



MANAGEMENT COMMITTEE  
Revised Kyoto Convention  
6<sup>th</sup> Session

PO0033E1a

-  
19 - 20 March 2009  
-

Brussels, 20 February 2009

**INTERNATIONAL CONVENTION ON THE SIMPLIFICATION  
AND HARMONIZATION OF CUSTOMS PROCEDURES  
(REVISED KYOTO CONVENTION)**

**CHAPTERS 2 AND 3 OF SPECIFIC ANNEX K ON RULES OF ORIGIN**

**SECRETARIAT NOTE**

Item IV on Agenda

**1. Background**

1. At its 5<sup>th</sup> Meeting in November 2008, the Management Committee considered a request by India concerning Chapters 2 (Documentary evidence of origin) and 3 (Control of documentary evidence of origin) of Specific Annex K relating to Origin; India's proposal was that the possibility of drafting Guidelines to these Chapters be envisaged (see document PO0027). At the end of the discussions, the Committee adopted this proposal and instructed the Secretariat to prepare draft Guidelines to Chapters 2 and 3 of Specific Annex K which were more related to procedures, for submission to the Committee at its next session.
2. The Secretariat has taken note of this decision but wishes to begin by providing the Contracting Parties with a more detailed analysis of these issues, as a means of ensuring that the work done is appropriate and is completely in line with Members' requirements.

**2. Further analysis of Chapters 2 and 3 of Specific Annex K**

3. It is worth noting at the outset that Annex K reproduces unchanged the original text of the provisions of Annexes D1, D2 and D3 to the 1973 Kyoto Convention. This means that these Annexes were negotiated almost 40 years ago, at a time when rules of origin had not developed to the point they have now reached. The environment has, of course, changed dramatically with the proliferation of trade agreements and the ongoing WTO negotiations concerning the harmonization of non-preferential rules of origin, and this needs to be taken into account during the preparation of any new instrument.
4. Bearing in mind the developments which have taken place in this area the Secretariat wonders whether, before undertaking the drafting of new Guidelines, it might

be preferable to begin by examining the legal texts of these two Chapters and checking whether or not any modifications are required. Updating the legal provisions would be a means of arriving at appropriate general principles, in terms of both the preferential and the non-preferential frameworks. This calls for a more detailed analysis of Chapters 2 and 3 of Annex K.

### ***Chapter 2: Documentary evidence of origin***

5. While certain broad principles laid down in the Standards and Recommended Practices of this Chapter are still valid, much of the Chapter is now obsolete because it does not distinguish the documentary evidence used in the non-preferential domain from that required for preferential origin purposes. This distinction between preferential and non-preferential is fundamental, because the requirement, issuing, types, content, use and management, as well as the control, of evidence for non-preferential and preferential origin are different. For these reasons, evidence of non-preferential origin needs to be dealt with first, before moving on to evidence of preferential origin.

#### Non-preferential origin evidence

6. It should be noted that until such time as the harmonization of non-preferential rules of origin has been completed, the probative value of a non-preferential origin certificate cannot be guaranteed. Such a certificate can merely serve as an indication for the importing country, which will have its own non-preferential rules of origin which may well be different from those of the exporting country. Therefore, the Committee may wish to consider whether it is advisable to start preparing Guidelines on the issuing and use of non-preferential origin evidence at this time. There are two further points which might be worth bearing in mind here :

- the Marrakesh Agreement (WTO), on which the ongoing harmonization work is based, deals only with the rules themselves and does not address the issue of documentary evidence;
- Document OC0067, drafted by the Secretariat in 2001<sup>1</sup> (on the basis of a questionnaire to which 103 Members responded), revealed that the non-preferential origin certificates which are commonly issued by Chambers of Commerce are being used less and less for Customs purposes (however they are widely used by banks for letters of credit). It also emerged from this document that the competent authorities responsible for issuing the certificates are in favour of maintaining the status quo, and that a review of the situation could be undertaken once the harmonization of the non-preferential rules has been completed.

#### Preferential origin evidence

7. In Chapter 2 of Specific Annex K, only Recommended Practice 2 includes the term “preferential”. To be specific, it states that “documentary evidence of origin should be required only when it is necessary for the application of preferential Customs duties, .....

---

<sup>1</sup> See document OC 0067 of 10 December 2001 ( 20<sup>th</sup> Session of the Technical Committee on Rules of Origin) on the Members Web site

8. Currently, there are around 300 free trade agreements which incorporate preferential rules of origin. In some agreements only a certificate of origin or a declaration of origin on the invoice is required, whereas others make provision for the pre-authentication of certificates, or for long-term certificates. It is also important to note that many studies and trials are currently taking place with electronic certificates (transfer of paper documents or creation of electronic messages in conjunction with electronic clearance procedures).
9. It should also be noted that in addition to the fact that there are so many different types of rules of origin in the various agreements, there are significant differences when it comes to the arrangements for issuing preferential origin evidence. In most cases it is Customs which issues evidence of origin or sets up an authorized exporters procedure (accreditation with advance control of the origin, frequent consignments, etc....). However, some Members have assigned the task of issuing preferential origin certificates to the Chambers of Commerce or to authorized bodies. Finally, in some countries the Ministries of Trade, Industry or Agriculture may, as appropriate, retain responsibility for issuing evidence of origin.

### ***Chapter 3 : Control of documentary evidence of origin***

10. This Chapter deals with administrative assistance in the field of origin, and establishes the principle of reciprocity. This very general text makes no distinction between non-preferential and preferential origin, and provides a highly detailed account of how to proceed when exchanging information. It should also be noted that the WCO has other instruments for the exchange of information, such as the Nairobi or Johannesburg Conventions. Also, where preferential rules are concerned a great many bilateral and regional agreements include, in the part related to origin (origin protocol), articles on administrative co-operation for the control of documentary evidence of origin.
11. Attention must, however, be drawn to the fact that this assistance may prove problematic until such time as the non-preferential rules have been harmonized. This is because if country A, which is currently applying its own non-preferential rules, requests assistance from country B, the latter will be able to indicate whether or not the goods are originating, but only in terms of its own non-preferential rules of origin.

### **3. Conclusion**

12. With reference to the analysis set out above, the Contracting Parties are requested to **inform the Secretariat** as to whether or not it would be advisable to examine the legal texts of these two Chapters and check whether any modifications are required in order to arrive at general principles which are appropriate. Moreover, where new Guidelines are concerned, more specific indications are needed regarding the approach to be adopted. In particular, a decision is needed on whether to embark upon the preparation of Guidelines on the issuing and use of non-preferential origin evidence, or whether it might be advisable to take this matter up again once the WTO's harmonization work has been completed.