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Assessment of the Readiness of Ukraine to implement commitments arising from the WTO Trade Facilitation Agreement

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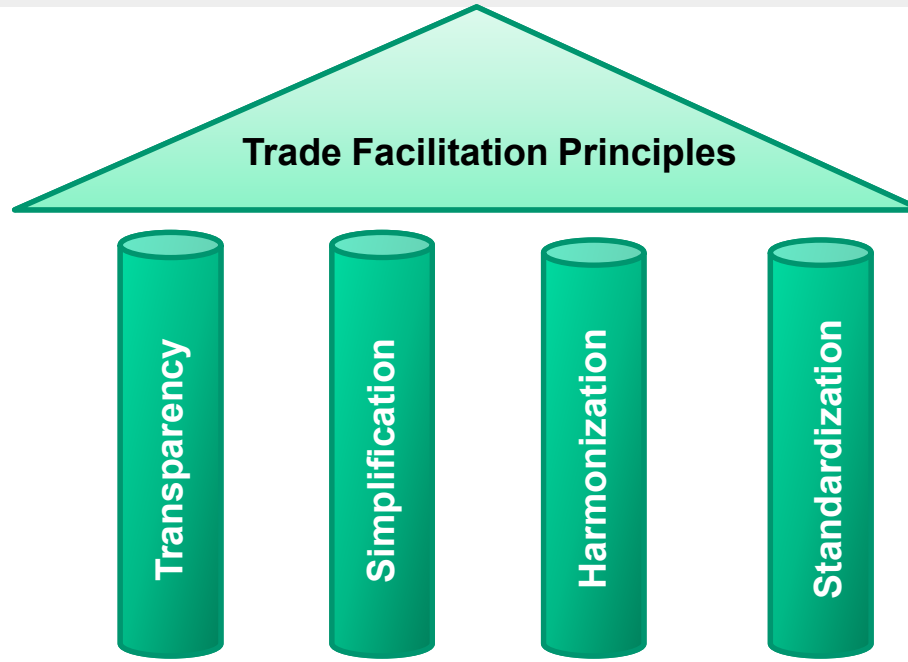
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UNECE Support for Trade Facilitation in Ukraine

- Implementing advanced TF instrument (Port Community System or local SW) in Odessa.
- Relying on local resources (involve private business)
- Plans to build sectorial (maritime or transport) SW, as per EU DG MOVE Directive 2010/65/EU, and
- national SW as per art. 10 of the WTO TF Agreement and EU's Multiannual Strategic Plan on e-Customs
- Interagency WG on TF and Logistics established

Facilitation and Compliance = two sides of the same coin



Governments and business have the same objective: increase trade and economic growth

**In the different regions of Ukraine: falling production between 2% and 50%;
falling exports between 12% and 96% yoy**

Need full cooperation between government authorities and the business community

Interagency TF Working Group

National TF Strategy

National

Single Window

Projects on:

- 1. Port Community System – local Single Window**
- 2. Establishing a National Trade Facilitation Committee**
- 3. Assessment of the readiness of Ukraine to implement the WTO TF Agreement**
- 4. Draft a national TF strategic plan**

Port Community System
www.singlewindow.org

Cargo

Consignor, exporter, consignee, freight forwarder





The WTO TFA: Special and differentiated approach

Substantive Rules: Section I

**Assess readiness;
WTO notification (A, B, C);
Technical assistance projects**

A Category

- **Done in
Ukraine 1
August 2015**

B Category

- **Longer
timeframe**

C Category

- **Longer
timeframe**
- **Technical
Assistance for
implementation**



How the assessment was carried out (1)

- Stage 1 - primary data collection (by 6 Apr.2015)
- Stage 2 – analysis of the data: disparity in responses!
- Stage 3 - validation of the initial report (28 Apr.2015) - identified the need to redraft the report and clarify the primary data. An attempt to expand the survey failed ⇒ interpret available data.
- Stage 4 - interpret the primary data. Compare and analyze trading practices in Ukraine and compare with the compliance with the Revised Kyoto Convention (ratified by Ukraine).



The assessment (2)

- Stage 5 - identify the reasons for the significant differences in the responses (e.g. incorrect implementation of the Revised Kyoto Convention) and then select the most accurate responses for the assessment and categorization of the implementation of the TFA measures.
- Stage 6 – validate the revised report: (1) complementary survey and (2) formal discussion and validation of the findings: 30 Sept.-2 Oct. 2015.



The questionnaire

- *A key element of the methodology. Aimed at showing:*
 - a) the level of readiness of Ukraine to comply with the conditions and requirements of the TFA;*
 - b) priority and categorization for each measure;*
 - c) resources needed in cases when Ukrainian agencies identify the need for more time or technical assistance.*
- *Focused on 37 measures in 13 articles of the TFA.*
- *Questions divided into "basic" and "supporting".*
- *Comparison between the actual state of affairs and the situation after the concrete TFA measure is implemented.*

Measures in the Agreement

Transparency measures	Fees and procedures	Transit and organizational issues
Art. 1.1. Publication of laws, procedures, etc.	Art. 6.1. General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	Art. 11. Freedom of Transit
Art. 1.2. Information available through internet	Art. 6.2. Specific disciplines on Fees and Charges	Art. 12. Customs Cooperation
Art. 1.3. Enquiry Points	Art. 6.3. Penalty Disciplines	Art. 23. Institutional arrangements: Committee on Trade Facilitation
Art. 1.4. Notification	Art. 7. Release and Clearance of Goods Art. 7.1 Pre-arrival Processing Art. 7.2. Electronic Payment	
Art. 2. Opportunity to comment and information before entry into force & consultation	Art. 7.4. Risk Management	
Art. 3. Advance rulings	Art. 7.5. Post-clearance Audit	
Art. 4. Appeal or review procedures	Art. 7.6. Establishment and Publication of Average Release Times	
Art. 5.1. Notifications for enhanced controls or inspections	Art. 7.7. Trade Facilitation Measures for Authorized Operators	
Art. 5. 2. Detention	Art. 7.8. Expedited Shipments	
Art. 5. 3. Test procedures	Art. 7.9. Perishable Goods	
	Art. 8. Border Agency Cooperation	
	Art. 9. Movement of Goods under Customs Control Intended for Import	
	Art. 10.1. Formalities and Documentation Requirements	
	Art. 10.2. Acceptance of Copies	
	Art. 10.3. Use of International Standards	
	Art. 10.4. Single Window	
	Art. 10.5. Pre-shipment Inspection	
	Art. 10.6. Use of Customs Brokers	
	Art. 10.7. Common Border Procedures and Uniform Documentation Requirements	
	Art. 10.8. Rejected Goods	
	Art. 10.9. Temporary Admission of Goods/Inward and Outward Processing	



Assessment report on the readiness of Ukraine to implement the WTO TFA

- Limited administrative capacity to implement:
 - need to train staff and involve capable staff
- Further focus on :
 - Top priority: implement measures notified as category A, but no real capacity to implement ⇒ focus on: **Publication; Information via Internet; Pre-arrival Processing; TF measures for Authorized Operators; Perishable Goods; Border Agency Cooperation; Establish a National TF Committee;**
 - Notify category B and C measures;
 - Make plans with budgets and timelines for category B and C measures.

Results of the assessment of the readiness of Ukraine to implement the WTO TFA

Table 1. Summary results of the survey on the readiness Ukraine to implement the TFA commitments

Statistics: In the notification on measures of category «A» (measures that should be implemented by the entry into force of the TF Agreement), which Ukraine made on 1 August 2014, these measures constituted 32%, i.e. almost 1/3 of all the measures! However, some respondents to the survey noted that a number of those measures were not and would not be implemented by the entry into force of the agreement. Respondents from business were quite generous. In general, 49% of the measures were categorized as «A» in their responses (yet these responses did not correspond to the official notification from 1 August 2015). 30% of the measures were categorized as «B» (the country needs more time) and only 21% as category «C» (the country needs more time and additional external resources). Exactly one third of the responses of the government agencies were that the measures should be considered as category «A», 25% as category «B» and as much as 41% as category «C». Obviously, they would like to see international assistance in the implementation of trade facilitation.

The authors of the study were not pleased with the density of the completion of the tables of the survey by the respondents. Another problem was the absolute diversity of the responses on certain questions. These responses seemed insufficient to allow the experts to make unequivocal recommendations.

In those cases where the notification of a certain measure from 1 August 2015 was «A» and the opinions of the respondents were that the measure was of category «A», the situation is clear. The problem is with those measures, which were notified as «A», but the opinions of the experts from the government agencies and private business was that the measure was category «B» or «C». In these cases, it is important to act fast, implement the measure by the entry into force of the Agreement. It seems that at the time of the preparation of the notification of measures of category «A» on 1 August 2014, the prevailing opinion was that the notification would remain a formality, and there would be no implications if the country does not really implement those measures notified as «A».

Next steps in the finalization of the report and beginning the implementation:

- Continue the survey among private business – new companies;
- Focus on capacity-building for staff in ministries and agencies;
- Continue work on developing a trade facilitation strategy (strategic plan), including agency plans for the implementation of measures of category «C».
- Send the final report to the Ministry of Economic Development and Trade, so that it can make an informed decision on its notification to the WTO Secretariat on the readiness to implement the measures in the WTO Trade Facilitation Agreement.

Содержание вопросника / Ключевые ответы	Content of Questionnaire / Key Answers	Responses on the status of implem- entation Y - Yes, N - No, P - Partially		Responses on measure Category (A, B and C)			Responses on the measure Priority 1- Low, 5 - High		Recommended categorization	Additional years to implement	
		NGOs	Gov. Agencies	Official Notification	NGOs	Gov. Agencies	NGOs	Gov. Agencies			
СТ. 1: Публикация (законов, процедур и т.д.) и доступ к информации	ART. 1: Publication and availability of information										
1.1: Публикация	1.1: PUBLICATION	Y P P P	P P P P	A	BC	ABB	5 5 5 5	4 5 5 5		1	Respondents thought, "what's online?" There were proposals to establish a single web-portal (through an agreement between the Ministry of economic development and trade and the State fiscal service) to publish all information. Customs claims that the regulatory framework already exists. Business (A. Omelchenko) insists that the views of business on this issue must be taken into account.
1.2: Информация, доступная в Интернете	1.2: INFORMATION AVAILABLE THROUGH INTERNET	Y N P	P P P P	A	AC	CA	5 5 5	3 5 5		1	Not «A» for sure. Some private companies have prepared this information (Ukrexpertiza, Derzhvneshinform, etc.), and are offering it for payment.

1.3: Справочные центры	1.3: ENQUIRY POINTS	P Y N	P N		BC	B	5 5 5	3 5	C	2	«B» or «C» - more likely «B». Further survey is necessary. Ukraine has good enquiry points on WTO issues under the Ministry of Economic Development and Trade. Yet here we deal mostly with Customs and trade procedures and practices.
1.4: Уведомление	1.4: NOTIFICATION	Y Y	Y		BC	A	5 4	2	B	1	The consultant claims that there is a mistake in the methodology (notification should be simply information, where the information is published, and not a notification to WTO). The categorization depends on items 1.1 and 1.2 – if all is well there, then one should simply cite where the publication has been made (on paper and on the internet – url).
СТ. 2: Возможность предоставлять комментарии, информация и замечания по новым и измененным правилам до вступления в силу	ART. 2: Opportunity to comment, information before entry into force and consultation										
2.1: ВОЗМОЖНОСТЬ ПРЕДОСТАВЛЯТЬ КОММЕНТАРИИ, ИНФОРМАЦИЮ И ЗАМЕЧАНИЯ	2.1: OPPORTUNITY TO COMMENT AND INFORMATION BEFORE ENTRY INTO FORCE	P Y P	Y Y Y		BC	AAA	5 5 4	3	A	1	There is a discrepancy in the assessments of the public and private sectors on the readiness of Ukraine to implement this measure. Actually, there are two levels of viewing this issue, and there is a discrepancy between them: (a) the issue may be addressed in the legislation, and there exist public advisory councils at each ministry; and (b) there are problems in the enforcement of the legal acts. It is necessary to reinforce the institutional basis, which allows for making comments. It is necessary to modernize both the laws and their implementation. The Law on deregulation of business is a step in the right direction. The Customs Code has 226 assessment norms in this respect, yet it is necessary to adopt a legal act (not just a decree of the Council of Ministers, but a law) that would seek legal responsibility from policy-makers that break the law in this area. Drafting and passing such a law is a difficult task. In the area of Customs valuation there are additional difficulties – instruments for improving the system are necessary.
2.2: КОНСУЛЬТАЦИИ (об этой теме может быть необходимо спрашивать до 2.1)	2.2: CONSULTATIONS	Y Y Y	P Y		BC	B	5 5 5	3	B	0.5	Probably, category «B», but not clear. A standing committee on consultations should be looking at this. The changes of structures and staff in the ministries and other agencies have a negative impact on these procedures. The responses to the questionnaire on this item had to be divided into two: (a) consultations with the business community and (b) consultations among the regulatory agencies.
СТ. 3: ПРЕДВАРИТЕЛЬНЫЕ РЕШЕНИЯ	ARTICLE 3: ADVANCE RULINGS	Y Y Y	Y N		BA	A	4 5		A		Seems to be category «B». The respondents note that only parts of the obligations under this article are not fulfilled yet. Will it be possible to accomplish this measure until the entry into force of the TFA?
СТ. 4: ПРОЦЕДУРЫ ОБЖАЛОВАНИЯ ИЛИ ПЕРЕСМОТРА РЕШЕНИЙ	ARTICLE 4: APPEAL OR REVIEW PROCEDURES	Y Y Y	Y		BC		5 5 5		C	0	This measure can be categorized as «B» or even «A». Customs claims that this procedure is already implemented. The problem is that one has to make references to legal acts, when addressing appeals or review procedures; establish procedures of consultations with stakeholders.
СТ. 5: ДРУГИЕ МЕРЫ НАЦЕЛЕННЫЕ НА УСИЛЕНИЕ БЕСПРИСТРАСТНОСТИ, ОТСУТСТВИЕ ДИСКРИМИНАЦИИ И ПРОЗРАЧНОСТИ	ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON DISCRIMINATION AND TRANSPARENCY										
5.1: ОПОВЕЩЕНИЯ С ЦЕЛЬЮ УСОВЕРШЕНСТВОВАНИЯ КОНТРОЛЬНО-ПРОВЕРОЧНЫХ МЕРОПРИЯТИЙ	5.1: NOTIFICATION FOR ENHANCED CONTROLS OR INSPECTIONS	P Y Y	Y		BC	A	4 2		B		This measure was included because of certain criticism raised by some countries (e.g. India) regarding the existing practice in the European Union to send to all control agencies in the EU information on companies which have had problems in importing into the EU. What can be done is to check whether such problem exists in Ukraine. If not (which is most likely the case), this measure can be categorized as «A». The system should be based on risk assessment. Currently, a process of eliminating checks and controls is under way.
5.2: ЗАДЕРЖАНИЕ	5.2: DETENTION	Y Y Y	Y		BA	C	4 3	4	B	4	Does the administrative procedure contain a provision on this? The procedure also depends on the exact location, at which the detention takes place: at the border or at an inland location. The problem is also in the need to provide clear explanation for the detention. This takes time.
5.3: ПРОЦЕДУРЫ ИСПЫТАНИЙ	5.3: TEST PROCEDURES	Y Y Y	Y Y		CA	CC	4 3	4	C	4	This measure seems to be category «C». In this case it may be appropriate to seek technical cooperation with UNIDO which, among the UN organizations working on trade facilitation, is the one specializing on testing laboratories.
СТ. 6: МЕРЫ РЕГУЛИРОВАНИЯ В ОТНОШЕНИИ СБОРОВ И ПЛАТЕЖЕЙ, НАЛАГАЕМЫХ В СВЯЗИ С ИМПОРТОМ И ЭКСПОРТОМ	ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION										
6.1: ОБЩИЕ МЕРЫ	6.1: GENERAL	Y Y	Y		AA	D	5 2		D		

Table 1. Summary results of a survey on readiness Ukraine on the implementation of the TFA commitments

Content of Questionnaire / Key Answers	Number of responses obtained			Responses on the status of implementation (Y - Yes, N - No, P - Partially)			Responses on the proposed category of the measure (A, B, C)			Time needed to implement the measure (in years)		Responses as to which agency should be responsible for implementing each measure					Responses on the priority of the measure (1 - Low, 5 - High)					Number of responses on actions needed (by category)					Number of responses on assistance & support (NA - Not Available, N - No Need, T/F - Technical/Financial support and Assistance)					Need for assistance and support (Recommendations of the workshop on the validation report)														
	Total	MOs	Government agencies	MOs	Government agencies	Consultant	Official Institution	MOs	Government agencies	Consultant	Participants in the validation seminar	The final result!	Responsibility	Consultant	The Centre for Economic Development and Trade	Ministry of Finance	Ministry of Foreign Affairs	Ministry of Internal Affairs	Ministry of Justice	Ministry of Foreign Affairs	The State Fiscal Service	The State Border Service	The government agency	MOs	Government Agencies	Government coordination	Cooperation by the partner institution framework	Established and/or administrative changes	Information and communication technology	Additional staff	Training and capacity building	Equipment	Other	NA	N	T	F	Policy/Legal framework	Procedures	Technical framework	Human Resources Training	Communication/Information Technology	Equipment & Infrastructure	Other Issues		
																																													147	86
ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION																																														
1. PUBLICATION																																														
2. INFORMATION AVAILABLE THROUGH INTERNET																																														
3. ENQUIRY POINTS																																														
4. NOTIFICATION																																														
ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION																																														
1. OPPORTUNITY TO COMMENT AND INFORMATION BEFORE ENTRY INTO FORCE																																														
2. CONSULTATIONS																																														
ARTICLE 3: ADVANCE RULINGS																																														
1. ADVANCE RULINGS																																														
ARTICLE 4: APPEAL OR REVIEW PROCEDURES																																														
1. APPEAL OR REVIEW PROCEDURES																																														
ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON DISCRIMINATION AND TRANSPARENCY																																														
1. NOTIFICATION FOR ENHANCED CONTROLS OR INSPECTIONS																																														
2. DETENTION																																														
3. TEST PROCEDURES																																														
ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION																																														
1. GENERAL DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION																																														
2. SPECIFIC DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION																																														
3. PENALTY DISCIPLINES																																														
ARTICLE 7: RELEASE AND CLEARANCE OF GOODS																																														
1. PRE-ARRIVAL PROCESSING																																														
2. ELECTRONIC PAYMENT																																														
3. SEPARATION OF RELEASE FROM FINAL DETERMINATION OF CUSTOMS DUTIES, TAXES, FEES AND CHARGES																																														
4. RISK MANAGEMENT																																														
Para 4.1.																																														
Para 4.2.																																														
Para 4.3.																																														
Para 4.4.																																														
5. POST-CLEARANCE AUDIT																																														
6. ESTABLISHMENT AND PUBLICATION OF AVERAGE RELEASE TIMES																																														
7. TRADE FACILITATION MEASURES FOR AUTHORIZED OPERATORS																																														
8. EXPEDITED SHIPMENTS																																														
9. PERISHABLE GOODS																																														
Para 9.1.																																														
Para 9.2.																																														
Para 9.3.																																														
Para 9.4.																																														
ARTICLE 8: BORDER AGENCY COOPERATION																																														
1. BORDER AGENCY COOPERATION																																														
ARTICLE 9: MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT																																														
ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION AND TRANSIT																																														
1. FORMALITIES AND DOCUMENTATION REQUIREMENTS																																														
2. ACCEPTANCE OF COPIES																																														
3. USE OF INTERNATIONAL STANDARDS																																														
4. SINGLE WINDOW																																														
5. PRE-SHIPMENT INSPECTION																																														
6. USE OF CUSTOMS BROKERS																																														
7. COMMON BORDER PROCEDURES AND UNIFORM DOCUMENTATION REQUIREMENTS																																														
8. REJECTED GOODS																																														
Para 8.1.																																														
Para 8.2.																																														
ARTICLE 11: FREEDOM OF TRANSIT																																														
1. FREEDOM OF TRANSIT																																														
Para 1.																																														
Para 2.																																														
Para 3.																																														
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Para 6.																																														
Para 7.																																														
Para 8.																																														
Para 9.																																														
Para 10.																																														
Para 11. (according to notification - 11.1)																																														
Para 12. (according to notification - 11.2)																																														
Para 13. (according to notification - 11.3)																																														



Priority issues for Ukraine:

- Rebuild State institutions (problem in all transition economies)
- Rebuild trust:
 - in conflict zones
 - public-private (PPP - no legal or organizational base yet)
- Ukraine caught between two regional trade blocs: EU & EEU.
- Rely on local resources (commitment → real results)
- Adequate attitude to staff and resources: train, maintain capacity.
- When reviewing regulatory procedures and practices: keep the balance between trade facilitation and compliance.



Thanks !

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