

The Role of the World Customs Organization in the Implementation of the World Trade Organization Agreement on Trade Facilitation¹

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Abstract

In this article, the role of the World Customs Organization (WCO) in the implementation of the Trade Facilitation Agreement (the Agreement, TFA) is examined as an important element in the current multilateral regulation of the international trading system. Based on an article-by-article analysis of the Agreement and the WCO Kyoto Convention, as well as an assessment of the potential and actual impact of the WCO instruments on its implementation, the author finds that there are no methods, nor a system of indicators, to assess the effectiveness and efficiency of such work, or the measures taken. The key to achieving a qualitative shift in the implementation of the Agreement is a detailed diagnosis of the state of affairs in developing and least developed countries and the specification and digitalization of data on the priority areas, the amounts and timing of all types of assistance, and the support provided to them. In conclusion, the importance of adequate self-assessment by countries of their readiness to implement the Agreement, the relevance of developing the necessary capacity to implement the Agreement, and bilateral and multilateral cooperation with donors is justified. Proposals for improving the work of the WCO and the WTO to ensure timely implementation of the Agreement are formulated.

Keywords: World Customs Organization, world trade, World Trade Organization, Trade Facilitation Agreement, role of the WCO, instruments of the WCO, customs authorities, trade facilitation

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Introduction

At the beginning of the 21st century, the global economic community took several active steps aimed at stimulating and developing international trade, as international trade has been and remains one of the main drivers of global economic growth since the second half of the 20th century. According to a study by the Organisation for Economic Co-operation and Development (OECD) [2013], a 1% decrease in global trade costs increases global income by at least \$40 billion. The global income of developing countries is expected to increase by at least \$40 billion, most of which (63%) will be generated by developing countries.

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One of the outcomes of this work was the conclusion of the Trade Facilitation Agreement (the Agreement, TFA) during the 9th Ministerial Conference of the World Trade Organization (WTO) in December 2013 in Bali, Indonesia, which entered into force on 22 February 2017. Today it is one of the fundamental international documents aimed at improving the conditions for international trade [Vorontsova, 2018].

In principle, this is the first multilateral trade agreement concluded since the establishment of the WTO 26 years ago. Economists at the United Nations (UN) European Commission estimate that full implementation of the Agreement could reduce trade costs by an average of 14.3% and increase global trade by up to \$1 trillion per year with the greatest benefits accruing to the lowest-income countries [UN, 2018].

At the same time, harmonization and simplification of customs procedures to facilitate international trade is one of the main strategic objectives of the World Customs Organization (WCO), founded in 1952 [WCO, 2019] (Figure 1). The WCO seeks to improve the efficiency of customs services, including through the creation of international instruments to harmonize customs systems and promote effective communication among its members [UNECE, 2012].



Figure 1. WCO's Strategic Goals in Accordance With the 2019–22 WCO Strategic Plan

Source: Drafted by the author based on the WCO data [2019].

To achieve this strategic goal, the main WCO instruments that enshrine the principles and obligations of countries in the field of customs administration are [Bozhidaeva, 2021]:

- revised Convention on the Simplification and Harmonization of Customs Procedures, 2006 (hereinafter, the Kyoto Convention) [WCO, 2008];
- SAFE Framework of Standards [WCO, 2021a];
- E-Commerce Framework of Standards [WCO, 2018a];
- Time Release Study Guidelines [WCO, 2018b];
- Risk Management Compendium [WCO, 2011];
- Guidelines for Post Clearance Audit [WCO, 2012a];
- Single Window Compendium [WCO, 2014a];
- WCO Data Model [WCO, 2020];
- Coordinated Border Management Compendium [WCO, 2009];
- WCO Transit Guidelines [WCO, 2017].

Within this list, the revised Kyoto Convention deserves special attention as it includes a full range of trade facilitation measures. It contains a comprehensive set of commitments developed by the WCO member states to ensure trade facilitation and outlines detailed standards for customs administration [Bobrova, Kozhankov, 2019].

According to the information provided by the WCO Secretariat, the practical implementation of the Agreement is largely related to issues of customs administration—up to 98% of the Agreement's provisions are directly or indirectly related to them. At the same time, in 40% of the provisions of the Agreement customs authorities are the main implementers [Goshin, Moser, 2016].

Therefore, there is a situation in which the international community is attempting to achieve the goal of trade facilitation using various agreements, conventions, and instruments developed under the auspices of two international organizations [Sidorov, Sidorova, 2020]. It is obvious that for the successful implementation of the Agreement concluded under the auspices of the WTO, it is necessary to ensure close cooperation and interaction within the WCO, as well as to achieve coordination and coherence between the two organizations. The membership of the WTO and the WCO coincide by almost 90%; the member states of these international organizations control up to 98% of global trade [Burasova, 2020]. At the same time, the set of competencies, tools, and measures for the implementation of agreements within the framework of the WTO and the WCO differ significantly. For example, the WCO lacks the tools to enforce agreements (work is based on voluntary adherence to agreements and recommendations) and dispute settlement, while in the WTO the dispute settlement mechanism is the main tool to ensure the implementation of agreements. In 2021 alone, eight trade disputes were registered in the WTO for one reason or another [WTO, 2021]. At the same time, the existing agreements in the WCO in terms of monitoring and review of the implementation of major international instruments are not implemented in full, which is regularly emphasized by the international community on the platform of specialized committees of this international organization.

At the same time, while many studies are devoted to the analysis of the TFA [Balandina, 2015], assessments of the implementation of the Kyoto Convention for the implementation of the Agreement are usually considered only during meetings of specialized bodies of the WTO and the WCO and are beyond the scope of a broad academic discussion.

Numerous academic studies on the implementation of the Agreement through WCO instruments note the difficulties of organizing systemic work, the lack of representative analytics, and the fragmented actions of the main stakeholders [Goshin, Moser, 2016].

In this connection, it appears relevant to conduct a systematic study of the possibility of using WCO tools to implement the TFA, to assess the practical measures of the international community in this area and their results, and, based on this analysis, to formulate recommendations aimed at improving the effectiveness of the interaction between the WTO and the WCO to implement the Agreement.

Therefore, if the hypothesis of insufficient use by these international organizations, as well as by members of the TFA, of the capabilities available in the WCO tools and the need for more effective and substantive coordination of the WTO and the WCO efforts to implement the Agreement is confirmed, recommendations can be developed both to accelerate the TFA's implementation through a more active use of WCO tools, resources, and capabilities and to obtain synergy of cooperation between the two organizations.

To assess the potential of the WCO instruments to implement the Agreement, a comparative analysis of the provisions of the Kyoto Convention and the Agreement is conducted below.

The International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) and the Trade Facilitation Agreement

The revised Kyoto Convention, which entered into force in 2006, provides a comprehensive set of customs procedures aimed at facilitating legitimate international trade while ensuring the effectiveness of customs controls for the full, legitimate, and timely collection of all customs duties, as well as the protection of society and the environment [Klimova, 2020]. It incorporates the key principles of simplification and harmonization of customs procedures: predictability, transparency, and use of information and communication technologies, as well as advanced customs technologies such as risk management, preliminary information, and post-clearance audit.

Countries that have acceded to the Kyoto Convention have reduced time for customs clearance, increase of fiscal revenues, increase of foreign direct investment and overall improvement of economic competitiveness [Yasui, 2010].

The TFA also contains provisions for accelerating the transportation, release, and clearance of goods, including goods in transit. It provides measures to promote effective interaction between customs and other regulatory agencies aimed at facilitating trade and compliance with customs regulations.

A key feature of the TFA is that developing and least developed WTO member states are free to determine the time frame for accession to certain provisions of the Agreement, which are included in separate annexes (B and C). At the same time, the adoption of obligations under Annex C is linked to the need for technical assistance and capacity building in the field of customs administration and border management [Vorontsova, 2018].

A comparative analysis of the Agreement and the Kyoto Convention shows that Chapter I of the TFA, covering its substantive part, correlates 90% with the provisions enshrined in the Kyoto Convention. The 48 provisions of Chapter I of the Agreement have similar provisions in more than 150 articles of the Kyoto Convention. In addition, the 48 provisions of the Agreement have references that are disclosed in 71 articles of the General Annex to the Kyoto Convention and seven articles of its Special Annexes.

The nature of the interrelation between the Agreement and the Kyoto Convention, as well as the other WCO instruments, can be examined using two of what appear to be the most important TFA articles—the provisions governing prior decisions and the release of goods (Tables 1 and 2).

Article 3 of the Agreement obliges the WTO members to provide advance rulings on tariff classification and origin (which is also required by the WTO Agreement on Rules of Origin). It also encourages members to provide advance rulings on the application of customs valuation methods and on certain other requirements (exemptions/preferences, quotas, and so on). This article also sets out the conditions and features concerning advance rulings.

A number of WCO instruments/tools elaborate on the obligations and guidelines for issuing provisional decisions (“binding decisions”/“binding information”) in the areas of classification, determination of origin and customs valuation. Standard 9.9 of the General Annex to the Kyoto Convention determines that binding decisions are issued at the request of the individual concerned, whereas in the Agreement the applicants are the exporter, the importer, or any person with a justified need or their representative. The Kyoto Convention Guidelines [WCO, 2010] for this standard cover many aspects of mandatory decisions, including their scope, notification, timing, and use. The Recommendation for Implementing Programmes for Binding Pre-Entry Classification Information [WCO, 1996] establishes the basic principles

of programmes for mandatory preliminary classification information. The Recommendation for Improvement of Tariff Classification Work and Related Infrastructures [WCO, 1998] deals with prior classification, including mandatory classification information. The WCO Technical Guide to Binding Origin Information [WCO, 2015] covers all the details of this service. Finally, the Practical WCO Guide to Customs Valuation [WCO, 2018] provides general recommended procedures for preliminary customs valuation decisions.

The provisions of the Agreement on prior decisions have certain specificity, but are without clarification, for example, regarding the validity period of decisions; the WCO instruments recommend specific practical deadlines (regarding prior information on the product code—at least one year from the date of issue, in the case of determining the country of origin the WCO recommends three years from the date of issue).

In addition, the WCO instruments and tools provide more guidance as to the time within which binding decisions on origin must be made: as soon as possible, but no later than 150 days from the submission of the request. This provision is taken from the WTO Agreement on Rules of Origin, which is binding for WTO members.

As for the scope of application, the provisions of the Agreement cover only imports, while the WCO classification and origin instruments apply to exports as well.

On the other hand, the WCO instruments and tools do not contain provisions for issuing a notice of rejection or reasons for it, with the exception of the WCO Technical Guide to Binding Origin Information.

The WCO Data Model, for example, contains the elements, their formats, and specifications that allow traders to submit specific information about the preliminary decision as part of the goods declarations.

Table 1. Comparison of the Provisions of the Agreement and the WCO Instruments, Using the Provisions on the Issuance of Preliminary Rulings as an Example

WTO	WCO
Article 3 “Advance Rulings” TFA	General Annex to the Kyoto Convention (Chapter 9 “Information, Decisions and Regulations of the Customs Service,” Standard 9.9). Recommendation on the Introduction of Programmes for Binding Pre-Entry Classification Information (1996). Recommendation on Improvement of Tariff Classification Work and Related Infrastructure (Annex, Part II) (1998). Technical Guide to Binding Origin Information. Practical Guide to Customs Valuation. WCO Data Model

Source: Drafted by the author based on analysis of Agreement and WCO tools.

Article 7 of the Agreement deals with such fundamental procedures and principles of modern customs activity as:

- processing of goods prior to their arrival (7.1);
- electronic payment of duties, taxes, fees, and charges collected by customs on imports and exports (7.2);
- separation of the stages of the release of goods and the final determination of the amounts of customs duties (7.3);
- risk mitigation using a risk management system (7.4);

- post clearance audit (7.5);
- setting and announcing average release dates (7.6);
- measures to simplify trade procedures for authorized operators (7.7);
- accelerated release of certain types of goods (7.8);
- perishable goods (7.9)

When comparing these provisions with existing WCO documents, it seems obvious that there is a similar or generally more detailed description of the obligations set out in the provisions of the Kyoto Convention (Chapters of General Annex), standards and recommendations in the WCO agreements and instruments that require their incorporation into national legislation and practice. If we focus only on the Kyoto Convention in terms of the implementation of the TFA, it appears that 32 provisions of Article 7 of the WTO Agreement are disclosed in 60 provisions of the WCO Kyoto Convention. For example, similar provisions to Article 7, paragraph 7.1 of the Agreement were previously set out in Chapter 3 of the General Annex of the Kyoto Convention (Standard 3.25), requiring the inclusion of national rules governing the submission and registration or verification of the goods declaration and supporting documents prior to the arrival of goods, and in Chapter 7 of the Kyoto Convention General Annex, requiring the use of information technology for these purposes. In addition, the WCO members developed guidelines for the immediate release of goods in the early 1990s, updating them in 2014 and 2018 due to the active introduction of modern information and communication technologies in customs administration practices under the Kyoto Convention.

Analysis of Article 7.2 to 7.9 of the Agreement confirms that most of the provisions of the TFA have similar provisions in WCO instruments. These provisions of the Agreement are in one way or another already enshrined and detailed in numerous provisions of the Kyoto Convention, the SAFE Framework of Standards to secure and facilitate trade, the Kyoto Convention Guidelines on Information and Communication Technology, the 2011 Single Window Compendium (updated in 2017), the 2018 Immediate Release Guidelines, the 2011 Risk Management Compendium, communication through the WCO Global Customs Enforcement Network that has been in operation for over 20 years, through the implementation of the WCO Guideline for Post-Clearance Audit since 2006, through a sequential Time Release Study including software and methodology application guidance, and implementation of the WCO Data Model in customs systems.

Table 2. Comparison of the Provisions of the Agreement and the WCO Instruments on the Example of Regulations on the Release of Goods

WTO	WCO
Article 7 “Release and Clearance of Goods” TFA	General Annex to the Kyoto Convention: Chapter 3, Clearance and Other Customs Formalities (Standards, 3.13, 3.14, 3.17, 3.25, 3.32, 3.34, 3.40), Chapter 4 “Duties and Taxes” (Standard 4.9), Chapter 5 “Security” (Standards 5.1–.7), Chapter 6 “Customs Control” (Standards 6.3–.5), Chapter 7 “Application for Information Technology” (Standard 7.1), Chapter 9 “Information, Decisions and Rulings Supplied by the Customs” (Standard 9.9); SAFE Framework of Standards; SAFE Package; Immediate Release Guidelines; Guidelines on Information and Communication Technology;

WTO	WCO
	Single Window Compendium; Risk Management Compendium; Guideline for Post-Clearance Audit; Time Release Study Guideline (TRS); Software TRS Online; Customs International Benchmarking Manual

Source: Drafted by the author based on analysis of the Agreement and WCO tools.

A full article-by-article comparative analysis of the Agreement and the Kyoto Convention is presented in the Annex. It seems that this analysis may be useful for further research in the country-by-country analysis of the results of the implementation of the Kyoto Convention and the Agreement, as well as the analysis of the effectiveness of this work.

WCO and TFA Instruments

The WCO toolkit has harmonized obligations and standardized approaches and principles in customs matters and builds national practices and guidelines for capacity building and international cooperation [Yudina, 2021].

Following the conclusion of the Agreement, the WCO has taken several tangible steps aimed at creating conditions for its successful implementation. In June 2014, the Mercator programme [WCO, 2014b] was launched after approval by member states to ensure uniform implementation of the Agreement using WCO tools. Mercator is also intended to ensure cooperation at borders and along international trade routes to create conditions for the smooth movement of goods [Kraslavskaya, 2020].

This programme provides tailored assistance to countries, taking into account national contexts and conditions for the implementation of trade facilitation measures, through mechanisms such as:

- donor funding through the Customs Cooperation Fund;
- the use of international customs instruments to implement the Agreement;
- engaging a global network of customs experts to provide in-country assistance;
- technical assistance and capacity building, focusing on needs assessment, strategic planning, implementation, monitoring, and evaluation;
- training of officials and the business community, including on the WCO e-learning platform;
- awareness-raising through regional seminars and educational outreach;
- development of solutions based on factual data, taking into account local, regional conditions
- use of performance measurement and results-based management;
- supporting collaboration with all stakeholders to ensure coordinated border management and partnership between customs and business.

Results-based management and performance evaluation should be an integral part of the planning process and activities to monitor the implementation of the Agreement in the framework of the Mercator programme [Davydov, 2015].

However, it can be stated that in practice there were no specific indicators and methodologies to evaluate the WCO activities and its member states in the implementation of the Mercator programme; the results are usually presented in unsystematic reports on the activities

(workshops and conferences) without an in-depth analysis of the situation or practical recommendations to improve the overall picture.

In December 2013, the WCO established the Trade Facilitation Agreement Working Group (TFAWG) [WCO, n.d.b] as the main platform for discussing assistance in implementing the Agreement. The group consisted of representatives from customs administrations, trade ministries, international organizations related to border management, the private sector, academia, and other stakeholders. More than 200 delegates met twice a year under the auspices of the working group. At its last meeting, held via video conference on 8–9 March 2021, the following statistics characterizing the implementation of the Agreement were given [WCO, 2021b]. The share of countries that completed the ratification procedures was 69.7% of the total number of WTO members. Accordingly, in the four years since the necessary level of approval for the entry into force of the Agreement was met (two thirds of the total number of member states) this share increased only by 3%. The share of developing and least developed countries that have joined the Agreement remained at 60.4%. At the same time, the WTO plans to reach accession rates of 83% by 2023 and 96% by 2028. The level of adherence to certain articles of the Agreement related to transparency is even lower: only 98 members notified the WTO Committee on Trade Facilitation of the publication of trade regulation information (Article 1.4), 83 notified the Single Window (Article 10.4.3), 110 notified customs brokers (Article 10.6.2) and 101 countries provided data on contacts for information exchange (Article 12.2.2).

The meeting of the working group noted that most of the least developed countries, as well as a significant number of developing countries during the four years of the Agreement have not yet identified, or have not yet received, the specific amount of assistance needed to meet their category C obligations under the Agreement.

At the same time, under the pretext of the need to focus resources on the practical implementation of the Agreement in the context of the coronavirus pandemic, the WCO Council (the highest body of the organization) decided in June 2021 to terminate the working group and “assign the implementation of specific articles of the Agreement to various WCO Committees” and also to include these issues in the agenda of the WCO Permanent Technical Committee meetings [WCO, n.d.a].

As a result, practical efforts to implement the Agreement within the framework of the WCO over the past year or two have been reduced to tracking the notifications of countries on the adoption of obligations and their implementation. Practical experience in implementing the Agreement is discussed only in the format of an exchange of practices, so this work does not lead to concrete steps to reduce the time frame for implementation or to fill it with concrete qualitative content. This seems to be why the lack of requests for assistance from a number of developing and least developed countries, or the failure to receive assistance in response to existing requests, was highlighted as a major risk during the final meeting of the working group.

In this context, it appears that the WCO's potential to implement the TFA remains largely untapped. Moreover, recently, due to various circumstances, including coronavirus restrictions, even those tools that were actively used before (the most striking example is the termination of the TFAWG) have not been used.

Findings and Recommendations

At present, the potential contribution of the Kyoto Convention and the other WCO instruments to the implementation of the TFA is substantially greater than their use and possible impact.

It seems that at present there are objective conditions in which the two leading organizations—the WTO and the WCO, which set the rules and recommendations in the field of world

trade—should carefully analyze more than four years of practice related to the implementation of the Agreement and take coordinated actions to restart the mechanisms of its implementation. The WTO has already taken steps in this direction. In 2021, its members launched work on the review of implementation of the Agreement for four years. Several proposals have been formulated, including a regular comparison of the actual and stated terms of implementation of obligations, an analysis of the causes of actual delays, the formation of the evidence base in support of the implementation of obligations and to justify the necessary requirements, the possibility of obtaining feedback from the business community, and other ideas. The first deliverables based on the results of the work are expected by the end of 2021 or early 2022.

Hence, it is necessary to establish truly representative analytics and feedback between members and the main stakeholders represented by the WTO and the WCO and to move from recording statistical data on the formal accession of members to the Agreement or its individual articles to a qualitative and objective assessment of the results of such accession.

A key factor in achieving a qualitative shift in the implementation of the Agreement, which at one time was positioned as a breakthrough tool for assisting the least developed and developing countries through the development of international trade, would be a detailed diagnosis of the state of affairs in these countries, specifying and digitalizing data on the priority areas of work, as well as of the amount and timing of all types of assistance and support for them.

The Agreement provides for greater freedom and autonomy for the least developed and developing countries in the distribution of notifications of accession to the provisions of the Agreement in categories B and C [Kozhankov, 2016]. At the same time, the relevance of adequate self-assessment of countries' readiness for implementation, directions, and volumes of capacity necessary to implement the provisions of category C, as well as bilateral and multilateral cooperation with donors, is obvious.

In this regard, the following recommendations are offered as specific proposals for improving the work to ensure timely implementation of the Agreement.

First, conduct an additional “mapping” of the articles of the Agreement to which the least developed and developing member states have acceded should be conducted, assessing the “coverage” of accession to the various articles of the Agreement, internationally and regionally.

Second, the WCO Permanent Technical Committee, together with the WTO Committee on Trade Facilitation, should form questionnaires on the implementation of the Agreement in least developed and developing countries and recommend that they conduct a self-assessment of the effects of accession in accordance with the proposed questionnaires. This could provide quantitative and qualitative assessments of the impact of accession to the Agreement on increasing cross-border trade in these countries, transit potential, and growth. In the absence of the necessary resources and competencies to conduct such self-assessments in developing and/or least developed countries, assistance should be offered to conduct such studies, including through WCO's existing mechanisms to assist in the capacity building of customs administrations.

Third, effectiveness and efficiency of the activities under the Agreement should be assessed by, for example, comparing the implemented articles with the economic effect of the measures taken calculated in terms of the growth rate of foreign trade turnover of these countries, as well as the gross domestic product. Thus, it is necessary to develop and implement appropriate methods of calculation.

Fourth, a similar analysis with respect to donor funds should be conducted, estimating the economic effect of the assistance provided depending on the amount of funds invested in the implementation of the Agreement.

Fifth, given the rapid development of cross-border e-commerce, a systematic analysis of the impact of the development of e-commerce on the implementation of the Agreement should be carried out.

Sixth, the research potential of the WTO and the WCO should be combined, since these two organizations have highly qualified experts in the field of international trade, necessary research tools, and the ability to obtain comprehensive information necessary for analysis from their members.

Undoubtedly, the potential and role of the WCO here is underestimated and not fully engaged. As the only international professional organization, the WCO is already making efforts to develop methodologies for assessing the implementation of universal customs instruments, which are directly aimed at the practical implementation of trade facilitation. The development of systematic and practical cooperation between the two organizations to give a new impulse to the use of the WCO resources for the implementation of the Agreement seems to be the only way to obtain an objective picture of the situation in the countries, the reforms carried out, the needs and amounts of necessary assistance, and the effectiveness of the implemented measures, including their actual impact on economic development.

The actualization of collaborative work on the implementation of the Agreement could provide a significant synergistic effect from the consolidation of efforts of the WTO and the WCO, the two largest international organizations in the field of governance and regulation of international trade for the development of the world economy in the context of a number of destabilizing factors in the first quarter of the 21st century.

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Annex. Comparison of the Provisions of the World Trade Organization Agreement on Trade Facilitation and the International Convention of the World Customs Organization on the Simplification and Harmonization of Customs Procedures

Article in the WTO Trade Facilitation Agreement (hereinafter—Agreement)	Provision of the International Convention on the Simplification and Harmonization of Customs Procedures (hereinafter—Convention)
Article 1: Publication and Access to Information	
1. Publication Provision is made for the prompt publication of information on a non-discriminatory basis and in an easily accessible form for the information of all interested parties	General Annex, Chapter 7 “Application of Information Technology,” Chapter 9 “Information, Decisions and Rulings Supplied by the Customs (Standards 9.1–.2) Provision shall be made for unrestricted access of any individual concerned to all relevant information of general nature relating to customs legislation, including clarified information prior to the entry into force of the amendments
2. Information Available Through Internet The information provided is intended to be available and updated via the Internet	General Annex, Chapter 7 “Application of Information Technology,” Chapter 9 “Information, Decisions and Rulings Supplied by the Customs (Standard 9.3) Provision is made for the use of information technology to facilitate the presentation of information
3. Enquiry Points It is intended to establish or maintain one or more information centres to respond to reasonable inquiries from interested parties	General Annex, Chapter 9 “Information, Decisions and Rulings Supplied by the Customs” (Standards 9.4–.8) Provision of the most accurate information on the specific issues raised, relating to customs legislation at the request of the individual concerned in the shortest possible time
4. Notification Provides for notification to the WTO Committee on Trade Facilitation of the places of publication of information, contacts of information centres	General Annex, Chapter 9 “Information, Decisions and Rulings Supplied by the Customs” (Standards 9.1–.3) Provision is made for unrestricted access of any individual concerned to all relevant information of general nature relating to customs legislation, including clarified information prior to the entry into force of the amendments. <i>Note:</i> The provisions are compatible, although the rules of the Convention do not require such (similar) notification
Article 2: Opportunity for Comment, Information Before Entry Into Force and Consultation	
1. Opportunity for Comment, Information Before Entry Into Force Provision is made to allow an appropriate time and opportunity for traders and other interested parties to comment on the proposed introduction or amendment of laws and other acts of general application	General Annex, Chapter 1 “General Principles” (Standard 1.3) Provision is made to establish and maintain interaction with traders in the framework of enhancing cooperation and facilitating participation in the development of best practices. <i>Note:</i> The Convention provides for trading parties to be consulted and informed of changes in laws and regulations in advance of entry into force but does not specifically mention the need to allow trading parties to comment on a proposed introduction or change
2. Consultation Provision is made for regular consultations between border authorities and interested parties	General Annex, Chapter 1 “General Principles” (Standard 1.3) Provision is made to establish and maintain interaction with traders in the framework of enhancing cooperation and facilitating participation in the development of best practices
Article 3: Advanced Rulings Provision is made for a provisional decision within a reasonable time to an applicant who has submitted a written request containing all necessary information	General Annex, Chapter 9 “Information, Decisions and Rulings Supplied by the Customs” (Standard 9.9) Provision is made for the issuance of a mandatory prescription at the request of the individual concerned provided that the customs service has all the necessary information

Article in the WTO Trade Facilitation Agreement (hereinafter—Agreement)	Provision of the International Convention on the Simplification and Harmonization of Customs Procedures (hereinafter—Convention)
Article 4: Appeal or Review Procedures	
1. Procedure for to appeal or review Provision is made for any individual in respect of whom an administrative decision is made by customs authorities to appeal against such a decision in pre-trial and judicial procedures	General Annex, Chapter 10 “Appeals in Customs Matters” Provides the right to appeal on customs issues by any individual concerned in the pre-trial and judicial order
Article 5: Other Measures to Enhance Impartiality, Non-Discrimination and Transparency	
1. Notification for Enhanced Controls or Inspection Provision is made for intensified controls or inspections at the border based on the risk with respect to food, drink, and feed to protect human life and health, animal, or plant in its territory	General Annex, Chapter 6 “Customs Control” (Standards 6.3–.4) Provision is made for the use of a risk management system for customs control (determining the individuals and goods, including vehicles to be checked and the extent of such checks)
2. Detention Provision is made for promptly informing the carrier and the importer in case the goods are delayed for inspection by customs or other competent authorities.	General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standards 3.33–.37), Chapter 6 “Customs Control” (Standards 6.1, 6.8) It is intended that when a decision is made to inspect goods, such inspection shall take place as soon as possible after registration of the goods declaration. At the same time, to improve customs control, the Customs Service seeks to cooperate with trade parties and conclude a memorandum of understanding. <i>Note:</i> There is no provision in the Convention expressly stating that Customs shall inform the carrier or the importer, but there is a Standard 3.36 in the General Annex, according to which Customs shall consider requests by the declarant for personal presence or the presence of his representative during the inspection of goods. Such requests must be granted except in exceptional circumstances
3. Test Procedures Provision is made for the possibility of re-inspection, upon request, if the result of the first inspection of the sample taken on arrival of the goods declared for import was unsatisfactory	General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standard 3.38) Provision is made for taking samples only when deemed necessary by Customs to ascertain the description by tariff and/or value of the goods declared or in order to ensure the application of other provisions of national law
Article 6: Discipline on Fees and Charges Imposed on or in Connection With Importation or Exportation and Penalties	
1. General Discipline on Fees and Charges Imposed on or in Connection With Importation or Exportation Applies to all payments and fees, except for import and export duties and taxes. Provision is made for the publication of information on such payments and duties, as well as an effort to reduce their number	General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standards 3.2), Chapter 9 “Information, Decisions and Rulings Supplied by the Customs” (9.7); Specific Annex A, Chapter 1 (Paragraph 19) It is envisaged that any fees (for customs formalities outside the established working hours of the customs authority, cargo operations) charged by the customs service should be limited to the approximate value of the services provided. <i>Note:</i> The Convention does not provide for a periodic review of duties and charges, as provided for in the text of the Agreement
2. Specific Disciplines on Fees and Charges for Customs Processing Imposed on or in Connection With Importation and Exportation It is envisaged that customs clearance duties should be limited to the approximate cost of services	General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standard 3.2), Chapter 9 “Information, Decisions and Rulings Supplied by the Customs” (9.7); Specific Annex A, Chapter 1 (Paragraph 19) It is envisaged that any duties (for customs formalities outside the established working hours of the customs authority, cargo operations) charged by the customs service should be limited to the approximate value of the services provided

Article in the WTO Trade Facilitation Agreement (hereinafter—Agreement)	Provision of the International Convention on the Simplification and Harmonization of Customs Procedures (hereinafter—Convention)
<p>3. Penalty Disciplines Penalties for violation of customs laws, other legal acts or procedural requirements shall be imposed on the individual responsible for the violation</p>	<p>General Annex, Chapter 3 “Clearance and other Customs formalities” (Standards 3.39, 3.43); Specific Annex H, Chapter 1 (Paragraphs 19–25) Provision is made for: – release, provided that no offences are detected; – setting the penalties applicable to each category of customs offences that can be dealt with in an administrative settlement (the severity or extent of the penalties, depends on the seriousness or importance of the customs offence committed and the previous activities of the person concerned connected with the customs service)</p>
Article 7: Release and Clearance of Goods	
<p>1. Pre-Arrival Processing Provision is made for procedures to enable the submission of documents, including in electronic form, to begin processing them prior to the arrival of goods to expedite the release of goods upon arrival</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standard 3.25), Chapter 7 “Application of Information Technology” Provision is made for the regulation of the submission and registration or verification of the goods declaration and supporting documents prior to the arrival of goods, including the use of information technology</p>
<p>2. Electronic Payment Provision is made for electronic payment of duties, taxes, fees, and charges levied by customs authorities and in connection with imports and exports</p>	<p>General Annex, Chapter 7 “Applications of Information Technology” (Standard 7.1) Provision is made for the use of information technology by the Customs Service in cases where it is cost-effective and efficient for the Customs Service and traders</p>
<p>3. Separation of Release From Final Determination of Customs Duties, Taxes, Fees, and Charges Provision shall be made for the release of goods before a final decision on customs duties, payments, taxes, and fees, if such a decision is not made prior to arrival, upon arrival or as soon as possible after arrival</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standards 3.13, 3.14, 3.17, 3.40), Chapter 4 “Duties and Taxes” (Standard 4.9), Chapter 5 “Security” (Standards 5.1–.7) Provision shall be made for the filing of a preliminary or incomplete goods declaration. The release of such declarations shall not be delayed subject to the provision of any required guarantees to ensure the collection of any applicable duties and taxes</p>
<p>4. Risk Management It is envisaged to establish and maintain risk management system for customs control purposes</p>	<p>General Annex, Chapter 6 “Customs Control” (Standards 6.3–.5) Provision is made for the customs service to use a risk management system for customs control</p>
<p>5. Post Clearance Audit Provides for the establishment or application of a post clearance audit to ensure compliance with its customs and other related laws and other regulations</p>	<p>General Annex, Chapter 6 “Customs Control” (Standard 6.6) It is envisaged that customs control systems include controls based on audit methods</p>
<p>6. Establishment and Publication of Average Release Times It is envisaged to measure and publish average release time using tools such as, among others, the World Customs Organization’s Time Release Study periodically and consistently</p>	<p>There is no similar provision in the text of the Convention itself. Implemented through the following WCO tools: – Time Release Study (TRS) – TRS Online software – Customs International Benchmarking Manual</p>
<p>7. Trade Facilitation Measures for Authorized Operators Provision is made for additional trade facilitation measures for operators who meet certain criteria, which are hereinafter referred to as authorized economic operators</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standard 3.32) Special procedures are provided for authorized individuals who meet the criteria established by Customs, including having a proper Customs compliance file and a satisfactory system of keeping commercial records</p>

Article in the WTO Trade Facilitation Agreement (hereinafter—Agreement)	Provision of the International Convention on the Simplification and Harmonization of Customs Procedures (hereinafter—Convention)
<p>8. Expedited Shipments It is envisaged to adopt or retain procedures which permit the expedited release of at least those goods which have arrived by air by individuals who have requested such treatment while customs control is retained</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” Provision is made for: – joint control at common border crossing points by the customs administrations concerned – release under guarantee – prioritization of inspections of goods by customs authorities</p>
<p>9. Perishable Goods Provision is made for expedited release and priority for any necessary inspections of perishable goods to prevent damage and spoilage</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standard 3.34) When planning inspections of goods, it is envisaged to give priority to the inspection of live animals and perishable goods, as well as other goods, the need for urgent inspection of which is recognized by the Customs Service</p>
<p>Article 8: Border Agency Cooperation Provision is made for the cooperation and coordination between authorities and agencies responsible for border controls and procedures relating to the import, export, and transit of goods in order to facilitate trade</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standard 3.35) Provides that if goods are to be inspected by other competent authorities and the Customs Service also plans to inspect them, the Customs Service shall ensure that such inspections are coordinated and, if possible, carried out simultaneously</p>
<p>Article 9: Movement of Goods Intended for Import Under Customs Control Provision is made for the movement of goods intended for import within the country under customs control from customs point of entry to other customs point within its territory, where the goods will be cleared and released</p>	<p>Special Annex E, Chapter 1 “Transit” It is envisaged that the Customs Service allows the transportation of goods under customs control on its territory, in particular, from the customs office of arrival to the domestic customs office</p>
<p>Article 10: Formalities Connected With Importation, Exportation and Transit</p>	
<p>1. Formalities and Documentation Requirements Provides for analysis of documentation requirements, revision of formalities and documentation requirements</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standards 3.11–.19) Provision is made for: – determination of the content of the goods declaration, including in electronic form – limiting the list of data to be included in the goods declaration – limiting the requirement for only those documents that are necessary for customs control – the possibility of submitting documentation by electronic means of communication – no requirement for translation of supporting documentation, except in cases where this is necessary for the processing of the declaration of goods</p>
<p>1. Acceptance of Copies There is an aspiration to accept paper or electronic copies of supporting documents required as part of import, export, and transit formalities</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standards 3.11–.19) Provision is made for: – determination of the content of the goods declaration, including in electronic form – submission of a minimum number of copies of the goods declaration – The possibility of submitting documentation by electronic means of communication</p>

Article in the WTO Trade Facilitation Agreement (hereinafter—Agreement)	Provision of the International Convention on the Simplification and Harmonization of Customs Procedures (hereinafter—Convention)
<p>3. Use of International Standards Provides for the use of international standards as the basis for import, export, and transit formalities and procedures</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standard 3.11), Chapter 7 “Application of Information Technology” (Standard 7.2) Provision is made for: – when implementing computer systems, the Customs Service shall use relevant internationally accepted standards – the paper format of the goods declaration should comply with the UN model form – the electronic format of the goods declaration is based on international standards for electronic information exchange, as defined by the recommendations on information technology of the Customs Cooperation Council</p>
<p>4. Single Window The intention is to create or maintain a “single window” system to provide documentation and/or required data for the import, export, or transit of goods through a single border crossing point</p>	<p>The Convention does not explicitly contain a similar provision. In turn, this issue is addressed by a provision in its General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standard 3.25): Provision is made for the submission and registration or verification of the goods declaration and supporting documents prior to the arrival of the goods</p>
<p>5. Pre-Shipment Inspections Provision is made to eliminate the requirement to use pre-shipment specifications in relation to tariff classification and customs valuation</p>	<p>The Convention does not contain a similar rule. The WCO Practical Guidelines for Valuation [2012b] provides some guidance on developing a strategy to eliminate pre-shipment inspection (for the purpose of determining customs value)</p>
<p>6. Use of Customs Brokers It is envisaged that, without prejudice to the essential interests of public policy the requirements for the mandatory use of customs brokers (intermediaries) should not be introduced</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standards 3.6–.7), Chapter 8 “Relationship Between the Customs and Third Parties” (Standards 8.1–.7) Provision is made for: – the determination of the conditions for an individual to act as a declarant of goods – any person who has the right to dispose of the goods has the right to act as a declarant – the possibility of conducting transactions with the Customs Service through an authorized third party</p>
<p>7. Common Border Procedures and Uniform Documentation Requirements It envisages the application of common customs procedures and unified documentation requirements for the release and customs clearance of goods throughout its territory</p>	<p>General Annex, Chapter 3 “Clearance and Other Customs Formalities” (Standards 3.11, 3.20) Provision is made for: – the paper format of the goods declaration should comply with the UN sample form – the goods declaration in electronic form is based on international standards of electronic exchange of information defined in the Recommendations on Information Technology of the Customs Cooperation Council – permission to submit the goods declaration to any established customs authority</p>
<p>8. Rejected Goods Provides for the possibility for the importer to divert or return the goods to the exporter or another person if such goods are rejected by the competent authorities because they do not meet the established sanitary or phytosanitary requirements or technical regulation measures</p>	<p>The Convention does not mention the return of goods that do not meet the prescribed sanitary or phytosanitary requirements or technical regulations. However, Chapter 4 of the General Annex to the Convention mentions the compensation to be given to the importer/exporter for goods that are returned General Annex, Chapter 4 “Fees and Taxes” (Standard 4.19) Provision is made for: – refunds of duties and taxes on imported or exported goods if, at the time of import or export, they are found to be defective or otherwise not in conformity with agreed specifications and are to be returned to the supplier or other person</p>

Article in the WTO Trade Facilitation Agreement (hereinafter—Agreement)	Provision of the International Convention on the Simplification and Harmonization of Customs Procedures (hereinafter—Convention)
9. Temporary Admission of Goods and Inward and Outward Processing	
<p>9.1 Temporary Admission of Goods It is provided the possibility of importing goods into its territory with conditional exemption, in whole or in part, from import duties and taxes, if such goods are imported for special purposes, are intended for re-export and have not been subject to any changes, except for natural wear and tear and loss due their use</p>	<p>Special Annex G, Chapter 1 It is provided that certain goods may be brought into a customs territory with conditional exemption, in whole or in part, from import duties and taxes; such goods must be imported for a specified purpose and must be intended for re-export within a specified period without undergoing any change except normal wear and tear due to their use.</p>
<p>9.2 Inward and Outward Processing The possibility of processing of goods on and outside the customs territory is provided. The goods admitted for processing may be re-imported with full or partial exemption from import duties and taxes</p>	<p>Special Annex F, Chapters 1–3 Provision is made for: – goods for processing in the customs territory are subject to full conditional exemption from import duties and taxes; – goods may be temporarily exported for manufacturing, processing or repair abroad and subsequently re-imported with full or partial exemption from import duties and taxes</p>
<p>Article 11: Freedom of Transit Provision is made for: – the exclusion of the use of rules or formalities representing implicit restrictions on transit traffic – transit shall be exempt from all charges or fees, except charges for transportation or those commensurate with the administrative costs occasioned by the transit or the cost of services rendered – giving goods to be in transit through the territory of any other state treatment no less favourable than that which would have been accorded to those goods had they been transported from their place of origin to their destination, without going through the territory of another state</p>	<p>Special Annex E, Chapters 1–2 Provides that goods transported under customs transit shall not be subject to duties and taxes, subject to compliance with the established conditions and the provision of any required guarantees. <i>Note:</i> Freedom of transit and the principle of non-discrimination are not covered by the equivalent provisions of the Convention. The freedom of transit in Article 11 of the Agreement is not limited to customs transit only. It is a holistic approach that includes other governmental agencies, in particular transport ministries</p>
<p>Article 12: Customs Cooperation Provision is made for: – exchange of information on claims in other states – exchange of information to verify import and export declarations upon request – ensuring the safety and confidentiality of the information exchanged – prompt response to requests for information – possibility to postpone or refuse a response to a request – comparing the cost of preparing a response to a request with the value of the information obtained – ability to enter into bilateral or regional agreements for the provision or exchange of customs information and data</p>	<p>General Annex, Chapter 1 “General Provisions,” Chapter 3 “Clearance and Other Customs Formalities,” Chapter 6 “Customs Control” (Standard 6.7), Chapter 7; Specific Annex H, “Offences,” Chapter 1 Provision is made for: – cooperation with other customs administrations and the conclusion of mutual administrative assistance agreements – wherever possible, all parties directly concerned shall be consulted in the introduction of information technology – the use of electronic methods of exchange of commercial information – combination of electronic methods and methods of authentication and identity of documents on paper – the right of the Customs Service to retain information for its own use for customs purposes and, where appropriate, to exchange such information with other Customs administrations and other legally authorized parties by electronic means for the exchange of commercial information – determining the procedure to be followed by Customs after it has discovered a Customs offence and the steps it may take – authorizing the Customs Service to obtain evidence of an offence <i>Note:</i> The scope of the Article of the Agreement for information exchange is very narrow (mainly only for the verification of import and export declarations in prescribed cases). The requested party may refuse to provide information based on its national legal system. This article does not replace the exchange of information on the basis of bilateral/multilateral/regional agreements. The agreement does not cover information exchange on a voluntary basis (only on a request basis)</p>

Source: Drafted by the author based on analysis of the Agreement and WCO instruments.