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І ТОРГІВЛІ УКРАЇНИ



CLDP  
COMMERCIAL LAW DEVELOPMENT PROGRAM



UKRAINE  
INTERNATIONAL  
CHAMBER OF COMMERCE

## **Workshop on the Readiness of Ukraine to Implement the WTO Agreement on Trade Facilitation (validation of the assessment report)**

The United Nations Economic Commission for Europe (UNECE), U.S. Department of Commerce's Commercial Law Development Program (CLDP), the United Nations Conference on Trade and Development (UNCTAD), the Ministry of Economic Development and Trade of Ukraine, the Interagency Working Group on Trade Facilitation and Logistics in Ukraine and the International Chamber of Commerce (ICC Ukraine) organized the Workshop on the validation of the Report on the Assessment of the Readiness of Ukraine to Implement the WTO Trade Facilitation Agreement (TFA), which was held from 30 September to 2 October 2015.

### **General Recommendations**

1. The participants in the Workshop reviewed the above Assessment Report, which was sponsored by UNECE. They discussed findings of the Report on Ukraine's readiness to implement the respective TFA measures. The international experts and the authors of the Report presented the measures of TFA, the readiness to implement measures notified as Category A on 1 August 2014, and the proposed notification of the remaining measures. The representatives of government agencies then commented on the proposed categorization of the measures and on their readiness to implement them. The participants in the Workshop requested the authors of the Report to thoroughly review it, and incorporate the comments and additions suggested in the discussions, including on the categorization of measures. On this basis, they validated the Report.

2. The participants in the Workshop recommend to all relevant regulatory agencies to use the Report as well as the recommendations of the CLDP Workshop held in June 2015 in their further work on the self-assessment of the readiness of Ukraine to implement the TFA.

3. The participants welcomed the expressed will of Ukraine to ratify and implement the TFA. In this sense, they recommend using the Report for the development of an

implementation roadmap. The TFA should be included in the strategic priorities for economic policy of Ukraine.

4. Regarding measures already notified as Category A by the Government of Ukraine, it was noted that those measures have to be implemented by the entry into force of the TFA for Ukraine. However, both the Report and the discussions at the Workshop indicated that Ukraine was not ready to implement many of them, and it was doubtful whether it would be ready by the entry into force of the TFA. Primary attention should be paid to these measures; and a coordinator should be nominated in the Government responsible for their prompt implementation. The participants recommended concentrating the efforts of the relevant agencies on the implementation of these Articles as soon as possible, as they cannot be reclassified from Category A to other categories. Particular concern was expressed with regard to Articles 1.1 (Publication), 1.2 (Publication on the Internet), 7.1 (Pre-Arrival Processing), 7.7 (Trade Facilitation Measures for Authorized Economic Operators), 7.9.1 and 2 (Perishable Goods), and 8 (Border Agency Cooperation). If external support is needed, it should be requested immediately, before the entry into force of the TFA.

5. As revealed during the Workshop, some agencies are not yet ready to identify and assess their needs in terms of timelines for the implementation of the measures (for measures of Category B) and in terms of timelines and requested international assistance (in terms of measures under the Articles categorized as C).

6. It was recommended to prepare a letter from a high level representative in the Government to all relevant regulatory agencies, inviting them to urgently work on the implementation of the measures that were identified as Category A but the readiness on them was assessed as insufficient. The letter should invite all agencies to promptly review and define their needs in terms of time and cost of possible international assistance and to communicate this information to the Ministry of Economic Development and Trade and potential donors.

7. As a first step on the work on problematic items already notified as Category A, all relevant agencies should identify and work with the Ministry of Economic Development and Trade to prepare an inventory of all information (laws, bylaws, forms, documentary procedures, etc.) defined in Article 1.1 of the TFA. The inventory should include places of publication and, when available, URLs of the publications on the internet. It is recommended to develop a web portal with all this information, which may become part of the functionality of a national Single Window to be created in the future.

8. The proposed categorization of the provisions under Article 11 (Transit) should be consulted and agreed with the Ministry of Infrastructure.

9. The participants supported the proposal to organize a meeting with donors, provisionally scheduled for 19 November 2015, on the platform of the Interagency Working

Group on Trade Facilitation and Logistics with high-level support from the relevant Government agencies of Ukraine, at which to present the various reports on the readiness of Ukraine to implement the TFA, including the UNECE-sponsored Report on the Assessment of the Readiness to implement the TFA, the recommendations of the June 2015 CLDP Workshop, and the USAID-sponsored WTO Trade Facilitation Agreement Conformity Assessment for Ukraine.

10. The Government of Ukraine should consider an official translation of the TFA into Ukrainian language and work on the final revision and publication of such a translation.

11. An English-Ukrainian glossary of terms related to the Trade Facilitation Agreement should be prepared.

## Specific Recommendations

### on a list of priority issues in the field of implementation in Ukraine of the WTO Agreement on Trade Facilitation (including the assessment of the need for international donor assistance)

A general comment, applicable to all provisions below: an analysis of relevant business processes need to be done with a view to draft recommendations to simplify the document flows. This would require international donor assistance.

<b>Trade facilitation measure</b>	<b>Comment (necessary legislative, institutional, logistical steps)</b>
Article 1.1 – Publication	The participants of the Workshop agree that the Government of Ukraine, notably the Ministry of Economic Development and Trade and the State Fiscal Service, should develop an inventory of documents and forms required by regulatory agencies for international trade operations, as well as the description of the relevant documentary procedures. This should be done with due regard to the provisions of TFA Article 10.1.
Article 7.1 – Pre-Arrival Processing	Article 259 of the Customs Code provides for pre-arrival processing. Procedures should be developed and implemented to allow pre-arrival processing for all means of transport, not only maritime transport. This work should include making the relevant amendments to Resolution No. 451 of the Cabinet of Ministers of May 25, 2012 entitled Issues on of Admission through the State Border of Automobile, Water, Railway and Air Vehicles of Carriers and Goods Carried by Them (as further amended). This work should also include the review of the existing and proposed pre-arrival processing procedures for compliance with the Revised Kyoto Convention, especially as regards the terminology used.
Article 7.4 – Risk Management	The objective of this measure is to ensure faster release of low-risk consignments. Thus, all major regulatory agencies have to put in place their risk management systems (systems of risk analysis and assessment, risks profiling). Some participants noted

	<p>that it would be important to interact such systems.</p> <p>The participants noted the need for increased interagency coordination and collaboration with regard to risk profiling, analysis and management.</p> <p>Since Article 7.4.4 has been notified by Ukraine as a Category A measure and since this measure could only be implemented in connection with implementation of the measures provided in 7.1.1, 7.1.2 and 7.1.2, implementing of 7.4 is an issue to be dealt with urgently.</p> <p>It should be pointed out that the State Fiscal Service already uses selectivity criteria, envisaged in subsection 7.4.4 of Article 7.4, in the risk management system, which is applied in the customs control of goods and vehicles.</p> <p>In developing and implementing the risk management systems (systems of risk analysis and assessment, risks profiling), it is important to ensure that the rules and standards contained in and based on the Revised Kyoto Convention should be followed.</p> <p>One of the important challenges of risk management (risk analysis and assessment, risks profiling) in Ukraine is the need to transfer the main focus of these procedures from the central office to regions of Ukraine.</p> <p>The participants of the Workshop stated the need for assistance in training the customs officials on the methods of the risk profiling, analysis and assessment, using “train-the-trainers” method where appropriate.</p>
<p>Article 7.5 – Post Clearance Audit</p>	<p>The participants of the Workshop noted the need for review of the existing legislation, including Law of Ukraine No. 877-V of April 5, 2007 On the Basic Principles of the State Supervision (Control) in the Sphere of Economic Activity (as further amended) and Law of Ukraine No. 2735-VI of December 2, 2010 On the State Market Supervision and Control of Non-Food Products (as further amended).</p> <p>They also noted the need for increased interagency coordination and collaboration with regard to post-</p>

	<p>clearance audit.</p> <p>The participants of the Workshop stated the need for assistance in training of customs officials on the methods of post-clearance audit using “train-the-trainers” method where appropriate.</p>
Article 7.6 – Establishment and Publication of Average Release Times	<p>The Workshop participants agreed that there is a need for support in the implementation of these measures as recommended by the WCO Time Release Study. There is a need not only for financial support (the amounts of which still have to be assessed), but also for the expert assistance in carrying out such tasks.</p>
Article 7.7 – Trade Facilitation Measures for Authorized Operators	<p>The Workshop participants agree that the need for international assistance could be categorized with regard to each of the following successive stages of implementing the measure: (1) to develop the concept of procedure for selecting Authorized Economic Operators (AEOs), in compliance with the provisions of Article 7.7 of the TFA, and the provision of introduction of simplified procedures for compliant AEOs, as described in the TFA; (2) on this basis, to develop the relevant additional subordinate legislation to support the provisions of the Customs Code of Ukraine on AEOs; and (3) define penalties for non-compliant AEOs.</p> <p>In doing this, due regard should be given to the relevant existing standards and best practices.</p>
Article 7.8 – Expedited Shipments	<p>Workshop participants recognize the need for additional review of the practical application of the relevant legislation (including Chapter 36 of the Customs Code and Resolution No. 450, of May 21, 2012 On the Issues of Application of Customs Declarations (as further amended) in order to ensure Ukraine’s readiness to implement WTO TFA requirements, contained in Article 7.8.</p>
Article 8 – Border Agency Cooperation	<p>The Workshop participants noted that Decree of the President of Ukraine No. 1209/2003, of October 24, 2003 “On the Measures to Increase the Efficiency of the Customs Service of Ukraine”, as further amended,</p>

	<p>should be used as the basis for improved coordination and collaboration at the border both among Ukrainian agencies and between Ukrainian agencies and agencies in neighbouring countries. Such collaboration should be aimed at resolving such issues as the multiplicity of procedures and controls. When developing and introducing projects aimed at improved coordination and collaboration, it is important to review the implementation of the existing projects with EU members.</p>
<p>Article 10.3 – Use of International Standards</p>	<p>The workshop participants agreed that it is necessary to study the existing international standards and related legal instruments (such as UNECE, WCO and ISO standards). An example of such standards is the World Customs Organization Data Model. It should be noted that the Data Model not only includes data sets for different customs procedures but also information needed by other regulatory agencies for the cross-border release of goods and clearance at the border. The implementation of regional standards (such as the standards of the European Union) would be useful if based on broader international/global standards. For example, the EU's Single Administrative Document reflects the United Nations Layout Key for Trade and Transport Documents (UNLK) and uses the relevant international codes. Carrying out Business Process Analysis will also be useful for the implementation of international standards.</p> <p>Thus the workshop participants agreed on the need for assistance to develop a coherent and consistent national policy in adopting and implementing international standards in accordance with WTO TFA Article 10.3.</p>
<p>Article 10.4 – Single Window</p>	<p>In the course of the discussions, UNECE noted that the cases of best practice Single Window mechanisms listed in the UNECE repository indicate a cost of implementation between 1 and 6 million USD. The Workshop participants agree that there should be a project approach to the implementation of this measure, with step-by-step planning and fulfilment,</p>

	<p>and with involving of all the stakeholders. The plans and requests for funding and assistance should include the following:</p> <ul style="list-style-type: none"> <li>• analysis of business processes;</li> <li>• analysis of the legal background;</li> <li>• creation of an enabling legal environment;</li> <li>• data harmonization and alignment with international standards;</li> <li>• creation of a relevant IT system.</li> </ul>
Article 11 – Freedom of Transit	<p>The Workshop participants agree that, as per Article 10 of Law of Ukraine No. 1172-XIV of October 20, 1999 On Transit of Cargoes (as further amended), the involvement of the Ministry of Infrastructure is essential for the implementation of the measures provided for in Article 11 of the TFA. Article 10 of the above Law provides that the central government authority of Ukraine in the area of transport should perform the functions of the transit coordinator. Currently the Ministry of Infrastructure is the central government authority of Ukraine in the area of transport.</p> <p>Thus, legal and other assistance could be necessary to support the functioning of the national transit coordinator in Ukraine.</p>

## Recommendations on the concrete Articles of the TFA

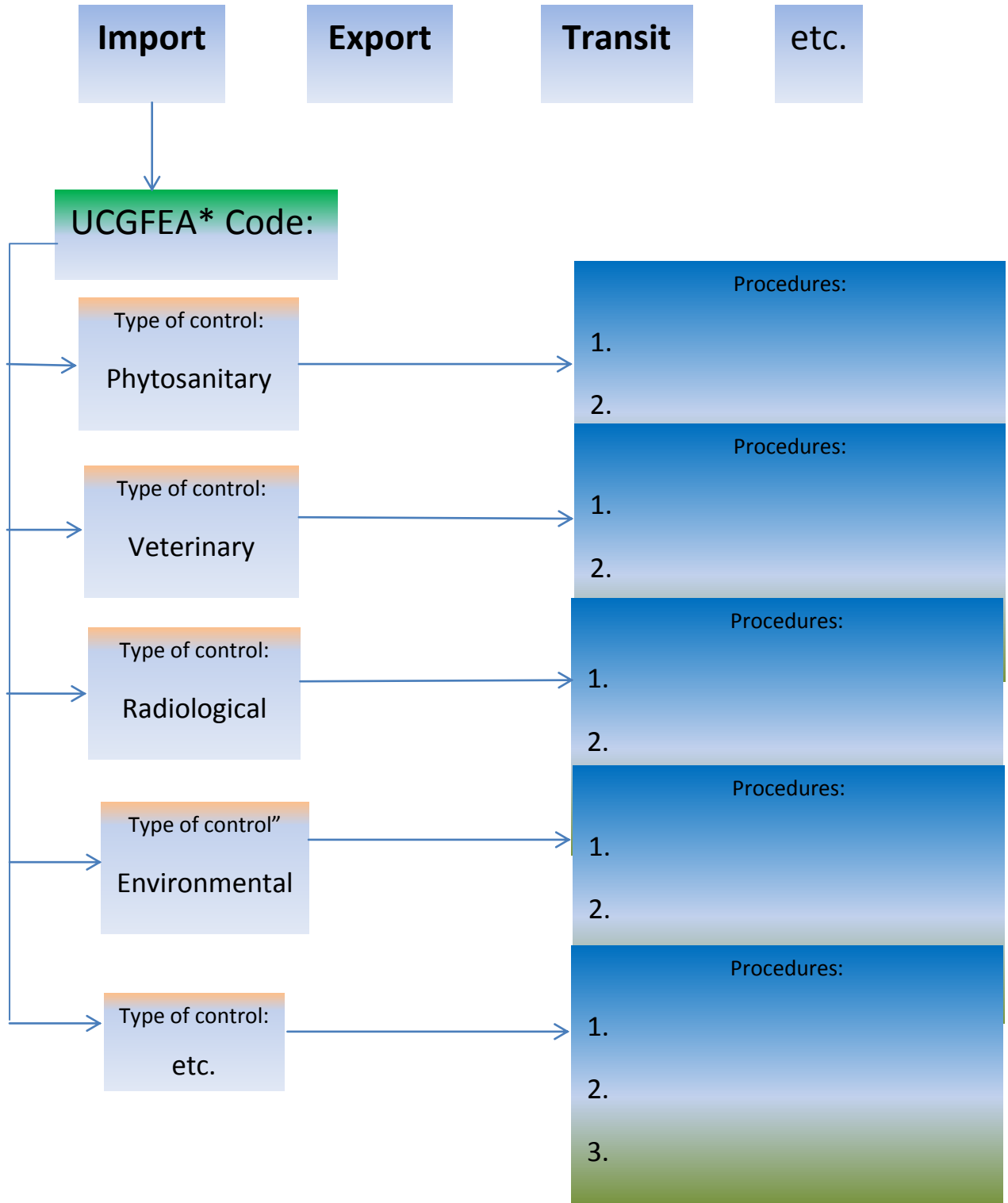
On Article 1.1 (Publication) and related Articles. The participants in the Workshop invited the representatives of the Government of Ukraine, notably the Ministry of Economic Development and Trade and the State Fiscal Service, to draft an inventory of documents required by regulatory agencies for international trade operations, as well as the relevant documentary procedures. On Articles 1.1 (notably the need for a sound analytical basis for the streamlining and decrease of numbers of documents) and 1.2 (Publication on the Internet), as well as the related Articles 10.1, 10.3 and 10.4, it is important to carry out an analysis of business processes, with a view to draft recommendations for to simplify the document flows.



In accordance with Article 319 of the Customs Code of Ukraine, goods crossing the customs border of Ukraine, in addition to customs control, may be subject to state sanitary and epidemiological, veterinary and sanitary, phytosanitary, environmental and radiological control. At the entry points on the state border of Ukraine, the above types of state control (except for radiological control) shall be carried out by the customs authorities in the form of advance documentary examination based on information obtained from the state authorities empowered to apply those controls, with the use of information technologies. The customs authorities shall interact with the state authorities empowered to carry out the above types of control and shall coordinate the carrying out these types of control at the entry points on the state border and in customs control areas in the customs territory of Ukraine in the manner prescribed by this Code and other Laws of Ukraine.

In this connection, in order to facilitate searching for relevant information for business entities, the Department of Phytosanitary Security (DPS) is proposing to set up a centralized website on the basis of the DPS that would be focused on the procedure of import, export and transit of goods with the linkage to their respective codes according to the Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA) According to the uniform scheme proposed by the DPS, each controlling authority would provide its procedures for import, export and transit.

An example is given below – please see the Table



\* UCGFEA stands for the Ukrainian Classification of Goods for Foreign Economic Activity.

On Article 1.3 (Enquiry Points) the participants rejected the proposed categorization as B and suggested C, as these measures would need resources and time to implement this

measure: notably for training and salaries of staff of these centres. Heavy approval procedures for providing information have to be eliminated.

Article 1.4 (Notification on where publications should be found, and the contacts of enquiry points) will be easy to fulfil, however, only after measures under Articles 1.1, 1.2, 1.3 are implemented, so the participants proposed Category B, and not A, as initially proposed by the experts.

On Article 2.1 (Opportunity to Comment), the State Fiscal Service noted its readiness to comply with the measure, so it should be categorized as A. A question may be raised whether the other agencies will have fulfilled this measure.

As for Article 2.2 (Consultations), it was noted that all the agencies have public advisory councils, but certain doubts were expressed with regard to the quality of discussions in these councils. Category B could be kept. The participants recommended that consultations become part of the ToR of the National Trade Facilitation Body to be created.

On Article 3 (Advance Ruling), arguably, what is needed for the classification of this measure as A is compliance with the mandatory requirements under this Article, while the optional ones could be either included or not in the classification. Ukraine fulfils the minimum requirements under this Article (advance ruling on classification and origin of goods), so the measure could be categorized as A. Yet the business community expressed willingness to see optional requirements, such as advance ruling on customs valuation, also included in the classification, which would mean the classification as C<sup>1</sup>.

On this and other measures, the participants recommended asking lawyers to verify whether it is necessary to notify the WTO on optional requirements under the TFA.

On Article 4 (Appeal or Review Procedures) the representative of the State Fiscal Service noted that the requirements under this Article were fulfilled, yet the authors of the Report insisted on the categorizing for this measure as C, as there was need for serious further work, in order to align relevant legislation and to implement it.

On Article 5.1 (Notification for Enhanced Controls and Inspections), the participants agreed to categorize it as B, but it was noted that this measure should be considered in connection to other Articles related to it.

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<sup>1</sup> Proposal of the Department of Phytosanitary Security of the State Veterinary and Phytosanitary Service of Ukraine: We would like to propose to categorize Article 3 (Advance Ruling) as C. Our reasons are as follows. Firstly, advance rulings require that communications with declarants should be established, perhaps through a kind of information program relating to the area of phytosanitary, access to which should be given to phytosanitary inspectors and business entities. Secondly, the procedure for issuing advance rulings has not been regulated at the legislative level. Thirdly, an advance ruling is not possible without physical control of the shipment in order to establish the phytosanitary conditions of the items subject to regulation.

On Article 5.2 (Detention), it was noted that there was no such term in customs legislation and other relevant legislation in Ukraine, so there is the need to work further on the legislation and look for national and international best practices. The authors of the Report suggested Category C, but the participants suggested B. The EUBAM representative noted that a major change in the legal and organizational setting had taken place with the unification of the taxation and customs authorities in Ukraine and this bore risks for a number of areas covered by the TFA (including this Article).

On Article 5.3 (Test Procedures), the authors of the Report suggested Category C, which was retained by the participants. The requirement of this Article is to provide possibilities for second laboratory tests in case of disagreement on the findings of the first tests between traders and the regulatory agencies. It is important to prepare a list of laboratories that can carry out such tests and to harmonize the rules among the various agencies with regard to second tests.

On Article 6.1 (General Disciplines on Fees and Charges) the participants agreed with the proposed notification as B. It is important to ensure that such fees and charges, as required by the provisions of this Article, are related only to actually delivered services or expenses related to the procedure.

Similarly, the proposed categorization for Article 6.2 (Specific Disciplines on Fees and Charges, namely, for customs processing) is B.

The relevant agencies should review their procedures for the existence of any *ad valorem* fees, and if any are detected, they should be eliminated. One of such *ad valorem* fees has been recently eliminated, and the remaining fees seem to be related to actual services rendered. No amount from such fees should be fed into the national budget. Unfortunately, no timeframe for actual implementation could be identified by the representatives of the agencies.

On Article 6.3 (Penalty Disciplines), the experts suggested Category C, and this was retained by the participants. The experts stressed the need to assure compliance of the definition of penalties in the Ukrainian administrative law system with the definition and implementation procedures envisaged in the TFA.

Article 7.1 (Pre-Arrival Processing) had been notified to the WTO Secretariat as Category A, but the agencies other than the State Fiscal Service noted that they had not yet implemented this measure. Therefore they were asked to take urgent action to implement it. If external support is needed, it should be requested immediately, before the entry into force of the TFA<sup>2</sup>.

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<sup>2</sup> Comment by the the Department of Phytosanitary Security of the State Veterinary and Phytosanitary Service of Ukraine: Implementation of Article 7.1 "Pre-Arrival Processing" with regard to the phytosanitary control of goods is not possible in the near future, because of certain difficulties: such procedure must be defined at the legislative level

The proposed categorization for Article 7.2 (Electronic Payments) as C was retained by the participants. Issues were reported on the transparency of electronic payments in Customs, while the other agencies have not implemented electronic payments.

On Article 7.3 (Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges), the experts suggested Category C, and this was retained by the participants.

On Article 7.4 (Risk Management), the experts proposed Category C for all Paragraphs except for Paragraph 7.4.4, which had already been notified as Category A. Controls and other measures reflected in the Agreement have to be based on the results of risk analysis and assessment. The purpose of this Article is to assure faster release of low-risk consignments. For these reasons, all major regulatory agencies have to put in place their risk management systems (systems of risk analysis and assessment, risks profiling). Even if there is no requirement to link these systems, some participants noted that this would be an important step to implement. The representative of EUBAM noted that it was possible that the fusion of the taxation and Customs services would jeopardize the implementation and maintenance of a proper risk management system in the customs sphere. Additionally, experts from SFS express their concerns about absence in new approved organizational structure of customs risk management unit.

Article 7.4.4 had been notified by Ukraine as A, and this was confirmed; however, this measure could only be implemented after the measures covered in Article 7, Paragraphs 1–3, are fulfilled, therefore it would have been logical to notify it as B.

It should be pointed out that the State Fiscal Service already uses selectivity criteria, envisaged in subsection 7.4.4 of Article 7.4, in the risk management system, which is applied in the customs control of goods and vehicles.

On Article 7.5 (Post-Clearance Audit), some representatives noted that there was already a procedure for post-clearance audit in Ukraine. As the experts noted, more has to be done to assure a properly functioning post-clearance audit based on risk analysis and selectivity. Therefore they propose the categorizing of this Article as C.

Although Article 7.6 (Establishment and Publication of Release Times) is not mandatory, the experts and participants stressed the importance of carrying out such tasks, as recommended by the TFA Time Release Study of the WCO. They insisted on the categorizing of this measure as C. This would imply certain costs for carrying out the relevant time release studies for a number of border crossings and for various means of transport. The cost and time of the recent time release study in the Port of Odesa, multiplied by the number of other studies in various border-crossing points may serve as the basis for assessment of the cost and timeline for implementing this measure. In

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with regard to the plant quarantine; lack of computer and server equipment, which has to be purchased to make the accumulation and processing of information possible; development of software for the implementation of Article 7.1. Thus, categorizing this measure as “A” is problematic.

addition to the above, there is the need to carry out an analysis of the relevant business processes, to use it as a tool for studying, reforming and improvement of trade procedures.

The notification already made on Article 7.7 (Trade Facilitation Measures for Authorized Operators) raised most serious concerns. Although the institute of Authorized Economic Operators is prescribed in the Customs Code of Ukraine, much more has to be done to reach compliance with this measure in terms of a functional system of AEOs. As with the other problematic measures already notified as A, there should be urgent action. The experts suggested to concentrate on a three-stage process of implementing this measure (including the need to receive prompt technical assistance: (1) to develop the procedure for selecting AEOs, in compliance with the provisions of Article 7.7 of the TFA, and the provision of preferences to compliant AEOs, as described in the TFA; (2) to develop additional legislation (by-laws and instructions) in support of this procedure; and (3) to define penalties for non-compliant AEOs.

On Article 7.8 (expedited shipment), the participants agreed on the categorization as A, but some of the procedures have to be described in more detail to make the implementation more operational.

On Article 7.9, the official notification as A covered only the measures defined in 7.9.3 and 7.9.4. On measures of 7.9.1 and 7.9.2, it is necessary to obtain the opinion of the relevant agencies (notably, the Veterinary and Phytosanitary Services) before the categorization can be made. The representatives of these agencies at the Workshop were not in a position to suggest any categorization. Since some of the measures were already notified as A and the participants noted problems in the implementation, urgent attention should be paid to these measures.

Some amendments have been made to the current procedure for visual review, inspection, analysis, fumigation (disinfection) and inspection (issuing and registration of a phytosanitary clearance certificate and a quarantine clearance certificate) of items subject to regulation in the field of plant quarantine, which was approved by Resolution of the Cabinet of Ministers of Ukraine No. 705 of May 12, 2007, in particular regarding the duration of phytosanitary expert examination of items subject to regulation (the opinion of phytosanitary expert examination is issued on the basis of the results of the analysis to determine the presence of harmful organisms): this examination shall be carried out within 24 hours from the moment when the sample of an item to be examined has been presented for analysis<sup>3</sup>.

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<sup>3</sup> Comment by and proposal of the Department of Phytosanitary Security of the State Veterinary and Phytosanitary Service of Ukraine: Fruits and vegetables pertain to products with a high phytosanitary risk. Most quarantine organisms that are absent in the territory of Ukraine may enter the territory of Ukraine with imported fruits and vegetables. Therefore, it is important to ensure phytosanitary examination of imported products in accordance with the approved methodologies. Resolution of the Cabinet of Ministers of Ukraine No. 705 of May 12, 2007 provides for

Besides, in accordance the Customs Code of Ukraine, to place goods under the customs warehousing procedure, the customs authorities may not demand:

“ ...

2) that the types of control be carried out as referred to in Part 1 of Article 319”.

Proceeding from the above, phytosanitary control shall be carried out after placing goods in customs warehouse at the time of customs clearance.

Article 8 (Border Agency Coordination) had been notified as Category A, but the Report and the participants noted lack of readiness on this measure, which should also be given urgent attention. The OECD assessments of the implementation of the various measures for trade facilitation have indicated deterioration in this area. The business community noted that the multiplicity of procedures and controls creates problems. The assessment of the implementation and further action on this measure should be split between: coordination among Ukrainian agencies and coordination between Ukrainian agencies and agencies in neighbouring countries. The participants from the State Fiscal Service and other agencies noted the development of projects for coordination with Poland several years ago. It is important to review the implementation of these projects.

The measure in Article 9 (Movement of Goods under Customs control identified for import) had been notified as Category A, and the participants confirmed that there were no major problems with this.

The numbering in the Agreement for Article 10.9A and 10.9B had been changed to 10.9.1 and 10.9.2 had been changed and this has to be reflected in the Report. Similarly 11.11.1, 11.11.2, 11.11.3, 11.11.4, 11.11.5, 11.12, and 11.13 have been changed to 11.11, 11.12, 11.13, 11.14, 11.15, 11.16, and 11.17, and this has to be reflected in the Report.

Article 10.1 (Formalities and Documentation Requirements) should be categorized as C, as international assistance is needed for the analysis and simplification of document requirements and procedures. First steps that would also need external assistance may be the inventarization of documentary requirements and procedures (as already noted in the comments on Article 1.1 above) and an analysis of business processes (where UNECE may offer a methodology and training of trainers to carry out a range of business process analyses and recommendations for reforms, starting from some strategic products for Ukraine).

The proposed categorization for Article 10.2 (Acceptance of Copies) was B, yet some participants noted that the requirement to issue legally valid electronic copies of

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phytosanitary examination to be carried out within 24 hours. Along with this, the Department of Phytosanitary Safety, in its planning on phytosanitary control, gives priority to perishable goods. However, in order to allow for legislative amendments to be made, we would like to propose to categorize this Article as B.

documents would need a system of electronic signatures – implemented legislation, certification and practical use of e-signatures and e-documents. For this reason they suggested Category C for this measure.

The measure in Article 10.3 (Use of International Standards) was confirmed as C, and the participants stressed the necessity to begin with creating a list of standards that have to be followed. It is important to review which international legal instruments have been used for the development of national norms and documentary procedures. This information should be announced on relevant websites. In addition to standard forms and documentary procedures described in the acts of various sectorial organizations (e.g. forms and documentary requirements for various certificates), earlier versions of the draft texts of the TFA included references to standards of UNECE, WCO and ISO. Such standards may include the United Nations Layout Key for Trade and Transport Documents and various codes supported by the UNECE trade facilitation recommendations (such as the UN code for ports and other locations related to trade UNLOCODE), the World Customs Organization's Data Model, etc. The implementation of regional standards (such as the standards of the European Union) would be useful inasmuch as they are based on broader international/global standards, in the way the EU's Single Administrative Document is based on the UNLK and uses international codes as much as possible. Carrying out the analysis of business processes will also be useful for the implementation of international standards.

Article 10.4 (Single Window) should clearly be categorized as C, as although there is a successful Port Community System in the Odesa region, the work on establishing a national Customs-Trade Single Window is still pending. This would be the most expensive measure to be considered as C. The UNECE noted that the cases of best practice Single Window mechanisms listed in the UNECE repository indicate cost of implementation between 1 and 6 million USD. There should be a project approach to the implementation of this measure, with step-by-step planning and fulfilment, and with involving of all the stakeholders. The plans and requests for funding and assistance should include: analysis of business processes; analysis of the legal background and creation of an enabling legal environment; data harmonization and alignment with international standards; creation of a relevant IT system.

Article 10.5 (Pre-shipment Inspection) should be categorized as A, as pre-shipment inspection is not used in Ukraine.

The experts proposed categorizing Article 10.6 (Use of Customs Brokers) as A, noting that countries should not make the use of customs brokers obligatory. There are no requirements for any party in Ukraine to use customs brokers.

On Article 10.7 (Common Border Procedures and Uniform Documentation Requirements), the experts proposed categorization as C, although the State Fiscal Service noted that Resolution 491 provided for uniform procedures throughout the territory of Ukraine. This,



however, needs further analysis and harmonization of documents and procedures, as noted in Articles 1.1 and 10.1, taking into account the requirements of Paragraph 10.7.2.

Article 10.8.1 (Rejected Goods) had already been notified as A. Ukraine should review this procedure and confirm that it complies with this requirement before the TFA has entered into force.

Paragraph 10.8.2 of this Article, which is not yet categorized, would need further analysis of compliance to be categorized.

Article 9.1 (Temporary Admission of Goods) had been notified as A, and the experts and the participants confirmed this categorization.

Article 9.2 (Inward and Outward Processing) had been notified as A, and the experts and the participants confirmed this categorization.

The various obligations listed in Article 11 (Transit) were reviewed. This Article builds on Article V of the GATT, which clearly defines the basic obligations in the area of transit. Unfortunately, not all the provisions in the TFA are as clear. Paragraphs 1, 2, 9, 11, 12, 13, 14, 15, 16, and 17 had been notified as A by Ukraine. For the purposes of analysis of the readiness, notification and implementation of the measures under this Article should be split into two types: (a) measures referring to the right of other countries to use the territory of a country for transit (measures described in Paragraphs 11.1 – 11.5); and (b) customs procedures on transit (measures described in Paragraphs 11.6 – 11.17). Unfortunately, there was no representative of the Ministry of Infrastructure; this Ministry should be consulted on the categorization of the measures, in addition to Ukraine's Customs (the State Fiscal Service gave its opinions during the Workshop) and the Association of Automobile Carriers of Ukraine (VAAP).

Paragraphs 11.1 and 11.2 had been notified as A, and they have to be implemented ASAP. Representatives of the private sector raised questions as to whether the measures described in these two Paragraphs have been implemented, but this issue may be too complex in the current situation.

The experts and participants agreed that Paragraph 11.3 can also be categorized as A.

Paragraph 11.4 refers to the Most Favoured Nation principle of GATT, and the measure can be categorized as A, but the opinion of the Ministry of Infrastructure is needed for this.

Paragraph 11.5 may tentatively be categorized as C, but the opinion of the Ministry of Infrastructure is important, as well as that of the Association of Automobile Carriers of Ukraine.

Paragraph 11.6 may tentatively be categorized as C, but the opinion of the Ministry of Infrastructure is important, as well as that of the Association of Automobile Carriers of Ukraine. There are problems with the interpretation of this Article, so, the agency issuing

the notification on B and C may need to have further discussions with the relevant other agencies (the State Fiscal Service, Ministry of Infrastructure and the Association of Automobile Carriers of Ukraine).

Paragraph 11.7 may tentatively be categorized as C, but the opinion of the Ministry of Infrastructure is important, as well as that of the Association of Automobile Carriers of Ukraine.

The level of implementation of Paragraph 11.8 may raise certain doubts in Ukraine. It is necessary to organize discussions among the regulatory agencies and then decide on the readiness of Ukraine to implement this measure (not to apply technical regulations and conformity assessment procedures to goods in transit). If these discussions show that there is no application of these procedures to goods in transit, this measure may also be notified as A.

The measure under Paragraph 11.9 has been notified as A. Yet similar issues as with those on Article 7.1 may be raised.

There was not enough time to discuss the implications for Paragraph 11.10.

Articles 11.11 – 11.17 have been notified as A. No essential objections were raised with exception of Paragraph 11.17 – the nomination of the national transit coordinator – which may still be pending (clarification is needed).

For Article 12 (Customs Cooperation), the experts suggested Category B. This Article reflects relevant texts in international customs law, namely the Revised Kyoto Convention. It is important to review compliance of Ukrainian customs law and practice with the provisions of this Article.

The establishment of a National Trade Facilitation Committee (Article 23.2) is not subject to categorization. It has to be implemented by the entry of the TFA into force. The participants discussed the options for establishment of this Committee with the Deputy Minister of Economic Development and Trade Ms Natalia Mykolska. She informed the participants that the Government is considering in depth various options, including the possibility to build on the experience and structure of the Interagency Working Group on Trade Facilitation and Logistics. The new structure and ToR of the Committee should reflect the TFA scope, possibly through the establishment of several sub-groups.