

WTO TFA Implementation

Article 6

(Disciplines on Fees and Charges)

May 30, 2017



KOREA CUSTOMS SERVICE

1. General Disciplines on Fees and Charges

Overview

The TFA requires the publication of information on fees and charges imposed on or in connection with importation and exportation. Members should also review fees and charges periodically with a view to reducing their number and diversity.

Several RKC standards stipulate that fees and charges shall be limited to the approximate cost of the services rendered.

1. General Disciplines on Fees and Charges

WTO TFA

1.1

The provisions of paragraph 1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with the importation or exportation of goods.

1.2

Information on fees and charges shall be published in accordance with Article 1. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

1.3

An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

1.4

Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

1. General Disciplines on Fees and Charges

RKC

General Annex - Chapter 3 (Clearance and other Customs Formalities)

Chapter 3 of the General Annex to the Revised Kyoto Convention sets standards on fees and charges for additional Customs services. Standard 3.2 stipulates that such charges can be levied, but that they must be limited to the approximate cost of the services rendered.

General Annex - Chapter 9 (Information, Decisions and Rulings Supplied by the Customs)

Chapter 9 of the General Annex also stipulates that any charges shall be limited to the approximate cost of the services rendered.

Specific Annex A - Chapter 1 (Formalities prior to the lodgement of the goods declaration)

Chapter 1 of Specific Annex A stipulates that expenses chargeable by Customs shall be limited to the cost of the services rendered.

1. General Disciplines on Fees and Charges

WCO Tools

Revised Arusha Declaration

The Declaration is the focal point of the WCO's anti-corruption and integrity development effort. It contains specific elements that are designed to improve the efficiency of Member administrations and reduce or eliminate opportunities for corruption.

2. Specific Disciplines on Fees and Charges

Best Practice

The greatest effect expected from this provision is that the various quasi-taxes that are imposed on the trade commodities will be managed in the direction of the WTO.

Overall, it is expected that the transparency of the fees and charges collected in relation to the Customs procedures in each Member will be improved and the level of service fees collected variously in the Customs procedure process will be somewhat reduced.

2. Specific Disciplines on Fees and Charges

Overview

The TFA foresees that the amount of fees and charges for Customs processing shall be limited in amount to the approximate cost of the services rendered.

Several RKC standards stipulate that fees and charges shall be limited to the approximate cost of the services rendered.

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Fees and charges for customs processing:

- (i) shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and
- (ii) are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

2. Specific Disciplines on Fees and Charges

RKC

General Annex - Chapter 3 (Clearance and other Customs Formalities)

Chapter 3 of the General Annex to the Revised Kyoto Convention sets standards on fees and charges for additional Customs services. Standard 3.2 stipulates that such charges can be levied, but that they must be limited to the approximate cost of the services rendered.

General Annex - Chapter 9 (Information, Decisions and Rulings Supplied by the Customs)

Chapter 9 of the General Annex also stipulates that any charges shall be limited to the approximate cost of the services rendered.

Specific Annex A - Chapter 1 (Formalities prior to the lodgement of the goods declaration)

Chapter 1 of Specific Annex A stipulates that expenses chargeable by Customs shall be limited to the cost of the services rendered.

2. Specific Disciplines on Fees and Charges

WCO Tools

Revised Arusha Declaration

The Declaration is the focal point of the WCO's anti-corruption and integrity development effort. It contains specific elements that are designed to improve the efficiency of Member administrations and reduce or eliminate opportunities for corruption.

3. Penalty Disciplines

Overview

According to the TFA provisions, Members may impose penalties only on the person(s) responsible for the breach of a Customs law, regulation or procedures requirement. Members are also required to ensure that the penalty depends on the facts and circumstances of the case and is commensurate with the degree and severity of the breach. The TFA encourages Members to consider voluntary disclosure as a potential mitigating factor when establishing a penalty.

Chapter 3 of the RKC General Annex contains several standards relating to Customs offences and errors. In addition, Chapter 1 of Specific Annex H deals with the investigation and establishment of breaches of Customs law and with the administrative settlement of offences by Customs. The Chapter sets standards which aim to combine the adequate investigation of Customs offences with minimal disruption of trade.

3. Penalty Disciplines

WTO TFA

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. Penalty Disciplines

WTO TFA

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.

3. Penalty Disciplines

RKC

**General Annex
- Chapter 3
(Clearance and
other Customs
Formalities)**

Chapter 3 of the General Annex contains several standards relating to Customs offences and errors. During the process of supplying information to Customs by means of a goods declaration, supporting documents, a cargo declaration or any other means, it is always possible that errors may occur. When errors in the information supplied are accidental, and are not made on a regular basis, Customs may normally give the declarant an opportunity to correct the mistake and will not take further action such as imposing a penalty.

When an offence is detected, a considerable time may elapse before the administrative or legal procedure is completed. It is often not beneficial to Customs or to the trade to delay the release of the goods until a final decision has been taken on the offence. Standard 3.43 provides for Customs to release the goods under certain conditions and take adequate security to ensure the payment of any additional duties and taxes or any penalties that may be imposed once the administrative or legal procedure is complete.

3. Penalty Disciplines

RKC

Specific Annex H - Chapter 1 (Customs Offences)

The primary task of Customs is to ensure compliance with Customs law. To assist in dealing with Customs offences or suspected offences, it is necessary that Customs have powers to investigate and, where appropriate, to impose sanctions against those who are not in compliance. Chapter 1 of Specific Annex H deals with the investigation and establishment of breaches of Customs law and with the administrative settlement of offences by Customs. The repression of Customs offences, by the application of suitable penalties, is also addressed but only to the extent that it falls within the competence of Customs.

This Chapter sets standards which aim to combine the adequate investigation of Customs offences with minimal disruption of trade. This is because long and costly criminal proceedings as a reaction to frequently occurring minor irregularities may impose disproportionate burdens on trade. Similarly, severe penalties for minor breaches of Customs law are inappropriate.

3. Penalty Disciplines

WCO Tools

Voluntary Compliance Framework

The Voluntary Disclosure Programmes (VDP) give clients a chance to correct inaccurate or incomplete information or to disclose information that clients have not reported during previous dealings with Customs authorities, without penalties in the appropriate circumstances.

The VCF will help traders comply voluntarily and correctly with Customs law, regulations or requirements. This will also reduce Customs burdens like inspection and efforts for improving data quality. As a result of this, all Customs procedures will be more effective, more efficient and more transparent.

3. Penalty Disciplines

Best Practice

It is estimated that Korea has already faithfully enforced the provisions of paragraphs 3.1 to 3.4 of Article 6. The Customs Act clearly defines the punishment cases and the persons to whom they are punished and maintains a relatively reasonable level of punishment. In addition, efforts are made to improve / maintain the integrity of the Customs officers.

If an exporter is subject to punishment in a foreign country, he or she may demand a re-examination based on this provision, but there may be a question depending on the country to use it effectively.



Thank you!



KOREA CUSTOMS SERVICE