

World Bank Group

Jamaica Customs Act

WTO Trade Facilitation Agreement Gap Analysis

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II. Acknowledgments

The WBG would like to thank the Jamaica Customs Agency and the Planning Institute of Jamaica and the Jamaica Trade Facilitation Task Force for their support in hosting and facilitating the preparation of the mission that informed this report.

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Executive Summary

Background

The WBG Trade and Competitiveness Global Practice is delivering advisory and lending operations in Jamaica totaling \$58M. The engagement in Jamaica promotes growth and competitiveness through investment climate reforms, private sector investment and promotion of innovation and entrepreneurship. Trade facilitation reforms, including the implementation of the WTO TFA, have been prioritized by the GoJ as part of the strategy to improve the investment climate. Customs and other border agencies are constrained by outdated legislation and multiple inspections, permits and fees that add to the time and cost of trade.

The Government of Jamaica has requested the assistance of the World Bank Group to support its national trade facilitation reform agenda. In May 2015, WBG initiated the delivery of its advisory services by providing inputs into the drafting of a national trade facilitation roadmap, and subsequently, in collaboration with the GoJ, UNCTAD and the International Trade Center (ITC), contributed to the development of a national implementation plan. The review of the Jamaica Customs Act was one of the actions prioritized in the plan.

In February 2016, the GoJ, through the Planning Institute of Jamaica (PIOJ) requested the assistance of the WBG to review the Customs Act of Jamaica (2015 Bill) to bring it into alignment with the World Trade Organisation (WTO) Trade Facilitation Agreement (TFA). The Customs Act is currently being reviewed to strengthen tax and customs administration in line with an IMF program to support Jamaica's economic reforms. The GoJ is adopting a multi-phase approach to the legal review. The first phase was completed in September 2014, when the Act was amended to implement the modernization of Customs Operations using ASYCUDA World (an integrated customs management system). In the second phase, the Cabinet approved amendments to the Customs Act in June 2015 and a draft bill was tabled later that year. This Bill includes amendments to provide additional support to the implementation of ASYCUDA world, improve compliance and improve and increase the collection of duties. It has not yet been passed. The legal review to align the Customs Act with the WTO TFA is the third phase, and the GoJ timeline is December 2016 for passage of these amendments.

This report was informed by discussions with the national authorities and private sector representatives including *inter alia* a mission in May 2016. It reviews the alignment of the Customs Act of Jamaica to the World Trade Organization Trade Facilitation Agreement (TFA) and proposes changes where gaps are found.

Summary of findings

Gaps Identified

The review identified 19 of the 36 TFA measures where the Customs Act does not appear to contain provisions to fully support implementation, as follows-

TFA Article	TFA Measure	Alignment Level	Gap(s)
1.1	Publication	Partial	No positive obligation to publish information, other than regulations, fees, and forms in the <i>Gazette</i>
1.2	Information available through the Internet	Not aligned	“
1.3	Enquiry Points	Not aligned	No obligation to supply information or forms on request
2.1	Opportunity to Comment and Information before Entry into Force	Partial	1. No obligation to provide interested persons with reasonable opportunity to comment on proposed regulations 2. No obligation to publish final regulations prior to entry into force
2.2	Consultations	Not aligned	No specific provisions to require regular consultations with stakeholders
3	Advance Rulings	Not aligned	No provisions concerning binding rulings
4	Procedures for Appeal or Review	Substantial	1. Obligation to provide written reasons for decisions appears limited to valuation and reassessment decisions 2. Technical inconsistencies in provisions on “assessment” and “re-assessment” 3. Establishment of administrative appeal procedures for disputes other than assessment is within discretion of Commissioner (including decisions affecting substantial rights) 4. Omissions (failure to act/decide within reasonable periods) not clearly subject to appeal
6.1	General Disciplines on Fees and Charges	Partial	1. Act requires fees to be prescribed by regulation published in Gazette, a print publication that may not be “easily accessible” 2. No provisions that authorize or require the Minister or other authority to publish fees prior to entry into force 3. No provisions in the Act or other legislation that authorize or require the Minister or other authority to conduct a periodic review of customs fees
6.2	Specific Disciplines on Fees and Charges	Not aligned	No provisions restricting fee amounts consistent with GATT principle
6.3	Penalty Disciplines	Substantial	No specific provisions defining procedural aspects of penalty assessment/decision (notification, right to hearing, written reasons. etc.)
7.1	Pre-Arrival Processing	Partial	Submission/processing of pre-arrival entry does not appear to be envisaged by the Act
7.3	Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges	Partial	Procedure defined in the Act for release prior to final determination of duty/tax is limited to case where valuation cannot be determined (not other assessment-related issues). The Act contains limited rules on use of customs guarantees that are specific to particular customs procedures.
7.6	Establishment and Publication	Partial	No specific provisions requiring or authorizing periodic

TFA Article	TFA Measure	Alignment Level	Gap(s)
	of Average Release Times		publication of average release times (and strict restrictions on disclosure of customs information)
7.7	Trade Facilitation Measures for Authorized Operators	Not aligned	No specific provisions- (i) defining simplified entry and release procedures, or (ii) authorizing establishment of an authorized operator program
7.8	Expedited Shipments	Not aligned	No specific provisions- (i) requiring or allowing establishment of simplified entry and release procedures for air cargo shipments, or (ii) exempting or authorizing waiver of collection of small amounts of duty (<i>de minimis</i> exception)
7.9	Perishable Goods	Partial	No specific provisions- (i) requiring or allowing establishment of simplified entry and release procedures for perishable goods, or (ii) requiring written explanation be given on request for unreasonable delays in release of goods
9	Movement of Goods Intended for Import under Customs Control	Not aligned	No specific provisions in the Act authorizing a transit or inbond procedure
10.6	Use of Customs Broker	Substantial	Amend the Act to set out general principles concerning use and regulation of customs brokers
11	Freedom of Transit	Partial	No specific provisions in the Act authorizing a transit or inbond procedure

With respect to the following TFA measures, either the Customs Act or other legislation was found to provide a legal basis for Customs implementation of the measure or the TFA measure is not applicable to Customs.

TFA Article	Measure	Alignment Level
1.4	Notification	Not applicable
5.1	Notifications for enhanced controls or inspections	Not applicable
5.2	Detention	Full
5.3	Test Procedures	Not applicable ¹
7.2	Electronic Payment	Full
7.4	Risk Management	Full
7.5	Post-clearance audit	Full
8	Border Agency Collaboration and Coordination	Full ²
10.2	Acceptance of Copies	Full
10.3	Use of International Standards	Full
10.4	Single Window	Full ³

¹ Not applicable because there do not appear to be any provisions for establishment of customs laboratories. If such provisions exist or such customs laboratories exist in fact, alignment to be reconsidered.

² No apparent gaps in Customs Act, but review of other border agency legislation recommended to ensure harmonization and consistency in respective mandated responsibilities and functions

³ See note 2

TFA Article	Measure	Alignment Level
10.5	Pre-shipment Inspection	Full
10.7	Common Border Procedures and Uniform Documentation Requirements	Full
10.8	Rejected Goods	Full
10.9	Temporary Admission and Inward and Outward Processing	Full
12	Customs Cooperation	Full

Proposals for Changes to the Act

Although gaps are identified with respect to 19 TFA measures, a significant number of these gaps are generally of the similar type. As such, this paper suggests that these common gaps may be resolved by the following proposed amendments-

Amendment	Proposal	TFA Articles
Transparency*	Incorporate a “transparency” mandate that would- -require Customs publication of information -define information to be published (in general or specific terms) -require use of internet to publish required information -require Customs to supply information and documents on request of interested person.	1.1., 1.2., 1.3., 6.1, 7.6
Customs Decisions	Incorporate general procedural rules on Customs decision making (a “due process” mandate) that- -requires Customs to provide written reasons for any adverse decision -requires Customs to provide opportunity to be heard before adverse decision taken -requires Customs to take required decisions/actions within reasonable period of time -defines general grounds for annulment, revocation and suspension of decisions -provides for delayed effective dates of revocation or suspension of decisions, in justified cases	4, 6.3
Customs Procedures	Define in the Act all customs procedures under which imported or exported goods must be declared (including temporary admission, inward processing, drawback, outward processing, and transit), based on RKC standards	9, 11
Customs Entry Processing	Revise/restructure the Act to (i) define more clearly the “normal” or standard customs entry, payment and control processes, including the rights and obligations of operators and Customs in relation to those processes, and (ii) define the essential elements and conditions for use of simplifications, based on RKC standards.	7.1, 7.3, 7.7, 7.8. 7.9
Customs Rule Making*	Either – (i) amend the Interpretation Act or other general legislation to require administrative authorities provide opportunity for comment on their proposed regulations and to publish final regulations prior to effective date (subject to justified exceptions), or (ii) amend the Customs Act to incorporate such provisions, applicable only to Customs	2.1, 6.1
Customs Guarantees	Define general principles on customs guarantees for use in all customs operations, including acceptable forms of guarantees; principles for determination of guarantee amounts; any limitations on who may act as	7.3, 7.7, 7.8, 7.9, 9, 10.9, 11

Amendment	Proposal	TFA Articles
	guarantor or surety; general conditions for discharge of guarantees, etc.	

**See "Cross Cutting Measures," below*

In addition to the proposals suggested in the table above, this review identified the following important changes to the Customs Act required to enable implementation of specific TFA measures.

Amendment	Proposal	TFA Article
Advance Rulings	Incorporate provisions on essential elements of a bindings ruling procedure, namely -- -define scope of ruling requests (tariff classification and origin, and such other matters as may be prescribed by regulation) -establish legal consequences of a ruling (binding on both Customs and the applicant) -define period of validity (open/no limitation) -define grounds for revocation and annulment (including change in law or interpretation) -define persons who may request rulings (any person who may act as "importer" under the Act) -authorize Commissioner to prescribe implementing regulations	3
Customs Fees	Amend Act to limit fees for customs processing to the approximate cost of the service provided	6.2
Delays in Release	Provide for right to written explanation where goods (including perishable goods) are not released within a specified period following, for example, date of submission of the entry.	7.9
De Minims Duty Amounts	Provide exemption for, or authorize waiver of collection of, small duty amounts	7.8
Customs Brokers	Amend the Act to set out general principles concerning use and regulation of customs brokers	10.6

**Cross-Cutting Measures*

A number of TFA measures are applicable to other government authorities in addition to Customs that have responsibilities for regulation of import, export, or transit goods. These TFA measures, which generally concern the "transparency" and "rule-making" or governance measures of the TFA, are the following--

- Publication (TFA Article 1.1)
- Information Available through the Internet (TFA Article 1.2)
- Enquiry Points (TFA Article 1.3)
- Opportunity to Comment and Information before Entry into Force (TFA Article 2.1)

- Consultations (TFA Article 2.2)
- Formalities and Documentation Requirements (Article 10.1)

A decision is required by the government as to whether legal provisions required to implement these measures should be incorporated (i) in the Customs Act and enabling legislation of each of the relevant border agencies or (ii) in legislation and/or other formal measures that are equally applicable to Customs and other border authorities (as well as other Ministries, Departments and Agencies, in some cases).

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Abbreviations and Acronyms

Act	Customs Act of Jamaica
GATT	General Agreement on Tariffs and Trade
MDAs	Ministries, Departments and Agencies
RKC	Revised Kyoto Convention
TFA	Trade Facilitation Agreement
WCO	World Customs Organization
WTO	World Trade Organization

IV. Introduction

A. Purposes

This paper reviews the alignment of the Customs Act of Jamaica to the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) and recommends changes where gaps are identified.⁴

The Customs Act was last amended by the Customs (Amendment) Act 2014 which entered into force October 1, 2014. A bill to make further changes to the Act – titled “Customs (Amendment) Act 2015” - is currently under consideration by the Parliament.⁵ For purposes of this review, it is assumed that the changes proposed in the 2015 bill will be enacted as proposed. Accordingly, references to the “Customs Act” in the paper should be taken to include all changes set out the 2015 bill.

B. Methodology

The TFA contains 36 technical measures that are set out in the first 12 articles of the agreement. In **Part II** of this paper, the Customs Act is reviewed against each of the TFA technical measures, in order given in the agreement.

With respect to each TFA measure, this review considers -

- ***Level of alignment***

On a scale of “full”, “substantial,” “partial” or “not aligned”.

In addition, there are a number of TFA technical measures that are “not applicable”; that is, the legal basis for implementation of these measures is not the Customs Act.

Where this paper indicates that the Act is “fully” or “substantially” aligned to the measure, it means only that there is a legal basis in the Customs Act for *Customs* implementation of the TFA measure. It is not intended to indicate that the measure is implemented by Customs in fact or that the Act provides a legal basis for implementation of the TFA measure by other border authorities.

- ***Summary of TFA measure***

A summary of the essential elements of the TFA measure, for reference purposes

- ***Other International Standards***

This is a summary of other international standards, if any, relevant to implementation of the TFA measure, for reference purposes. In most cases, these standards are those of the World Customs Organization (WCO) Revised Kyoto Convention (RKC).

- ***Relevant Customs Act Provision(s)***

⁴ World Trade Organization, Agreement on Trade Facilitation, WT/L/31 (15 July 2014)

⁵ The version of the 2015 bill that was used in this review was downloaded from the Parliament website in June 2016; the document properties indicate it was last modified July 27, 2015.
<http://www.japarliament.gov.jm/index.php/publications/bills/public-bills>

This summarizes the provisions of the Customs Act relevant to the TFA measure, if any.

- ***Other Legislation***

This summarizes other legislation of Jamaica that would provide a legal basis for Customs implementation of the TFA measure, if any.

- ***Gap Analysis***

Analysis of level of alignment of the Act to TFA measure

- ***Proposal***

Suggested changes to be made to the Act, where a gap in alignment was found. With respect to many TFA measures, there may be various options for implementation. This section includes discussion of important options and recommendations.

Part III of the paper is a conclusion and summarizes the gaps and proposals of Part II.

V. WTO Trade Facilitation Agreement Alignment

A. Publication (Article 1.1)

1. *Level of Alignment: Partial*

2. *Summary of TFA Measure*

- WTO Members shall publish certain specified customs and trade-related information, including -
 - procedures for importation, exportation, and transit and required forms and documents
 - applied rates of duties and taxes
 - fees and charges
 - import, export or transit restrictions or prohibitions
 - rules for the classification or valuation
 - laws, regulations, and administrative rulings of general application relating to origin
 - penalty provisions
 - procedures for appeal or review
- WTO Members shall publish the required information “promptly” and in a “non-discriminatory” and “easily accessible manner” to allow other governments, traders and interested persons to become acquainted with the information.

3. *Other International Standards*

RKC Standard 9.1: The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person.

RKC Transitional Standard 9.3: The Customs shall use information technology to enhance the provision of information.

4. *Customs Act Provision(s)*

Section 258 (Forms) requires the publication in the Gazette of any forms that may be prescribed by the Commissioner to be used for purposes of the customs laws.

Section 257 (Regulations) generally authorizes the Minister to prescribe regulations to carry out the provisions of the customs laws, and authorizes the Minister by regulation to impose fees and charges. Any such regulations are required to be published in Gazette.

Section 4A (Obligations for secrecy) provides that all documents and information in respect of any matter under the Act are required to be dealt with as “secret and confidential” by any person with an official duty under, or employed in the administration of, the Act and shall not be disclosed, subject to specified exceptions. These exceptions allow disclosure only -

- by any person authorized by the Commissioner “for purposes of this Act”

- to other Ministries, Departments, or Agencies (MDAs) for the purpose of assisting them in the performance of their powers, functions or duties under any enactment
- by the Commissioner, pursuant to enactment, treaty, or international agreement
- with consent of person who provided the document or information
- by the Commissioner to any person pursuant to an agreement, for purposes of assisting the Commissioner in carrying out his powers, functions and duties under the Act, or by that person to another person in accordance with the agreement.

Non-authorized disclosure is considered an offense subject to fine and, in default of payment thereof, a term of imprisonment.

5. Other Legislation

The **Access to Information Act** grants the public rights to access official documents that are held by public authorities (which include Executive Agencies, such as the Customs Agency) on application and subject to specified exemptions relating to governmental, commercial or personal information of a sensitive nature. That Act does not impose a positive obligation on public authorities to publish information of the types described in the TFA measure.

The **Official Secrets Act** prohibits disclosure of certain information that affects national security.

The **Revenue Administration Act** establishes Customs as a department of Government, designates the Commissioner as the head of the department, and defines in general terms the responsibilities of the Commissioner (**Sections 12 and 14**).

6. Gap Analysis

Other than the obligation to publish in the Gazette regulations, fees and required forms, there are no provisions of the Customs Act or other legislation that authorize or require publication, either in specific or general terms, of the information types described by the TFA measure.

Moreover, to the extent publication of regulations and forms and documents is required by the Customs Act, the obligation is to publish only in the Jamaica Gazette. The Gazette appears to be a print publication only and, as such, may not be “easily accessible” to “other governments, traders and interested persons” as required by the TFA measure.

The Customs Act prohibition against disclosure of information (Section 4A) is broad: publication of any information acquired by Customs officers in their official capacity is prohibited and potentially subject to criminal sanctions, *even if* the information is not confidential in nature or was not submitted to Customs in confidence (in that respect, the prohibition appears to be significantly broader than the restrictions on disclosure under the Access to Information Act). Such a broad prohibition may effectively discourage disclosure of confidential information, but unless disclosure is specifically authorized in the Act, it may also inhibit publication of non-sensitive information that is within the scope of the TFA measure.

7. *Proposal*

The Act should impose a positive “transparency” obligation on the Commissioner or Customs Agency. (Note that the scope of this obligation should extend to all transparency-related measures of the TFA, including [Information Available through Internet \(Article 1.2\)](#) and [Enquiry Points \(Article 1.3\)](#)).

This transparency obligation might be implemented in the Customs Act in various ways, as follows-

Amend the Customs Act to include a new article to require the Commissioner to publish such information as necessary or useful to enable compliance with the customs laws. This provision may –

- provide an illustrative list of types of information to be published (taken from the TFA measure, for example);
- prohibit the publication of any information that is exempt or prohibited from the disclosure by law (*e.g.*, Access to Information Act; Official Secrets Act);
- provide that the manner of publication shall reasonably ensure access by interested persons;
- mandate internet publication.

An example of this approach, from the customs legislation of the United States, is the following -

Figure 1 U.S. Customs Legislation: Transparency Provision

(e)Public information

The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5.

Source: Title 19, United States Code, Section 1625

Under this proposal, the Commissioner will have discretion in determining what information will be published and by what means (“The Commissioner shall publish such information as he deems...”). The advantage of such a discretionary approach is that Customs will have greater flexibility in determining the types and scope information it will choose to publish (which necessarily implies an obligation to monitor and keep the information updated, which implies an administrative cost).

The consequence of this flexibility is that such a provision may be difficult to enforce.

An alternative approach would be to mandate publication of specified types of information. An example of this approach is as follows-

Figure 2 Liberia Legislation: Transparency Provision

Section 6: Transparency

6.1 The Minister shall publish in the Official Gazette or in such manner or by such means that will, in the Minister's opinion, bring the following lists to the attention of interested parties, and shall make available to any interested party a copy of any or all of the following lists at no charge:

- (a) a list of Restrictive Measures that are imposed from time to time pursuant to section 5.1;
- (b) a list of all fees charged pursuant to section 7.1;
- (c) a list of goods which may not be imported into Liberia pursuant to sections 11.1 and 11.2;
- (d) a list of Quantitative Restrictions imposed on exports and imports pursuant to sections 15.1 and 15.2;
- (e) a list of goods which are subject to quotas pursuant to section 16.2; and
- (f) a list of import licenses and export licenses that must be obtained pursuant to section 17.

Source: Liberia Foreign Trade Law

Alternatively, the amendment could combine a mandatory and discretionary approach: mandate that the Commissioner publish certain specified items of information that are of particular importance to private sector (*e.g.*, applied duties and taxes; fees; required forms and documents) and authorize the Commissioner to publish other information types as he deems fit.

Finally, another approach might be to amend the **Revenue Administration Act** to extend the definition of the Commissioner's responsibilities, one of which would include the transparency obligation. This approach appears to be consistent with other legislation of Jamaica that lists functions or powers of the agency in the enabling law. See, for example, the Standards Act (Section 6 defines functions of the Bureau of Standards) or the Jamaica Promotions Corporation Act (Section 4 defines duties of JAMPRO).

B. Information Available through Internet (Article 1.2)

1. Level of Alignment: Not aligned

2. Summary of TFA Measure

- WTO Members shall prepare practical guides to their import, export, and transit procedures including appeal procedures
- WTO Members shall publish on the internet:
 - (i) the practical guides,
 - (ii) the documents or forms required for import, export or transit,
 - (iv) the enquiry point contact information.
- WTO Members are encouraged to publish on the internet the trade laws and information described under Article 1.1, above.

3. Other International Standards

See above ([Publication \(Article 1.1\)](#)).

4. Customs Act Provision(s)

See above ([Publication \(Article 1.1\)](#)).

5. Other Legislation

See above ([Publication \(Article 1.1\)](#)).

6. Gap Analysis

There are no provisions of the Customs Act that require or authorize preparation and publication on the internet of the information described in the TFA measure. As noted in the discussion under Article 1.1, above, the Customs Act does require publication of regulations and prescribed forms in the Gazette. However, this appears to be a print publication only.

7. Proposal

The proposal made under [Publication \(Article 1.1\)](#) is equally applicable with respect to this TFA measure.

C. Enquiry Points (Article 1.3)

1. Level of Alignment: Not aligned

2. Summary of TFA Measure

- WTO Members shall, within its available resources, establish one or more “enquiry points” to respond to “reasonable” questions from governments, traders and other interested persons about the matters listed in Article 1.1, and to requests for required forms and documents.
- If a member of a customs union or involved in regional integration, the government may opt to participate in a regional enquiry point, rather than establishing a national enquiry point.
- Governments shall respond to such enquires and requests within a “reasonable” time.
- Any fees charged shall be limited to the approximate cost incurred.

3. Other International Standards

RKC Standard 9.4: At the request of the interested person, the Customs shall provide, as quickly and as accurately as possible, information relating to the specific matters raised by the interested person and pertaining to Customs law.

RKC Standard 9.5: The Customs shall supply not only the information specifically requested but also any other pertinent information which they consider the interested person should be made aware of

RKC Standard 9.7: When the Customs cannot supply information free of charge, any charge shall be limited to the approximate cost of the services rendered.

4. Customs Act Provision(s)

Section 257 (Regulations) generally authorizes the Minister by regulation to impose fees and charges.

There does not appear to be any specific relevant provisions in the Act concerning implementation of an enquiry point or supply of information on request.

5. Other Legislation

The **Access to Information Act** grants the public rights to access official documents that are held by public authorities (which include Executive Agencies, such as the Customs Agency) on application and subject to specified exemptions relating to governmental, commercial or personal information of a sensitive nature.

6. Gap Analysis

There are no provisions of the Customs Act that would require or authorize Customs to establish an enquiry point or, generally, to respond to individual requests for information on the matters described in the TFA measure or otherwise.

Although the **Access to Information Act** would require Customs to provide copies of official documents on request (including copies of forms and documents), that Act does not require Customs to provide answers or advice in response to individual enquires of governments, traders and other interested persons as foreseen in the TFA measure.

The Customs Act does authorize the Minister to impose fees and charges by regulation, but does not specify any restrictions or conditions on amount of such fees or charges, such as limitation to the cost of service provided.

7. Proposal

The transparency provisions suggested under Article 1.1., above, should include an obligation of the Commission to supply on request such forms and information as may be required to comply with the customs laws.

With regard to fees and charges, see discussion under [General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation \(Article 6.1\)](#) and [Specific Disciplines on Fees and Charges for Customs Processing Imposed on or in Connection with Importation and Exportation \(Article 6.2\)](#), below.

D. Notification (Article 1.4)

1. Level of Alignment: *Not applicable*

2. Summary of TFA Measure

- WTO Member governments are required to notify the WTO Committee on Trade Facilitation the official places where information will be published, the URL of the website(s) where information can be found, and the contact information of the enquiry point(s).

3. Other International Standards

None applicable

4. Customs Act Provision(s)

There are no provisions in the Customs Act concerning the notification described in the measure.

5. Other Legislation

Responsibility for communication of notifications to the WTO committees generally appears to be the responsibility of the Ministry of Foreign Affairs and Foreign Trade.⁶

6. Gap Analysis

Not applicable; not within the scope of the Customs Act.

7. Proposal

Not applicable.

E. Opportunity to Comment and Information before Entry into Force (Article 2.1)

1. Level of Alignment: Partial

2. Summary of TFA Measure

- Traders and other interested parties must be given an opportunity and reasonable time to comment on proposals for new laws and administrative regulations relating to movement, release and clearance of goods, as well as any amendments thereto
- New or amended laws and regulations must be made publicly available as early as possible before their entry into force
- Exceptions are provided for changes in duty or tariff rates; measures that have relieving effect or the efficacy of which would be undermined by prior notification; urgent circumstances; and minor changes

3. Other International Standards

⁶ <http://jis.gov.jm/ministries/foreign-affairs/>

RKC Standard 9.2: When information that has been made available must be amended due to changes in Customs law, administrative arrangements or requirements, the Customs shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.

4. Customs Act Provision(s)

The Customs Act contains a number of provisions that authorize the Minister or the Commissioner to prescribe regulations, such as -

- **Section 37** (Minister may make regulation to prohibit import of specified goods, etc);
- **Section 61** (Minister may make regulations imposing conditions on use of small craft);
- **Section 233** (Minister may make regulations to license persons who transact business with Customs on behalf of others); and
- **Section 257** (Minister may make regulations to better carry out the customs laws and prevent frauds).

Section 258 (Forms): any forms prescribed by the Commissioner to be used for purposes of the customs laws shall be published in the Gazette one month before such forms are required to be used.

5. Other Legislation

Section 31, The Interpretation Act: all regulations made under any Act shall be published in the Gazette and, unless otherwise provided, take effect and come into operation as law on the date of such publication.

Section 30, The Interpretation Act: where an Act provides that regulations are “subject to a negative resolution” or “subject to a negative resolution of the House of Representatives,” the regulation must be laid before each House of Parliament or the House of Representatives, respectively, to allow the particular legislative body/bodies a period of time (21 days) to resolve to annul the regulation (any such resolution taking effect only from the date thereof).

Section 30, The Interpretation Act: where an Act provides that a regulation is “subject to affirmative resolution” or “subject to affirmative resolution of the House of Representatives” it does not come into operation until affirmed by each House of Parliament or by the House of Representatives, respectively.

6. Gap Analysis

The Minister and Commissioner are authorized to issue regulations under the Act. But, neither the Act nor other legislation require or authorize the Minister or the Commissioner to provide interested persons with an opportunity and reasonable time to comment on proposals for such regulations.

With the exception of forms prescribed by the Commissioner under Section 258, neither the Customs Act nor other legislation requires the Minister or the Commissioner to publish regulations prior to their entry into force.

7. Proposal

There are two general options to align the legislation to this TFA measure:

One option is to-

- (i) amend the Interpretation Act to require publication of laws and regulations prior to entry into force, and
- (ii) amend the Interpretation Act (or other applicable legislation, or establish a new legal act or formal policy measure) to require opportunity for comment on proposed regulations,

with both requirements subject to defined justified exceptions.

If these two principles were incorporated in the Interpretation Act, they would be applied to all MDAs, including the Customs Agency, subject to defined exceptions.

A leading illustration of this approach is U.S. Administrative Procedures Act, as follows -

Figure 3 U.S. Legislation: Rule-Making Procedures

Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

- (1) a military or foreign affairs function of the United States; or
- (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

- (A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or
- (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

- (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
- (2) interpretative rules and statements of policy; or
- (3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

Source: United States Administrative Procedure Act, 5 U.S. Code § 553

The advantage of this first option is that that all MDAs would be subject to the same obligation. This would be consistent with the TFA which is applicable to all authorities that make regulations relating to movement, release and clearance of goods. On the other hand, this approach involves complexity,

given the number of MDAs that might be affected, their different spheres of activities, and the differing impact on their operations.

An alternative approach is to incorporate these TFA principles within the Customs Act. This would require the Commissioner to provide an opportunity for comment on any proposed regulations issued under the customs laws, as well as to require the Commissioner to publish any such regulations some period of time prior to their entry into force (*e.g.*, 30 days, as the U.S. example above), subject to justified exceptions in both cases.

Jamaica's Standards Act contains somewhat similar agency-specific provisions with respect to products standards, which illustrate such an approach.

Figure 4 Jamaica Standards Act: Rule-Making Procedures

Standard specifications and compulsory standard specifications

7.- (1) The Bureau [of Standards] shall formulate for the Minister specifications for such commodities, processes and practices as he may from time to time request.

(2) The Bureau, on formulating a specification, may, with the consent of the Minister, declare it to be a standard specification for the commodity, process or practice to which it relates.

(4). The Bureau shall as soon as may be after the declaration of a standard specification cause notice thereof to be published in the *Gazette* and in such other manner as the Minister may direct and shall place on sale copies of the standard specification.

(5) No specification shall be declared to be a standard specification unless the Minister is satisfied that any persons who may be affected thereby have had an opportunity to consider it and to make representations on it to the Bureau and that the Bureau has given due consideration to such representations.

Source: Section 7, Standards Act

It may be useful to request the Bureau of Standards to provide their experiences with respect to application of these provisions.

It also should be noted that under either option, if these principles are incorporated in law, the validity of regulations that do not comply with the obligations should be subject to challenge on appeal. The administrative and/or judicial remedy in these cases should be reviewed and verified.

F. Consultations (Article 2.2)

1. Level of Alignment: Not aligned

1. Summary of TFA Measure

- WTO Members shall provide for “regular consultations” between their border and traders or other stakeholders

2. Other International Standards

RKC Standard 1.3: The Customs shall institute and maintain formal consultative relationships with the trade to increase co-operation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements.

3. Customs Act Provision(s)

No specific provisions.

4. Other Legislation

No specific provisions.

5. Gap Analysis

There does not appear to be provisions in the Act or other legislation or other formal legal or policy measures that would either require or authorize the Commissioner or other officers to conduct regular consultations with stakeholders.

6. Proposal

An obligation that the Commissioner conduct regular stakeholder consultations or, for example, that the Commissioner issue regulations on consultation procedures. However, implementation of this measure requires that the Commissioner have a certain amount of discretion as to who to consult, on what matters, on what time periods, in what fora, etc., and might therefore be better implemented through a formal policy measure rather than legislated. Moreover, this TFA obligation is applicable to all border authorities, not Customs only. Given that a common government approach may be desired, the better solution may be to implement this measure at a government-wide level and as a policy measure, rather than in the Customs Act.

G. Advance Rulings (Article 3)

1. Level of Alignment: Not aligned

2. Summary of TFA Measure

- Customs shall provide a written ruling on request concerning the tariff classification or origin of goods prior to their importation, and may issue rulings on other customs issues, such as customs valuation

- A ruling can be requested by an exporter, importer or “any person with a justifiable cause” or their representatives
- The ruling shall be binding on Customs and remain valid for a reasonable period of time
- The person requesting the ruling shall have rights to be notified if Customs takes certain actions adverse to his interests (such as a refusal to issue a ruling or a decision to revoke or modify a ruling)
- Customs must publish requirements for applications for rulings, the time period in which the ruling will be issued, and the length of time for which the ruling will be valid

3. Other International Standards

RKC Standard 9.9: The Customs shall issue binding rulings at the request of the interested person, provided that the Customs have all the information they deem necessary.

4. Customs Act Provision(s)

No specific provisions.

5. Other Legislation

No specific provisions.

6. Gap Analysis

There are no provisions in the Customs Act that require or authorize the issuance of binding advance rulings on tariff classification or on any other matters.

7. Proposal

Amend the Customs Act to require the Commissioner to provide binding rulings on request. The amendment should lay out the essential elements of a binding rulings procedure consistent with WTO requirements, particularly-

- the scope of ruling requests

WTO agreements require Customs to issue rulings on questions of the tariff classification and origin of imported goods, and permit Customs to issue rulings on other matters (*e.g.*, valuation).

Tariff classification and, to a much lesser extent, origin of goods (particularly for trade preference purposes), are areas where there is typically the greatest demand for rulings. A recommended approach, therefore, is to provide in the Act the requirement that the Commissioner shall issue rulings on tariff classification and origin of goods and may issue rulings on such other matters as the Commissioner may by regulation prescribe. This provides flexibility to Customs to evolve the rulings program consistent with demand.

- the legal consequence of a ruling

Under the TFA measure, the Act might provide that the ruling (i) shall be binding on Customs (only) or (ii) shall be binding on both Customs and the applicant.

The recommended approach is to establish that the ruling is binding on both Customs and the applicant. The ruling represents Customs view of the appropriate tariff classification or origin of the goods, and therefore should be declared by the importer at entry. If this position is adopted, it will be important to ensure that the importer has a right of appeal against a declaration made using the tariff classification or origin defined in the ruling that he disputes.

- the period of validity of a ruling

Under the WTO agreements, rulings shall remain binding for a minimum period of 1 year in the case of tariff classification and 3 years in the case of origin.

There are a several options for implementation that are typically found in customs legislation -

- set out absolute periods validity (which may vary, depending on type of the ruling);
- set out minimum periods of validity (which also may vary, depending on type of the ruling), subject to authority of Commissioner (or the Minister) to prescribe longer periods by regulation; or
- do not limit period of validity of rulings.

The latter approach is recommended. This reduces the need of an importer to re-apply for a ruling even though there is no change in law or circumstances. In any case, the law should provide that Customs may suspend or revoke any ruling at any time (see below) where there is a change in law or interpretation.

- the grounds for revocation or annulment of rulings

As noted above, grounds for revocation should include change in law or interpretation.

Grounds for annulment typically include knowingly false or incorrect information supplied by the applicant.

The law should specify the effective date of revocation (typically, date when revocation is issued or received by the applicant) and annulment (typically, void *ab initio*). To prevent hardship or unjust results, customs legislation also typically provides for continued use of rulings that have been revoked for a limited period of time.

- the persons who may request rulings

Legislation of some countries restricts the applicant to a person who will act as the declarant and/or is established within the customs territory. A more expansive approach, as indicated in the TFA measure, is to permit any person with an interest in the transaction and who can supply the required information to make the application (in this connection, the Code definitions of “importer” might be used).

The amendment should further require the Commissioner to establish by regulation the elements necessary for implementation of a rulings program, specifically-

- form of application
- required information
- procedures for use of the ruling in connection with entry of goods

H. Procedures for Appeal or Review (Article 4)

1. Level of Alignment: Substantial

2. Summary of TFA Measure

- WTO Members shall provide traders with the right to appeal customs administrative “decisions” to an independent or higher-level administrative authority and/or a judicial body
- “Decisions” subject to appeal are any decisions that affect rights and obligations of a specific person in an individual case, and include omissions (that is, a failure to act or decide as provided by law)
- WTO Members may require that an administrative appeal or review be initiated prior to the judicial appeal or review
- If the decision on appeal is not made within a reasonable period (or within a period of time defined by law), the person should be able to appeal to a higher administrative authority or a court
- Customs must provide reasons for their decisions so that person affected may have effective recourse to the appeal procedures, where necessary

3. Other International Standards

RKC Standard 10.1: National legislation shall provide for a right of appeal in Customs matters.

RKC Standard 10.2: Any person who is directly affected by a decision or omission of the Customs shall have a right of appeal.

RKC Standard 10.3: The person directly affected by a decision or omission of the Customs shall be given, after having made a request to the Customs, the reasons for such decision or omission within a period specified in national legislation. This may or may not result in an appeal.

RKC Standard 10.4: National legislation shall provide for the right of an initial appeal to the Customs.

RKC Standard 10.5: Where an appeal to the Customs is dismissed, the appellant shall have the right of a further appeal to an authority independent of the Customs administration.

RKC Standard 10.6: In the final instance, the appellant shall have the right of appeal to a judicial authority.

RKC Standard 10.7: An appeal shall be lodged in writing and shall state the grounds on which it is being made.

RKC Standard 10.8: A time limit shall be fixed for the lodgement of an appeal against a decision of the Customs and it shall be such as to allow the appellant sufficient time to study the contested decision and to prepare an appeal.

RKC Standard 10.9: Where an appeal is to the Customs they shall not, as a matter of course, require that any supporting evidence be lodged together with the appeal but shall, in appropriate circumstances, allow a reasonable time for the lodgement of such evidence.

RKC Standard 10.10: The Customs shall give its ruling upon an appeal and written notice thereof to the appellant as soon as possible.

RKC Standard 10.11: Where an appeal to the Customs is dismissed, the Customs shall set out the reasons therefor in writing and shall advise the appellant of his right to lodge any further appeal with an administrative or independent authority and of any time limit for the lodgement of such appeal.

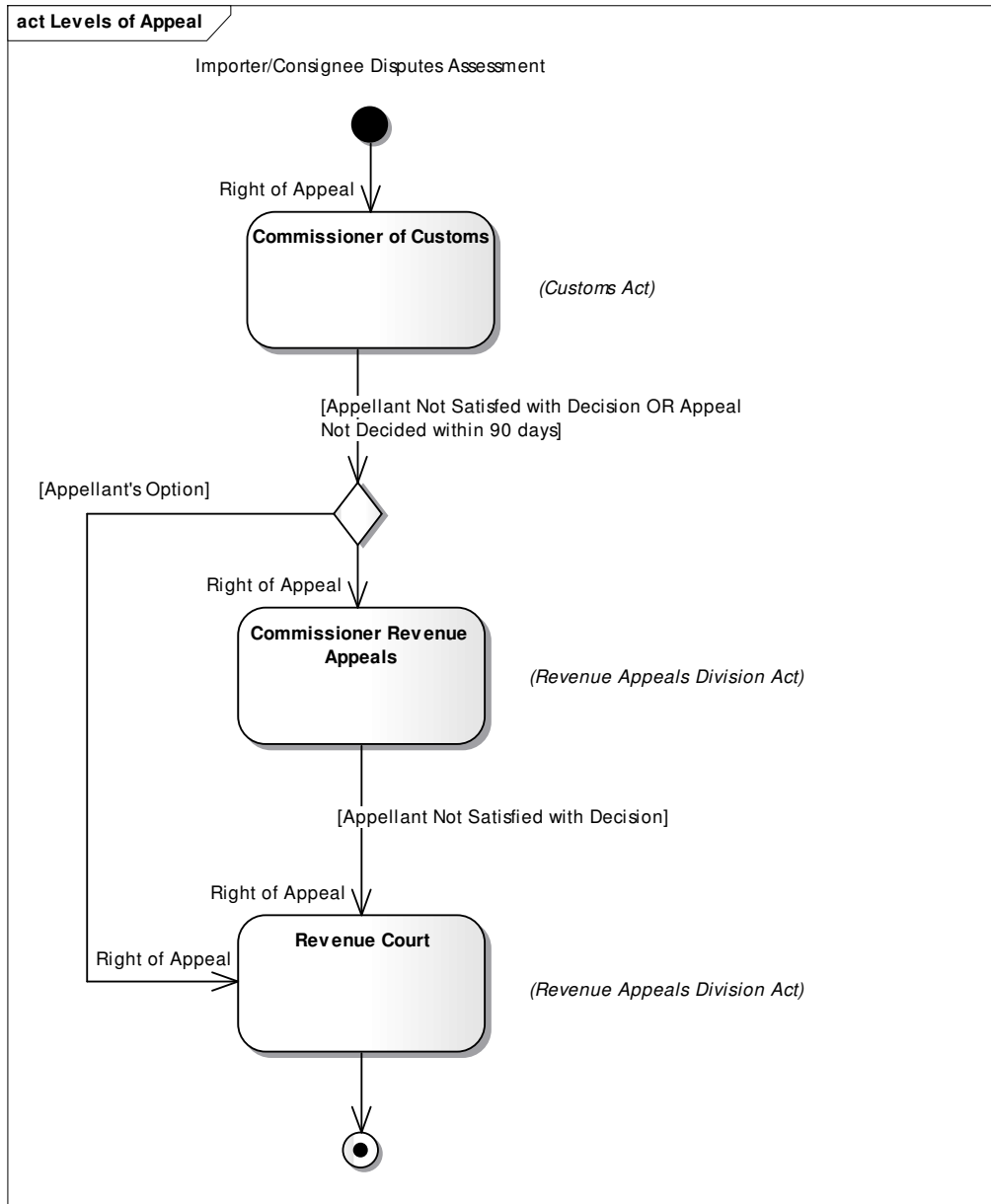
RKC Standard 10.12: Where an appeal is allowed, the Customs shall put their decision or the ruling of the independent or judicial authority into effect as soon as possible, except in cases where the Customs appeal against the ruling.

4. *Customs Act Provision(s)*

The draft **Customs (Amendments) Act, 2015** provides -

- a right of appeal in cases of disputes as to “whether any and what” amount of duty is payable on imported or exported goods, including any disputes as to valuation (**Section 50A, Procedure in case of dispute as to assessment or valuation**);
- the appeal may be made by an importer or consignee (with respect to disputed import duty) or the exporter or his agent (with respect to disputed export duty) (**Section 50A**);
- the initial appeal shall be made to the Commissioner; thereafter, further appeal shall be made to the Commissioner of Revenue Appeals and then the Revenue Court (the latter two appeals are regulated by the Revenue Appeals Division Act) (**Sections 50A; 50B, Appeal to Commissioner of Revenue Appeals; 50C, Appeal to Revenue Court**);

Figure 5 Customs Act: Level of Appeals



- the initial appeal by means of submission of a notice of objection to the Commissioner of Customs is required to be made within 90 days of paying the deposit or giving security for duty demanded (or 90 days of the date of the assessment, in cases where no duty is deposited or no security given)(**Section 50A**);
- within 90 days of receipt of the notice of objection, the Commissioner is required to inform the appellant, in writing, of the decision, the reasons, and right of further appeal (**Section 50A**);
- if the Commissioner fails to decide an appeal within 90 days of receipt of the notice of objection, the objection shall be deemed rejected for purposes of making the further appeal under the Revenue Appeals Division Act (**Section 50B**);

- the Commissioner may make regulations, subject to affirmative resolution of the House of Representatives, to prescribe matters in addition to assessment of duty and valuation of goods that may be the subject of dispute resolution and to define that dispute resolution process (**Section 50D, Dispute resolution for other matters**).

Section 15B (Assessment of duty, etc.) of the **draft Customs (Amendments) Act, 2015** provides that -

- a declaration by the importer or consignee is a “binding representation” as to all elements upon which duty and tax is determined (e.g., valuation, tariff classification, duty rate);
- the Commissioner is authorized to “make a reassessment with regard to any assessment” under the Act; and
- where any reassessment made by the Commissioner has the effect of imposing a new liability or altering an existing liability, the Commissioner shall give the importer or exporter written notice of the liability.

5. Other Legislation

The Revenue Appeals Division Act, 2015 –

- establishes a “Revenue Appeals Division” within the Ministry of Finance and Public Service to hear and determine appeals by taxpayers against decisions of “Revenue Commissioners” (including the Commissioner of Customs) concerning the liability of the taxpayer under any revenue law;
- provides that appeals shall be determined by a Commissioner of Revenue Appeals, who is under the operational superintendence of and reports directly to the Financial Secretary;
- provides that an appeal of a decision of a Revenue Commissioner (e.g., Commissioner of Customs) regarding liability under any revenue law shall be made to the Commissioner of Revenue within 90 days of notification of the decision, or 30 days of receipt of the taxpayer’s receipt of the decision, whichever is later;
- provides that, where the taxpayer is aggrieved with the decision of the Commissioner of Revenue Appeals, a further appeal may be made to the Revenue Court within 30 days of receipt of the decision (or such longer period as may be allowed by rules of that court);
- provides that a taxpayer may appeal directly to the Revenue Court, rather than making an appeal to the Revenue Appeals Division.

6. Gap Analysis

The legislation is substantially aligned to the TFA requirements. The legislation thus-

- establishes an administrative appeal procedure with respect to assessment-related decisions to a higher (Commissioner of Customs) and independent (Revenue Appeals Division) authorities;
- provides for possibility of immediate appeal to the Revenue Appeals Division, where decision by the Commissioner is delayed; and

- provides an option of proceeding directly to the Revenue Court, bypassing the Revenue Appeals Division.

However, certain improvements might be made to the Act that would remove certain anomalies and extend rights related to customs decisions and appeals, as follows-

Right to reasons for decisions subject to appeal

The TFA measure requires Customs to provide reasons for decisions, so as to enable the person affected to make a proper appeal.

The Customs Act does specify that reasons shall be provided to a person in the case of valuation decisions (**Section 15A, Value of goods**) and in certain limited cases of re-assessment (**Section 15B (5), Assessment of duty etc.**). However, the obligation to provide written reasons is not specified with respect to other assessment-related decisions (tariff classification, origin, rate of duty).

The principle – the right to written reasons - should be an obligation with respect to all adverse customs decisions. The fact that it is specifically included in the law with respect to certain decisions and not others may result in an interpretation that such a right was not intended for decisions other than those specified.

“Assessment” and “Re-Assessment”

There appears to be a technical omission in the provisions concerning Customs rights of “assessment” and “re-assessment.”

Under legislation of other countries applying similar principles, Customs may reject the declared classification, valuation, origin, *etc.*, and itself *assess* the declaration. *However*, if the importer’s declaration is released without change by Customs, the importer’s declaration of duty, value and classification is *deemed* to be Customs *assessment*. Thereafter (and subject to a statute of limitations), Customs may *reassess* the declaration; that is, re-assess its own *assessment* or the *deemed assessment* that was made at the time the goods were declared.

For example, this is implemented in Canada’s customs legislation (which may have been a model for the provisions in Jamaica’s law) as follows-

Figure 6 Canada Customs Legislation: Assessment and Reassessment

**Canada Customs Act
(Determination/Redetermination)***

*(*Note: for purposes of illustration, “accounting” = declared; “determination=assessed; “re-determination”=reassessed)*

Accounting **32. (1)...**[N]o goods shall be released until

<i>and payment of duties</i>	(a) they have been accounted for by the importer or owner thereof in the prescribed manner and, where they are to be accounted for in writing, in the prescribed form containing the prescribed information...(etc.) · · ·
<i>Determination by officer</i>	58. (1) Any officer...may determine the origin, tariff classification and value for duty of imported goods at or before the time they are accounted for under subsection 32(1)...
<i>Deemed determination</i>	(2) If the origin, tariff classification and value for duty of imported goods are not determined under subsection (1), the origin, tariff classification and value for duty of the goods are deemed to be determined, for the purposes of this Act, to be as declared by the person accounting for the goods in the form prescribed under paragraph 32(1)(a). That determination is deemed to be made at the time the goods are accounted for under subsection 32(1).... · · ·
<i>Re-determination or further re-determination</i>	59. (1) An officer... may (a) in the case of a determination under section... 58, re-determine the origin, tariff classification, value for duty or marking determination of any imported goods at any time within (i) four years after the date of the determination, on the basis of an audit or examination...(etc.)

The Act does not clearly set out these principles. **Section 15B** of the Customs Act appears to authorize Customs to “assess” duty in cases “[w]here the Commissioner has reasonable cause to suspect that duties are payable on goods and no declaration has been made.” It further provides that “the Commissioner may make a reassessment with regard to any assessment made under this Act;” however, the sole case of an “assessment” under the Act is that just mentioned (where no declaration was made and there is reasonable cause to suspect duties are payable). This can lead to an interpretation that Customs does not have authority to re-assess declarations, other than the unusual case just mentioned.

These provisions of the Act should clearly set out the following principles –

- the importer has the obligation and liability to declare to Customs the proper classification, value, origin and rate of duty (this appears in the law);
- Customs has the right to assess the declaration, if errors are found (this does not appear in the law);
- If declaration is released without change (*i.e.*, the importer’s declared elements are correct or not examined), the declaration shall be “deemed assessed” by Customs (this does not appear in the law);

- Customs has the right at any time (subject to a limitation period) after release of the goods to re-assess the original assessment (including a deemed assessment) (this appears in the law, but only in limited cases);
- The importer shall be provided notification of any assessment or re-assessment (but Customs release without change may be considered a deemed notification) (this appears in the law, but only in limited cases).

Administrative Appeals – Disputes other than Assessments/Reassessments

The Act establishes a right of administrative appeal against assessment-related decisions and it defines procedures for such appeals. It does not specifically provide administrative appeal rights/procedures with respect to other Customs disputes; however, it does authorize the Commissioner to define rights of appeal and appeal procedures with respect to such other disputes, subject to affirmative resolution by the House of Representatives. Absent an administrative appeal procedure, it appears that an economic operator’s rights of appeal with respect to such disputed Customs decisions would be to the courts.⁷

Administrative appeal procedures – where disputes are heard by persons with proper technical expertise and with less formality than a judicial proceeding – are typically a more efficient method of resolving disputes than through the courts. Although assessment/reassessment decisions likely account for most disputes with Customs, other decisions by Customs under the Act can have equal or more significant adverse impacts on operators if not resolved quickly, and therefore are particularly appropriate for administrative appeal. These include, for example, disputes related to licensing, approvals, appointments (*e.g.*, refusal to grant application for a private warehouse; revocation of a broker’s license, *etc.*). Other examples might be disputes about claims for refund⁸ or drawback⁹ or claims for payment of duty that was “short-levied” or “erroneously refunded.”¹⁰ .

Under the law, the decision whether or not to prescribe administrative appeal rights and procedures for these other disputes is now fully within the discretion of the Commissioner. An improvement that might be made to the law is to require the Commissioner to prescribe administrative appeal rights and procedures with respect to disputes of these kinds (*e.g.*, licensing/authorization and drawback/refunds), and allow the Commissioner to prescribe administrative appeal rights and procedures with respect to all others.

Omissions

The TFA measure defines a customs “decision” that shall be subject to appeal to include a “failure to take an administrative action or decision as provided for in a Member’s domestic law and legal system.”

⁷ Apparently the Supreme Court has inherent authority to hear such cases. [cite authority]

⁸ Section 50, Refund of duties paid in error

⁹ Section 47, Declaration by owner of goods exported on drawback

¹⁰ Section 15(2), Effect of obligation to pay duty

The Customs Act does realize this principle with respect to certain specific cases. For example, **Section 50B (Appeal to Commissioner of Revenue Appeals)** provides that the failure of the Commissioner to decide an administrative appeal within 90 days, the applicant shall have the right to appeal to the next level (*i.e.*, the Revenue Appeals Division or the Revenue Court).

Modern customs legislation generalizes this principle such that is applied in all cases where Customs fails to take a required decision or action within a reasonable period of time.

7. Proposal

1. Clarify technical discrepancy in Act concerning “assessment” and “reassessment” terms (see discussion above).
2. Require the Commissioner to prescribe by regulation appeal rights and procedures with respect to disputes concerning licensing or authorization, refunds and drawback (see discussion above).
3. Incorporate in the Act general “due process” principles related to Customs decision-making, including, subject to justified exceptions, the following-
 - obligation to provide reasons, in writing, for any adverse Customs decision;
 - obligation to take required decisions or required actions within reasonable time period (and provide a right of administrative appeal where limits are not observed);
 - obligation to provide opportunity for a hearing before adverse decisions are taken;
 - general grounds for annulment, suspension or revocation of decisions; and
 - effective date of decisions and annulment, suspension or revocation of decisions.

A leading example of the customs legislation incorporating these kinds of decision-making principles is the European Union legislation (see Articles 22-32, Regulation (EU) No. 952/2013 of 9 October 2013 (Union Customs Code)).

I. Notifications for enhanced controls or inspections (Article 5.1)

1. Level of Alignment: *Not applicable*

2. Summary of TFA Measure

- *If* a government uses a system to notify border authorities to enhance controls or inspections with respect to imports of food, beverages or feedstuffs in order to protect human, animal or plant health (*e.g.*, rapid alert systems), *then* the government must adopt certain disciplines to ensure fairness and transparency in operation of the system

3. Other International Standards

None identified.

4. Customs Act Provision(s)

There are no provisions in the Customs Act concerning the notification systems described by this measure.

5. Other Legislation

None identified.

6. Gap Analysis

This measure concerns rapid alert systems for food and animal feed safety purposes, and would be typically under jurisdiction of the government authorities responsibility for sanitary and phytosanitary measures. It typically is not within the scope of the Customs Act.

7. Proposal

Not applicable.

J. Detention (Article 5.2)

1. Level of Alignment: Full

2. Summary of TFA Measure

- If Customs or other border authority detains imported goods for inspection, it shall promptly inform the carrier, the importer or his agent (such as the customs broker, acting on the importer's behalf)

3. Other International Standards

None identified.

4. Customs Act Provision(s)

There are no specific provisions requiring or authorizing Customs to inform the carrier, importer or agent if goods are detained for inspection.

Section 227 (Goods Handled by Owner): the owner shall be responsible for preparing goods for customs examination.

5. Other Legislation

The **Revenue Administration Act** establishes Customs as a department of Government and provides that the Commissioner of Customs "shall be responsible for the general administration of the Customs Department" and such other functions related to customs or other sources of revenue as may be assigned to him by law (**Sections 12 and 14**).

6. Gap Analysis

No change in the Customs Act appears required.

The authority to issue detention notices would appear to fall under the Commissioner's general authority for general administration of the Customs Department under the Revenue Administration Act.

Moreover, Section 227 of the Customs Act implies that Customs must inform the owner that the goods are detained for examination. Pursuant to the Minister's general authority to issue regulations "for the better carrying out of the provisions of the customs laws" (Section 257), this obligation to inform the carrier, importer or agent may be formalized, if necessary, through an administrative regulation.

7. Proposal

Not applicable.

K. Test Procedures (Article 5.3)

1. Level of Alignment: *Not applicable*

2. Summary of TFA Measure

- Border authorities may grant traders the right to a second test, where test results on a sample of goods taken upon arrival of goods declared for importation are adverse to the trader
- Border authorities shall publish the contact information of laboratories where confirmatory tests can be carried out or provide this information to the importer (*They may be regional or international laboratories, if there are no national accredited laboratories*)
- Border authorities shall consider the results of the second test.

3. Other International Standards

None identified.

4. Customs Act Provision(s)

Section 226 (Samples) authorizes Customs to take samples of goods at the time of entry or at any time afterwards "for such purposes as the Commissioner may deem necessary."

There are no specific provisions in the Customs Act concerning testing of samples, customs laboratories, accreditation of third part laboratories, or re-testing procedures.

6. Gap Analysis

There does not appear to be any provisions in the Customs Act or other legislation that require or authorize Customs to establish a customs laboratory to carry out testing for customs purposes (*i.e.*, for establishing proper tariff classification of goods), and no provisions concerning test procedures.

If Jamaica Customs Department has established or intends to establish a customs laboratory, such provisions should be considered for inclusion in the Customs Act.

7. Proposal

Not applicable (subject to caveat discussed above).

L. General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation (Article 6.1)

1. Level of Alignment: Partial

2. Summary of TFA Measure

- Information about fees and charges imposed by governmental authorities on or in connection with importation and exportation of goods must be published in accordance with TFA Article 1.1 (including amount of fee, reason for fee, the responsible authority, and when and how payment is to be made)
- Any new or amended fees or charges must be published an “adequate time” prior to their entry into force, except in urgent circumstances
- Governments must periodically review their fees and charges in order to reduce the number and diversity “where practicable”

3. Other International Standards

RKC Standard 9.1: The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person.

RKC Standard 9.2: When information that has been made available must be amended due to changes in Customs law, administrative arrangements or requirements, the Customs shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.

RKC Transitional Standard 9.3: The Customs shall use information technology to enhance the provision of information.

4. Customs Act Provision(s)

Section 257 (Regulations): the Minister may prescribe by regulation fees and charges, and any such regulations shall be published in the Gazette.

5. Other Legislation

Section 31, The Interpretation Act: all regulations made under any Act shall be published in the Gazette and, unless otherwise provided, take effect and come into operation as law on the date of such publication.

6. Gap Analysis

The Act requires fees (which may be prescribed by the Minister in the form of a regulation) to be published in the Gazette, but, as this is a print publication, it may not be easily accessible” to “other governments, traders and interested persons” as required by this TFA measure.

There are no provisions in the Act or other legislation that authorize or require the Minister or other authority to publish fees prior to entry into force.

There are no provisions in the Act or other legislation that authorize or require the Minister or other authority to conduct a periodic review of customs fees for the purposes described in the TFA measure.

7. Proposal

The obligation under this TFA measure regarding publication of fees is closely related to TFA Article 1.1 (Publication). Accordingly, the same proposal made under that article would likewise respond to this TFA requirement on publication of fees. That is, the Act should require that the Commissioner publish such information as necessary or useful to enable compliance with the customs laws. As noted in the discussion under [Publication \(Article 1.1\)](#), this amendment might include an illustrative list of matters to be published which may include information concerning customs fees and charges.

The obligation to publish new or changes to fees an adequate time period before entry into force is similar to the measure described under [Opportunity to Comment and Information before Entry into Force \(Article 2.1\)](#), and the proposal made in connection with that measure is applicable here.

Finally, the obligation to periodically review fees and charges is closely related to [Formalities and Documentation Requirements \(Article 10.1\)](#), below, and will be discussed in connection with that measure.

M. Specific Disciplines on Fees and Charges for Customs Processing Imposed on or in Connection with Importation and Exportation (Article 6.2)

- 1. Level of Alignment:** *Not aligned*
- 2. Summary of TFA Measure**

- Any fees or charges imposed for customs processing must 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
- Fees not linked to a specific import or export operation must be closely connected to the customs processing of the goods.

3. *Other International Standards*

GATT Article VIII: fees and charges shall be limited in amount to the approximate cost of services rendered

4. *Customs Act Provision(s)*

Section 257 (Regulations): the Minister may prescribe by regulation fees and charges, and any such regulations shall be published in the Gazette.

5. *Other Legislation*

None identified.

6. *Gap Analysis*

The authority provided by the Act to the Minister to establish fees does not include the limitation of the TFA measure concerning fee amounts for customs processing.

There does not appear to be other general legislation that would restrict customs fee amounts to the approximate cost of the service provided.

7. *Proposal*

Amend Section 257 to limit fees for customs processing that may be prescribed by the Minister to the approximate cost of the service provided.

N. *Penalty Disciplines (Article 6.3)*

1. *Level of Alignment: Substantial*

2. *Summary of TFA Measure*

- Where Customs applies civil or administrative penalties for violations, it shall:
 - impose penalties only on the person(s) responsible for the violation
 - ensure that the amount of such penalties are proportionate to the degree and severity of the violation
 - avoid conflicts of interest in assessment and collection of penalties

- avoid creating an incentive for the assessment of a penalty that is not commensurate with the circumstances of the case
- provide the person with a written explanation of the violation specifying the applicable law
- consider a “prior disclosure” as a potential factor to mitigate the penalty amount

3. Other International Standards

RKC Standard 3.39: The Customs shall not impose substantial penalties for errors where they are satisfied that such errors are inadvertent and that there has been no fraudulent intent or gross negligence. Where they consider it necessary to discourage a repetition of such errors, a penalty may be imposed but shall be no greater than is necessary for this purpose.

RKC Specific Annex H, Standard 19: The Customs shall take the necessary measures to ensure, where applicable, that as soon as possible after a Customs offence is discovered:

- the administrative settlement of the latter is initiated; and
- the person concerned is informed about the terms and conditions of the settlement, the avenues of appeal and the time limits for such appeals.

RKC Specific Annex H, Standard 22: National legislation shall lay down the penalties applicable to each category of Customs offence that can be dealt with by administrative settlement and shall designate the Customs offices competent to apply them.

RKC Specific Annex H, Standard 23: The severity or the amount of any penalties applied in an administrative settlement of a Customs offence shall depend upon the seriousness or importance of the Customs offence committed and the record of the person concerned in his dealings with the Customs.

RKC Specific Annex H, Standard 24: Where untrue particulars are furnished in a Goods declaration and the declarant can show that all reasonable steps had been taken to provide accurate and correct information, the Customs shall take that factor into account in considering the imposition of any penalty.

RKC Specific Annex H, Standard 25: Where a Customs offence occurs as a result of force majeure or other circumstances beyond the control of the person concerned and there is no question of negligence or fraudulent intent on his part, no penalty shall be applied provided that the facts are duly established to the satisfaction of the Customs.

4. Customs Act Provision(s)

Throughout the Customs Act a number of penalties are defined for different breaches of the provisions of the Act. Table 1 illustrates the type and level of penalties defined in the Act.

Table 1 Customs Act Penalties: Illustrative List

Article	Title	Description	Persons Liable	Penalty
64	Accommodation of officer	Failure to provide food/accommodation to customs officer	Master	\$300,000
68	Penalty for not making due report	Failure to report/make false report of vessel outturn	Master or Agent	\$1,000,000
71	Master to answer questions	Failure to answer questions, produce books and documents, produce list of passengers on demand of proper officer	Master or Agent	\$500,000
106	Penalty for interfering with storage of goods in a private warehouse	Alteration or removal of goods in a warehouse without authority of proper officer	Occupier of private warehouse	\$1,000,000
110	Penalty for no warehousing, etc.	Goods entered for warehousing not duly warehoused	Importer	\$500,000
150	Penalty for interfering with goods secured by officer	Willfully opening, altering or breaking a lock, seal or mark placed by a customs officer on goods or stores on board a vessel or aircraft	Master	\$1,000,000
209	Penalty for false declarations, etc.	Making a false declaration, application, statement etc to Customs	Person who does the act	A penalty not more than \$1,000,000 or 3x the value of the goods, whichever is greater
210	Penalty for evading customs laws regarding imported or exported goods	Importing uncustomed, prohibited or restricted goods contrary to such prohibition or restriction	Person who does the act	If duty can be determined, a penalty of 3x the duty or 3x the value of the goods, whichever is greater; otherwise, \$2,000,000
211	Penalty in relation to concealed goods, &c.	Attempt to import or export goods concealed in any way in a manner calculated to deceive Customs	Person who attempts to import or export the goods	3x the duty or 3x the value of the goods, whichever is greater.

Article	Title	Description	Persons Liable	Penalty
223	Documents, production of	Failure to produce records, answer questions, produce evidence on request	Importer, Exporter or any person concerned in the importation or exportation of any goods	Not exceeding \$500,000

Section 219 (Commissioner may mitigate penalty) provides that, subject to approval of the Minister (which may be given in form of general directions), the Commissioner “may mitigate or remit any penalty or restore anything seized under the customs laws at any time prior to the commencement of proceedings in any court against any person for an offence against the customs laws.”

5. *Other Legislation*

None identified.

6. *Gap Analysis*

The Act appears to be substantially aligned to the measure-

- the penalty provisions define the person liable as the person (or persons) who fails to comply with the particular obligation;
- the Commissioner’s authority to mitigate or remit penalties (**Section 219**) provides legal basis for implementation of the TFA principles that penalties proportionate to the degree and severity of the violation and that a prior disclosure should be considered as a mitigating factor;
- there appear to be no provisions that would give rise to a conflict of interest or create incentives for disproportionate penalty amounts (*e.g.*, there are no provisions that allow Customs officers to share in penalty amounts).

On the other hand, there do not appear to be provisions in the Act concerning procedural aspects of assessment and mitigation of penalties, such as requirements of a written notification of penalty assessment and opportunity to be heard, notification of final decision and rights of further appeal. As noted above (see [Procedures for Appeal or Review \(Article 4\)](#)), the Act would be improved if general procedural rules were incorporated to ensure fairness and transparency of customs decisions, including Customs penalty related decisions.

7. *Proposal*

Incorporate in the Act general “due process” principles for Customs decision-making discussed under [Procedures for Appeal or Review \(Article 4\)](#).

0. **Pre-Arrival Processing (Article 7.1)**

1. *Level of Alignment: Partial*

2. **Summary of TFA Measure**

- Import documentation and other required information, including the manifest, shall be permitted to be submitted prior to arrival of the goods in order to expedite the release of the goods on arrival
- The documentation for pre-arrival processing may be submitted in electronic format where appropriate

3. **Other International Standards**

RKC Standard 3.25: National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods.

4. **Customs Act Provision(s)**

Section 65 (Report to be provided before arrival of aircraft of ship) requires the master/agent/owner of aircraft or ship to submit a cargo report to the Commissioner *prior* to arrival, listing the goods intended for discharge, the goods remaining on board, and the goods intended for transshipment. The report is required to be submitted 24 hours prior to arrival to Jamaica in the case of vessels; 15 minutes after departure for Jamaica in the case of an aircraft; before bulk is broken in the case of bulk shipments; or such other period as the Minister by order may prescribe.

Section 76 (Unloading, entry, removal and delivery of goods) prohibits the removal of imported goods from the Customs area or the Queen’s warehouse unless the goods have first been duly reported and entered and authorized for removal or delivery.

Section 87 (Goods not entered or delivered) requires imported goods that not entered “and also produced for examination and customs clearance” within 14 days *after* unloading from the aircraft or ship to be deposited in the Queen’s warehouse (**Section 87**).

Section 14 (Time for ascertaining rate of duty payable) provides that the rate of duty applicable to imported goods shall be the rate in effect when a declaration is registered in the Customs System.

Part VIIA (Customs System) generally authorizes the Commissioner to establish an electronic communication system for communication of any document or information required by the Customs Act (among other purposes); authorizes the Commissioner to establish by rule the types of documents that may be sent through the system; and generally provides that the provisions of the Electronic Transactions Act shall apply in respect of an electronic communication system established by the Commissioner.

5. **Other Legislation**

None identified.

6. **Gap Analysis**

Although the Act requires advance submission of cargo data by the vessel or aircraft owner, operator or agent, there are no specific provisions concerning submission of the entry by the importer or his agent, or processing of same by Customs, prior to arrival of the goods.

It appears that a pre-arrival declaration procedure may not be envisaged by the Customs Act. For example, as noted above, Section 14 of the Act provides that the rate of duty shall be that applicable at the time a declaration is registered on the Customs System. In the case of pre-arrival declarations, such a provision can have certain unintended consequences (*e.g.*, by allowing importers to take advantage of the procedure to avoid changes in duty rates), unless qualified. That there are no such qualifications suggests that the law does not take into account the possibility of this procedure.

6. Proposal

Incorporate provisions authorizing submission of pre-arrival declarations, with the appropriate conditions and qualifications. This will require consideration of -

- the date to be used for purposes of duty and tax assessment and application of customs laws (*i.e.*, rate of duty, exchange rate, prohibitions and restrictions, economic measures, *etc.*), which might be
 - date of submission of the declaration
 - date of registration of the declaration
 - date of exportation of the goods from last port of export
 - date of importation of goods to Jamaica
 - date of notification of arrival of vessel/aircraft
 - *etc.*
- the extent of processing prior to arrival (and notification to the importer), such as
 - pre-arrival registration (only) of the declaration
 - pre-arrival registration and notification of risk channel
 - pre-arrival registration and notification of release
- the period in advance of arrival a declaration may be submitted, such as
 - not more than x days prior to arrival
 - not prior to loading at final port of export
 - *etc.*

Development of this provision may be complicated by the fact that the Customs Act generally does not clearly define standard processes and requirements for declaration and release of goods. That is, in order to define an exceptional procedure (such as pre-arrival), it may be required to define the “normal” declaration procedure.

P. Electronic Payment (Article 7.2)

1. Level of Alignment: Full

2. Summary of TFA Measure

- To the extent practicable, WTO Members should allow electronic payment of duties, taxes, fees and charges

3. Other International Standards

None identified.

4. Customs Act Provision(s)

Part VIIA (Customs System) generally authorizes the Commissioner to establish an electronic communication system for “the payment or collection, by electronic means, of customs duties or any other tax, duty, fee or other amount collectible by the Commissioner”; authorizes the Commissioner to establish rules for the operation and use of the system; and generally provides that the provisions of the **Electronic Transactions Act** shall apply in respect of an electronic communication system established by the Commissioner.

5. Other Legislation

Electronic Transactions Act

6. Gap Analysis

None; current legislation supports implementation of electronic payment of customs duties, taxes, fees and charges.

7. Proposal

Not applicable.

Q. Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges (Article 7.3)

1. Level of Alignment: Partial

2. Summary of TFA Measure

- WTO Members shall allow importers to obtain release of their goods, under a guarantee, if required, prior to the final determination and payment of customs duties, taxes, fees and charges where the final determination is not done prior to, upon arrival or as rapidly as possible after arrival

- Any required guarantee shall be limited in amount to the equivalent of duties, taxes, fees and charges to which the goods may be liable, as determined by Customs
- If the importer commits an offense, Customs may require a guarantee for the potential fine or penalty as a condition for release of the goods (however, release of goods in cases of violations of law or fraud shall be determined by national law)
- Customs shall discharge the guarantee without delay when no longer required for its intended purposes and/or when all requirements have been met

3. *Other International Standards*

RKC Standard 3.13: Where, for reasons deemed valid by the Customs, the declarant does not have all the information required to make the Goods declaration, a provisional or incomplete Goods declaration shall be allowed to be lodged, provided that it contains the particulars deemed necessary by the Customs and that the declarant undertakes to complete it within a specified period.

RKC Standard 3.14: If the Customs register a provisional or incomplete Goods declaration, the tariff treatment to be accorded to the goods shall not be different from that which would have been accorded had a complete and correct Goods declaration been lodged in the first instance. The release of the goods shall not be delayed provided that any security required has been furnished to ensure collection of any applicable duties and taxes.

RKC Standard 3.41: If the Customs are satisfied that the declarant will subsequently accomplish all the formalities in respect of clearance they shall release the goods, provided that the declarant produces a commercial or official document giving the main particulars of the consignment concerned and acceptable to the Customs, and that security, where required, has been furnished to ensure collection of any applicable duties and taxes.

RKC Standard 3.42: When the Customs decide that they require laboratory analysis of samples, detailed technical documents or expert advice, they shall release the goods before the results of such examination are known, provided that any security required has been furnished and provided they are satisfied that the goods are not subject to prohibitions or restrictions.

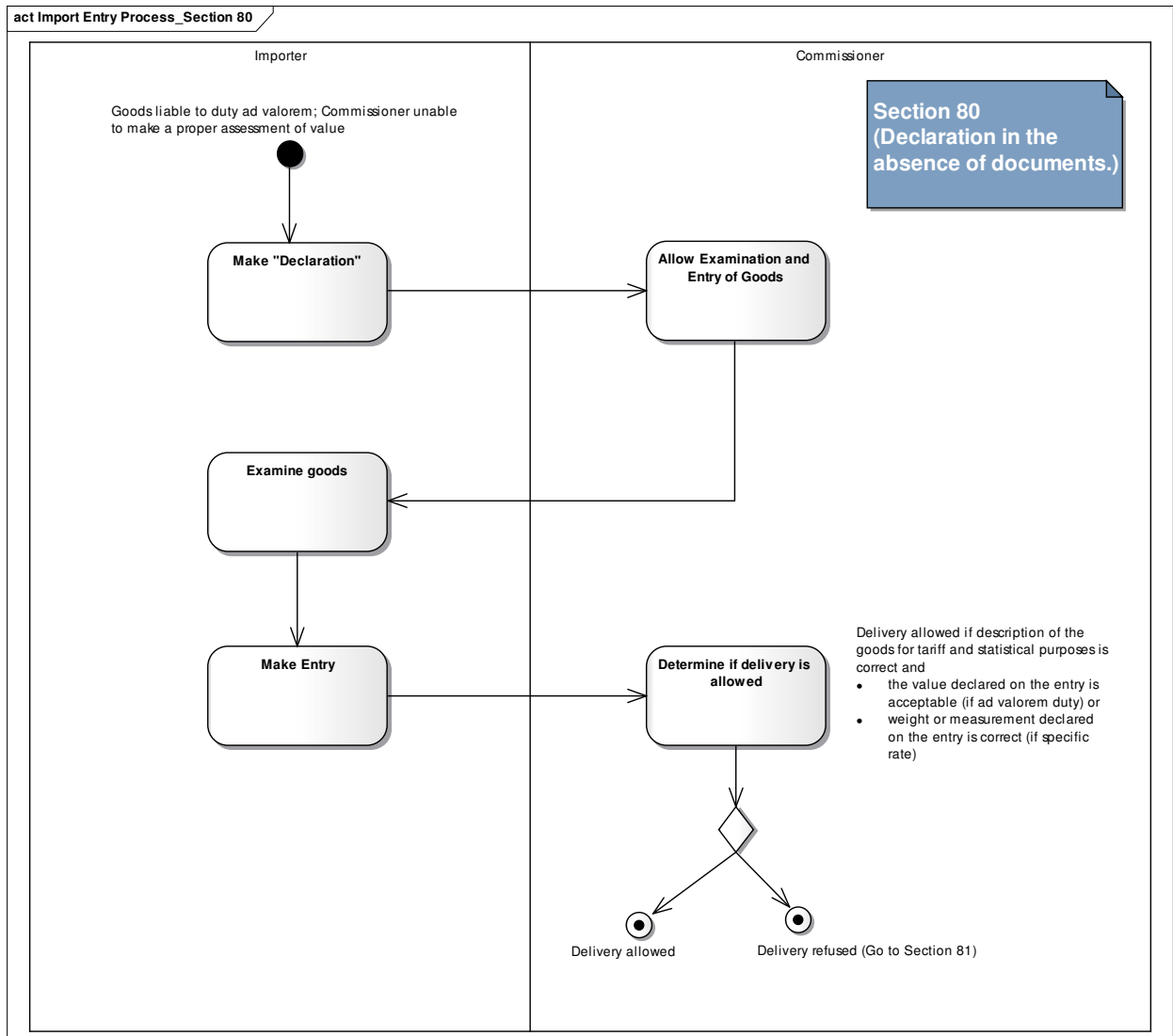
4. *Customs Act Provision(s)*

Sections 80 to 82 of the Customs Act defines procedures for release of imported goods on the basis of incomplete or provisional information, as follows-

- **Section 80 (Declaration in the absence of documents)**

Imported goods may be released on the basis of incomplete or missing documents or information, provided that sufficient information is presented to describe the goods and allow assessment of duty.

Figure 7 Customs Act Section 80: Declaration in Absence of Documents

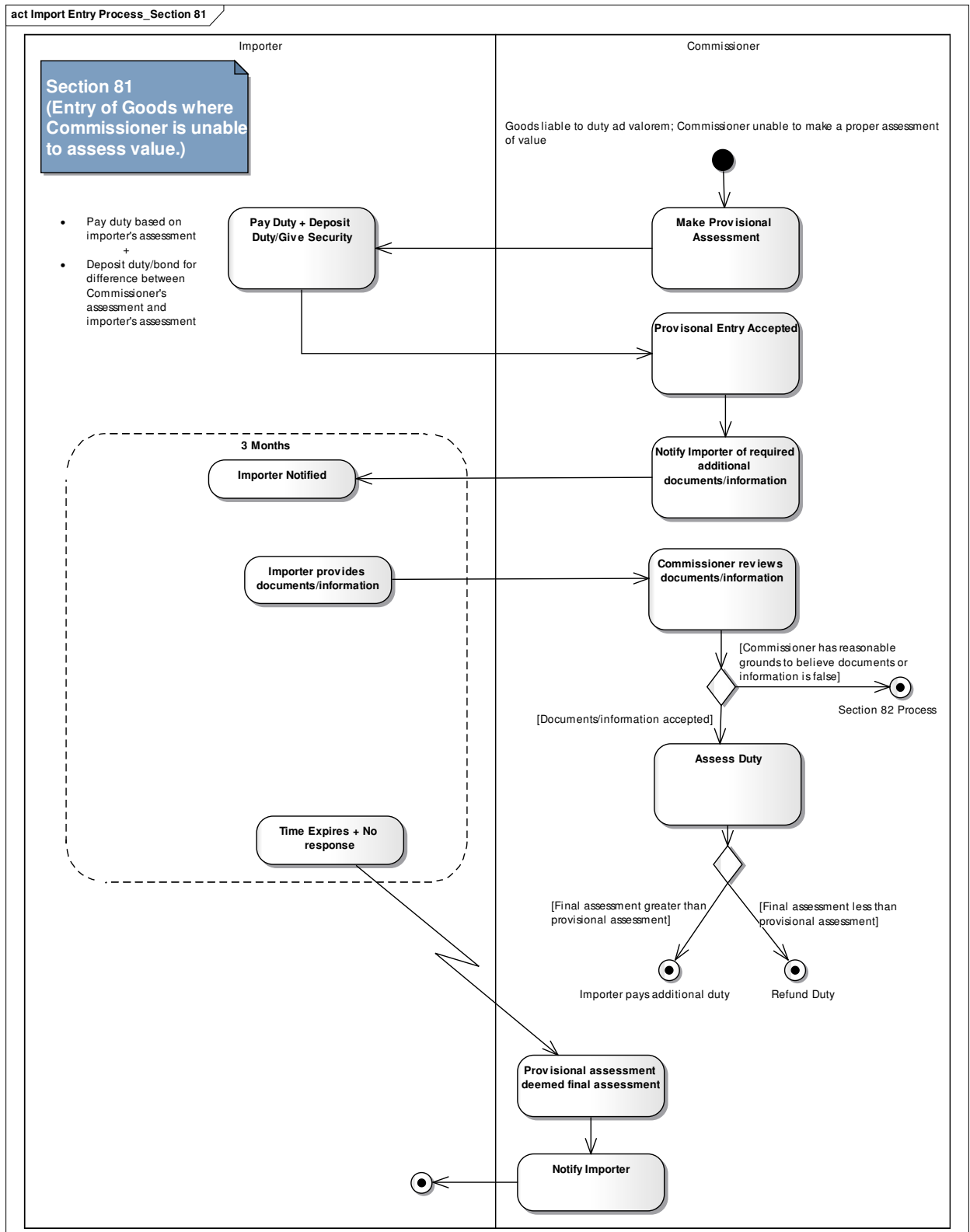


• **Section 81 (Entry of Goods where Commissioner is unable to assess value)**

Imported goods may be released in cases where a final value cannot be determined. Under this procedure, the importer is required to pay the amount of duty calculated on the basis of the value the importer declared, and deposit or provide a bond for the difference in duty based on the value determined by the Commissioner and that determined by the importer.

The Commissioner is required to provide, in writing, the documents and information required to determine a final value, which the importer is required to provide within a period of 4 months; otherwise, the Commissioner's determination of value is deemed to be the final valuation.

Figure 8 Customs Act Section 81: Entry of goods prior to final determination of valuation



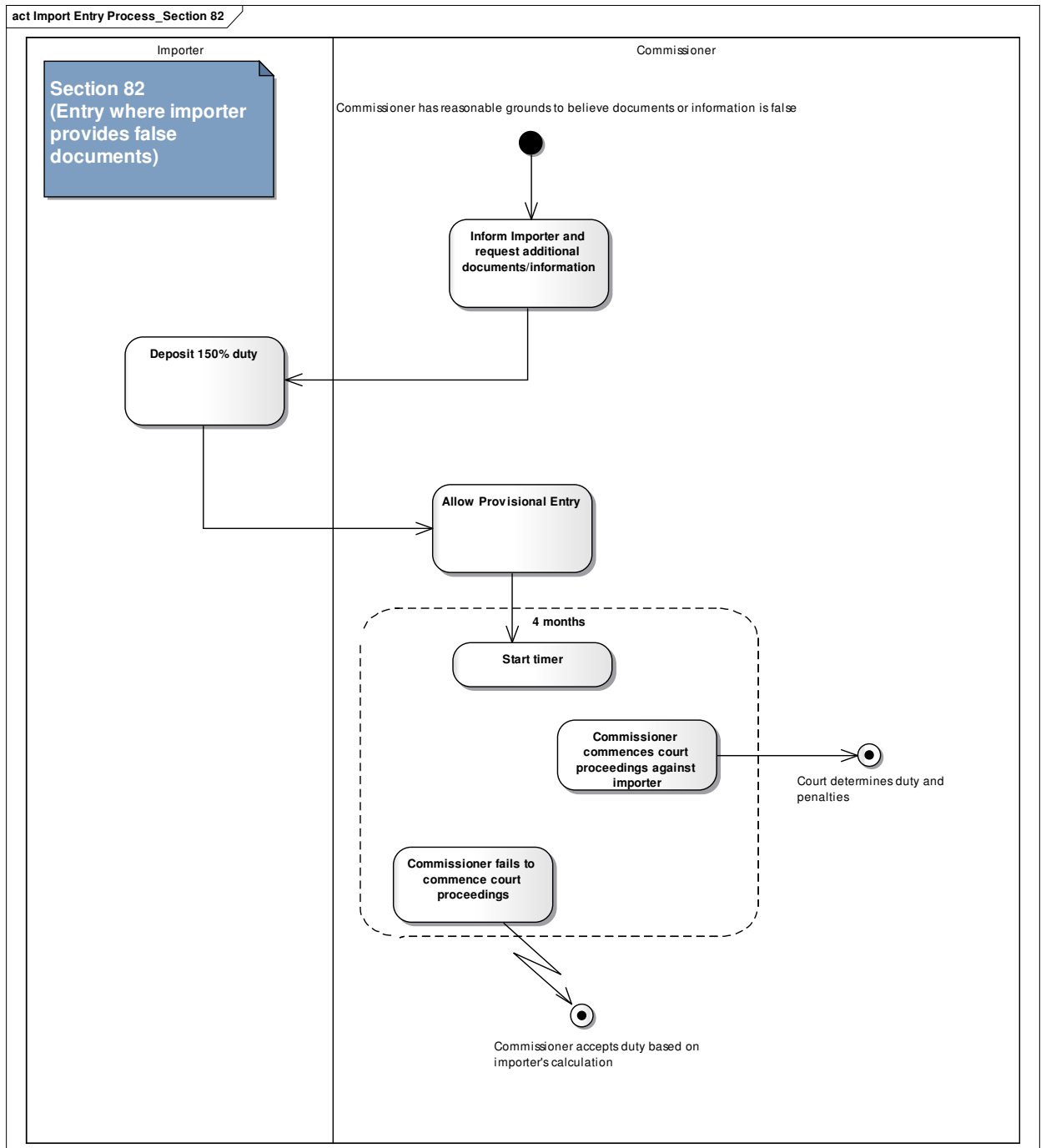
- **Section 82 (Entry where importer provides false documents)**

Imported goods may be provisionally released in cases where the Commissioner has reasonable doubts about the truth or accuracy of the documents presented by the importer to support the customs value.

The required deposit is 100% of the duty as determined by the Commissioner plus “an additional amount, not being more than one half of the amount assessed.”

The Commissioner must commence a case against the importer in a court within 4 months; otherwise, the Commissioner must accept the value as declared by the importer. If a case is brought and the court finds an offense, the deposit may be forfeited, in addition to any penalty determined by the court.

Figure 9 Customs Act Section 82: Entry where importer provides false documents



5. Other Legislation

None identified.

6. Gap Analysis

The Customs Act provides for separation of release from final determination of duty and tax only in cases where the customs valuation of the goods cannot be determined at the time of entry (Section 81)(this is apparently intended to implement Article 13 of the WTO valuation agreement). The Act does not cover cases where assessment cannot be finalized at the time of entry for other reasons (e.g., tariff classification or origin cannot be determined).

With respect to guarantees, the Act does not contain further provisions applicable to this procedure, other than as set out in Section 81. There are, for example, no general provisions in the Act laying out general principles for determination of guarantee amounts, acceptable forms of guarantees, discharge of the guarantee, *etc.*

7. Proposal

There are various options for the implementation of this TFA measure in the Act.

One option is to extend Section 81 to allow release prior to final determination in any case where assessment is at issue. This would require only deletion of the reference in Section 81 to “customs valuation.”

Another option, which might provide the greatest degree of facilitation, is to replace Section 81 with a “two-step” clearance procedure of the kind described by RKC Standard 3.41. That is, in all cases, goods may be released to the importer upon submission of a summary declaration (containing only such information as may be required by Customs to determine that the goods are not prohibited and any restrictions – such as licenses- have been met) and, where required, a guarantee, subject to the obligation to submit a supplementary or complete declaration thereafter, upon which basis the final assessment can be determined and duty and tax paid. This approach appears, for example, in the U.S. customs legislation.

A third option that appears in customs legislation of certain countries would retain Section 81 of the Customs Act (modified as suggested in the first option above) and add a new provision to the Act that would provide for use of the RKC Standard 3.41, but for authorized persons only. This approach appears, for example, in the EU customs legislation.

R. Risk Management (Article 7.4)

1. Level of Alignment: Full

2. Summary of TFA Measure

- Customs shall apply risk management to control in connection with import, export and transit of goods
- Customs shall concentrate control on high risk consignments and expedite the release of low-risk goods

- Appropriate selectivity criteria should be used in applying risk management

3. **Other International Standards**

RKC Standard 6.2: Customs control shall be limited to that necessary to ensure compliance with the Customs law.

RKC Standard 6.3: In the application of Customs control, the Customs shall use risk management.

RKC Standard 6.4: The Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination.

RKC Standard 6.5: The Customs shall adopt a compliance measurement strategy to support risk management.

4. **Customs Act Provision(s)**

No specific provisions concerning methods of control.

5. **Other Legislation**

The **Revenue Administration Act** establishes Customs as a department of Government and provides that the Commissioner of Customs “shall be responsible for the general administration of the Customs Department” and such other functions related to customs or other sources of revenue as may be assigned to him by law (**Sections 12 and 14**).

6. **Gap Analysis**

The Customs Act defines when imported goods are under customs control (**Section 11B, When goods subject to customs control**), and it enumerates the enforcement powers of customs officers-

Table 2 Customs Act: Customs Officer's Powers

Section	Customs officer may-
3	exercise such powers, authorities and privileges as provided under law to officers of the Constabulary Force (<i>i.e.</i> , the Constabulary Force Act)
53	board and search any aircraft or ship, examine goods, require goods to be unloaded, and removed for examination, or to be secured; examine goods in the course of being unloaded or removed or when unloaded or removed; lock/seal or otherwise secure goods on board
57	search persons (and their baggage) that have been landed from an aircraft or ship or are suspected of receiving goods from such persons; question such persons
60	arrest and detain the Master of a small ship that is found to be carrying goods imported contrary to law
71	require Master of a ship to answer questions and produce documents
74	seize abandoned aircraft or ships
90	examine warehoused goods
203	enter and search any house where uncustomed or prohibited goods or books or records or computer equipment related to same are kept, provided a special warrant of a Resident Magistrate is first obtained
204	stop and search vehicles upon reasonable suspicion

205	patrol freely and enter any part of the Island, other than a dwelling or other building
222A	require persons to produce for inspection documents or records required for audit
223	require an importer, exporter or other person concerned in the import or export of goods to produce documents for inspection
238	make arrests
239	make arrests after escape

The Act does not mandate or limit how customs control is to be applied to the import, export or transit of goods, such as requirements regarding incidence or frequency of controls or mandating application of controls in particular cases.

Accordingly, there appears to be no barrier in the legislation that would preclude Customs from implementing customs control on the basis of risk management principles, to concentrating controls on high risk consignments, and to applying selectivity criteria, as the TFA measure requires.

6. Proposal

No change is proposed to the Customs Act. The legislation (including the Commissioner responsibility under the Revenue Administration Law for “general administration” of the Customs Department) would appear to allow Customs to exercise its controls based on risk management principles.

S. Post-clearance audit (Article 7.5)

1. Level of Alignment: Full

2. Summary of TFA Measure

- WTO Members shall use post-clearance audit “with a view to expediting the release of goods” and, wherever practicable, to inform risk management
- Persons or goods subject to post-clearance audit should be selected on the basis of risk, which may include appropriate selectivity criteria
- Audits must be conducted in a transparent manner and the persons subject to audit should be notified with information about audit results

3. Other International Standards

RKC Standard 6.6: Customs control systems shall include audit-based controls.

WCO Guidelines for Post-Clearance Audit, Chapter 2.1 (Legal Powers), which provides in part:

“[t]o implement PCA, the following particular legal powers must be provided at the adequate levels of Customs laws and regulations:

- Authority of PCA Officers (auditors);

- Scope of PCA (Person/company subject to PCA);
- Obligations of auditees;
- Penal scheme; and
- Right of appeal.”

4. Customs Act Provision(s)

(Note: all the following provisions are from the proposed Customs (Amendments) Act, 2015)

Section 15B (Assessment of duty, etc.): authorizes the Commissioner to make a reassessment up to 7 years from the date the original assessment was made, notwithstanding the goods are no longer subject to customs control and duty originally assessed has been paid.

Section 50A (Procedure in case of dispute as to assessment or valuation): provides for rights of appeal in cases where a dispute arises as to “whether any or what duty” is payable; requires a deposit or security of not less than 20 percent of the amount demanded where goods are no longer customs control.

Section 239A (Keeping of records): requires importers, exporters, agent, broker, carrier, warehouse keeper, operator of a Customs area, airport manager, port manager, any person concerned with the coasting trade and any other person who conducts business under customs laws to keep all documents, books, records and any other information relating to the transaction of such customs business in form and manner prescribed by regulation for a period of 7 years from date of the transaction; provides penalties for non-compliance. -

Section 239B (Access to records): requires persons who are required to keep records, when requested by a proper officer, to make such records available, to provide access to such records, to answer questions, to provide working space, and to provide copies of the records; provides penalties for non-compliance.

Section 239C (Retention of records by Commissioner): authorizes the Commissioner to take possession and retain records; provides for return of copies to the person concerned.

Section 239D (Audit or examination of records): authorizes the proper officer to enter any premises or place where required records are kept for purposes of auditing or examining them; provides penalties for non-compliance with request of the officer.

Section 239E (Provisions of relevant information and copies of documents): requires any person subject to regulatory supervision by the Bank of Jamaica or the Financial Services Commission to provide information and copies of relevant records that the Commissioner may request in writing; provides penalties for non-compliance.

5. Other Legislation

None identified.

6. Gap Analysis

With enactment of the provisions of the Customs (Amendments) Act, 2015 that are referenced above, the Customs Act provides a legal basis for implementation of the TFA measure consistent with the WCO standards.

7. Proposal

No change proposed.

T. Establishment and Publication of Average Release Times (Article 7.6)

1. Level of Alignment: Partial

2. Summary of TFA Measure

- WTO Members are encouraged to measure and publish, on a periodic basis and in a consistent manner, the average time it takes to release goods, using tools such as the WCO Time Release Study
- WTO Members are encouraged to share experiences in carrying out these measurements with the WTO trade facilitation committee

3. Other International Standards

WCO, Guide to Measure the Time Required for the Release of Goods

4. Customs Act Provision(s)

No specific provisions requiring or authorizing the measurement of average release times.

Section 4A (Obligations for secrecy): all documents and information in respect of any matter under the Act are required to be dealt with as “secret and confidential” by any person with an official duty under, or employed in the administration of, the Act and shall not be disclosed, subject to specified exceptions. These exceptions allow disclosure-

- by any person authorized by the Commissioner “for purposes of this Act”
- by the Commissioner, pursuant to enactment, treaty, or international agreement
- with consent of person who provided the document or information
- to other government authorities for the purpose of assisting them in the performance of their powers, functions or duties under any enactment

Non-authorized disclosure is considered an offense subject to fine and, in default of payment thereof, a term of imprisonment.

5. Other Legislation

The **Revenue Administration Act** establishes Customs as a department of Government and provides that the Commissioner of Customs “shall be responsible for the general administration of the Customs Department” and such other functions related to customs or other sources of revenue as may be assigned to him by law (**Sections 12 and 14**).

No specific provisions requiring or authorizing measurement of average release times.

6. Gap Analysis

The Commissioner’s authority under the Revenue Administration Act for the general administration of the Customs Department would appear to be a sufficient legal basis for Customs conduct of time release studies envisioned by this measure.

With regard to publication of the results of time release studies, as noted under [Publication \(Article 1.1\)](#) above, the broad restrictions on disclosure of information may inhibit publication of information obtained by Customs in course of official activities, even if such information is not confidential in nature or submitted to Customs in confidence, such as results of time release studies. To remove this potential barrier to publication, it may be useful to include a specific reference to time release studies in the “transparency provisions” proposed in connection with TFA Article 1.1.

7. Proposal

With respect to periodic publication of results of time release studies, see recommendations under [Publication \(Article 1.1\)](#), above.

U. Trade Facilitation Measures for Authorized Operators (Article 7.7)

1. Level of Alignment: Not aligned

2. Summary of TFA Measure

- “Authorized operators” or those traders that Customs has determined present a low risk of non-compliance with legal requirements shall be allowed certain additional trade facilitation benefits
- Governments shall publish their “authorized operator” qualification criteria
- Authorized operator schemes should be based on international standards, unless those are inappropriate or ineffective
- Governments shall allow other governments the possibility to negotiate a mutual recognition of their respective authorized trader schemes

3. Other International Standards

RKC Transitional Standard 3.32: For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for:

- release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration;
- clearance of the goods at the declarant's premises or another place authorized by the Customs;

and, in addition, to the extent possible, other special procedures such as:

- allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person;
- use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements;
- allowing the lodgement of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration.

4. Relevant Customs Act Provision(s)

No specific provisions.

5. Other Legislation

No specific provisions.

6. Gap Analysis

There does not appear to be a legal basis for Customs implementation of an authorized operator program. For example, the Customs Act does not contain any provisions that authorize or require Customs to differentiate treatment of importers or exporters based on risk. Other than provisions allowing release prior to final valuation (**Sections 81-82**), the current law does not provide for any simplifications in Customs clearance and controls, whether available generally or to select operators. The Customs Act thus does not provide a legal basis for the clearance simplifications described in the TFA requires to be offered to qualified authorized operators, such as-

- deferred payment of duties, taxes and fees
- use of comprehensive or reduced guarantees
- single customs declaration for all imports and exports in a given period
- clearance at the premises of the authorized operator or another place authorized by Customs

7. Proposal

- Define in the Customs Act the simplifications in entry procedures and control that are available to persons authorized by Customs. These simplified procedures and controls should be based on TFA and RKC standards and might include-

- release of goods on the basis of a simplified declarations, subject to provision of a supplementary declaration (see [Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges \(Article 7.3\)](#), above);
 - use of periodic declaration;
 - Customs entry processing and release at the premises of the operator or another place authorized by customs;
 - entry by notation in the importer’s own records, followed by supplementary declaration;
 - use of importer self-assessment; and
 - deferral of duty and tax.
- Because the use of most or all of these simplified procedures will require use of a guarantee, it would be important to include in the Customs Act general principles on customs guarantees. These provisions would define the types of guarantees that may be accepted, set out principles for determination of guarantee amounts; define any limitations on who may act as guarantor or surety; provide general conditions for discharge of guarantees, *etc.* These provisions should authorize the Commissioner to allow authorized operators the possibility to use comprehensive or general guarantees as well as the possibility of reduced guarantee amounts or waiver of guarantee altogether.
 - Authorize the Commissioner in the Act to establish by regulation an authorized operator program and define the essential qualification criteria.
 - Authorize the Commissioner or Minister to enter into bilateral/regional agreements for mutual recognition of authorized operator status under specified conditions.

V. Expedited Shipments (Article 7.8)

1. *Level of Alignment: Not aligned*

2. *Summary of TFA Measure*

- WTO Members shall offer simplified procedures for rapid release of air cargo (including exemption from payment of small amounts of duty) to persons who apply for such treatment
- WTO Members may limit only those persons or firms who fulfil certain criteria (*i.e.*, express consignment operators) to apply for expedited release treatment
- The criteria for the application for expedited release treatment shall be published

3. *Other International Standards*

RKC Transitional Standard 4.13: National legislation shall specify a minimum value and/or a minimum amount of duties and taxes below which no duties and taxes will be collected.

RKC Standard 4.14: If the Customs find that errors in the Goods declaration or in the assessment of the duties and taxes will cause or have caused the collection or recovery of an amount of duties and taxes less than that legally chargeable, they shall correct the errors and collect the amount underpaid.

However, if the amount involved is less than the minimum amount specified in national legislation, the Customs shall not collect or recover that amount.

WCO, Immediate Release Guidelines

4. Relevant Customs Act Provision(s)

Article 15 (Effect of obligation to pay duty) provides that where any obligation to pay duty is incurred by reason of an entry, bond, removal from warehouse or otherwise, “such obligation shall be deemed to be an obligation to pay all duties of customs which may become legally payable.”

Article 5 (Customs Duties) provides that the House of Representatives may, by resolution, provide for the importation or exportation of any goods without payment of customs duty thereon.

There does not appear to be any other specific provisions related to this TFA measure.

5. Other Legislation

No specific provisions identified.

6. Gap Analysis

There does not appear to be a legal basis for Customs implementation of simplified clearance processing for express consignments.

As noted previously, the Customs Act generally does not provide for any simplifications or variations in Customs clearance processing, whether these are made available generally or to select operators, other than a procedure for provisional release pending resolution of customs valuation disputes (**Sections 81-82**).

Moreover, the Customs Act does not specifically allow or require the Commissioner to waive collection of *de minimis* amounts of duty and tax; to the contrary, **Section 15** would appear to require collection of all duty legally due on an entry. However, it appears that such a *de minimis* waiver might be established by means of a resolution of the House of Representatives pursuant to **Section 5** of the Act.

5. Proposal

Establish a waiver of collection of payment of minimal amounts of duty and tax consistent with the RKC standards. It appears that a *de minimis* provision might be established in the form of an exemption by means of a resolution by the House of Representatives or it might be established by means of an amendment of the Customs Act itself. In the latter case, a recommended approach is to provide in the law that where total assessed duty and tax due on an entry falls below a specified threshold (for example, the equivalent of \$100), collection of such duty and tax shall be waived, and to further provide that such threshold may be increased by regulation prescribed by the Minister.

Amend the Customs Act to authorize the Commissioner to prescribe, by regulation, expedited entry and release procedures of goods arriving by air for use by authorized person. This authorized provision

should be drafted to ensure it permits the Commissioner to implement the WCO immediate release guidelines with respect to air cargo.

W. Perishable Goods (Article 7.9)

1. *Level of Alignment: Partial*

2. *Summary of TFA Measure*

- WTO Members shall adopt or maintain procedures for the importation of perishable goods that:
 - allow release within shortest possible time;
 - provide for release, where appropriate, outside Customs normal business hours;
 - give priority to such goods when scheduling examinations;
 - allow such goods to be stored in appropriate conditions for their conservation, where facilities approved by the relevant authorities are available;
 - where practicable, and upon request, allow release to occur at these storage facilities; and
 - require Customs to give a written explanation to the importer, on request, when there is a significant delay in the release of the goods.

3. *Other International Standards*

RKC Standard 3.34: When scheduling examinations, priority shall be given to the examination of live animals and perishable goods and to other goods which the Customs accept are urgently required.

RKC Standard 3.2: At the request of the person concerned and for reasons deemed valid by the Customs, the latter shall, subject to the availability of resources, perform the functions laid down for the purposes of a Customs procedure and practice outside the designated hours of business or away from Customs offices. Any expenses chargeable by the Customs shall be limited to the approximate cost of the services rendered.

4. *Customs Act Provision(s)*

Section 68 (Account of cargo to be provided) provides that the Commissioner may exempt any person importing perishable goods from the general obligation to submit an outturn report (a report of all cargo discharged from an arriving aircraft or vessel), if the Commissioner is “satisfied that those goods or supplies require urgent clearance.”

Section 76 (Unloading, entry, removal and delivery of goods) prohibits the unloading of goods from an arriving vessel or aircraft other than days and times to be prescribed by regulation. “Save in accordance with any regulation made under this Act, or with the written permission of the Commissioner,” all goods unloaded from a vessel shall be conveyed to a customs area “in the care of a proper officer” and shall

not be removed therefrom without being duly reported and entered and without the delivery authorized by the proper officer.

Section 259 (Discretionary power of the Commissioner in special circumstances) provides that the Commissioner may permit the entry, unloading, and removal of goods in such form and manner as he may direct to meet the exigencies of any case to which the customs laws may not be conveniently applicable.

5. Other Legislation

None identified.

5. Gap Analysis

Other than general and discretionary authority provided to the Commissioner to establish exceptions by regulation or in individual cases, the Act does not appear to provide for the entry and release of goods outside normal hours or for simplified procedures for expedited entry and release of perishable goods (**Section 68** does allow the Commissioner to exempt perishable goods from the outturn report, but it is not clear that an outturn report would delay release in any case).

Customs legislation of certain other countries incorporate specific procedures consistent with the TFA measure that permit perishable goods and other urgent consignments to be released to the importer to be held in facilities suitable for their preservation pending completion of customs processing.

There does not appear to be any specific provisions that would require Customs to provide a written explanation in the case of significant delays in release of perishable goods.

6. Proposal

To better align to the TFA measure and create greater certainty and transparency in the law, amend the Act to require the Commissioner to prescribe by regulation an immediate release procedure, whereby perishable goods (as well as other urgent consignments, including relief consignments) may be directly released to authorized persons, including outside normal business hours, under guarantee, if required, to be held pending completion of customs processing.

With regard to explanation of significant delays in release, this TFA measure might be extended to cases of significant delay of any goods, perishable or otherwise. Customs legislation of certain countries thus provides that following a specified number of days following registration or acceptance of the declaration or entry by Customs, where goods have not been released, the importer shall have a right to a written explanation of reasons for the delay.

Figure 10 Bangladesh Legislation: Right to Reasons for Delay in Release

**Right to Written Reasons for Delays in Release
Bangladesh Legislation**

82A. Procedure in case of goods not assessed or out-passed by Customs after presentation of the related bill of entry within a specified period.-

If any goods, other than goods detained, seized, confiscated, under adjudication or appeal under the provisions of this Act, for which a bill of entry has duly been presented, are not assessed and out-passed within seven working days the owner of such goods may serve a notice upon the Commissioner to finalize the Customs formalities within three working days enabling him to pay duty and taxes and clear the goods, and the said Commissioner or any officer authorized on his behalf shall do so, if the import is in order, or issue a show cause notice if the import is not in order.

Explanation.- For the purpose of this section "detained goods" include goods detained for chemical examination, radiation test, reference for resolution disputes on of classification, value, ITC aspect or any other legal disputes.

Source: Bangladesh Customs Act 1969, Section 82A

As indicated in the sample above, legislation of certain countries further provides that where the delay continues for a further specified period, the failure to release the goods gives rise to an appeal procedure. A further example appears in the U.S. customs legislation.

Figure 11 U.S. Legislation: Right to Reasons for Delay in Release

**Right to Written Reasons for Delays in Release
U.S. Customs Legislation**

(c)DETENTIONS Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:

(1)IN GENERAL

Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.

(2)NOTICE OF DETENTION The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of—

(A) the initiation of the detention;

(B) the specific reason for the detention;

(C) the anticipated length of the detention;

(D) the nature of the tests or inquiries to be conducted; and

(E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

5) EFFECT OF FAILURE TO MAKE DETERMINATION

(A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of [legal provisions on administrative appeals]

Source: U.S. Code title 19 section 1499

X. Border Agency Collaboration and Coordination (Article 8)

1. Level of Alignment: Full

2. Summary of TFA Measure

- National border authorities/agencies shall cooperate and coordinate border controls and procedures to facilitate trade
- Countries with common land borders shall cooperate and coordinate procedures to facilitate cross-border trade

3. Other International Standards

RKC Transitional Standard 3.35: If the goods must be inspected by other competent authorities and the Customs also schedules an examination, the Customs shall ensure that the inspections are co-ordinated and, if possible, carried out at the same time.

4. Customs Act Provision(s)

Section 4A (Obligation for Secrecy): allows the Commissioner, or an officer authorized by the Commissioner, to exchange documents and information with other departments of the government, public bodies or executive agencies for the purpose of assisting them in performance of their powers, functions or duties under law.

5. Other Legislation

None identified.

6. Gap Analysis

The Act authorizes the Commissioner, or an authorized officer, to exchange documents and information, including confidential information, with other government authorities to support their lawful tasks. This authority to share information is an important enabling element of border coordination and cooperation.

It will also be important to ensure that the legal mandate of Customs and the other border authorities in terms of their respective jurisdictional authority, powers and responsibilities is clear and harmonized. This would require examination of other border authorities enabling legislation for gaps/overlaps.

6. Proposal

No changes proposed to the Customs Act.

Y. Movement of Goods Intended for Import under Customs Control (Article 9)

1. Level of Alignment: Not aligned

2. Summary of TFA Measure

- Customs shall allow imported goods to be moved from a customs office of entry to another customs office within the same customs territory where the goods would be released or cleared.

3. Other International Standards

RKC Specific Annex E, Chapter 1, Customs Transit, which defines a customs transit operation to include movement from a customs office of entry to an inland Customs office.

2. Relevant Customs Act Provision(s)

Article 76 (Unloading, entry removal, and delivery of goods) generally requires imported goods unloaded from a vessel or aircraft to be landed, conveyed in the care of the proper officer into the Customs area, or to a Queen's warehouse if the Commissioner shall so require, and duly reported and "entered." "Entered" is defined in **Section 2 (Interpretation)** only in relation to an entry of goods for warehousing, import, ship stores, and export.

4. Other Legislation

None identified.

5. Gap Analysis

The Customs Act does not appear to contain specific provisions that would allow for in-bond or national transit movements, allowing goods to be moved from the port of entry to another customs office or area for import entry. As noted above, **Section 76(e)** prohibits removal of goods from the Customs area

or from the Queen's warehouse in which they have been conveyed until "duly reported and entered," and **Section 2** suggests that goods may be "entered" for the following purposes-

- import
- warehouse
- ship's supply, or
- export.

In addition, with respect to entry of goods, **Article 49** refers to an "entry...for drawback"; **Article 122** refers to an "entry for use" (after warehousing); and **Article 132** refers to "entered under bond for due exportation."

Moreover, **Sections 14A (Time for ascertaining rate of duty payable)** and **15B (Assessment of duty, etc.)** require persons who make declarations to Customs to declare a "customs procedure code" for the goods, but the Act does not appear to define these "customs procedures."

There does not appear to be any specific provisions in the Act defining an "entry for transit" or otherwise permitting movement of goods from the port of entry to an inland point for customs import processing and release.

6. Proposal

Clearly define in the Act a comprehensive list of the customs procedures under which imported or exported goods must be declared. These procedures would be defined in accordance with the standards of the RKC, and would include a transit procedure (both international and national transit). Under this proposal, the Act would set out with respect to each procedure-

- the purpose of the procedure;
- the duty and tax consequences;
- any requirements concerning guarantees or other security;
- the conditions under which the procedure will be discharged; and
- any other special conditions related to the procedure (e.g., time limits, permitted uses of the goods, persons eligible, prior authorizations for use of the procedure, etc.).

Z. Formalities and Documentation Requirements (Article 10.1)

1. Level of Alignment: Not Aligned

1. Summary of TFA Measure

- WTO Members shall review import, export and transit formalities and documentation requirements with a view towards simplifying or reducing them, and ensure that such formalities and documentation requirements are-
 - adopted/applied with a view to rapid release and clearance
 - adopted/applied to reduce time and cost of compliance for traders
 - revised, if a less trade restrictive solution is available
 - eliminated, if no longer required

2. Other International Standards

OECD, Recommendation of the Council on Regulatory Policy and Governance

3. Relevant Customs Act Provision(s)

No specific provisions.

4. Other Legislation

None identified.

5. Gap Analysis

There do not appear to be any specific provisions in the Act or other legislation that would require Customs to assess the trade facilitation or other economic or business-related impacts of proposed or existing regulations.

6. Proposal

This measure is applicable to all MDAs that regulate import, export or transit goods. It is similar in nature to “regulatory impact analysis” which is typically implemented by formal policy or instruction of the executive, such as an order, directive or formal guidelines issued by or under authority of the president or cabinet requiring MDAs to conduct a regulatory impact analysis and/or issue a regulatory impact statement with respect to regulatory proposals, and to periodically review existing regulations. See, for example, *Better Regulation Framework Manual: Practical Guidance for UK Government Officials* (March 2015); U.S. Executive Order 13563, *Improving Regulation and Regulatory Review* (January 2011); The President of the Republic of South Africa, *Guidelines for the Implementation of the Regulatory Impact Analysis/Assessment (RIA) Process in South Africa* (2012). Often these systems involve establishment or appointment of a central entity within the government to set policy, oversee and guide individual MDAs in carrying out these kinds of evaluations.

The Customs Act might be amended to require the Commissioner, for example, to undertake and publish an impact analysis or assessment with each regulation that the Commissioner issues (with justified exceptions). However, this measure should be applied to all authorities that regulate import, export and transits, and its implementation requires policy and strategic challenges and decisions (*e.g.*, what regulations must be evaluated, what methodology shall be used, when must assessment be

undertaken, how should results be used, etc.). Given that a common government policy and methodological approach may be desired, the better solution may be to implement this measure through a formal act or policy at a government-wide level, rather than in the Customs Act.

This measure is related to [Opportunity to Comment and Information before Entry into Force \(Article 2.1\)](#).

AA. Acceptance of Copies (Article 10.2)

1. Level of Alignment: Full

1. Summary of TFA Measure

- WTO Members shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export or transit formalities
- If the original document has been provided to one border authority, other border authorities shall accept a copy authenticated by the agency holding the original
- Neither an original nor a copy of the export declaration submitted to authorities in the country of export shall be required for importation of the goods

2. Other International Standards

None identified.

3. Relevant Customs Act Provision(s)

Section 222 (Documents, form of): “[e]very document submitted to the Commissioner or his officers for the purposes of the customs laws shall be in such form as may be prescribed, if any”.

Section 224 (Copies of documents to be submitted): where the Commissioner requires presentation of an invoice or a certificate of origin, or both, the Commissioner may require duplicates of such documents to be submitted. The Commissioner may retain the duplicate or, if no duplicate is submitted, keep the original.

4. Other Legislation

Section 10 of the **Electronic Transactions Act** provides that where a law requires information to be presented in its original form or to be made available for inspection, it may be produced electronically subject to certain conditions to assure integrity and accessibility of the information, as well as compliance with information technology requirements of the government authority to whom the information is presented.

5. Gap Analysis

There do not appear to be any specific requirements in the Act concerning submission of originals of supporting documents. **Section 224** of the Act appears to imply that the original of the invoice and the certificate of origin must be submitted to Customs; this would appear to preclude submission of paper copies of such documents in place of the original. However, the **Electronic Transactions Act** authorizes Customs to accept electronic copies (*e.g.*, scanned, faxed) under certain conditions of any such supporting documents required for inspection in place of the original for purposes of completing import or export formalities.

There do not appear to be any provisions in the Act that require the importer to present the original or copy of the export declaration for the goods submitted to authorities in the country of export for purpose of import entry.

6. Proposal

No changes proposed to the Customs Act

BB. Use of International Standards (Article 10.3)

1. Level of Alignment: Full

1. Summary of TFA Measure

- WTO Members are encouraged to use "relevant international standards" as the basis for their import, export and transit formalities and procedures
- Governments are encouraged to take part in preparation and periodic review of standards through the "appropriate" international organizations

2. Other International Standards

RKC Standard 1.2: The conditions to be fulfilled and Customs formalities to be accomplished for procedures and practices in this [RKC General] Annex and in the [RKC] Specific Annexes shall be specified in national legislation and shall be as simple as possible.

3. Relevant Customs Act Provision(s)

No specific provisions.

4. Other Legislation

No specific provisions.

5. Gap Analysis

The "international standard" most relevant to customs legislation is the WCO Revised Kyoto Convention (RKC). Implementation of this TFA measure thus requires that the Customs Act provisions related to

import, export and transit formalities and procedures, as well as any implementing procedures, should be aligned to the RKC.

6. Proposal

In the context of this project, this TFA measure is not implemented by particular legal text, but by ensuring that the relevant RKC standards are taken into account in drafting amendments to the Act to implement any of the WTO TFA-measures in the Customs Act.

More generally, the Customs Act should be reviewed to ensure alignment with RKC standards and recommendations related to import, export, and transit formalities and procedures, in addition to those directly related to the WTO TFA.

CC. Single Window (Article 10.4)

1. Level of Alignment: Full

2. Summary of TFA Measure

- WTO Members shall endeavour to establish a "Single Window" to which a trader can submit all documents and/or data required by customs and all other border or licensing authorities for the import, export or transit of goods, and from which the trader will receive all notifications
- Where a trader submits required data and/or documents to the single window he/she shall not be asked again for the same information other than in exceptional cases ("one-time submission")
- WTO Members shall use ICT to the extent possible and practicable to support the single window.

3. Other International Standards

UNECE, Recommendation No. 35, Establishing a Legal Framework for International Trade Single Window (2010)

4. Relevant Customs Act Provision(s)

See [Border Agency Collaboration and Coordination \(Article 8\)](#), above.

5. Other Legislation

Electronic Transactions Act

6. Gap Analysis

See [Border Agency Collaboration and Coordination \(Article 8\)](#), above.

7. Proposal

No changes proposed to the Customs Act.

DD. Pre-shipment Inspection (Article 10.5)

1. Level of Alignment: Full

2. Summary of TFA Measure

- WTO Members shall not use pre-shipment inspection services in relation to tariff classification and customs valuation of imports
- WTO Members are encouraged not to introduce new requirements for other types of pre-shipment inspection (without prejudice to their right to use pre-shipment inspection for SPS purposes)

3. Other International Standards

None applicable

4. Relevant Customs Act Provision(s)

No specific provisions identified.

5. Other Legislation

No specific provisions identified.

6. Gap Analysis

The Customs Act and other legislation does not appear contain provisions that allow or require use of pre-shipment inspection.

7. Proposal

Not applicable.

EE. Use of Customs Brokers (Article 10.6)

1. Level of Alignment: Substantial

2. Summary of TFA Measure

- WTO Members shall not introduce the requirement for the mandatory use of customs brokers
- Measures on the use of customs brokers or any subsequent modifications thereof shall be published promptly
- Any broker licensing rules shall be transparent and objective

3. Other International Standards

RKC Standard 8.1: Persons concerned shall have the choice of transacting business with the Customs either directly or by designating a third party to act on their behalf.

RKC Standard 8.2: National legislation shall set out the conditions under which a person may act for and on behalf of another person in dealing with the Customs and shall lay down the liability of third parties to the Customs for duties and taxes and for any irregularities.

RKC Standard 8.3: The Customs transactions where the person concerned elects to do business on his own account shall not be treated less favourably or be subject to more stringent requirements than those Customs transactions which are handled for the person concerned by a third party.

RKC Standard 8.6: The Customs shall specify the circumstances under which they are not prepared to transact business with a third party.

4. *Relevant Customs Act Provision(s)*

Section 233 (Authority to be produced by person acting for another) (i) provides that Customs may require proof of authority whenever any person “shall make application to any officer to transact any business on behalf of any other person” and (ii) provides that “it shall be lawful” for the Minister to prescribe regulations for the licensing of persons to transact business with the Customs on behalf of others for remuneration.

5. *Other Legislation*

No specific provisions identified.

6. *Gap Analysis*

The law appears to be generally aligned to the TFA measure. There do not appear to be any provisions in the Customs Act requiring mandatory use of brokers. Moreover, various provisions of the Act concerning entry of the goods suggest that entry may be made by the importer himself or by an agent.

The Act appears to leave entirely within the discretion of the Minister whether or not to implement a system of licensing with respect to agents who transact customs business for remuneration. If in fact the government has taken the decision that such agents shall be licensed, the essential requirements should be set out in the Act.

7. *Proposal*

Consistent with the RKC, the Act should set out general principles concerning use and regulation of customs brokers, namely -

- that any person may conduct customs business on his own behalf or use a customs broker to do so;
- that any person who acts as an agent for another to conduct customs business shall be licensed, and any exceptions thereto;
- a definition of “customs business” the conduct of which by an agent a license is required

- the general conditions under which a license will be granted, suspended or revoked and
- the liability of brokers for payment of duties and taxes.

FF. Common Border Procedures and Uniform Documentation Requirements (Article 10.7)

1. Level of Alignment: Full

2. Summary of TFA Measure

- WTO Members shall apply common customs procedures and uniform documentation requirements for release and clearance procedures at all customs offices throughout the country

3. Other International Standards

None identified.

4. Relevant Customs Act Provision(s)

No specific provisions requiring or providing for uniform application of procedures at all customs offices.

5. Other Legislation

The **Revenue Administration Act** provides that the Commissioner of Customs “shall be responsible for the general administration of the Customs Department” (**Sections 12 and 14**).

6. Gap Analysis

The Commissioner’s mandated responsibility under the Revenue Administration Act for general administration of the Customs Department appears to be sufficient authority to enable the Commissioner to take measures to ensure uniform application of the customs laws by the Customs Department.

7. Proposal

No change to the Customs Act proposed.

GG. Rejected Goods (Article 10.8)

1. Level of Alignment: Full

2. Summary of TFA Measure

- The importer shall be allowed to return to the exporter (or to a person the exporter designates) imported goods that have been rejected due to failure to comply with prescribed sanitary or phytosanitary regulations or technical regulations.

3. Other International Standards

None identified (with respect to Customs)

3. Relevant Customs Act Provision(s)

Section 145 (General provisions as to loading and exportation of goods): No goods shall be loaded on any aircraft or ship for exportation before such goods are “duly entered.”

Section 152 (Bond to be given in certain cases): The Commissioner may require the exporter give security by bond to ensure exportation in cases of goods “goods exportable only under particular rules, regulations or restrictions.”

Section 154 (Penalty for not exporting): Where goods for which a bond has been demanded under Section 152 are not duly exported to and discharged at the declared destination or otherwise accounted for to the satisfaction of the Commissioner, the goods shall be forfeited and the Master of the aircraft or ship shall be liable to a penalty.

4. Other Legislation

None identified

5. Gap Analysis

It appears the Customs Act provides a sufficient legal basis for implementation of a customs procedure for re-exportation of goods.

(Note, that legislation or regulations of other government authorities may prohibit or restrict export of goods that have been rejected entry due to failure to comply with SPS or technical regulations, in which case the goods may not be re-exportable. However, there does not appear to be any barrier to re-export of such goods under the Customs Act.)

6. Proposal

Not applicable.

HH. Temporary Admission and Inward and Outward Processing (Article 10.9)

1. Level of Alignment: Full

1. Summary of TFA Measure

- Governments should allow goods to be temporarily imported totally or partially free of import duties and taxes, if intended for a specific purpose and re-exported within a specific period without undergoing any change (Temporary Admission)
- Governments should allow goods to be imported totally or partially free of import duty and taxes, or be eligible for drawback, if used intended for manufacturing, processing, or repair and subsequent exportation (Inward Processing/Drawback)
- Governments should allow goods to be returned from abroad, totally or partially free of import duties and taxes, if the goods had been temporarily exported for manufacturing, processing, or repair abroad and subsequent exportation (Outward Processing)

2. Other International Standards

RKC, Specific Annex G, Temporary Admission

RKC, Specific Annex F, Chapter 1, Inward Processing

RKC, Specific Annex F, Chapter 2, Outward Processing

RKC, Specific Annex F, Chapter 3, Drawback

3. Relevant Customs Act Provision(s)

Temporary Admission

Section 35 (Goods imported for temporary use):¹¹ Goods may be imported without payment of duty where the Commissioner is satisfied the goods are imported for temporary use only. The importer is required to deposit the duty chargeable on the goods or provide security for such amount, as the Commissioner elects. The Commissioner is authorized to waive the deposit or security, in whole or in part, and impose such terms and conditions as he deems fit. The goods must be exported within 3 months (6 months, in the case of commercial samples); otherwise the deposit shall be forfeited or the security enforced. (**Section 36, Disposal of Deposit**).

Section 37 (Restrictions and conditions on importation for temporary use): The Minister is authorized to issue regulations excluding certain goods from the benefit of temporary import; restricting or placing conditions on use of the procedure with respect to other goods; or requiring partial payment of duty on goods imported for temporary use.

Inward Processing

Section 45 (Minister may direct granting of drawbacks): The Minister is authorized to direct, by order, what goods may be eligible for drawback and under what conditions. Drawback is defined as “a refund of all or part of any duty of customs or excise authorized by law in respect of goods exported or used in any particular manner (**Section 2 Interpretation**).

¹¹ As amended by proposed Customs (Amendment) Act, 2015.

Section 129 (Power of Commissioner to permit processing and manufacture in warehouse subject to conditions): The Commissioner is authorized to permit goods entered in warehouse to be processed or used in the manufacture of other goods, under such conditions as he may generally or in particular cases impose. Where the finished goods are removed from the warehouse for import for consumption, import duty shall be assessed on the imported materials used in the processing or manufacture, either at the rate of import duty applicable in relation to such materials or at the rate of import duty applicable to processed or manufactured goods of the same class or description, whichever is lesser.

Section 128 (Goods entered for exportation exempt from import duty): No import duty shall be charged on warehoused goods entered under bond for due exportation.

Outward Processing

Section 16 (Duty on goods re-imported): Goods subject to *ad valorem* duty that are returned to Jamaica after undergoing repairs, renovations or improvements abroad, without changing their form or character, are subject to duty only on the increase in value of the goods attributable to such processing (and any amount contracted to be paid for the execution of the process is *prima facie* evidence of that value, without prejudice to the powers of the Commissioner to ascertain value under the customs laws).

4. Other Legislation

None identified/

5. Gap Analysis

The Act does provide for implementation of temporary admission, inward processing and drawback and outward processing.

6. Proposal

Under the RKC and in customs legislation of other countries, temporary admission, inward processing and drawback and outward processing are defined as customs procedures under which imported or exported goods (as the case may be) may be declared. These do not appear to be defined as such in the Customs Act and the use of certain of these appears to be under the discretion of the Commissioner or Minister.

The proposal discussed under [Movement of Goods Intended for Import under Customs Control \(Article 9\)](#), above is applicable here. That is, these current provisions would be recast and included among the list of customs procedures under which goods may be declared and (as with the other procedures) the duty and tax consequences, requirement of a guarantee or other security, and any other conditions would be clearly defined.

II. Freedom of Transit (Article 11)

1. *Level of Alignment: Partial*

2. *Summary of TFA Measure*

- Regulations or formalities on transit shall be eliminated or reduced if no longer required or a less trade-restrictive solution becomes available, and they should not be applied in a manner that would be a disguised restriction on trade
- Charges that may be imposed on transit only for transit administrative procedures entailed or transit services provided, and shall be limited in amount to the expense of such procedures or cost of such services
- WTO Members shall not seek, impose or maintain voluntary restraints or similar measures on traffic in transit
- WTO Members shall not treat goods that will pass in transit through another country to the final destination less favourably than if the goods were shipped to the destination without passing through that other country
- In processing and control of transit movements, WTO Members:
 - shall allow pre-arrival declaration
 - shall not apply formalities, documentation requirements or controls other than those necessary to identify the goods and ensure compliance with transit requirements
 - shall not apply any customs charges nor unnecessary delays or restrictions while the goods are en route
 - shall not apply technical regulations and conformity assessment procedures on goods in transit
 - shall promptly terminate the transit operation once goods reach the office of exit, if all requirements are met
- Governments are encouraged to make separate lanes or similar infrastructure for transit in traffic
- Any guarantee that Customs requires for a transit movement:
 - shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled;
 - shall be discharged by Customs without delay once the transit is completed; and
 - may be comprehensive for some operators or maybe renewed by the trader thereafter.
- Information on how guarantees are set must be made available to the public.
- Customs may require a convoy to accompany goods only if the goods are high risk and so specified in its laws and regulations and published
- Governments should endeavour to cooperate and coordinate to enhance freedom of transit
- Each government should endeavour to appoint a national transit coordinator to whom other governments can make enquires and proposals

3. *Other International Standards*

RKC Specific Annex E, Chapter 1, Customs Transit.

4. Relevant Customs Act Provision(s)

There appear to be only a few references in the Act to “transit” or goods in transit, as follows –

- Section 39 (Minister may prohibit importation, carriage coastwise, or exportation) (Minister may, by published order, establish prohibitions against importation of goods, but may make exceptions for goods in transit)
- Section 65 (Report)(Cargo report required to separately report goods in transit)

However, there does not appear to be specific provisions in the Act that define the transit procedure.

5. Other Legislation

None identified.

6. Gap Analysis

The Act does not appear to define a transit procedure or set out rights and obligations of Customs and traders involved.

7. Proposal

See proposal under [Movement of Goods Intended for Import under Customs Control \(Article 9\)](#), above.

JJ. Customs Cooperation (Article 12)

1. Level of Alignment: Full

1. Summary of TFA Measure

- A national customs administration shall provide another administration, upon request and subject to conditions, information and/or documents concerning specific import or export declarations in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

2. Other International Standards

International Convention on Mutual Administrative Assistance in Customs Matters (2003)(Johannesburg Convention)

3. Relevant Customs Act Provision(s)

Section 4A (Obligations for secrecy) provides that all documents and information in respect of any matter under the Act are required to be dealt with as “secret and confidential” by any person with an official duty under, or employed in the administration of, the Act and shall not be disclosed, subject to

specified exceptions. These exceptions include disclosure “by the Commissioner, pursuant to enactment, treaty, or international agreement.”

4. Other Legislation

None identified

5. Gap Analysis

None identified in the Act. **Section 4A** would appear to allow the Commissioner to exchange information related to export declarations pursuant to the WTO TFA (once accepted by Jamaica).

6. Proposal

No changes to the Act identified.

VI. Conclusion

Table 3 below summarizes the findings of this review of alignment of the Customs Act to the TFA, including level of alignment, key gaps, and proposals.

Table 3 Summary of Findings and Recommendations

TFA Article	TFA Measure	Alignment Level	Gap(s)	Proposal	Relevant Legislation
1.1	Publication	Partial	No positive obligation to publish information, other than regulations, fees, and forms in the <i>Gazette</i>	Incorporate a “transparency” mandate that would- -require Customs publication of information -define information to be published (in general or specific terms) -require use of internet to publish required information -require Customs to supply information and documents on request of interested person.	-Customs Act and/or -Revenue Administration Act
1.2	Information available through the Internet	Not aligned	“	“	“
1.3	Enquiry Points	Not aligned	No obligation to supply information or forms on request	“	“
1.4	Notification	Not applicable	Not applicable	Not applicable	TBD
2.1	Opportunity to Comment and Information before Entry into Force	Partial	1. No obligation to provide interested persons with reasonable opportunity to comment on proposed regulations 2. No obligation to publish final regulations prior to entry into force	Either – (i) amend the Interpretation Act or other general legislation to require administrative authorities provide opportunity for comment on their proposed regulations and to publish final regulations prior to effective date (subject to justified exceptions), or (ii) amend the Customs Act to incorporate such provisions, applicable only to Customs	-Interpretation Act or -Customs Act
2.2	Consultations	Not aligned	No specific provisions to require regular consultations with stakeholders	Government to issue formal measures to obligate border authorities, including Customs, to hold regular consultations with their stakeholders	TBD
3	Advance Rulings	Not aligned	No provisions concerning binding rulings	Incorporate provisions on essential elements of a bindings ruling procedure, namely -- -define scope of ruling requests (tariff classification and origin, and such other matters as may be prescribed by regulation)	Customs Act

TFA Article	TFA Measure	Alignment Level	Gap(s)	Proposal	Relevant Legislation
				<ul style="list-style-type: none"> -establish legal consequences of a ruling (binding on both Customs and the applicant) -define period of validity (open/no limitation) -define grounds for revocation and annulment (including change in law or interpretation) -define persons who may request rulings (any person who may act as “importer” under the Act) -authorize Commissioner to prescribe implementing regulations 	
4	Procedures for Appeal or Review	Substantial	<ol style="list-style-type: none"> 1. Obligation to provide written reasons for decisions appears limited to valuation and reassessment decisions 2. Technical inconsistencies in provisions on “assessment” and “re-assessment” 3. Establishment of administrative appeal procedures for disputes other than assessment is within discretion of Commissioner (including decisions affecting substantial rights) 4. Omissions (failure to act/decide within reasonable periods) not clearly subject to appeal 	<ol style="list-style-type: none"> 1. Incorporate general procedural rules on Customs decision making (a “due process” mandate) that- <ul style="list-style-type: none"> -requires Customs to provide written reasons for any adverse decision -requires Customs to provide opportunity to be heard before adverse decision taken -requires Customs to take required decisions/actions within reasonable period of time -defines general grounds for annulment, revocation and suspension of decisions -provides for delayed effective dates of revocation or suspension of decisions, in justified cases 2. Clarify technical discrepancy concerning “assessment” and “re-assessment” 3. Require Commissioner to establish appeal procedures with respect to disputes involving substantial rights (e.g., licensing, denial of refund or drawback). 	Customs Act
5.1	Notification for enhanced controls or inspections	Not applicable	Not applicable	Not applicable	TBD

TFA Article	TFA Measure	Alignment Level	Gap(s)	Proposal	Relevant Legislation
5.2	Detention	Full	Aligned	Not applicable	Revenue Administration Act
5.3	Test Procedures	Not applicable	Not applicable	Not applicable	Not applicable
6.1	General Disciplines on Fees and Charges	Partial	<ol style="list-style-type: none"> 1. Act requires fees to be prescribed by regulation published in Gazette, a print publication that may not be “easily accessible” 2. No provisions that authorize or require the Minister or other authority to publish fees prior to entry into force 3. No provisions in the Act or other legislation that authorize or require the Minister or other authority to conduct a periodic review of customs fees 	Same as 1.1, 2.1 and 10.2	Same as 1.1, 2.1 and 10.2
6.2	Specific Disciplines on Fees and Charges	Not aligned	No provisions restricting fee amounts consistent with GATT principle	Amend Act to limit fees for customs processing to the approximate cost of the service provided	Customs Act
6.3	Penalty Disciplines	Substantial	No specific provisions defining procedural aspects of penalty assessment/decision (notification, right to hearing, written reasons. <i>etc.</i>)	Incorporate general procedural rules on Customs decision-making (see 4, above)	Customs Act
7.1	Pre-Arrival Processing	Partial	Submission/processing of pre-arrival entry does not appear to be envisaged by the Act	<p>Incorporate a pre-arrival processing procedure in the Act, taking into account-</p> <ul style="list-style-type: none"> -date to be used for assessment and application of customs laws -extent of customs processing pre-arrival -period in advance of arrival entry may be submitted 	Customs Act
7.2	Electronic Payment	Full	Not applicable	Not applicable	Electronic Transactions Act
7.3	Separation of Release from Final	Partial	1. Although the Act includes a procedure for release of goods prior to final	1. Amend Act to - (i) extend provisions in Act to allow release	Customs Act

TFA Article	TFA Measure	Alignment Level	Gap(s)	Proposal	Relevant Legislation
	Determination of Customs Duties, Taxes, Fees and Charges		determination of duty/tax, it is limited to case where valuation cannot be determined, and does not apply to other assessment-related delays. 2. The Act contains limited rules on use of customs guarantees that are specific to particular customs procedures.	prior to final determination wherever assessment cannot be determined for any reason; OR (i) incorporate a “two-step” clearance procedure as described by RKC standard 81 (recommended), OR (iii) extend the Act as described in point (i) AND allow use of two-step procedure described in point (ii) to authorized operators only. 2. Incorporate in the Act general rules on use of customs guarantee including acceptable forms of guarantees, principles for determination of guarantee amounts, persons who make act as guarantor or surety etc.	
7.4	Risk Management	Full	Not applicable	Not applicable	Customs Act
7.5	Post Clearance Audit	Full	Not applicable	Not applicable	Customs Act
7.6	Establishment and Publication of Average Release Times	Partial	No specific provisions requiring or authorizing periodic publication of average release times (and strict measures against disclosure of customs information)	Incorporate an obligation to publish average release times within the “transparency” mandate described in 1.1, above.	Same as 1.1
7.7	Trade Facilitation Measures for Authorized Operators	Not aligned	No specific provisions- (i) defining simplified entry and release procedures, or (ii) authorizing establishment of an authorized operator program	1. Define the simplifications in entry procedures and control that shall be made available to persons authorized by Customs 2. Define the general principles for use of customs security (generally required for use of simplifications) 3. Authorize the Commissioner to establish an authorized operator program based on qualification criteria specified in the Act 4. Authorize the Minister/Commissioner to establish bilateral/regional authorized operator mutual recognition agreements -	Customs Act

TFA Article	TFA Measure	Alignment Level	Gap(s)	Proposal	Relevant Legislation
7.8	Expedited Shipments	Not aligned	No specific provisions- (i) requiring or allowing establishment of simplified entry and release procedures for air cargo shipments, or (ii) exempting or authorizing waiver of collection of small amounts of duty (<i>de minimis</i> exception)	Amend Act to- (i) Authorize Commissioner to prescribe by regulation alternative and simplified entry and release procedures in specified cases (including air cargo express consignments), and (ii) Provide exemption for, or authorize waiver of collection of, small duty amounts	Customs Act
7.9	Perishable Goods	Partial	No specific provisions- (i) requiring or allowing establishment of simplified entry and release procedures for perishable goods, or (ii) requiring written explanation be given on request for unreasonable delays in release of goods	Amend Act to- (i) Authorize Commissioner to prescribe by regulation alternative and simplified entry and release procedures in specified cases (including perishable goods), and (ii) Provide for right to written explanation where goods (including perishable goods) are not released within a specified period following, for example, date of submission of the entry.	Customs Act
8	Border Agency Collaboration and Coordination	Full	No apparent gaps in Customs Act, but review of other border agency legislation required to ensure harmonization and consistency in respective mandated responsibilities and functions	Review Customs Act in conjunction with legislation of other border agencies to ensure consistency in mandated responsibilities and functions with respect to border processing and control	General
9	Movement of Goods Intended for Import under Customs Control	Not aligned	No specific provisions in the Act authorizing a transit or inbond procedure	Define in the Act all customs procedures under which imported or exported goods may be declared (including temporary admission, inward processing, drawback, outward processing and transit), based on RKC standards	Customs Act
10.1	Formalities and Documentation Requirements	Not Aligned	No specific provisions in the Act or other legislation to require Customs to assess to assess the trade facilitation or other economic or business-related impacts of proposed or existing regulations.	Government to issue formal measures to obligate MDAs, including Customs, to assess trade impacts of proposed and existing regulations	TBD
10.2	Acceptance of Copies	Full	Not applicable	Not applicable	-Customs Act

TFA Article	TFA Measure	Alignment Level	Gap(s)	Proposal	Relevant Legislation
					-Electronic Transactions Act
10.3	Use of International Standards	Full	Not applicable	Amendments to Act to implement the TFA should take into account RKC standards and recommendations	Customs Act
10.4	Single Window	Full	See 8, above	See 8, above	See 8, above
10.5	Pre-Shipment Inspection	Full	Not applicable	Not applicable	Customs Act
10.6	Use of Customs Broker	Substantial	Act does not define conditions under which a person may act as an agent or define liability of such agents	Amend the Act to set out general principles concerning use and regulation of customs brokers	Customs Act
10.7	Common Border Procedures and Uniform Documentation Requirements	Full	Not applicable	Not applicable	Revenue Administration Act
10.8	Rejected Goods	Full	Not applicable	Not applicable	Customs Act
10.9	Temporary Admission and Inward and Outward Processing	Full	The Act does provide for the procedures but specific conditions for use of certain of the procedures are not defined and within the discretion of the Commissioner	Define in the Act all customs procedures under which imported or exported goods must be declared (including temporary admission, inward processing, drawback, outward processing and transit), based on RKC standards	Customs Act
11	Freedom of Transit	Partial	No specific provisions in the Act authorizing a transit or inbond procedure	Define in the Act all customs procedures under which imported or exported goods must be declared (including temporary admission, inward processing, drawback, outward processing, and transit), based on RKC standards	Customs Act
12	Customs Cooperation	Full	Not applicable	Not applicable	Customs Act

As indicated by the table, this review determined that the Act does not appear to contain provisions to implement 19 of the 36 TFA technical measures.

A number of these gaps are of the same type and therefore may be resolved by a single amendment to addition of a section of the Act. These gaps with a potential common resolution are-

TFA Measure(s)	Common Proposal
1.1., 1.2., 1.3., 6.1, 7.6	Incorporate a “transparency” mandate that would- -require Customs publication of information -define information to be published (in general or specific terms) -require use of internet to publish required information -require Customs to supply information and documents on request of interested person.
4, 6.3	Incorporate general procedural rules on Customs decision making (a “due process” mandate) that- -requires Customs to provide written reasons for any adverse decision -requires Customs to provide opportunity to be heard before adverse decision taken -requires Customs to take required decisions/actions within reasonable period of time -defines general grounds for annulment, revocation and suspension of decisions -provides for delayed effective dates of revocation or suspension of decisions, in justified cases
9, 11	Define in the Act all customs procedures under which imported or exported goods must be declared (including temporary admission, inward processing, drawback, outward processing, and transit), based on RKC standards
2.1, 6.1	Either – (i) amend the Interpretation Act or other general legislation to require administrative authorities provide opportunity for comment on their proposed regulations and to publish final regulations prior to effective date (subject to justified exceptions), or (ii) amend the Customs Act to incorporate such provisions, applicable only to Customs
7.3, 7.7, 7.8, 7.9, 9, 10.9, 11	Incorporate in the Act rules on use of customs guarantee applicable generally to customs procedures and operations, and which include acceptable forms of guarantees, principles for determination of guarantee amounts, persons who make act as guarantor or surety <i>etc.</i>

In addition, certain of the gaps listed in Table 3 concern TFA simplifications of “usual” or standard customs entry, control and release processes and are intended to expedite release of imported goods with respect to particular categories of operators, transactions or goods. These are –

- Trade Facilitation Measures for Authorized Operators (Article 7.7)
- Perishable Goods (Article 7.9)
- Expedited Shipments (Article 7.8)
- Pre-Arrival Processing (Article 7.1)
- Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges (Article 7.3)

The Act does not specifically provide for these simplifications, nor does the Act appear to clearly define the “usual” or standard entry/release processing that these procedures are intended to simplify or expedite. To accommodate these simplifications, as well as to generally improve the clarity of the Act, the Act might be revised and restructured to (i) more clearly define the normal or standard customs entry and release processing, including the rights and obligations of operators and Customs in relation to those processes, and (ii) define the essential elements and conditions for use of simplified entry and release processing.

Finally, there are a group of TFA measures that are indicated as gaps in Table 3 that applicable to MDAs in addition to Customs. These are -

- Publication (TFA Article 1.1)
- Information Available through the Internet (TFA Article 1.2)
- Enquiry Points (TFA Article 1.3)
- Opportunity to Comment and Information before Entry into Force (TFA Article 2.1)
- Consultations (TFA Article 2.2)
- Formalities and Documentation Requirements (Article 10.1)

A policy decision would appear to be required at a government level as to whether some or all of these measures are better implemented in the enabling acts of each of the relevant authorities, including Customs, or should be implemented as general legislation.