There is also a requirement in the WTO Valuation Agreement (Article 12) to publish valuation legislation.</p>	<p>- develop comprehensive WCO guideline for transparency and predictability;</p> <p>- the WTO has advised that many countries have not yet informed the WTO of their valuation legislation as required; a WCO project could potentially address this issue:</p>	<ul style="list-style-type: none"> PTC RKC/MC SAFE WG HSC TCCV
2. Information Available Through Internet	<ul style="list-style-type: none"> RKC, GA § 9; Recommendation (1999) on the Use of World Wide Web sites by Customs administrations; Recommendation (2001) on the 	<p>Provision compatible with WCO instruments, as most of the elements required in the Customs area are dealt with therein, even though “forms and documents” are not mentioned</p>	<p>- develop a comprehensive WCO guidelines for transparency and predictability</p>	<ul style="list-style-type: none"> PTC RKC/MC SAFE WG HSC IMSC

² Wherever a reference is made to the Revised Kyoto Convention (RKC), this refers to both the Standards in the General Annex or a Specific Annex, as well as to the accompanying RKC Guidelines.

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
	application of HS Committee Decisions.	specifically.	- update WCO Recommendation to cover all aspects listed in Article 1.1	
3. Enquiry Points	<ul style="list-style-type: none"> RKC, GA §§ 7 and 9. 	<p>Provision compatible with WCO instruments; in fact the RKC Management Committee discussed this point in November 2008, and saw no need to draft additional guidelines. Guidelines to Chapter 9 of the GA provide sufficient guidance on enquiry points/offices.</p> <p>The WTO text further mentions Members in a Customs union or involved in regional integration establishing common enquiry points. However, there is no specific guidance in the RKC on how to establish enquiry points in Customs unions or regional economic communities (RECs).</p> <p>RKC Guidelines for Chapter 7 also include guidance on how to set up a Help Desk and its components.</p>	<ul style="list-style-type: none"> - develop a WCO list of enquiry points responsible for Customs matters, including enquiry points in Customs unions/RECs; - develop guidelines for enquiry points in Customs unions/RECs; 	<ul style="list-style-type: none"> PTC RKC/MC SAFE WG IMSC
4. Notification	<ul style="list-style-type: none"> RKC, GA § 9; Recommendation (1999) on the Use of World Wide Web sites by Customs administrations; 	Provision compatible with WCO instruments, although the WCO instruments do not require such notification.	<ul style="list-style-type: none"> - develop a list of URLs of websites; - develop a similar notification system at the WCO. 	<ul style="list-style-type: none"> PTC RKC/MC HSC SAFE WG
ARTICLE 2: OPPORTUNITY TO COMMENT,				

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION				
1. Opportunity to Comment and Information before Entry into Force	<ul style="list-style-type: none"> RKC, GA §§ 1 and 9 (primarily) 	<p>Provision compatible with WCO instruments.</p> <p>The RKC envisages consultation with the trade and informing them of changes in laws and regulations well in advance of entry into force, but doesn't specifically mention the need to allow the trade to comment on the proposed introduction or amendment. However, the WTO text says the Members shall <u>to the extent practicable and in a manner consistent with its domestic law and legal system</u> provide opportunities and time period to traders and others to comment.</p>	<ul style="list-style-type: none"> - develop a Guidelines on Customs- Business Partnership including guidance on providing opportunities to trade to comment on laws/regulations; - develop a model Business Lens Checklist for SMEs. 	<ul style="list-style-type: none"> PTC RKC/MC SAFE WG HSC
2. Consultations	<ul style="list-style-type: none"> RKC, GA §§ 1, 7 and 9 (primarily); SAFE 	<p>Provision compatible with WCO instruments.</p> <p>The WTO text mentions a consultation process with other border agencies and traders which Members shall provide, as appropriate. The RKC refers to cooperation with other agencies in terms of joint controls and on the other hand to cooperation with the traders separately.</p>	<ul style="list-style-type: none"> - develop Guidelines on Customs and Business Partnership; - develop a model Business Lens Checklist for SMEs; - the CBM Compendium under development to 	<ul style="list-style-type: none"> PTC RKC/MC SAFE WG HSC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
			include consultations with other border agencies.	
ARTICLE 3: ADVANCE RULINGS				
	<ul style="list-style-type: none"> • RKC, GA § 9; • Recommendation (1996) on the introduction of programmes for binding pre-entry classification information; • Recommendation (1998) on the improvement of Tariff Classification work and related infrastructure (Appendix, Part II); • Technical Guidelines on Binding Origin Information; • Practical Guidelines for Valuation Controls 	<p>Provision compatible with WCO instruments.</p> <p>The WCO instruments/tools provide ample guidance on advance rulings, or “binding rulings”/“binding information” as indicated in the WCO instruments and tools, on classification, origin and valuation.</p> <p>The WTO text makes also reference to advance rulings on relief or exemption from customs duties, on quotas and other. However, only advance rulings on tariff classification and rule of origin are mandatory</p>	<p>- provide guidance on advance rulings on relief/exemption from customs duties, on quotas and those other than tariff, classification and valuation, where ample guidance is already provided;</p> <p>- Revenue Package Phase II Action Plan envisages development of consolidated guidelines for advance rulings.</p>	<ul style="list-style-type: none"> • PTC • RKC/MC • SAFE WG • HSC • TCCV • TCRO
ARTICLE 4: APPEAL OR REVIEW PROCEDURES				
1. Right to Appeal or Review	<ul style="list-style-type: none"> • RKC, GA § 10. 	<p>Provision in line with the RKC.</p> <p>Right of appeal is determined by the Member’s entire legal system, both administrative and judicial. Appeal and review of Customs cases is subject to what the Member’s legal system</p>		

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
		defines.		
ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON- DISCRIMINATION AND TRANSPARENCY				
1. Notification for enhanced controls or inspections	<ul style="list-style-type: none"> • RKC, GA § 6; • SAFE; • Risk Management Compendium; • Single Window Compendium 	Article 5.1 addresses risk based notifications for enhanced controls or inspections at the border in respect of foods, beverages or foodstuff in order to protect human, animal or plant life or health, but doesn't seem to make the system mandatory. This provision is not explicitly covered by WCO tools and instruments since the WTO ATF provision concerns very specific goods for which usually other government agencies have specific responsibilities. However, the WCO does encourage the use of risk management and a compliance (measurement) strategy, as well as sharing information on high risks to reduce the burden on legitimate, low risk trade. Also, Joint Targeting Centers could be considered as an effective tool to enhance information exchange and inter-agency cooperation in this regard (RMC, Volume 1, Annex 4).	- provide reference to this article and possible implications for customs under the Compendium on Coordinated Border Management.	<ul style="list-style-type: none"> • PTC • RKC/MC • SAFE WG • IMSC • EC
2. Detention	<ul style="list-style-type: none"> • RKC, GA § 3, 6 	Article 5.2 addresses the detention of	- provide reference to	<ul style="list-style-type: none"> • PTC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
	<ul style="list-style-type: none"> Risk Management Compendium. 	<p>goods declared for importation for inspection by Customs or any other competent authority. The term “detention” might seem to have connotations related to offences. However, in this article it means not releasing goods until an inspection has been performed. Although the RKC does not have a provision that explicitly states that Customs has to inform the carrier or importer, it does contain a Standard 3.36 in the General Annex that says that Customs shall consider requests by the declarant to be present or to be represented at the examination of the goods. Such requests shall be granted unless exceptional circumstances exist. This provision pre-supposes that the declarant is informed of intended inspection by Customs. Although the RKC does not concern itself with the competences of other government agencies, it does have a Transitional Standard (3.35) to ensure that controls by Custom and other agencies are co-ordinated and, if possible, carried out at the same time.</p>	<p>this article and possible implications for customs under the Compendium on Coordinated Border Management.</p>	<ul style="list-style-type: none"> RKC/MC SAFE WG EC
3. Test Procedures	<ul style="list-style-type: none"> RKC, GA § 3, 10; Customs Laboratory Guide. 	<p>Article 5.3 addresses the opportunity (but not an obligation) for a Member to provide for a second test if the first test result shows an adverse finding for goods declared for importation. This provision is not covered by WCO</p>	<p>- develop a guideline and networks of Customs laboratories to implement the second test efficiently;</p>	<ul style="list-style-type: none"> PTC RKC/MC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
		instruments. WCO instruments do not address the question of second confirmatory tests. One could argue that the right of appeal (GA § 10) covers the request for a second test but that might be considered tenuous.	- provide reference to this article and possible implications for customs under the Compendium on Coordinated Border Management.	
ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION				
1. General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	<ul style="list-style-type: none"> • RKC, GA §§ 3 and 9; SA A § 1; • Revised Arusha Declaration. 	<p>Unlike the Revised Arusha Declaration, the RKC does not provide for the periodic review of fees and charges.</p> <p>Information on fees and charges should be published. The RKC does not cover this point.</p>	- consider the amendment of RKC to include the period review and publishing of information on fees and charges.	<ul style="list-style-type: none"> • PTC • RKC/MC
2. Specific Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	<ul style="list-style-type: none"> • RKC, GA § 3; SA A § 1; • Revised Arusha Declaration. 	In line with RKC.		<ul style="list-style-type: none"> • PTC • RKC/MC
3. Penalty	<ul style="list-style-type: none"> • RKC, GA § 3, SA H §1 	Provision compatible with WCO	- continue the	<ul style="list-style-type: none"> • PTC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
Disciplines		instruments. Members are encouraged to consider voluntary disclosures as a mitigating factor.	discussion on voluntary disclosure and compliance.	<ul style="list-style-type: none"> • RKC/MC
ARTICLE 7: RELEASE AND CLEARANCE OF GOODS				
1. Pre-arrival Processing	<ul style="list-style-type: none"> • RKC, GA §§ 3 and 7; • SAFE; • Immediate Release Guidelines. 	<p>Provision compatible with WCO instruments.</p> <p>The WTO text is very scarce on this matter merely indicating that there shall be a procedure in place to allow for submission of import documentation etc. to allow to begin processing prior to arrival of goods with a view to expediting the release of goods upon arrival.</p> <p>Regarding electronic submission of documents for pre-arrival processing, Members shall only as appropriate provide for. The WCO instruments and tools however provide extensive guidance on this matter</p>		<ul style="list-style-type: none"> • PTC • RKC/MC • SAFE WG
2. Electronic Payment	<ul style="list-style-type: none"> • RKC, GA § 7; 	Kyoto ICT Guidelines and SW Compendium mention e-payment. Also, refunds and drawbacks should also be paid by customs to traders electronically.	-develop a guideline for electronic payment	<ul style="list-style-type: none"> • PTC • RKC/MC • IMSC • DMPT
3. Separation of Release from Final	<ul style="list-style-type: none"> • RKC, GA §§ 3 and 5; • SAFE; 	Provision compatible with WCO instruments.		<ul style="list-style-type: none"> • PTC • RKC/MC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
Determination of Customs Duties, Taxes, Fees and Charges	<ul style="list-style-type: none"> • Immediate Release Guidelines. 			
4. Risk Management	<ul style="list-style-type: none"> • RKC, GA § 6; • SAFE; • Risk Management Compendium 	<p>Article 4.1, 4.2 and 4.3 are directly compatible with RKC GA § 6.1, 6.2, 6.3, 6.4</p> <p>Article 4.4 aims to set up a risk management system based on appropriate selectivity criteria. As the criteria cited are not prescriptive, they do not conflict with WCO's approach in the RM Compendium, which advocates a continuous review for identification and treatment of risks in customs processes.</p> <p>Also, apart from selectivity criteria, RMC promotes receiving the pre-arrival data (RMC, Volume 2).</p> <p>Provision compatible with WCO instruments.</p>		<ul style="list-style-type: none"> • PTC • RKC/MC • SAFE WG • EC
5. Post-clearance Audit	<ul style="list-style-type: none"> • RKC, GA § 6; • SAFE; • Risk Management Compendium; • Post Clearance Audit Guidelines 	<p>Article 5.1 is consistent with RKC GA § 6.6 on Audit-based controls.</p> <p>Article 5.2 aims to be prescriptive in the manner post-clearance audit is conducted. The first part relating to utilizing risk-based criteria for audit selection is consistent with GA § 6.5.</p> <p>But the subsequent point in the same</p>	<p>- the PCA Guidelines may have to be more explicit in providing guidance to administrations on post-audit communication and the rights and obligations of auditees;</p>	<ul style="list-style-type: none"> • PTC • RKC/MC • SAFE WG • EC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
		<p>paragraph on audit transparency and notification “without delay of the results, their rights and obligations and the reasons for the results” are not explicitly covered in the RKC. The PCA Guidelines draws reference to national legislations on follow-up actions by both auditor and auditee instead.</p> <p>The SAFE Package provides some guidance in this area through the Model AEO Appeal process.</p>	<p>- both the PCA Guidelines and the AEO appeal process need to be made consistent</p>	
<p>6. Establishment and Publication of Average Release Times</p>	<ul style="list-style-type: none"> • Guide to Measure the Time Required for the Release of Goods (TRS Guide); • TRS Online Software; • The Customs International Benchmarking Manual 	<p>Provision compatible with WCO instruments.</p> <p>The WTO ATF <u>encourages</u> Members to measure and publish their average release times. WCO TRS is directly referred to in the text. The 2011 version of the TRS Guide includes a model press release to provide guidance to members when publishing information.</p>		<ul style="list-style-type: none"> • PTC • RKC/MC
<p>7. Trade Facilitation Measures for Authorized Operators</p>	<ul style="list-style-type: none"> • RKC, GA § 3; • SAFE; • SAFE Package 	<p>The WTO ATF takes into consideration different models of the WCO: both Special Procedures for Authorized Persons (RKC Transitional Standard 3.32) and the AEO in the SAFE. For example, in the WTO text, the specified criteria for Authorized Operators (AO) are very similar to a number of criteria specified in the SAFE text (i.e. an appropriate record</p>	<p>-continue discussion at the SAFE review sub-group (e.g. compliance programs, MRA for compliance programs)</p> <p>- Members to use existing WCO</p>	<ul style="list-style-type: none"> • PTC • RKC/MC • SAFE WG • SAFE review sub-group

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
		<p>of compliance, a system of managing records, financial solvency, supply chain security).</p> <p>However, none of these requirements are mandatory. AO programme may include only few of the specified criteria.</p> <p>Fundamental difference between AEO and AO is that in AEO there is thrust on supply chain security with consequent facilitation, whereas in AO the main thrust is on compliance or the risk of non – compliance with laws. Basically, the SAFE AEO is a very comprehensive concept compared to what is included in the WTO text</p> <p>On the other hand, the trade facilitation measures (i.e. benefits) include some from the RKC (clearance of goods at the premises of the authorized operator, a single customs declaration for all imports or exports), some from the SAFE or the PSCG benefits paper (fewer physical inspections, rapid release time), and for instance reduced documentary and data requirements is in both the RKC and the SAFE..</p> <p>- The Members shall provide additional trade facilitation measures to Authorized Operators.</p>	<p>instruments and tools to develop and implement AO scheme. This could be stepping stone for implementation of fully-fledged AEO programme. The C2B consultation and partnership guidance and the AEO Compendium should address also the AO concept and examples.</p>	

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
		<p>WTO ATF Text stipulates that the Members are encouraged to develop authorized operator schemes on the basis of international standards, wher such standards exist.</p> <p>RKC along with guidelines and SAFE Framework of Standards along with the SAFE Package provides standards .</p> <p>The text also refers to mutual recognition of authorized operator schemes.</p>		
8. Expedited Shipments	<ul style="list-style-type: none"> • RKC, GA § 3; • Immediate Release Guidelines. 	<p>Provision compatible with WCO instruments.</p> <p>The text is more or less in line with the Immediate Release Guidelines (IRG) which provides much more information and guidance. The IRG provide that the Customs will generally grant immediate release/clearance for all consignments, provided that the appropriate conditions are met and the necessary information is communicated in a certain time before arrival of goods.</p> <p>In WTO Members shall adopt or maintain procedures for expedited shipments. It also states that the procedures should be allowing expedited release of at least those goods entered through air cargo</p>	- possibly developing standards (within the IRG) on who may apply for expedited release of goods to align with the WTO text (although this would not be a facilitation measure).	<ul style="list-style-type: none"> • PTC • RKC/MC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
		<p>facilities.</p> <p>The difference to WCO is that the WTO Text provides a possibility of limiting who may apply for expedited shipments (expedited shipment carrier), indicating specific criteria, which are not contained in the IRG, while the IRG indicates criteria for the 4 categories of goods to which this procedure applies. The IRG is specific on which data elements need to be submitted to the Customs in advance, which is not included in the WTO text.</p> <p>The WTO text talks only about expedited release and not of expedited clearance (which is covered in the IRG).</p>		
9. Perishable goods	<ul style="list-style-type: none"> RKC, GA § 3; 	<p>The WTO text is consistent with the RKC which also says that Customs shall release perishable goods with priority. However, the WTO text provides more specificity in terms of storage of perishable goods. The WTO text indicates a requirement for a Member to provide a communication on the reasons for the delay of release.</p>	<ul style="list-style-type: none"> - possibly revise the RKC legal text or developed guidelines to provide more specificity 	<ul style="list-style-type: none"> PTC RKC/MC
ARTICLE 8: BORDER AGENCY COOPERATION	<ul style="list-style-type: none"> RKC, GA § 3; SAFE; Customs Compendium : Integrated Border Management. 	<p>In article 9.1, the WTO ATF text takes a broad approach to border agency cooperation within one jurisdiction. The RKC only addresses joint controls but</p>	<ul style="list-style-type: none"> - develop CBM Compendium - amend the Glossary to include 	<ul style="list-style-type: none"> PTC RKC/MC SAFE WG IMSC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
	<ul style="list-style-type: none"> • WCO Data Model • Single Window Compendium 	<p>the SAFE FoS and the Integrated Border Management Compendium, which is currently under revision and will be re-named to Coordinated Border Management Compendium, take the same broad approach as the WTO ATF text.</p> <p>In article 9.2, the WTO ATF text deals with cross border CBM. The list of possible cooperation and coordination areas is more or less the same as in the WCO instruments and tools although the wording is sometimes slightly different. E.g. the WTO ATF text speaks of one stop border post controls whereas the WCO instruments and tools talk of juxtaposed Customs offices to facilitate joint controls. The WTO ATF provisions seem compatible with WCO instruments, although the difference in terminology may also indicate a difference in interpretation.</p>	both WCO and WTO terms used.	<ul style="list-style-type: none"> • DMPT • EC
ARTICLE 9: MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT	<ul style="list-style-type: none"> • RKC, SA E §§ 1 and 2; • Customs Compendium on a Secure and Efficient Transit System. 	Provision compatible with WCO instruments.	- develop Transit Handbook	
ARTICLE 10: FORMALITIES CONNECTED				

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
WITH IMPORTATION AND EXPORTATION AND TRANSIT				
1. Formalities and Documentation Requirements	<ul style="list-style-type: none"> • RKC, GA § 3; • Recommendation on Dematerialization of Supporting Documents 	<p>The trade facilitative outcome of harmonised procedures is stated in the preamble of the RKC and Article 1.1a is consistent with RKC GA §3.34.</p> <p>Article 1.1c and 1.1d have no equivalent clause in the RKC, which does not impose as a criterion “the least trade restrictive” measure to be applied, or the doing away of formalities and requirements no longer required.</p> <p>Provision compatible with WCO instruments.</p> <p>The TF Committee would develop procedures for relevant information and sharing best practices</p>	<p>The RKC preamble recognizes that simplification and harmonization can be achieved through the implementation of programmes aimed at continuously modernizing Customs procedures and practices and thus enhancing efficiency and effectiveness,</p> <p>There is a need to consider if this point of divergence needs to be elaborated.</p>	<ul style="list-style-type: none"> • PTC • RKC/MC
2. Acceptance of Copies	<ul style="list-style-type: none"> • RKC, GA § 3; • Recommendation (2012) on Dematerialization of Supporting Documents 	<p>Provision compatible with WCO instruments.</p> <p>Clause 2.1 puts the acceptance of paper documents at par with electronic documents (instead of giving primacy to electronic documents.)</p>		<ul style="list-style-type: none"> • PTC • RKC/MC • IMSC • DMPT
3. Use of International	<ul style="list-style-type: none"> • RKC, §§ 3 and 7; • Data Model; 	Provision compatible with WCO instruments.	- identify WCO tools as valuable	<ul style="list-style-type: none"> • PTC • RKC/MC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
Standards	<ul style="list-style-type: none"> • Recommendation (June 2009) concerning the use of the WCO Data Model; • Recommendation (June 1990) on the use of the UNTDED; • Recommendation (June 1990) on the use of UN/EDIFACT. 	<p>Reference to the WCO Data Model, the use of the UNTDED and UN/EDIFACT have been removed from the WTO text.</p> <p>The Committee may identify specific standards that are of value to WTO members.</p>	<p>standards at the TF Committee</p> <p>- Need to position the WCO Data Model before the Committee. Prepare appropriate material to reflect the principles enshrined in the WTO Text</p> <p>- The WCO Data Model Project Team is ideally suited for carrying out activities listed in 3.2 and 3.3.</p>	<ul style="list-style-type: none"> • IMSC • DMPT
4. Single Window	<ul style="list-style-type: none"> • RKC, GA § 3; • SAFE. • Single Window Compendium • Single Window Information Store (on WCO web site) • Data Model 	<p>Provision compatible with WCO instruments. Although the RKC does not explicitly refer to Single Window, some of its provisions do cover, in part, the operation of the Single Window.</p> <p>The definition of Single Window in the ATF text is simple and practical.(4.1 and 4.2)</p>	<p>- SW Compendium is being updated.</p>	<ul style="list-style-type: none"> • PTC • RKC/MC • IMSC • DMPT
5. Pre-shipment Inspection	<ul style="list-style-type: none"> • Practical Guidelines for Valuation Control 	<p>The Members shall not require the use of pre-shipment inspection for: 1. Tariff classification and 2. Customs valuation. Regarding others types of pre-shipment inspection, Members are encouraged not to introduce or apply new requirements regarding their use.</p>	<p>- further work planned under Phase II of the Revenue Package Action Plan.</p>	<ul style="list-style-type: none"> • PTC • RKC/MC • TCCV

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
		<p>This article does not apply to destination inspection activities.</p> <p>Practical Guidelines for Valuation Control provide some guidance in terms of developing a strategy for the elimination of pre-shipment inspection.</p>		
6. Use of Customs Brokers	<ul style="list-style-type: none"> RKC, GA §§ 3 and 8. 	<p>The WTO ATF text allows the mandatory use of Customs brokers only if it was introduced before the Agreement enters into force. It may contradict with RKC (standard 3.7). The Members shall notify and publish its measures on the use of customs brokers, which is in line with the RKC which talks about declarants and the need to have the conditions specified in the national legislation – this would include brokers, but is broader.</p>	<ul style="list-style-type: none"> - develop a guideline on “Customs and Business Partnership” - the terminology could be a thing to consider as the RKC mentions “declarant” which is any person who makes a goods declaration (importer, exporter, customs broker...) and is broader than “customs broker”. 	<ul style="list-style-type: none"> PTC RKC/MC
7. Common Border Procedures and Uniform Documentation Requirements	<ul style="list-style-type: none"> RKC, GA § 3 	<p>Article 7.1 and 7.2 are phrased very broadly and requires that customs procedures and documentation within a member’s territory have to be standardized, other than the exceptional handling scenarios listed in 7.2.</p> <p>RKC GA § 3 does not prescribe that Competent Customs Offices need to adhere to the same procedures and</p>		<ul style="list-style-type: none"> PTC RKC/MC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
		<p>Article 7.2 provides for the exception of differentiated handling for different goods, different risks, different modes of transport, electronic filing or SPS requirements. Hence, the Article cancels itself out.</p> <p>Provision is not clear enough to identify the measure. It could include competence of Customs office, general Customs procedures or application of Customs legislation.</p>		
8. Rejected Goods	<ul style="list-style-type: none"> RKC, GA § 3 and SA C § 1 	<p>The RKC does not specifically mention the return of goods which don't meet prescribed sanitary or phytosanitary regulations or technical regulations. However, under article 4.19 RKC mentions the repayment which shall be granted to the importer/exporter for the goods that are returned as they are not in accordance with the agreed specifications at the time of importation/exportation. If importers fails to do this in a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.</p> <p>However, as the WTO text mentions that this shall be done by members subject to and consistent with its laws and regulations, it allows flexibility in terms of further specificities.</p>	<p>- Possibly Members would be asking for more guidance on how to deal with rejected goods and what would be the other courses of action to deal with such non-compliant goods, if the importer fails to re-consign/return the rejected goods, but also on how the goods re-entering the territory would be treated.</p>	<ul style="list-style-type: none"> PTC RKC/MC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
9. Temporary Admission of Goods/Inward and Outward Processing				
(a) Temporary Admission of Goods	<ul style="list-style-type: none"> • RKC SA G § 1; • Istanbul Convention; • A.T.A. Convention 	Provision compatible with WCO instruments, but the latter are much more specific.		<ul style="list-style-type: none"> • PTC • RKC/MC • Administrative Committee on Istanbul Convention/CPs to the ATA Convention
(b) Inward and Outward Processing	<ul style="list-style-type: none"> • RKC SA F §§1, 2 and 3 	Provision compatible with WCO instruments but the RKC is much more specific.		<ul style="list-style-type: none"> • PTC • RKC/MC
ARTICLE 11: FREEDOM OF TRANSIT	<ul style="list-style-type: none"> • RKC, GA §§ 1 and 2: • Customs Compendium on Secure and Efficient Transit System. 	Freedom of transit and principle of non-discrimination are not covered by equivalent provisions in WCO instruments. The Article V definition of traffic in transit differs slightly from the sphere of application of Chapter 1 of Specific Annex E to the RKC. RKC does not cover advance filing and comprehensive guarantee system.	- develop Transit Handbook	<ul style="list-style-type: none"> • PTC • RKC/MC • Administrative Committee on Istanbul Convention/CPs to the ATA Convention
ARTICLE 12: CUSTOMS COOPERATION	<ul style="list-style-type: none"> • Nairobi Convention, • Guide to the Exchange of Customs Valuation Information • RKC, • Model Bilateral Agreement, 	The coverage of information exchange article is very narrow (mainly for verification of an import and export declarations in identified cases only). A requested party may refuse the provision of information based on its	- encourage to use the Model Bilateral Agreement and Nairobi Convention - continue the	<ul style="list-style-type: none"> • PTC • RKC/MC • EC

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
	<ul style="list-style-type: none"> • Globally Networked Customs (GNC)Feasibility Study. • Johannesburg Convention (not in force) • Customs Enforcement Network Global Application (CEN); • National Customs Enforcement Network Application (nCEN); • Customs Enforcement Network Communication Platform (CENcomm). 	<p>national legal system.</p> <p>This Article would not replace information exchange based on bilateral/plurilateral/regional agreements.</p>	<p>development of GNC project</p> <p>-fast track relevant UBs/Proof of Concept projects.</p> <p>- Review the Guide to the Exchange of Customs Valuation Information to ensure alignment with ATF (although they seem to be closely aligned).</p>	
1. Measures Promoting Compliance and Cooperation	<ul style="list-style-type: none"> • RKC, GA §§ 1 and 3; • RKC, SA H § 1. 		<p>- develop a guideline on “Customs and Business Partnership”</p> <p>- continue the discussion on voluntary disclosure and compliance.</p>	
2. Exchange of Information	<ul style="list-style-type: none"> • RKC, GA §§ 6 and 7; • Nairobi Convention; • Model Bilateral Agreement; • Guide to the Exchange of Valuation Information; • GNC Feasibility Study; • • Customs Enforcement Network Global Application (CEN); • National Customs Enforcement 	<p>The WTO ATF Text does not cover information exchange on voluntary basis. Other WCO tools cover the spontaneous information exchange.</p> <p>The WTO ATF Text focuses on information exchange for the purposes of verifying import/export declaration. It refers to exchange of available information in respect of a</p>	<p>- develop and share a list of contact points</p> <p>- continue working for comprehensive approach towards Customs cooperation by using WCO</p>	

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
	<ul style="list-style-type: none"> • Network Application (nCEN); • Customs Enforcement Network Communication Platform (CENcomm). 	<p>consignment presented as legitimate trade. It does not envisage</p> <ul style="list-style-type: none"> • Exchange of information on commodity smuggling, drug trafficking, IPR, CITES and Hazardous waste enforcements. • Investigative assistance, backtracking investigations, etc. • Exchange of advance information. <p>There is a possibility that Customs administrations will not be a contact point of information exchange. Johannesburg Convention stipulates direct communication between Customs (Art 3.)</p> <p>Contact points will be notified to the TF Committee. Johannesburg Convention also requests the notification to the WCO.</p>	instruments and tools.	
3. Verification	<ul style="list-style-type: none"> • Nairobi Convention; • Model Bilateral Agreement. 	Requested Member can ask for confirmation of the verification conducted by the Requesting Member, including pertinent information on such verification.		
4. Request	<ul style="list-style-type: none"> • Nairobi Convention; • Model Bilateral Agreement. 	Requesting Member need to provide information on domestic laws and legal system regarding data protection when they request information.		
5. Protection and	<ul style="list-style-type: none"> • Nairobi Convention; 	The WTO ATF Text doesn't		

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
confidentiality	<ul style="list-style-type: none"> Model Bilateral Agreement. 	differentiate nominal and non-nominal data, which is important for enforcement purposes.		
6. Provision of Information	<ul style="list-style-type: none"> Nairobi Convention; Model Bilateral Agreement. 	<p>The WTO ATF Text limits exchange of information as set out in the import or export declaration and the accompanying documents: commercial invoice, packing list, certificate of origin and bill of lading.</p> <p>The WTO ATF Text sets timeline for the submission (90 days, to the extent possible).</p>	- encourage Members to use nCEN	
7. Postponement or refusal of a request	<ul style="list-style-type: none"> Nairobi Convention; Model Bilateral Agreement. 	The members may refuse the provision of information if its domestic law and legal system prevents the release of the information or it would impede law enforcement/interfere with on-going proceedings.		
8. Reciprocity	<ul style="list-style-type: none"> Nairobi Convention; Model Bilateral Agreement. 			
9. Administrative burden	<ul style="list-style-type: none"> Nairobi Convention; Model Bilateral Agreement. 			
10. Limitations		<p>Requested parties do not have to conduct surveillance/enquiries to obtain the requested information.</p> <p>No documents other than those submitted with the declaration can be called for.</p> <p>Also they do not have to verify the</p>		

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	WCO Instruments, Tools, Guidelines (not exhaustive)	Remarks	Possible implications	WCO Body concerned
		accuracy of information. Translation of the documents cannot be requested.		
11. Unauthorized use or disclosure	<ul style="list-style-type: none"> Nairobi Convention; Model Bilateral Agreement. 			
12. Bilateral and regional agreements	<ul style="list-style-type: none"> Nairobi Convention; Model Bilateral Agreement; Johannesburg Convention CMAAs/MOUs SAFE Framework of Standards; Guidelines on ISCM (Advance Electronic Cargo Information); GNC. 	<p>The WTO ATF text does not affect Member's right or obligations under bilateral, plurilateral or regional agreements.</p> <p>Johannesburg Convention should be recognized as the plurilateral agreement.</p>		

Institutional arrangements

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	Remarks
ARTICLE 13: INSTITUTIONAL ARRANGEMENTS	
1. Committee on Trade Facilitation	<p>A specific reference to the WCO is included in the text of Article 13.1:</p> <p><i>"1.5 The Committee shall maintain close contact with other international organizations in the field of trade facilitation, such as the World Customs Organization, with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:</i></p>

Article in the WTO Agreement on Trade Facilitation (WT/MIN(13)/36 WT/L/911)	Remarks
	<p><i>(a) attend meetings of the Committee; and (b) discuss specific matters related to the implementation of this Agreement.”</i></p> <p>The text indicates that the WCO and its working bodies could be invited to the meetings of the TF Committee to discuss specific matters relating to the implementation of the ATF.</p> <p>Another important point is that an agreement has been reached to have the Committee review the operation and implementation of the ATF <u>4 years</u> from its entry into force, and periodically thereafter.</p>
2. National Committee on Trade Facilitation	<p>In accordance with Article 13.2, each Member shall establish or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of the ATF. Many Members have already established their trade facilitation committees where Customs represents an important stakeholder.</p>