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WTO Agreement on Trade Facilitation (TFA): General Rules on Simplification, Harmonization and Modernization of Administrative Procedures

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The Trade Facilitation Agreement (TFA) stands in the wake of the Kyoto Convention and other international Conventions concluded under the auspices of the WTO and the World Customs Organization (WCO) which contributed to the development of an international customs law. That customs law has introduced a change in the supranational regulatory framework inasmuch as for the first time, it lays down specific criteria and rules in relation to customs procedures and controls and rights of the economic operators. The TFA contains a number of provisions for the protection of private operators, aimed at ensuring the implementation of certain fundamental principles in dealings between traders and customs administrations. The important principles that are worth mentioning in this respect include: transparency; legal clarity; information for traders; the right of defence; and the right to judicial protection.

1 TFA: BASIC PRINCIPLES

In December 2013, following the work of the Ministerial Conference in Bali, the members of the WTO concluded the Trade Facilitation Agreement (hereinafter, TFA[1]) which, together with the protocol of 27 November 2014,[2] was officially incorporated into the WTO Agreement, and has been in force since 22 February 2017 after its ratification by two-thirds of the WTO membership.

The TFA, whose principles are binding upon WTO members, has introduced a change in the supranational regulatory framework inasmuch as for the first time, it lays down specific criteria and rules in relation to customs procedures and controls[3] and rights of the economic operators. The TFA stands in the wake of the Kyoto Convention and other international Conventions concluded under the auspices of the WTO and the WCO which contributed to the development of an international customs law.

International customs law is constituted by the rules adopted by the WTO legal order based upon lawmaking treaties in customs matters as a substantial part of international customs law, while its procedural aspects are mostly based upon multilateral treaties adopted within the framework of World Customs Organization (WCO).[4] The central aim of TFA is simplifying and expediting the procedures and formalities associated with customs clearance, through the adoption of uniform methods, inspired by selective methodologies based on advanced risk analysis systems, enabling a uniform platform for operators and customs.

With this in mind, the TFA lays down a series of measures aimed at simplification and harmonization, inspired by best customs practices, such as the electronic transmission of the dialogue between operators and

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[1] The WTO Agreement 1994, in particular Arts V, VII and X, contain provisions for the adoption of transparent systems and which are aimed at ensuring the application of minimum procedural standards. However, before the TFA, there were no provisions for rules governing common criteria for checks and controls. https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm.

[2] WTO, *Protocol Amending the Marrakech Agreement Establishing the World Trade Organization* (28 Nov. 2014).

[3] P. C. Mavroidis, *The regulation of international trade*, II *The WTO Agreements on trade in goods*, Cambridge 46 (2016).

[4] C. J. Cheng, *Customs Law of East Asia*, Alphen aan den Rijn (2010).

customs, the selection of the operations that should be subject to controls based on a risk analysis system,[5] placing emphasis, in particular, on compliance and the figure of the Authorized economic operator.

Of particular interest is also the *single windows* system. This is a digital platform that can optimize the exchange of information (within a WTO member) among all the departments involved in the customs clearance process, and also includes the elimination of paper-based records and documents.

From a strictly legal point of view, the TFA introduces legal principles that are directly binding upon its member parties, with a series of obligations for national legislators. It is important to underline that customs law not only include provisions regulating political and trade relationships among different countries and territories. It also contains a number of provisions for the protection of private operators, aimed at ensuring the implementation of certain fundamental principles in dealings between traders and customs administrations. The important principles that are worth mentioning in this respect include: legal clarity; information for traders; the right of defence; and the right to judicial protection.

Internationally, some of these principles can already be found in the WTO Agreement but many have been recently introduced or fleshed out in the TFA, of which they constitute one of the agreement's most important aspects.

2 Single window

The concept behind the single window rule is to concentrate in a single place and in a single time all the investigations around the import of the good: investigations operated by customs, health, public security, Consumer Protection and preservation of protected species. In terms of international customs law, an essential point of reference is the International Convention on the Simplification and Harmonization of Customs Procedures (referred to hereinafter as the Revised Kyoto Convention[6]). Amongst the principles introduced under this Convention, the rules governing the examination of goods, which 'shall take place as soon as possible after the goods declaration has been registered'[7] and the 'single window'[8] are of particular importance, since they guarantee rapid procedures and limit uncertainty of the customs debt.

The technique of 'risk analysis' is referred to both in the Kyoto Convention and in the *Trade Facilitation Agreement.* Article 7, paragraph 4, TFA expressly provides for the adoption of such control systems by each WTO members so as to avoid discrimination and restrictions on international trade. The Agreement lists some of the criteria that may be used, by members, to identify the correct risk level of customs operations: the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, means of transport etc.

Cooperation with other states also plays an important role in this sector. The international sale of goods involves both a supplier's and a buyer's countries and may also draw in other countries such as the country of origin of a product and the countries it passes through during transport, involving legal and administrative systems that often differ considerably from one another.

3 Exchange of information

The procedures used for the exchange of information and the collection of data (on the basis of national and international rules and regulations) and which provide the basis for customs controls are of particular importance, including in respect of the evidentiary importance of the data received. The provisions of the TFA aimed at simplifying and expediting customs procedures provide for the strengthening of post-clearance customs controls so as to ensure compliance with customs regulations. The selection of the traders who undergo post-clearance audits must take place with the aid of a selective risk analysis system and the checks must be carried out in a transparent manner.[9]

Cooperation between customs administrations is one of the primary objectives of the Revised Kyoto Convention[10] and of ongoing initiatives of the WCO and was recently acknowledged as an essential instrument in the TFA.

The exchange of information between customs authorities is contemplated under Article 12 of the TFA, which

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[5] The TFA provides for specific forms of support for less developed countries to enable the adoption and implementation of the new rules envisaged. cf. TFA, sec. II.

[6] International Convention on the Simplification and Harmonization of Customs procedures. In 1999 the WCO completed a full revision of its 1973 Kyoto Convention. The good of the changes was to provide customs administrations with a modern set of uniform principles for simple, effective and predictable customs procedures that also achieve customs control. B. Hoekman, A. Mattoo & P. English, *Development, trade, and the WTO, Washington*, 135 (2002).

[7] Revised Kyoto Convention, General Annexe/Ch. 3, 3.33.

[8] 'If the goods must be inspected by other competent authorities and the Customs also schedules an examination, the Customs shall ensure that the inspections are co-ordinated and, if possible, carried out at the same time'. Revised Kyoto Convention, General Annexe/Ch. 3, 3.35. This is an important rule, since the lack of transparency of national trade regulations definitely stands out as a major barrier to international trade. 'Other non-tariff barriers' to trade can also take the form of technical barriers to trade, sanitary and phytosanitary measures. The arbitrary application of these rules also discourages traders and hampers trade. P. VAN DE BOSSCHE & W. Zdouc, *The Law and Policy of the World Trade Organization, Cambridge*, 3rd ed., 37 (2013).

[9] Art. 7.5 TFA.

[10] 'The Customs shall seek to co-operate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control', Revised Kyoto Convention, General Annex/Ch. 6, 6.2.

describes such exchanges as essential for controlling trade flows and for the concrete implementation of customs regulations with specific reference to information relating to persons involved in a transaction, to the information contained in export and import declarations and to the origin and value of goods. The TFA provides a number of general reference criteria (requirement to request assistance, protection of data exchanged, notification methods) but does not constitute the regulatory basis, per se, for the exchange of information, which continues to be governed by international, bilateral or regional agreements on mutual assistance in customs matters.[11]

4 Clarity of the rules and right to information

The need for a clear and stable reference legal framework is of fundamental importance for business planning. Internationally, the principles of legal certainty and legal clarity[12] are enshrined in Article X of the WTO Agreement (GATT 1994), which provides that laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to classification or valuation or rates of duty and any restrictions or prohibitions on imports or exports must be published promptly in such a manner that everybody is able to acquaint themselves with them.

There is also a general prohibition on the enforcement of measures of general application involving an increase in a customs duty or the imposition of other requirements on imports with respect to consolidated and uniform practice or which involve a new or more burdensome requirement, restriction or prohibition on imports before such measures have been officially published. These state acts must be administrated in a 'uniform, reasonable and impartial' manner, and a (national) forum must be provided where claims regarding the administration of the customs laws can be adjudicated (art. X.3 of GATT).These transparency obligations have been described in detail and reinforced in the TFA, which provides for the mandatory publication of the provisions and the availability of information (Article 1) and the opportunity for consultations, comments and information before the laws enter into force (Article 2). In particular, Article 1 of TFA requires members to publish and ensure the easy accessibility of a variety of customs-related information, with the clear aim of ensuring that traders and, in general, any interested party can obtain information pertaining to rules governing import, export, transit, rates of duty, documentary formalities and the penalty provisions for breaches of customs regulations in advance and with sufficient clarity.[13]

5 Advance rulings

The key objective of pre-entry advance ruling programmes is to provide decisions on the classification, origin and valuation of commodities prior to their importation or exportation, thus adding certainty and predictability to international trade and helping traders to make informed business decisions based on legally binding rulings. Customs administrations also benefit from having advance knowledge of future importations which is useful for risk management purposes.[14]

The advance ruling addresses the need to provide companies with an essential degree of legal certainty, to facilitate the work carried out by customs departments and to ensure greater uniformity when applying customs legislation,[15] thus protecting traders against possible objections later on and hence eliminating the risk of incurring greater amounts in customs duties and penalties.

The right to a ruling, i.e. to an advance decision binding upon the customs administration, was affirmed internationally for the first time in the Revised Kyoto Convention as an essential instrument for ensuring compliance by traders and enabling the planning of international operations.[16]

The main advantage from a trader's point of view is the legal guarantee that the ruling by the customs administration will be applied by the latter and will therefore be binding.[17] The *Trade Facilitation Agreement* contains a general definition of ruling, which is defined as the

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[11] P. C. Mavroidis, *The Regulation of International Trade*, The WTO Agreement on Trade in Goods, Cambridge, 57 ss (2016).

[12] These principles have been described in detail and reinforced in the TFA, which provides for the mandatory publication of the provisions and the availability of information (Art. 1) and the opportunity for consultations, comments and information before the laws enter into force (Art. 2).

[13] Art. 1, para. 1, letter g), TFA. The reason for this provision is clearly to render customs regulations more transparent and easily accessible by persons involved in customs-related operations so as to enable proper planning of goods flows and the associated costs, which are usually passed on to the customer.

[14] WCO, *Technical Guidelines on Advance Rulings for Classification, Origin and Valuation* (June 2018) in http://www.wcoomd.org/en/topics/origin/instrument-and-tools.aspx.

[15] *See also Court of Justice, 2 Dec. 2010, C-199/09, Schenker, in ECR, 2010, 2311; Court of Justice, 29 Jan. 1998, C-315/96, Lopex Export, in ECR, 1998, 317.*

[16] The current tools are, in the case of classification, the Council Recommendation on the Introduction of Programmes for Binding Pre-entry Classification Information (1996) and a comprehensive Recommendation on the Improvement of Tariff Classification Work and Related Infrastructure (1998); in the case of valuation, the Practical Guidelines for Valuation Control (2012); and, in the case of origin, Technical Guidelines on Binding Origin Information (2011). Additionally, the Agreement on Rules of Origin sets ground rules for assessments of origin, which apply to advance rulings and are referred to in these Guidelines (WCO, *Technical Guidelines on advance rulings for classification,origin and valuation* (June 2018) in *http://www.wcoomd.org/en/topics/origin/instrument-and-tools.aspx).*

[17] Art. 9.9 Revised Kyoto Convention. The WCO Guidelines clarifies that '*Advance rulings on classification, origin and valuation shall be binding, in accordance with the terms set out therein, on the authority that issued the advance ruling in respect of the applicant that sought it*' (at 19). '*Advance rulings may be binding on the applicant to whom the advance ruling was issued*' (at 20).

written decision provided by the customs administration in response to an application by a trader concerning the customs classification and origin of goods due to be imported subsequently.[18] In order to harmonize and modernize the guidance on advance rulings in three areas, and taking into account Article 3 (Advance rulings) of the Bali Ministerial decision on the TFA, the WCO has developed a single document covering procedures for issuing advance rulings on the classification of goods, rules of origin and Customs valuation.[19]

The TFA provides that each WTO member mustput in place a procedure for advance rulings, which must be issued to an applicant within the time limits prescribed by national legislation. The advance ruling must be valid for at least one year from the date of issuance (three years on origin) unless the laws, facts or circumstances supporting the ruling have changed.

Whereas rulings on customs origin and classification are mandatory instruments binding on Member States, the TFA 'encourages' the use of advance rulings in relation to the appropriate method or criteria used for determining the customs value given a particular set of facts, with regard to the applicability of requirements for relief or exemption from customs duties and on any additional matters for which the member in question deems it appropriate to issue advance rulings.[20]

An application for a ruling must be submitted by a trader in writing and must contain all the required information. The Member State concerned may refuse to issue an advance ruling if the question in respect of which the application was submitted is under assessment or review by a public administration or if a decision has already been given. Under the TFA, ifthe State decides to revoke, modify or invalidate a ruling, it is obliged to provide written notice to theapplicant, setting out the relevant facts and the basisfor its decision. An advance ruling may only be revokedif the ruling sought was based on incomplete, incorrect,false or misleading information.

6 Right to appeal

The provisions of the TFA lay down the general and unconditional obligation for WTO members to put in place mechanisms enabling appeals against any customs-related administrative decisions. An administrative decision is defined as 'a decision with a legal effect that affects the rights and obligations of a specific person in an individual case'.[21]

The right of defence and the right to a fair trial in relation to a customs-related decision or assessment are also enshrined internationally, in the WTO Agreement which provide that each Member State must maintain judicial, arbitral or administrative tribunals for the review of administrative action relating to customs matters.[22] This provision has been interpreted as a legal basis for affirming that the principles of 'uniformity, impartiality and reasonableness' must be upheld when applying customs regulations,[23] which requires WTO members to ensure the right of appeal before an administrative body and/or court of law, explaining that impartial proceedings must be guaranteed in both cases. National legislation may also make provision for an administrative appeal before lodging an appeal before a judicial body, in which case the review must be referred to an independent administrative body or one with a higher rank than the body that originally issued the decision. The right to appeal before a Court of law is one of the fundamental principles of EU law.[24]

Although the customs code (Article 44 UCC) leaves the question of how the right of appeal should be exercised to the legislation of Member States, it does acknowledge the right of anyone to appeal against decisions taken by customs authorities relating to the application of customs regulations if they concern him or her directly and individually.[25]

The validity of this right of defence is also subject to the condition, incumbent upon WTO members, that an adequate statement of reasons is furnished in support of the administrative decision taken by the customs authorities, so as to enable operators to lodge an appropriate appeal. The introduction principle of effective legal protection for operators has found expression and been acknowledged in WTO rulings. In the *Thailand-Cigarettes (Philippines)* case, the Panel clarified

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[18] Art. 3, para. 9, letter a), TFA.

[19] Art. 3 of the WTO TFA requires Members to issue advance ruling regarding the tariff classification and the preferential and non-preferential origin of goods in accordance with the provisions of that article. Members 'are also encouraged' to issue advance rulings for other areas such as Customs valuation, requirements for relief or exemption from Customs duties, requirements for quotas and any additional matters where a Member considers it appropriate to issue an advance ruling.

[20] Art. 3, para. 9, letter b), TFA.

[21] Art. 4, para. 4 TFA.

[22] Art. X.3(b) WTO Agreement (GATT 1994). 'The section and the content of the various provisions of article X (of the WTO Agreement) establish the goal of guaranteeing due process of law to importers and exporters', WT/DS315/R, *EC – Selected customs matters*, Panel Report (16 June 2006), at www.wto.org.

[23] WT/DS27/AB, *EC-Bananas III*, Appellate Body Report (26 Nov. 2008), at www.wto.org.

[24] Recital 26 of the Union Customs Code (UCC) provides that '*In order to secure a balance between, on the one hand, the need for customs authorities to ensure the correct application of the customs legislation and, on the other, the right of economic operators to be treated fairly, the customs authorities should be granted extensive powers of control and economic operators a right ofappeal*'.

[25] Court of Justice, *Kamino international logistics, cit.,* at 56; Court of Justice, 13 Mar. 2014, C-29/13 and C-30/13, *Global Trans Lodzhistik*, at *curia.eu*, at 42–43; Court of Justice,11 Jan. 2001, C-1/99, *Kofisa Italia Srl v. Ministero delle Finanze*, in *ECR*, 2001, 207; Court of Justice, 3 Dec. 1992, C-97/91, *O.B. v. Commission*, in *ECR*, 2003, 5797, at 14; Court of Justice, 15 Oct. 1987, C-222/86, *Heylens*, in *ECR*, 1987, 4097, at 14.

that the principle of a fair trial requires WTO members to guarantee 'rapid and effective protection against unfavourable customs decisions'.[26]

Internationally, there has been acknowledgement that the right of defence, enshrined under the WTO Agreement, must be interpreted as being inclusive of the right to a trial within a reasonable timeframe.[27]

7 Sanctions

The gradual realization of the need to adopt a common sanctions framework to serve as a reference so as to reduce uncertainty for operators (who previously had to familiarize themselves with the penalties applicable in each country in which they operate) and combat trade diversion towards countries with less stricter regimes led to the adoption at the WTO of a number of principles and rules, set down in the TFA.[28]

The provisions incorporated into the TFA fill the gap left by international customs law.[29] The WTO has promoted efforts dealing with substantive rules of customs law whereas until recently, certain members have consistently opposed any regulatory framework governing the consequences of violations of such common provisions, precisely because they considered that such aspects should be directly regulated in strategic policy decisions taken at national level.

The Revised Kyoto Convention (Annex H) underlined the importance to promote the simplification of the customs law, even by harmonizing the sanctions system. This Convention provided a definition of infringement as '*customs offence means any breach or attempted breach of customs law*'. The customs infringement is defined as '*every infringement*' of the national customs law, with the consequence that every Member State '*shall define Customs offences and specified the conditions under which they may be investigated, established and, where appropriate, dealt with by administrative settlement*'. The provision is based on the objective violation of the law, regardless to the fact that the offence is committed with intention or negligence.

Only the Nairobi Convention in fact, defines the smuggling as a '*customs fraud consisting in the movement of goods across a Customs frontier in any clandestine manner*'.[30]

It is only in Article VIII of the WTO Agreement (GATT 1994) that provision is made concerning the non-imposition by members of substantial penalties for minor breaches of import and export regulations relating to customs documentation, stipulating that where such breaches consist of omissions or mistakes which are easily rectifiable and do not involve intent or gross negligence, the penalty should only be of a dissuasive nature.

However, it was only under the TFA that a general definition of customs sanctions was set down for the first time. The TFA also codifies the principle of penalty disciplines. According to the TFA, penalties are 'those imposed by a Member's customs administration for a breach of the Member's customs laws, regulations, or procedural requirements'. This is clearly a broad and generalized definition, which refers back to the national customs legislations of the WTO members.[31]

The TFA also provides for the application of other important principles, which members must implement from their date of entry into force.[32] These include the obligation to notify any penalty in writing, in observance of the rights of the defence and in accordance with the principles of legality and transparency, adequately setting out the grounds.[33]

The principles whereby a penalty should refer specifically to a person[34] and be proportional[35] are also recognized and hence a penalty must depend on the facts and circumstances of the case and must be commensurate with the degree and severity of the breach. It follows that the provisions of each member– in order to comply with the legal criteria laid down in the

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[26] WT/DS371, *Thailand-Cigarettes (Philippines)*, Appellate Body Report (17 June 2011), at www.wto.org.

[27] This is the sense in which the right of defence, for which provision is made in Art. X.3 (6) WTO Agreement (GATT 1994), was interpreted by the WTO dispute settlement bodies (WT/DS371, Thailand-Cigarettes (Philippines), cit.). In particular, it was observed that although the provision requiring WTO members to administer rulings in a 'reasonable' manner does not specify a maximum period for administrative appeals, a period of seven years (in particular, if compared with the average duration of similar appeals, lasting two and a half years) should be regarded as a violation of the principle set out in Art. X.3(a) of the WTO Agreement.

[28] Art. 6, par. 3.1, TFA.

[29] The concept of punishment – its definition – and its practical application, even in the field of customs law, has historically represented a part of the legal system where States never intended to accept the implementation of common principles, since the right – and the way – to punish is strictly connected with their national sovereignty. In this regard, the absence of international conventions on sanctions in the field of customs law is a clear clue of such consideration. However, the different enforcement of the customs legislation causes an unequal treatment of the economic operators, and determines a negative impact on the improvements of international competitiveness.

[30] Art. 1, International Convention on mutual administrative assistance for the prevention, investigation and repression of customs offences, Nairobi (9 June 1977). Furthermore, the Nairobi Convention's Commentary specified that 'This definition covers not only cases where goods have been concealed to escape Customs controls, but also cases where goods, although not concealed, have not been properly declared to the Customs. It covers all modes of transport, including the post'. This Convention contains the definition of smuggling; however, also in this occasion, its punishment is left to the application of each Member States, which may punish it with a fine or even consider it as a crime.

[31] Hence this rule reflects a consolidated international principle whereby infringements of customs regulations are punished as set out in the provisions of the legislation of the country where such infringements occur. This means that the concept of sanction under the TFA is non-specific and includes any type of violation. In particular, the provision includes both substantive violations, i.e. those resulting in a loss of tax revenues and formal violations involving infringements of procedural rules not entailing any loss of revenues.

[32] In fact, the provisions of the TFA are immediately applicable within member parties since the Convention does not contemplate any transitional arrangements other than in relation to certain specific provisions and only with regard to developing countries (Art. 24, para. 3, TFA).

[33] The penalty notice must indicate 'the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed' (Art. 6, para. 3.5, TFA).

[34] 'Penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws' (Art. 6, para. 3.2, TFA).

[35] 'The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach' (Art. 6, para. 3.3, TFA).

TFA – must ensure that the infringer is one and the same person as the addressee of the penalty and that the penalty is commensurate with the severity of the violation committed.[36]

Provision is also made internationally for incentives to encourage the correction of errors by operators themselves.[37] Finally, with a view to encouraging cooperation between customs authorities and traders, provision is also made for consideration by members of voluntary disclosure of breaches as a mitigating factor when establishing a penalty.[38] In fact, WTO members are agreed on the importance of ensuring that traders are aware of their compliance obligations and encourage voluntary compliance, thus enabling traders to rectify breaches of their own accord and not incur any penalties.[39]

8 Rights and safeguards in judicial proceedings

The TFA generally requires WTO members to 'provide that any person to whom customs issues an administrative decision has the right, within its territory, to an administrative appeal and/or a judicial appeal[40] or review of the decision;' 'Each Member shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner'.[41]

A consequence of the TFA is that international customs law now expressly provides for an operator to be informed of his or her right of appeal or review before an administrative authority or court of law in respect of any assessment notice and, more generally, any decision taken by customs authorities.[42]

The rights of the defence and the right to a fair trial in relation to a customs-related decision or assessment are also enshrined internationally, in the WTO Agreement which provide that each Member State must maintain judicial, arbitral or administrative tri- bunals for the review of administrative action relating to customs matters.[43] This provision has been inter-preted as a legal basis for affirming that the principles of 'uniformity, impartiality and reasonableness' must be upheld when applying customs regulations.[44]

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[36] It follows that where a penalty envisaged under a national law is disproportionate or fails to consider the principle whereby penalties must be specific to the offender, it runs contrary to Art. 6, para. 3, V.

[37] 'When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person' (Art. 6, para. 3.6, TFA). 'Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders' (Art. 12, para. 1.1, TFA).

[38] Art. 6, para. 3.6, TFA.

[39] Art. 12, para. 1.1, TFA.

[40] To or review by an administrative authority higher than or independent of the official or office that issued the decision.

[41] Art. 4, para. 1 and 3, TFA.

[42] Art. 4, para. 1, TFA.

[43] Art. X.3(b) WTO Agreement (GATT 1994). 'The section and the content of the various provisions of article X (of the WTO Agreement) establish the goal of guaranteeing due process of law to importers and exporters', WT/DS315/R, EC – *Selected customs matters*, Panel Report (16 June 2006), at www.wto.org.

[44] WT/DS27/AB, EC-Bananas III, Appellate Body Report (26 Nov. 2008), at www.wto.org.