***Measures defined by Ukraine on January 4, 2018 as Category B, with estimated dates of execution.***

***For each item discussed below Ukraine needs to clarify the following points:***

**Agencies**Several Ukrainian government ministries and agencies have specific roles executing different TFA provisions. Each responsible office (in some cases multiple offices under a provision) should be identified so that their implementation activities cab be better planned and coordinated.

**Gap Analysis** Identify specific gaps that must be addressed by relevant agencies and the National Trade Facilitation Committee to comply with specific TFA obligations.

**Actions planned to eliminate gaps** (to be included in the Action Plan)

*Provision executed?*

*What is already done to execute the provision?*

*What agency is responsible?*

*Contact persons?*

**Legislation** Identify specific legislative needs to eliminate identified gaps (*what laws and regulations should be drafted or amended?*)

**Procedures** *What procedural reforms, new procedures, etc. are planned to execute a specific provision?*

**Policy guidance**  *Identify specific political issues to be addressed with regard to identified gaps.*

**Training** *Clarify specific professional training required to eliminate identified gaps.*

**IТ** *Clarify specific hardware and software needs required to eliminated identified gaps*

*Article 1.3:* Enquiry points *Category В*

*Proposed date of introduction: February 28, 2019*

|  |  |
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| **Heading/description** | **Facts** |
| “3.1 Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested parties on matters covered by paragraph 1.1 and to provide the required forms and documents referred to in subparagraph 1.1(a).  3.2 Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.  3.3 Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of their fees and charges to the approximate cost of services rendered.  3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.” | Ukraine has efficiently functioning WTO-related enquiry points. This experience can be used. However, in this case, it is more about customs procedures and practices.  The enquiry point will provide information related to the operations of all regulatory agencies, while it is necessary to determine, which agency is responsible for the inquiry point. |

***What is to be done (for action plans)***

**Gap analysis:** Decide as to how it is to be done, e.g. phone or email? How officers knowledgeable in all aspects can be appointed in every agency?

**Planning actions to eliminate gaps** (to be include in the action plan)

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible?*

*Contact persons?*

Several Ukrainian government ministries and agencies have specific roles in trade control and publication of procedure information.

**Legislation** What should be done about legislation to have a functioning inquiry point? (*What laws and regulations should be drafted or amended?*)

**Procedures** *What procedural reforms and/or new procedures, etc. are planned to have a functioning inquiry point?*

**Policy guidance** *Are there political issues to eliminate problems?*

**Training** *Clarify specific professional training required for an inquiry point operation.*

**IТ** *Clarify specific needs for hardware and software to have a functioning inquiry point.*

**Agencies**

Customs:

Ministry of Economic Development and Trade:

Ministry of Infrastructure:

Veterinary Inspection:

Phytosanitary Inspection:

Ministry of Ecology and Natural Resources:

Chamber of Commerce:

Other

*Article 1.4:* Notification *Category В*

*Proposed date of introduction: February 28, 2019*

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| **Heading/description** | **Facts** |
| “Each Member shall notify the Committee on Trade Facilitation established under paragraph 1.1 of Article 23 (referred to in this Agreement as the "Committee") of:  (a) the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published;  (b) the Uniform Resource Locators of website(s) referred to in paragraph 2.1; and  (c) the contact information of the enquiry points referred to in paragraph 3.1.” | When paragraphs 1.1, 1.2 and 1.3 are executed in full, this paragraph should not be a problem.  Information is gathered from all regulatory agencies, but which of them and who is responsible as a coordinator (MEDT?). |

***What is to be done (for action plans)***

**Gap analysis:** When paragraphs 1.1, 1.2 and 1.3 are executed in full, this paragraph should not be a problem

Is the legal framework created?

Is information collected on: (а) the official places of publication of information, as specified in subparagraphs 1.1 «а»-«j»; (b) the URL's of web-sites, referred to in subparagraph 2.1; (c) the contact information of the enquiry points referred to in paragraph 3.1

**Planning actions to eliminate gaps** (to be include in the action plan)

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible?*

*Contact persons?*

Several Ukrainian government ministries and agencies have specific roles in trade control and publication of procedure information.

Customs:

Ministry of Economic Development and Trade:

Ministry of Infrastructure:

Veterinary Inspection:

Phytosanitary Inspection:

Ministry of Ecology and Natural Resources:

Chamber of Commerce:

Other

*Article 2.1:* Opportunity to comment, information before entry into force, and consultations *Category В*

*Proposed date of introduction: February 28, 2019*

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| **Heading/description** | **Facts** |
| “1.1 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit.  1.2 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.  1.3 Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraphs 1.1 or 1.2, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from paragraphs 1.1 and 1.2” | There are differences between the public and the private sector in their assessment to execute this measure.  Possibility to comment and information before taking legal effect by a trade act are associated with the operation of the customs and other regulatory bodies. |

***What is to be done (for action plans)***

**Gap analysis:** In practice there are two levels of the same problem with a distinction between them: (а) legally the issue can be addressed – by creation of public councils with each agency; and (b) there are enforcement problems in exercising of what is written in the laws. The institutional basis for comments should be improved. Both legislation and its application should be updated. It is about a business deregulation law. The Customs Code contains 226 evaluation norms on the matter, while it is necessary to adopt the norm (at the level of the law rather than the Cabinet of Ministers' level) punishing those responsible individuals that violate legislation in this area (which is rather complicated). In terms of customs valuation, there are additional difficulties – tools for improvement of the system are required.

**Planning actions to eliminate gaps** (to be included in the action plan)

*What has already been done to execute the measure?*

*What agency is responsible?*

*Contact persons?*

Several Ukrainian government ministries and agencies have specific roles in trade control. Which?

Customs:

Ministry of Economic Development and Trade:

Ministry of Infrastructure:

Veterinary Inspection:

Phytosanitary Inspection:

Ministry of Ecology and Natural Resources:

Chamber of Commerce:

Other

*Article 2.2:* Consultations  *Category В*

*Proposed date of introduction: February 28, 2019*

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| **Heading/description** | **Facts** |
| “Each Member shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.” | This should be the responsibility of the permanent consultations body. Change of structure and staff in ministries has a negative effect.  Consultations should be provided both by the Customs, and other regulatory bodies. |

***What is to be done (for action plans)***

**Gap analysis:** Compliance in two areas is necessary: consultations with the trade community and consultations between regulatory authorities.

**Planning actions to eliminate gaps** (to be included in the action plan)

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible?*

*Contact persons?*

Several Ukrainian government ministries and agencies have specific roles in trade control and must be involved in consultations. Which ones?

Customs:

Ministry of Economic Development and Trade:

Ministry of Infrastructure:

Veterinary Inspection:

Phytosanitary Inspection:

Ministry of Ecology and Natural Resources:

Chamber of Commerce:

Other

*Article 4: Procedures for appeal or review Category В*

*Proposed date of introduction: December 31, 2020*

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| **Heading/description** | **Facts** |
| “1. Each Member shall provide that any person to whom customs issues an administrative decision[(4)](https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm#fnt-4) has the right, within its territory, to:  (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;  and/or  (b) a judicial appeal or review of the decision.  2. The legislation of a Member may require that an administrative appeal or review be initiated prior to a judicial appeal or review.  3. Each Member shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.  4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:  (a) within set periods as specified in its laws or regulations; or  (b) without undue delay  the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority[[1]](#footnote-1)5.  5. Each Member shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review where necessary.  6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.” | The Customs claim that the procedure is already approved. The problem is that references to legal acts need to be made, and the discussion procedure with stakeholders needs to be approved. |

***What is to be done (for action plans)***

**Gap analysis:**

*Is the legal framework already in place?*

*What has already been done to execute the measure?*

*What is to be done?* (to have them included in the action plan)

*What agency is responsible?*

*Contact persons?*

The Customs Service is involved, but other agencies can also be involved. Which ones?

*Article 6.3: Penalty disciplines Category В*

*Proposed date of introduction: December 31, 2020.*

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| **Heading/description** | **Facts** |
| “3.1 For the purpose of paragraph 3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs laws, regulations, or procedural requirements.  3.2 Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.  3.3 The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.  3.4 Each Member shall ensure that it maintains measures to avoid:  (a) conflicts of interest in the assessment and collection of penalties and duties; and  (b) creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.  3.5 Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.  3.6 When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.  3.7 The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.” | Facts about penalties should be identified.  The provision is first of all about the customs operations. |

***What is to be done (for action plans)***

**Gap analysis:**

*Is the legal framework already in place?*

*What has already been done to execute the measure?*

*What is to be done?* (to have them included in the action plan)

*What agency is responsible?Customs*

*Contact persons?*

*Article 7.4.1: Risk management (a risk management system must be adopted) Category В*

*Proposed date of introduction: December 31, 2018*

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| **Heading/description** | **Facts** |
| “Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.” | The provision is related to the customs operations, as well as other controlling bodies. |

***What is to be done (for action plans)***

**Gap analysis:**

*Is the legal framework already in place?*

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible? Customs, but others too?*

*Contact persons?*

*Article 7.4.2: Risk management (in the meantime discrimination must be avoided) Category В*

*Proposed date of introduction: December 31, 2018*

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| **Heading/description** | **Facts** |
| “Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.” | The provision is related to the customs operations, as well as other controlling bodies. |

***What is to be done (for action plans)***

**Gap analysis:**

*Is the legal framework already in place?*

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible? Customs, but others too?*

*Contact persons?*

*Article 9.1 and .2:* Perishable goods[[2]](#footnote-2)10 *Category В*

*Proposed date of introduction: December 31, 2019.*

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| **Heading/description** | **Facts** |
| “ 9.1 With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:  (a) under normal circumstances within the shortest possible time; and  (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.  9.2 Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.” | To be verified |

***What is to be done (for action plans)***

**Gap analysis:**

*Is the legal framework already in place?*

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible? Customs, but others too?*

*Contact persons?*

*Article 10.1: Formalities and documentation requirements*  *Category В*

*Proposed date of introduction: December 31, 2020*

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| **Heading/description** | **Facts** |
| “1.1 With a view to minimizing the incidence and complexity of import, export, and transit formalities and to decreasing and simplifying import, export, and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Member shall review such formalities and documentation requirements and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements are:  (a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;  (b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;  (c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and  (d) not maintained, including parts thereof, if no longer required.” | This is a rather complicated process – analysis and simplification of documentation processes are required, as well as data harmonization, to simplify the procedures.  This provision covers both the customs, and other controlling bodies. |

***What is to be done (for action plans)***

**Gap analysis:** analysis, simplification of business documentation process and data harmonization are required. International assistance will be needed in two areas. Maybe it should be moved to C?

**Planning actions to eliminate gaps** (to be included in the action plan)

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible?*

*Contact persons?*

Several Ukrainian government ministries and agencies have specific roles in gathering and control of information and documents, and should be involved in the documentation simplification process. Which ones?

Customs:

Ministry of Economic Development and Trade:

Ministry of Infrastructure:

Veterinary Inspection:

Phytosanitary Inspection:

Ministry of Ecology and Natural Resources:

Chamber of Commerce:

Other

*Article 10.2: Acceptance of copies*  *Category В*

*Proposed date of introduction: December 31, 2019*

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| **Heading/description** | **Facts** |
| “2.1 Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities.  2.2. Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.  2.3. A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.[[3]](#footnote-3)11” | Legislation is not ready yet.  This provision covers both the customs, and other controlling bodies. |

***What is to be done (for action plans)***

**Gap analysis:** draft and pass appropriate legislation and develop a control system over fraudulent copies.

**Planning actions to eliminate gaps** (to be included in the action plan)

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible?*

*Contact persons?*

Several Ukrainian government ministries and agencies have specific roles in document flows, and should be involved in adopting procedures for acceptance of copies. Which?

Customs:

Ministry of Economic Development and Trade:

Ministry of Infrastructure:

Veterinary Inspection:

Phytosanitary Inspection:

Ministry of Ecology and Natural Resources:

Chamber of Commerce:

Other?

*Article 10.3: Use of international standards to facilitate trade*   *Category В*

*Proposed date of introduction: December 31, 2018*

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| **Heading/description** | **Facts** |
| “1.1 With a view to minimizing the incidence and complexity of import, export, and transit formalities and to decreasing and simplifying import, export, and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Member shall review such formalities and documentation requirements and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements are:  (a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;  (b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;  (c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and  (d) not maintained, including parts thereof, if no longer required.” | There is no common understanding between various agencies and the business community as to what standards of simplification of trade procedures and e-commerce really are, and how they should be exercised.  This provision concerns the customs and other controlling bodies. |

***What is to be done (for action plans)***

**Gap analysis:** This is a rather complicated process – it is necessary to understand what kind of standards these are, and how they should be adopted. International assistance will be required. Maybe should be moved to C?

**Planning actions to eliminate gaps** (to be included in the action plan)

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible?*

*Contact persons?*

Several Ukrainian government ministries and agencies have specific roles in application of international trade facilitation standards. Which?

Customs:

Ministry of Economic Development and Trade:

Ministry of Infrastructure:

Veterinary Inspection:

Phytosanitary Inspection:

Ministry of Ecology and Natural Resources:

Chamber of Commerce:

Other

*Article 10.5: Preshipment inspection Category В*

*Proposed date of introduction: December 31, 2019*

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| **Heading/description** | **Facts** |
| “5.1 Members shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.  5.2 Without prejudice to the rights of Members to use other types of preshipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.[[4]](#footnote-4)12.” | Ukraine does not seem to exercise preshipment inspections in the meaning of the Agreement on Preshipment Inspections |

***What is to be done (for action plans)***

**Gap analysis:**

Is the preshipment inspection practiced in Ukraine? If not this is Category A.

*Article 10.6: Use of customs brokers Category В*

*Proposed date of introduction: December 31, 2019*

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| **Heading/description** | **Facts** |
| “6.1 Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not introduce the mandatory use of customs brokers.  6.2 Each Member shall notify the Committee and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.  6.3 With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.” | The use of customs brokers in Ukraine does not seem to be a requirement. |

***What is to be done (for action plans)***

**Gap analysis:**

The use of customs brokers in Ukraine does not seem to be a requirement. What is required is that transparent and objective rules be applied to the licensing of customs brokers*.*

If there is no inconsistency, this is Category A

*Article 10.7:*Common border procedures and uniform documentation requirements *Category В*

*Proposed date of introduction: December 31, 2021*

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| **Heading/description** | **Facts** |
| “7.1 Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.  7.2 Nothing in this Article shall prevent a Member from:  (a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;  (b) differentiating its procedures and documentation requirements for goods based on risk management;  (c) differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;  (d) applying electronic filing or processing; or  (e) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on the Application of Sanitary and Phytosanitary Measures.” | This provision concerns the customs and other controlling bodies.  Facts of application need to be established. |

***What is to be done (for action plans)***

**Gap analysis:** Are all procedures harmonized at different border crossing points? If not, can it be moved to C?

*Is the legal framework already in place (laws and regulations)?*

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible? Customs, but all the rest too?*

Customs:

Veterinary Inspection:

Phytosanitary Inspection:

Ministry of Ecology and Natural Resources:

Ministry of Infrastructure:

Other?

*Contact persons?*

*Article 10.8.2: Part of Article 10.8 regarding "Rejected goods" Category В*

*Proposed date of introduction: December 31, 2020*

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| **Heading/description** | **Facts** |
| “8.2 Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.”  While the provision of Art. 10.8.1: Category А, „Если товары, представленные для ввоза, отклоняются компетентным органом Члена по причине их несоответствия установленным санитарным или фитосанитарным требованиям или мерам технического регулирования, Член должен с учетом и в соответствии со своими законами и иными нормативными правовыми актами позволить импортеру перенаправить или вернуть забракованные товары экспортеру или любому другому лицу, обозначенному экспортером.“ | ? |

***What is to be done (for action plans)***

**Gap analysis:**

*Is the legal framework already in place?*

*What has already been done to execute the measure?*

*What is to be done?*

*What agency is responsible? Customs, but others too?*

*Contact persons?*

1. 5 Nothing in this paragraph prevents the Members from admitting administrative failure to act as regards the appeal or review of the decision in favor of the petitioner in line with their laws or other legal acts. [↑](#footnote-ref-1)
2. 10 For the purposes of the present provision, perishable goods are understood to be those subject to quick spoilage by reason of their natural properties, specifically, in absence of proper storage conditions. [↑](#footnote-ref-2)
3. 11 Nothing in this paragraph prevents a Member from requiring presentation of documents such as certificates, approvals or licenses as a mandatory condition for importation of goods subject to control. [↑](#footnote-ref-3)
4. 12 This paragraph covers the preshipment inspection that is a subject of the Agreement of Preshipment Inspections, and does not prohibit preshipment inspections for sanitary and phytosanitary purposes. [↑](#footnote-ref-4)