

## HOW FAR DOES THE TRADE FACILITATION NEGOTIATION TEXT (REV.16) GO BEYOND THE WCO REVISED KYOTO CONVENTION (RKC)?

### SYNOPSIS

This Note assesses the extent to which the Trade Facilitation negotiation text (Rev.16) goes beyond the WCO Revised Kyoto Convention (RKC). The backdrop to this Note is the erroneous view that the TF Agreement only differs slightly from the WCO RKC.

This assessment finds that

- The RKC has a much more limited Membership than the WTO. Seventy-odd WTO Members are not Contracting Party to the RKC. In Africa, only 6 have accepted all the provisions of the Convention.
- Around half of the articles of the TF negotiation text introduce a new legally binding obligation where no related provisions exist in the RKC. Examples are Interval between Publication and Entry into Force, Opportunity to Comment on New and Amended Rules, Advance Rulings, Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation, Post-clearance Audit, Establishment and Publication of Average Release Times, Prohibition of Consular Transaction Requirement and Pre-shipment Inspections.
- For another half of the TF provisions there are indeed related provisions in the RKC but the TF Agreement introduces a stronger, broader and/or a more legally binding commitment.

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**TABLE OF CONTENTS**

|      |                                                                                          |   |
|------|------------------------------------------------------------------------------------------|---|
| I.   | Introduction.....                                                                        | 3 |
| II.  | The WCO Revised Kyoto Convention (RKC).....                                              | 3 |
| III. | Key differences between future WTO TF Agreement and WCO RKC.....                         | 5 |
| IV.  | How far does the TF negotiation text (Rev.16) go beyond the WCO RKC? - a comparison..... | 6 |
| V.   | Summary of the comparison between TF provisions and WCO RKC.....                         | 8 |
| VI.  | Matrix: Comparison between TF Agreement and WCO RKC.....                                 | 9 |

## I. INTRODUCTION

1. The backdrop for this Analytical Note is the view of some WTO Members that most of the customs techniques envisaged in the Trade Facilitation (TF) Agreement are derived from the WCO's Revised Kyoto Convention (RKC). Since most WTO Members are already a Contracting Party to the WKC, the argument is made that they should not have problems in accepting TF commitments that would only slightly strengthen the already existing regime contained in the RKC.
2. This Note debunks this view by actually comparing the draft TF negotiation text (Rev.16) with the WCO RKC. First of all, around half of the articles of the TF negotiation text introduce a new legally binding obligation where no related provisions exist in the RKC. Secondly, in several areas there are indeed related provisions but the TF Agreement introduces a stronger, broader and/or a more legally binding commitment. Thirdly, the Membership of WCO RKC is much more limited than WTO TF: the RKC has 86 Contracting Parties whereas WTO has 159 Members.<sup>1</sup>

## II. THE WCO REVISED KYOTO CONVENTION (RKC)

3. The WCO Revised Kyoto Convention (RKC) provides minimum standards for the simplification and harmonization of Customs procedures. The amendment of the 1973 Kyoto Convention took place on 26 June 1999 and entered into force almost 7 years later, on 3 February 2006.
4. The RKC contains a General Annex and Specific Annexes. The General Annex contain the core provisions including those relating to clearance and other customs formalities; assessment, collection and payment of duties and taxes; deferred payment of duties and taxes; customs control: application of information technology; relationship between the customs and third parties; information, decisions and rulings supplied by the customs and appeals in customs matters.

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<sup>1</sup> Albania joined in June 2013 as the 86<sup>th</sup> Member, <http://www.wcoomd.org/en/media/newsroom/2013/june/albanias-accession-to-the-rkc.aspx>

5. The 10 Specific Annexes contain more detailed rules in different areas. The last Annex, Annex K on Rules of Origin, is perhaps the most well-known. Other Specific Annexes deal with customs processes such as Arrival of goods; Importation; Exportation; Customs warehouses and free zones; Transit; Processing; Temporary admission; Offences and Special Procedures (e.g. Travellers, Postal traffic, Relief consignments).
  
6. A main difference between the General Annex and the Specific Annexes is the mandatory nature of the provisions in the General Annex. All Contracting Parties are bound by the General Annex; a reservation to any of the provisions of the General Annex is considered null and void. This does not mean that provisions in the General Annex do not contain flexibilities for Contracting Parties. Some provisions are so-called 'Transitional Standards' and have an implementation period of 60 months (i.e 5 years). Furthermore, the language of the provisions themselves provides flexibility. Some illustrative examples of flexibilities in the General Annex, taken from Chapter 3 on Clearance and other customs formalities, are:
  - *Qualification of the mandatory nature of obligation:* At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls. (3.4)
  - *Reference to national legislation:* Before lodging the Goods declaration the declarant shall be allowed, under such conditions as may be laid down by the Customs: to inspect the goods; and to draw samples. (3.9)
  - *Obligations of traders:* The declarant shall be held responsible to the Customs for the accuracy of the particulars given in the Goods declaration and the payment of the duties and taxes (3.8).
  
7. With respect to the Specific Annexes, each Contracting Party has the discretion to ratify or not, and has the discretion to define reservations if it decides to ratify a particular Specific Annex. Furthermore, several provisions in the Specific Annex are called 'Recommended Practices' (as opposed to 'Standards') and are not legally binding.

### III. KEY DIFFERENCES BETWEEN FUTURE WTO TF AGREEMENT AND WCO RKC

8. Before embarking on a comparison between the TF negotiation text and the WCO RKC, the following key differences between a future TF Agreement and the RKC should be taken into account:
9. *The membership of the WTO is much broader than that of the RKC. As of June 2013, the RKC has 86 Contracting Parties whereas WTO has 159 Members. **This implies that 70-odd WTO Members, almost half of the Membership, would take entirely new legally binding commitments in the areas addressed by the TF Agreement.***
10. In Africa, only 22 countries have acceded to the RKC.<sup>2</sup> In addition, out of those 20, only 6 have accepted all the provisions of the Convention. The African Union has noted that implementation of its provisions has been a challenge for countries that have acceded.<sup>3</sup>
11. *The WTO TF Agreement will be backed up by the WTO DSM to enforce compliance. The dispute settlement mechanism (DSM) of the WTO is much stronger than that provided for in the WCO RKC. According to Article 14 of the RKC, 'any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention shall so far as possible be settled by negotiation between them'. Parties may refer disputes to the Management Committee set up by RKC and may agree in advance to accept the recommendations of the Management Committee as binding.*
12. The WTO DSM (or the threat thereof) is a stronger mechanism to command compliance than the WCO RKC and will expose WTO Members in particular developing countries to retaliation and increased pressures, if they do not fully implement the provisions agreed in the future TF agreement.
13. It has to be noted that the issue of the applicability of the WTO dispute settlement in the case of the TF Agreement has not yet been fully settled. WTO dispute settlement would only apply if the agreement would be listed in Appendix 1 of

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<sup>2</sup> In alphabetical order, they are Algeria, Botswana, Egypt, Gabon, Kenya, Lesotho, Madagascar, Mali, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Senegal, South Africa, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.

<sup>3</sup> Background Note for 1st African Union Commission - WCO Seminar on the Revised Kyoto Convention, 18-21 June 2013

the Dispute Settlement Understanding (DSU). A consensus is required to either add the new TF agreement to Annex 1A of the WTO Agreement which contains all the Multilateral Agreements on Trade in Goods (Annex 1A is covered by the DSU), or to add the new TF agreement to Appendix 1 of the DSU agreement (as a separate entry). Nevertheless, the WTO DSM has been one of the main reasons for developed countries to bring Trade Facilitation into the ambit of the WTO.

#### **IV. HOW FAR DOES THE TF NEGOTIATION TEXT (REV.16) GO BEYOND THE WCO RKC? - A COMPARISON**

14. Many provisions of the TF Agreement appear not to be derived from the WCO RKC. In other words, there are no related provisions in the WCO Revised Kyoto Convention; the TF Agreement would create new legally binding obligations. Examples are:
- Article 2.1 – Interval between Publication and Entry into Force
  - Article 2.2 – Opportunity to Comment on New and Amended Rules
  - Article 3 – Advance Rulings
  - Article 8 – [Prohibition of Consular Transaction Requirement]
  - Article 10.5 – Single Window
15. Naturally, some provisions of the TF Agreement have counterparts in the WCO RKC, but the TF Agreement would go beyond the WCO RKC in scope or in terms of the mandatory nature. Examples are provisions relating to publication and availability of Information, detention, penalty disciplines, pre-arrival processing, risk management, perishable goods and the use of customs brokers.
16. Only two provisions in the TF negotiation text appear to be roughly similar to corresponding provisions in the WCO RKC, Article 2.3 on Consultations and Article 4.1 on Right of Appeal.
17. In the case of Article 12, there are two relevant WCO Conventions dealing with Customs Cooperation, namely Nairobi Convention of 1977, in particular Annex II on Assistance in the assessment of import or export duties and taxes of as well as the Johannesburg Convention of 2003. However, Annex II has primarily been accepted by developing countries, whereas many developed countries did not,

and the Johannesburg Convention which builds upon the Nairobi Convention has not yet entered into force.<sup>4</sup>

18. The table on the next page presents the summary and is followed by a more detailed Matrix which, for each TF provisions, examines the existence and scope of counterpart provisions in the WCO RKC. The last column summarizes how the WCO RKC goes beyond the TF provision.

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<sup>4</sup> The Johannesburg Convention contains detailed rules on different assistance procedures, assessment of duties and taxes, exchange of information, recovery of customs claims and the use, confidentiality and protection of information, among others.

## V. SUMMARY OF THE COMPARISON BETWEEN TF PROVISIONS AND WCO RKC

| <b><u>New legally binding obligation introduced by WTO TF Agreement; no related provision exists in WCO RKC</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b><u>Related provision exists in WCO RKC, however the TF Agreement goes beyond the WCO RKC</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Article 2.1 – Interval between Publication and Entry into Force<br/>           Article 2.2 – Opportunity to Comment on New and Amended Rules<br/>           Article 3 – Advance Rulings<br/>           Article 4.2 – Appeal Mechanism [in a Customs Union][that is a WTO Member]<br/>           Article 5.1 – [Import Alerts/Rapid Alerts]<br/>           Article 5.3 – [Test Procedures]<br/>           Article 6.1 – Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation<br/>           Article 7.5 – Post-clearance Audit<br/>           Article 7.6 – Establishment and Publication of Average Release Times<br/>           Articles 7.9.1, 7.9.4-7 – Perishable Goods<br/>           Article 8 – [Prohibition of Consular Transaction Requirement]<br/>           [Article 9bis – Declaration of Transshipped or in Transit Goods][Domestic Transit]<br/>           Article 10.1 – Review of Formalities and Documentation Requirements<br/>           Article 10.2 – Reduction/Limitation of Formalities and Documentation Requirements<br/>           Article 10.3 – Acceptance of Copies<br/>           Article 10.5 – Single Window<br/>           Article 10.6 – Pre-shipment [and Post-shipment Inspections]<br/>           Article 10.8 – Common Border Procedures and Uniform [Documentation Requirements]<br/>           Article 10.9 – Option to Return Rejected Goods to the Exporter</p> | <p>Article 1 – Publication and Availability of Information<br/>           Article 5.2 – Detention<br/>           Article 6.2 – Penalty Disciplines<br/>           Article 7.1 – Pre-arrival Processing<br/>           Article 7.2 – Electronic payments<br/>           Article 7.3 – Separation of Release from Final Determination and Payment of Customs Duties, Taxes, Fees and Charges<br/>           Article 7.4 – Risk Management<br/>           Article 7.7 – Trade Facilitation Measures for Authorized Operators<br/>           Article 7.8 – Expedited Shipments<br/>           Article 7.9.3 – Perishable Goods<br/>           Article 9 – Border Agency Cooperation<br/>           Article 10.4 – Use of International Standards<br/>           Article 10.7 – Use of Customs Brokers<br/>           Article 10.10 – Temporary Admission of Goods/Inward and Outward Processing<br/>           Article 11 – Freedom of Transit</p> |
| <b>Similar obligation</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>Article 2.3 – Consultations<br/>           Article 4.1 – Right of Appeal</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |



## VI. MATRIX: COMPARISON BETWEEN TF AGREEMENT AND WCO RKC

| Article | Issue                                  | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | TF goes beyond WCO binding instruments in following key areas                                                                                   |
|---------|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1     | Publication                            | <p><b>General Annex</b>, para 4.4, Chapter 9 section A - Information of General Application, para 9.1, 9.2:</p> <ul style="list-style-type: none"> <li>• The rates of duties and taxes shall be set out in official publications. (4.4)</li> <li>• The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person. (9.1)</li> <li>• 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. (9.2)</li> </ul> <p>The WCO RKC defines 'customs law' as: "the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the Customs, and any regulations made by the Customs under their statutory powers;"</p> | The TF text obliges Members to publish much more information including information that is not of a general application (ref Article X of GATT) |
| 1.2     | Information available through Internet | <p><b>General Annex</b>, para 9.3: The Customs shall use information technology to enhance the provision of information (transitional standard, i.e. implementation period of 60 months)</p> <p>'Information technology' is not defined in the RKC.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | The reference to 'information technology' in RKC does not necessarily mean publication of information through the internet.                     |
| 1.3     | Enquiry Points                         | <b>General Annex</b> , Chapter 9 section B (paras 9.4 to 9.7)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                 |

| Article | Issue                                             | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | TF goes beyond WCO binding instruments in following key areas                                           |
|---------|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
|         |                                                   | <ul style="list-style-type: none"> <li>• 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. (9.4)</li> <li>• 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. (9.5)</li> <li>• When the Customs supply information, they shall ensure that they do not divulge details of a private or confidential nature affecting the Customs or third parties unless such disclosure is required or authorized by national legislation. (9.6)</li> <li>• When the Customs cannot supply information free of charge, any charge shall be limited to the approximate cost of the services rendered. (9.7)</li> </ul> |                                                                                                         |
| 1.4     | Notification                                      | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | TF Agreement would introduce entirely new binding obligation                                            |
| 2.1     | Interval between Publication and Entry into Force | No related provisions in WCO Revised Kyoto Convention (UNECE reports a link to Chapter 9, but the RKC does not refer to an interval between publication and entry into force)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | TF Agreement would introduce entirely new binding obligation                                            |
| 2.2     | Opportunity to Comment on New and Amended Rules   | No related provisions in WCO Revised Kyoto Convention (UNECE reports links to Chapters 1 and 9 of RKC, but Chapter 9 deals with 'Information, Decisions and Rulings supplied by the Customs', not with comments on new and amended rules. Chapter 1 has a general provision on consultations, see below on Article 2.3 of TF text)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | TF Agreement would introduce entirely new binding obligation                                            |
| 2.3     | Consultations                                     | <ul style="list-style-type: none"> <li>• 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</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Similar obligation as in TF Agreement, the TF Text adds 'as appropriate' whereas RKC says 'commensurate |

| Article | Issue           | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | TF goes beyond WCO binding instruments in following key areas |
|---------|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
|         |                 | commensurate with national provisions and international agreements. (1.3)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | with national provisions and international agreements'        |
| 3       | Advance Rulings | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | TF Agreement would introduce entirely new binding obligation  |
| 4.1     | Right of Appeal | <p><b>General Annex, Chapter 10 – Appeals in Customs Matters</b><br/> <i>Section A: Right of Appeal</i></p> <ul style="list-style-type: none"> <li>• National legislation shall provide for a right of appeal in Customs matters. (10.1)</li> <li>• Any person who is directly affected by a decision or omission of the Customs shall have a right of appeal. (10.2)</li> <li>• 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. (10.3)</li> <li>• National legislation shall provide for the right of an initial appeal to the Customs. (10.4)</li> <li>• 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. (10.5)</li> <li>• In the final instance, the appellant shall have the right of appeal to a judicial authority. (10.6)</li> <li>• An appeal shall be lodged in writing and shall state the grounds on which it is being made. (10.7)</li> </ul> <p><i>Section B: Forms and Grounds of Appeal</i></p> <ul style="list-style-type: none"> <li>• 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. (10.8)</li> </ul> | Similar language seems to be in TF text                       |

| Article | Issue                                                       | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | TF goes beyond WCO binding instruments in following key areas                                                                                                                                            |
|---------|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|         |                                                             | <ul style="list-style-type: none"> <li>• 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. (10.9)</li> </ul> <p><i>Section C: Consideration of Appeal</i></p> <ul style="list-style-type: none"> <li>• The Customs shall give its ruling upon an appeal and written notice thereof to the appellant as soon as possible. (10.10)</li> <li>• 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. (10.11)</li> <li>• 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. (10.12)</li> </ul> |                                                                                                                                                                                                          |
| 4.2     | Appeal Mechanism [in a Customs Union][that is a WTO Member] | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | This would be an innovation compared to WCO RKC. Could theoretically be used against EU but also against developing country customs unions, especially the ones that are currently developing in Africa. |
| 5.1     | [Import Alerts/Rapid Alerts]                                | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | TF Agreement would introduce entirely new binding obligation                                                                                                                                             |
| 5.2     | Detention                                                   | <b>Specific Annex H - Seizure or detention of the goods or means of transport</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | TF Agreement goes a step further compared with RKC. 'Furnish a                                                                                                                                           |

| Article | Issue                                                                                        | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | TF goes beyond WCO binding instruments in following key areas                                                                                                      |
|---------|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|         |                                                                                              | <ul style="list-style-type: none"> <li>When the Customs seize or detain goods and/or means of transport, they shall furnish the person concerned with a document showing:               <ul style="list-style-type: none"> <li>- the description and quantity of the goods and means of transport seized or detained;</li> <li>- the reason for the seizure or detention; and</li> <li>- the nature of the offence.</li> </ul> </li> </ul>                                                                                                                                                                                                                                     | document' can be done without knowledge of the importer, 'notify/inform' the importer means more certainty that the importer gets the information about detention. |
| 5.3     | [Test Procedures]                                                                            | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | TF Agreement would introduce entirely new binding obligation                                                                                                       |
| 6.1     | Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation | <p>The WCO Revised Kyoto Convention does not contain the word 'fee' and there is only one provision related to 'charges' (Specific Annex A, 1.19):</p> <p>Any expenses chargeable by the Customs in connection with :</p> <ul style="list-style-type: none"> <li>- accomplishment of Customs formalities prior to the lodgement of the Goods declaration outside the designated hours of business of the Customs;</li> <li>- unloading goods at a place other than the one approved for unloading; or</li> <li>- unloading goods outside the designated hours of business of the Customs,</li> </ul> <p>shall be limited to the approximate cost of the services rendered.</p> | TF Agreement would introduce entirely new binding obligation                                                                                                       |
| 6.2     | Penalty Disciplines                                                                          | <p><b>Specific Annex H, section on Administrative settlement of Customs offences</b></p> <ul style="list-style-type: none"> <li>The Customs shall take the necessary measures to ensure, where applicable, that as soon as possible after a Customs offence is discovered:               <ul style="list-style-type: none"> <li>- the administrative settlement of the latter is initiated; and</li> <li>- the person concerned is informed about the terms and conditions of</li> </ul> </li> </ul>                                                                                                                                                                           | The TF Agreement contains a provision on 'conflict of interest' which does not feature in RKC                                                                      |

| Article | Issue | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | TF goes beyond WCO binding instruments in following key areas |
|---------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
|         |       | <p>the settlement, the avenues of appeal and the time limits for such appeals. (19)</p> <ul style="list-style-type: none"> <li>• Where during clearance of the goods a Customs offence has been discovered which is regarded as of minor importance, it should be possible for the offence to be settled by the Customs office which discovers it. (20, Recommended Practice)</li> <li>• 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. (22)</li> <li>• 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. (23)</li> <li>• 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. (24)</li> <li>• 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. (25)</li> <li>• Goods that have been seized or detained, or the proceeds from the sale of such goods after deduction of any duties and taxes and all other charges and expenses incurred, shall be:           <ul style="list-style-type: none"> <li>- turned over to the person entitled to receive them as soon as</li> </ul> </li> </ul> |                                                               |

| Article | Issue                  | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | TF goes beyond WCO binding instruments in following key areas                                                                                                                                                                                                                                                                                                                                                                           |
|---------|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|         |                        | <p>possible after the Customs offence has been definitively settled; or<br/>- when this is not possible, held at their disposal for a specified period,<br/>provided that the goods have neither been condemned as forfeited or confiscated nor abandoned to the Revenue as a result of a settlement. (26)</p> <ul style="list-style-type: none"> <li>Any person implicated in a Customs offence that is the subject of an administrative settlement shall have the right of appeal to an authority independent of the Customs unless he has chosen to accept the compromise settlement. (27)</li> </ul>                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 7.1     | Pre-arrival Processing | <p><b>General Annex, Chapter 3 – Clearance and other Customs Formalities</b></p> <ul style="list-style-type: none"> <li>National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents <u>prior to the arrival of the goods</u>. (3.25)</li> <li>The Customs shall permit the lodgement of supporting documents by electronic means. (3.18)</li> <li>The Customs shall limit the data required in the Goods declaration to only such particulars as are deemed necessary for the assessment and collection of duties and taxes, the compilation of statistics and the application of Customs law. (3.12)</li> <li>In support of the Goods declaration the Customs shall require only those documents necessary to permit control of the operation and to ensure that all requirements relating to the application of Customs law have been complied with. (3.16)</li> </ul> | <ul style="list-style-type: none"> <li>TF Agreement (7.1.1.) adds ‘with a view to expediting the release of goods upon arrival’</li> <li>RKC only refers to lodgment of supporting document by electronic means, whereas the TF text refers ‘documents’</li> <li>The TF text allow less flexibility in the documents that can be required by Customs (RKC refers to ‘application of Customs law’, i.e. national legislation)</li> </ul> |
| 7.2     | Electronic payments    | <p>4.6. Standard<br/>National legislation shall specify the methods that may be used to pay the duties and taxes.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | TF Agreement would introduce entirely new binding obligation                                                                                                                                                                                                                                                                                                                                                                            |

| Article | Issue                                                                                                 | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | TF goes beyond WCO binding instruments in following key areas                                                                                                                                                                                                                                                                                                                                                      |
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|         |                                                                                                       | Specific Annex J, Chapter 1 – Travellers<br>19. Recommended practice<br>Wherever possible, the use of credit cards or bank cards should be acceptable as a means of payment for services rendered by the Customs and for duties and taxes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Specific Annex J only deals with Travellers                                                                                                                                                                                                                                                                                                                                                                        |
| 7.3     | Separation of Release from Final Determination and Payment of Customs Duties, Taxes, Fees and Charges | <b>General Annex, Chapter 3, section on Release of goods</b> <ul style="list-style-type: none"> <li>• Goods declared shall be released as soon as the Customs have examined them or decided not to examine them, provided that :               <ul style="list-style-type: none"> <li>- no offence has been found;</li> <li>- the import or export licence or any other documents required have been acquired;</li> <li>- all permits relating to the procedure concerned have been acquired; and</li> <li>- any duties and taxes have been paid or <u>that appropriate action has been taken to ensure their collection.</u> (3.40)</li> </ul> </li> <li>• 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. (3.41)</li> <li>• 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</li> </ul> | Current TF text is not very clear but goes beyond WCO RKC in some respects: <ul style="list-style-type: none"> <li>• Members are asked to adopt regulation</li> <li>• ‘sufficient guarantee’ is a slightly weaker compared to the phrase ‘ensure collection of any applicable duties and taxes’</li> <li>• Separation of release and final determination seems to become a main rule, not the exception</li> </ul> |



| Article | Issue                                                  | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | TF goes beyond WCO binding instruments in following key areas                                                                                                                                                                                                                         |
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|         |                                                        | <p>restrictions. (3.42)</p> <ul style="list-style-type: none"> <li>When an offence has been detected, the Customs shall not wait for the completion of administrative or legal action before they release the goods, provided that the goods are not liable to confiscation or forfeiture or to be needed as evidence at some later stage and that the declarant pays the duties and taxes and furnishes security to ensure collection of any additional duties and taxes and of any penalties which may be imposed. (3.43)</li> </ul>           |                                                                                                                                                                                                                                                                                       |
| 7.4     | Risk Management                                        | <p><b>General Annex, paras 6.3-6.6</b></p> <ul style="list-style-type: none"> <li>In the application of Customs control, the Customs shall use risk management. (6.3)</li> <li>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.(6.4)</li> <li>The Customs shall adopt a compliance measurement strategy to support risk management (6.5)</li> <li>Customs control systems shall include audit-based controls (6.6)</li> </ul> | The current TF text seems to ask a 'common' risk management system across Member's territory. A Member could run into legal troubles if it operates different risk management systems or if it operates a risk management in one border crossing, but not at another border crossing. |
| 7.5     | Post-clearance Audit                                   | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | TF Agreement would introduce entirely new binding obligation                                                                                                                                                                                                                          |
| 7.6     | Establishment and Publication of Average Release Times | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | TF Agreement would introduce entirely new binding obligation                                                                                                                                                                                                                          |
| 7.7     | Trade Facilitation Measures for Authorized Operators   | <p><b>General Annex, Chapter 3 Special procedures for authorized persons (3.32)</b></p> <p>For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs</p>                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>TF Agreement may make the implementation of an authorized operator scheme mandatory while it is an option in the RKC – Art 7.6.1. [shall][may]. In the case of</li> </ul>                                                                      |

| Article | Issue               | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | TF goes beyond WCO binding instruments in following key areas                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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|         |                     | <p>requirements and a satisfactory system for managing their commercial records, the Customs shall provide for:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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:</li> <li>• 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;</li> <li>• 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;</li> <li>• allowing the lodgment 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. (3.32, transitional standard)</li> </ul> | <p>'shall', the TF Agreement would create entirely new binding obligations</p> <ul style="list-style-type: none"> <li>• Article 7.6.4 would oblige WTO members to implement WCO's SAFE as well as the WCO Authorized Economic Operator Guidelines which are non-binding</li> <li>• TF Agreement does not a strong provisions on mutual recognition of authorized economic operators, which will be a major problem in the future, and a source of discrimination</li> <li>• TF Agreement is more specific about the 'criteria specified by the Customs' (Article 7.6.2 TF)</li> <li>• Article 7.6.3 adds 'trade facilitation measures' that are not mentioned in RKC: 'fewer physical inspections [as appropriate], 'rapid release time', ['deferred payment of duties, taxes, fees or charges], [use of comprehensive/reduced guarantees]</li> </ul> |
| 7.8     | Expedited Shipments | The Customs shall permit the lodging of the Goods declaration by electronic means. (3.21)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | TF Agreement would introduce a new binding obligation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

| Article | Issue                                             | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | TF goes beyond WCO binding instruments in following key areas                                                                                                                                                                                                                                                                                  |
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|         |                                                   | WCO RKC has some provisions on postal items (Specific Annex J, Chapter 2), e.g. 'The clearance of postal items shall be carried out as rapidly as possible.' (A "postal items" means letter-post and parcels, as described in the Acts of the Universal Postal Union currently in force, when carried by or for postal services)                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                |
| 7.9     | Perishable Goods                                  | <b>General Annex, Chapter 3:</b> <ul style="list-style-type: none"> <li>• 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 (3.34)</li> </ul>                                                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>• The text of Article 7.9.3 goes beyond the WCO RKC: priority to the examination of perishable goods 'with a view to expediting the release of such goods and preventing any avoidable loss or deterioration'</li> <li>• The other paragraphs would create entirely new binding obligations</li> </ul>  |
| 8.1     | [Prohibition of Consular Transaction Requirement] | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | TF Agreement would introduce entirely new binding obligation                                                                                                                                                                                                                                                                                   |
| 9       | Border Agency Cooperation                         | <b>General Annex, Chapter 3 - Clearance and other Customs Formalities</b> <ul style="list-style-type: none"> <li>• Where Customs offices are located at a common border crossing, the Customs administrations concerned shall correlate the business hours and the competence of those offices. (3.3)</li> <li>• At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls (3.4, transitional standard)</li> <li>• Where the Customs intend to establish a new Customs office or to convert an existing one at a common border crossing, they shall,</li> </ul> | TF Agreement - 'shall ensure.. cooperation / coordination' (9.1)<br>9.2 is between brackets and goes further by demanding 'shall endeavour.. harmonization'<br>9.3 is about cooperation with other Members with common borders and coordination of procedures at border crossing. Article 9.3(i)-(vii) is a non-exhaustive list of procedures. |

| Article | Issue                                                               | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | TF goes beyond WCO binding instruments in following key areas                                                                                                                                                                                                                                                                |
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|         |                                                                     | wherever possible, co-operate with the neighbouring Customs to establish a juxtaposed Customs office to facilitate joint controls. (3.5, transitional standard)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 'workings days' not mentioned in WCO<br>'Establishment of expedited processes' not in WCO                                                                                                                                                                                                                                    |
| 9bis    | [Declaration of Transshipped or in Transit Goods][Domestic Transit] | <p><b>Specific Annex E - Customs Transit</b></p> <ul style="list-style-type: none"> <li>• The Customs shall allow goods to be transported under Customs transit in their territory :               <ul style="list-style-type: none"> <li>(a) from an office of entry to an office of exit;</li> <li>(b) from an office of entry to an inland Customs office;</li> <li>(c) from an inland Customs office to an office of exit; and</li> <li>(d) from one inland Customs office to another inland Customs office.</li> </ul> </li> <li>(1.2)</li> <li>• Goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that any security required has been furnished. (1.3)</li> </ul> | <p>The WCO RKC does not contain the concept of 'most convenient customs office' for purposes of declaring goods for transit. RKC affords government the flexibility to designate offices of entry (and exit).</p> <p>WCO RKC has no provisions on transshipment</p> <p>TF Agreement would create new binding obligations</p> |
| 10.1    | Review of Formalities and Documentation Requirements                | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | TF Agreement would introduce entirely new binding obligations                                                                                                                                                                                                                                                                |
| 10.2    | Reduction/Limitation of Formalities and Documentation Requirements  | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | TF Agreement would introduce entirely new binding obligations                                                                                                                                                                                                                                                                |
| 10.3    | Acceptance of Copies                                                | WCO RKC has only two provisions that deal with handing in copies of original documents:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | TF Agreement would introduce entirely new binding obligations                                                                                                                                                                                                                                                                |

| Article | Issue                                        | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | TF goes beyond WCO binding instruments in following key areas                                                                                                                                                                                                                                                                                                        |
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|         |                                              | <ul style="list-style-type: none"> <li>The Customs shall require the lodgement of the original Goods declaration and only the minimum number of copies necessary (3.15)</li> <li>The Customs shall reduce, as far as possible, the number of copies of the declaration of arrival required to be submitted to them. (Specific Annex J, 3.10)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                      |
| 10.4    | Use of International Standards               | <p><b>Preamble</b><br/>         RECOGNIZING that such simplification and harmonization can be accomplished by applying, in particular, the following principles : (..)</p> <ul style="list-style-type: none"> <li>the implementation of relevant international standards,</li> </ul> <p><b>General Annex, 3.11</b><br/>         The contents of the Goods declaration shall be prescribed by the Customs. The paper format of the Goods declaration shall conform to the UN-layout key.<br/>         For automated Customs clearance processes, the format of the electronically lodged Goods declaration shall be based on international standards for electronic information exchange as prescribed in the Customs Co-operation Council Recommendations on information technology.</p> | <p>The TF Agreement would go beyond WCO RKC.</p> <ul style="list-style-type: none"> <li>'encouraged to use' instead of 'recognizing'</li> <li>(in brackets). The rebuttable presumption that international standards do not create an unnecessary obstacle to trade is problematic as many developing countries do not take part in standards formulation</li> </ul> |
| 10.5    | Single Window                                | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | TF Agreement would introduce entirely new binding obligations                                                                                                                                                                                                                                                                                                        |
| 10.6    | Pre-shipment [and Post-shipment Inspections] | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | TF Agreement would introduce entirely new binding obligations                                                                                                                                                                                                                                                                                                        |
| 10.7    | [Use of Customs Brokers]                     | <b>General Annex, Chapter 8 (Relationship between the Customs and Third Parties)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                      |

| Article | Issue                                                             | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | TF goes beyond WCO binding instruments in following key areas |
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|         |                                                                   | <ul style="list-style-type: none"> <li>• 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. (8.1)</li> <li>• 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. (8.2)</li> <li>• 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. (8.3)</li> <li>• A person designated as a third party shall have the same rights as the person who designated him in those matters related to transacting business with the Customs. (8.4)</li> <li>• The Customs shall provide for third parties to participate in their formal consultations with the trade. (8.5)</li> <li>• The Customs shall specify the circumstances under which they are not prepared to transact business with a third party. (8.6)</li> <li>• The Customs shall give written notification to the third party of a decision not to transact business. (8.7)</li> </ul> |                                                               |
| 10.8    | Common Border Procedures and Uniform [Documentation Requirements] | No specific related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | TF Agreement would introduce new binding obligations          |
| 10.9    | [Uniform Forms                                                    | No specific related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | TF Agreement would introduce new                              |

| Article | Issue                                                      | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | TF goes beyond WCO binding instruments in following key areas                                                                                                                          |
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|         | and Documentation Requirements Relating to Clearance]      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | binding obligations                                                                                                                                                                    |
| 10.10   | Option to Return Rejected Goods to the Exporter            | No related provisions in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | TF Agreement would introduce entirely new binding obligations                                                                                                                          |
| 10.11   | Temporary Admission of Goods/Inward and Outward Processing | <b>Specific Annex G, Temporary Admission<br/>Specific Annex F, Chapter 1 (Inward Processing) and Chapter 2 (Outward Processing)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>• Temporary admission: seems to be along the lines as RKC</li> <li>• Inward and Outward Processing: RKC has more detailed provisions</li> </ul> |
| 11      | Freedom of Transit                                         | <p><b>Specific Annex E – Customs Transit (only ‘Standards’ are presented here, not ‘Recommended Practices’, except no. 26 see last bullet point)</b></p> <ul style="list-style-type: none"> <li>• Customs transit shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex. (1)</li> <li>• The Customs shall allow goods to be transported under Customs transit in their territory :               <ul style="list-style-type: none"> <li>(a) from an office of entry to an office of exit;</li> <li>(b) from an office of entry to an inland Customs office;</li> <li>(c) from an inland Customs office to an office of exit; and</li> <li>(d) from one inland Customs office to another inland Customs office.</li> </ul> </li> <li>(2)</li> <li>• Goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that any security required has</li> </ul> | TF Agreement would go far beyond WCO RKC                                                                                                                                               |

| Article | Issue | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | TF goes beyond WCO binding instruments in following key areas |
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|         |       | <p>been furnished. (3)</p> <ul style="list-style-type: none"> <li>• National legislation shall specify the persons who shall be responsible to the Customs for compliance with the obligations incurred under Customs transit, in particular for ensuring that the goods are produced intact at the office of destination in accordance with the conditions imposed by the Customs. (4)</li> <li>• Any commercial or transport document setting out clearly the necessary particulars shall be accepted as the descriptive part of the Goods declaration for Customs transit and this acceptance shall be noted on the document.(6)</li> <li>• The Customs at the office of departure shall take all necessary action to enable the office of destination to identify the consignment and to detect any unauthorized interference. (8)</li> <li>• When a consignment is conveyed in a transport-unit and Customs sealing is required, the Customs seals shall be affixed to the transport-unit itself provided that the transport-unit is so constructed and equipped that :           <ul style="list-style-type: none"> <li>(a) Customs seals can be simply and effectively affixed to it;</li> <li>(b) no goods can be removed from or introduced into the sealed part of the transport-unit without leaving visible traces of tampering or without breaking the Customs seal;</li> <li>(c) it contains no concealed spaces where goods may be hidden; and</li> <li>(d) all spaces capable of holding goods are readily accessible for Customs inspection.</li> </ul> <p>The Customs shall decide whether transport-units are secure for the purposes of Customs transit. (10)</p> </li> <li>• If a consignment is, in principle, to be conveyed under Customs seal and the transport-unit cannot be effectively sealed, identification</li> </ul> |                                                               |



| Article | Issue | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | TF goes beyond WCO binding instruments in following key areas |
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|         |       | <p>shall be assured and unauthorized interference rendered readily detectable by :</p> <ul style="list-style-type: none"> <li>- full examination of the goods and recording the results thereof on the transit document;</li> <li>- affixing Customs seals or fastenings to individual packages;</li> <li>- a precise description of the goods by reference to samples, plans, sketches, photographs, or similar means, to be attached to the transit document;</li> <li>- stipulation of a strict routing and strict time limits; or</li> <li>- Customs escort. (12)</li> </ul> <p>The decision to waive sealing of the transport-unit shall, however, be the prerogative of the Customs alone.</p> <ul style="list-style-type: none"> <li>• When the Customs fix a time limit for Customs transit, it shall be sufficient for the purposes of the transit operation. (13)</li> <li>• Only when they consider such a measure to be indispensable shall the Customs :           <ul style="list-style-type: none"> <li>(a) require goods to follow a prescribed itinerary; or</li> <li>(b) require goods to be transported under Customs escort. (15)</li> </ul> </li> <li>• Customs seals and fastenings used in the application of Customs transit shall fulfil the minimum requirements laid down in the Appendix to this Chapter. (16)</li> <li>• A change in the office of destination shall be accepted without prior notification except where the Customs have specified that prior approval is necessary. (19)</li> <li>• Transfer of the goods from one means of transport to another shall be allowed without Customs authorization, provided that any Customs seals or fastenings are not broken or interfered with.(20)</li> <li>• National legislation shall not, in respect of the termination of a</li> </ul> |                                                               |

| Article | Issue               | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | TF goes beyond WCO binding instruments in following key areas                                                                                                                                                                                                             |
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|         |                     | <p>Customs transit operation, require more than that the goods and the relevant Goods declaration be presented at the office of destination within any time limit fixed, without the goods having undergone any change and without having been used, and with Customs seals, fastenings or identification marks intact.(23)</p> <ul style="list-style-type: none"> <li>• As soon as the goods are under its control, the office of destination shall arrange without delay for the termination of the Customs transit operation after having satisfied itself that all conditions have been met. (24)</li> <li>• Contracting Parties should give careful consideration to the possibility of acceding to international instruments relating to Customs transit. When they are not in a position to accede to such international instruments they should, when drawing up bilateral or multilateral agreements with a view to setting up an international Customs transit procedure, take account therein of Standards and Recommended Practices in the present Chapter. (26, Recommended Practice)</li> </ul> |                                                                                                                                                                                                                                                                           |
| 12      | Customs Cooperation | <p><b>General Annex, para 6.7</b><br/>The Customs shall seek to co-operate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control.</p> <p><b>WCO Nairobi Convention of 1977, Annex II</b> -Assistance, on request, in the assessment of import or export duties and taxes<sup>5</sup><br/>1. At the request of the Customs administration of a Contracting Party which has good reason to believe that a serious Customs offence has</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <p>WCO Nairobi Convention of 1977, Annex II has a limited number of Contracting Parties, mainly developing countries)</p> <p>Besides that, the International Convention on Mutual Administrative Assistance in Customs Matters - Johannesburg Convention (2003) - has</p> |

<sup>5</sup> [http://www.wcoomd.org/en/about-us/legal-instruments/~/\\_media/574B25F13D9C4D4BA44AB4CD50A967C5.ashx](http://www.wcoomd.org/en/about-us/legal-instruments/~/_media/574B25F13D9C4D4BA44AB4CD50A967C5.ashx)

| Article | Issue | Related provision in WCO Revised Kyoto Convention                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | TF goes beyond WCO binding instruments in following key areas                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|         |       | <p>been committed in its country, the Customs administration of the requested Contracting Party shall communicate all available information which may help to ensure the proper assessment of import or export duties and taxes</p> <p>2. A Contracting Party shall be taken to have fulfilled its obligations in this respect if, for example, it communicates as appropriate in response to a request the following information or documents available to it :</p> <p>(a) in respect of the value of goods for Customs purposes : the commercial invoices presented to the Customs of the country of exportation or importation or copies of such invoices, certified or not by the Customs, as the circumstances may require; documentation showing current export or import prices; a copy of the declaration of value made on exportation or importation of the goods; trade catalogues, price lists, etc. published in the country of exportation or in the country of importation;</p> <p>(b) in respect of the tariff classification of goods : analyses carried out by laboratory services to determine the tariff classification of the goods; the tariff description declared on importation or exportation;</p> <p>(c) in respect of the origin of goods : the declaration of origin made on exportation, when such declaration is required; the Customs status of the goods in the country of exportation (Customs transit Customs warehouse, temporary admission, free zone, free circulation, exported under drawback, etc.).</p> | <p>not yet entered into force. The only 3 Contracting Parties are: Albania, India and South Africa</p> <p>There are several bilateral customs cooperation agreements, which are modeled on WCO's model bilateral agreement on mutual administrative assistance in customs matters. For example EU and India have signed such a bilateral. Main differences between TF and this bilateral agreement are:</p> <ul style="list-style-type: none"> <li>• <u>Information to be requested</u>: the EU-India bilateral is very general on the form in which information is to be communicated (Article 15) while Article 12.4 TF is very specific (and borrows from WCO Nairobi Convention),</li> <li>• <u>No time limit on information to be communicated by requested authority</u></li> <li>• <u>Language</u>: EU-India bilateral - requests in official language of requested authority or language acceptable to that authority vs Art. 12.6 requests in mutually</li> </ul> |

| Article | Issue | Related provision in WCO Revised Kyoto Convention | <b>TF goes beyond WCO binding instruments in following key areas</b> |
|---------|-------|---------------------------------------------------|----------------------------------------------------------------------|
|         |       |                                                   | acceptable language or one of the three official WTO languages       |

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**HOW FAR DOES THE TRADE FACILITATION NEGOTIATION TEXT (REV.16) GO BEYOND THE WCO  
REVISED KYOTO CONVENTION (RKC)?**

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