



MANAGEMENT COMMITTEE
Revised Kyoto Convention
6th Session

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Brussels, 18 February 2009.

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

**REVIEW OF THE REVISED KYOTO CONVENTION : PROPOSAL BY INDIA, NEW
ZEALAND AND THE NETHERLANDS**

SECRETARIAT NOTE

Item V on Agenda

1. Under the terms of Article 6, paragraph 6 of the Revised Kyoto Convention, New Zealand, the Netherlands and India have sent the Secretariat similar requests for the inclusion of items on the Agenda for this meeting. In particular, these Contracting Parties suggest that a comprehensive review of the Revised Kyoto Convention be undertaken, in the light of the developments which have taken place in the trading environment and in the functions fulfilled by Customs over the past decade. The texts of their requests, including the reasons therefor, are reproduced below.

New Zealand

“New Zealand would like to propose that a ‘Review of the Revised Kyoto Convention [RKC]’ be added to the Agenda of the Revised Kyoto Convention Management Committee. The reasons for this are:

– Ten years have passed since the RKC was adopted and best-practice procedures have changed significantly since that time. We think that a review which examines whether this instrument remains up to date would be a valuable exercise. The work on the theme of Customs in the 21st Century continues to move forward and an up to date and relevant RKC would form a strong foundation for this work. On the other hand, if the RKC is seen to be out of date, it reduces both the credibility and relevance of this work.

– Areas that should be considered include:

- *The SAFE Framework*
- *Developments in the WTO Trade Facilitation Negotiations*

○ *Coordinated Border management/single window initiatives*

– A revision of the RKC would strengthen the WCO's position on the international stage. As the only comprehensive international convention on trade facilitation and Customs, the RKC has already been referred to extensively in the WTO Doha Round. As the Doha negotiations have stalled, this provides us with an opportunity to update customs best-practice procedures. These could be used to inform future negotiations at the WTO.

– A comprehensive review would also enable WCO Members which are not Contracting Parties to the RKC to share any difficulties they may be encountering with certain provisions and/or procedures in the Convention. These concerns would be taken into consideration in the review process.

It is worth noting that the RKC came into force in February 2006 so the three years that the original contracting parties had to become fully compliant is almost complete.

We would be interested in your views on what outcome we could expect from this item being discussed at the upcoming Kyoto Management Committee. A possible outcome could be agreement from delegates that the Secretariat prepare an options paper for discussion/decision at the PTC meeting later in the year.

Another question to consider would be the development of a possible time-line. In this regard I wonder what decisions need to be made by Council and what can be left to Kyoto Management Committee delegates. We don't want to get too far ahead of ourselves; however it is important that we think very carefully about the process and timings."

Netherlands

"1. The Revised Kyoto Convention (RKC) was adopted by the Council of the WCO in June 1999 after a five year review cycle and came into force in February 2006 after 40 Contracting parties to the 1973 Kyoto Convention had signed the Protocol of amendment revising the Kyoto Convention. Currently there are 59 Contracting Parties to the RKC, which is almost the same number (63) of Contracting Parties to the 1973 Kyoto Convention.

2. The RKC is the blueprint for modern, efficient and effective Customs procedures in the 21st Century. However, only two years after the RKC was adopted the world changed after the attacks in the United States in September 2001. Likewise the Customs environment changed and in the role of protecting society Customs was from then on also involved in the protection of national security. Customs had to adapt to their new role and new security requirements were introduced which could bring the relation between control and facilitation out of balance.

3. Although the principles of the RKC cover a number of these new measures, such as risk management, it became apparent that the RKC did not cover all new measures related to security.

For obvious reasons, during the first years after the RKC came into force there was no strong desire among the Contracting Parties to the RKC to amend the legal text of the Convention in a period where Contracting Parties were implementing the RKC into their national legislation and while other Members of the WCO were making preparations for

accession to the RKC. As a compromise, the Guidelines to the RKC were, where feasible, amended to accommodate the need to include some of the measures related to security, such as modern seal techniques

4. Even though the legal text of the RKC remained unchanged, a number of initiatives within the WCO and other international organizations have resulted in new instruments that cover the new requirement related to security. This made it possible for Customs, other governmental agencies and the trade to adapt to the new security environment that also satisfied the needs for harmonised procedures and practices. In June 2005 session of the WCO Council the Director General of Customs adopted the Safe Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework). More than 132 Members have already signed a letter of intent to implement the Safe Framework. The SAFE Framework contains Standards and Guidelines which covers, among others, the harmonisation of pre-arrival/pre-departure cargo information requirements, the advanced use of risk management, a focus on export controls, including outbound inspections and benefits for the legitimate trade based on the concept of the Authorised Economic Operators (AEO).

5. The SAFE Framework contains not exclusively security measures as such, but it includes also the facilitation aspects related to the new security requirements, which covers an important task of the WCO to work towards efficient and predictable Customs procedures and the facilitation of legitimate trade. In addition to the SAFE Framework, to facilitate the implementation of several SAFE Framework instruments, Guidelines have been developed, such as the International Supply Chain Guidelines and the AEO Guidelines, including specific reference to Small and Medium Enterprises.

6. The importance of the SAFE Framework is not under discussion; its value has been proved with the implementation of its instruments in a great number of the Customs administrations. At the same time however, it must be acknowledged that the SAFE Framework is a non-binding instrument while the Standards in the General Annex and the Specific Annexes of the RKC are binding to the Contracting Parties. One should not lose sight of the importance of the RKC being the main international instrument with mainly binding provisions which guarantees a maximum of harmonisation and simplification of Customs procedures, in other words facilitation.

7. Most of the instruments included in the SAFE Framework, although developed from a security point of view, cover also the facilitation aspects of the new security measures. The SAFE Framework makes in its title not only a reference to security but also to facilitation. Having said this, it is essential that further consideration should be given to the necessity to incorporate parts of the SAFE Framework into the legal texts of the RKC. In addition, where the Guidelines to the RKC recently have been amended, it is clear that this "temporary measure" should not lead to a situation where parts of the Guidelines are not covered by an appropriate legal provision. Since the fifth session of the RKC Management Committee a change can be seen as a result of which Contracting Parties and other Members of the WCO endorse the viewpoint to amend the legal provisions of the RKC to bring them more in line with the new security requirements.

8. After the establishment of the RKC in 1999 a number of new Customs concepts have been developed, not only related to security, also the developments in the field of information technology leading to new automated applications. A number of procedures,

concepts and practices deserve a place in the RKC. With all the new instruments the RKC will ensure again a balance between the different functions of Customs, namely providing facilitation for legitimate trade while exercising appropriate controls for the protection of society. A number of these items have already been included in the Recommendations of the United Nations, the facilitation instruments of the International Maritime Organization and the European Civil Aviation Conference. Further development of the facilitation instruments of the International Civil Aviation Organization in these areas is to be expected. Also the Customs legislation of a number of Members of the WCO is already aligned to the new security requirements and the matching facilitation measures, possibly developed on the basis of the concepts of the SAF Framework.

9. We suggest that the procedures mentioned below, concepts and practices could be included in the RKC.

Advanced cargo information requirements.

The first item is the requirement for advanced cargo information requirements (Pre-arrival/pre-departure information). Standard 3.25 of the General Annex makes reference to the advanced lodgement of information; Chapter 3 of the General Annex is related to Clearance and other formalities and covers in general the Customs procedures, such as import, export or transit. Providing advanced information is generally not considered to be a Customs procedure. This relates to Specific Annex A, Chapter 1, on the Formalities prior to the lodgement of a goods declaration. Normally this would be the most appropriate place for a provision related to the requirements for advanced information, but this Chapter is only accepted by a small number of Contracting Parties. On the other hand it would make the acceptance easier, while placing the advanced cargo requirements in the General Annex would require the acceptance by all Contracting parties.

Single Window.

An important concept to facilitate the exchange of information between business and Customs is the Single window. The Single window makes it possible that all information required by regulatory agencies dealing with border crossing, including Customs, can be lodged at a single point and at the same time. The Single Window is an effective tool for the streamlining of the required information, but it will not work without the necessary data harmonization. The Single Window concept should be covered in Chapter 7 of the General Annex as a concept applicable to the electronic exchange of information between Customs and business. The Single Window would enable Cross Border Regulatory Agencies to make arrangements for coordinated risk management and coordinated controls. This concept is often referred to as One Stop Shop. Transitional Standard 3.35 provides already for coordinated examinations, possibly at the same time.

Authorized Economic Operator

The AEO is an important instrument to facilitate international trade as counterpart for the new strengthened security requirements. An AEO has a high degree of security standards in respect of their role in the international supply chain. It will, among other benefits, in return provide for the faster clearance of goods by Customs, for example through reduced examination rates. It is important the concept of the AEO is included in the RKC, either connected to Standard 3.32 on special procedures for authorized persons or Chapter 8 on the relation between Customs and third parties. Guidelines for the procedures involved in the process of application have been developed and could be transferred to the Guidelines of Chapter 3 or Chapter 8 of the General Annex.

Data harmonisation and standardisation

At the time RKC was adopted it was considered to be sufficient to make a general reference in Standard 7.2 of Chapter 7 of the General Annex to the use of relevant international accepted standards for the harmonisation and standardisation of data elements. However, after the adoption of the RKC in 1999 much effort has been put in the development of the WCO Data Model. In the accompanying Guidelines to Chapter 7 the WCO Data Model has already been included and explained in more detail. Nevertheless, a specific reference to the WCO Data Model as an example of such an international standard would put more emphasis on the importance of the WCO Data Model for Customs, other Cross Border Regulatory Agencies and business.

Other items to be considered

In the past years other than the above mentioned items passed in review, which could be discussed for possible inclusion in the legal text of the RKC, such as:

- more emphasis on export;*
- mutual recognition of controls;*
- mutual recognition of AEO programs;*
- cooperation with other Cross Border Regulatory Agencies;*
- the international trade supply chain and integrated supply management;*
- authorized supply chain and smart and secure trade lanes;*
- non-intrusive inspections;*
- advanced sealing techniques.*

10. The purpose of this document is to provide material for discussion to bring the RKC up to date as the international instrument for the harmonization and standardization of Customs procedures. No specific drafts for new or amended (Transitional) Standards and Recommended Practices have been prepared to make it possible to have preliminary discussions on the proposals in general to determine to what extent inclusion in the legal text of the RKC is desirable.”

India

“Please refer to your e-mail requesting the Contracting Parties to communicate to the WCO Secretariat any amendment proposals under Article 6, Paragraph 6 of the Revised Kyoto Convention.

It has been noted that hitherto the Management Committee has taken steps to supplement the guidelines to the Revised Kyoto Convention and add best practices to some of the procedures set out in its various Annexes.

The Indian Customs Administration notes that it is now 10 years since the legal texts and guidelines were finalized and adopted by the Council. The last effort to revise the Kyoto Convention was taken after 25 years. It is felt that with a fairly large number of Contracting Parties already on board, it is appropriate to ask the Management Committee to consider whether a review of the entire Convention and the guidelines should be taken up to ensure that the Convention meets the current practices. My Administration is also of the view that some of the guidelines would also need to be examined in detail. Valuable contributions could be made by Members in the process of accession or having already acceded who have found that more detailed implementation instructions would

be useful in making the guidelines more comprehensive. These could assist Contracting Parties, both current and potential, by providing substantive inputs where doubts have arisen on the scope of the legal provisions and its implementation during accession.

Our Administration would appreciate if the essence of our proposal is suitably drafted for consideration by the Management Committee at its next meeting.”

2. The Secretariat is very much in favour of such a process, and wishes to draw the Contracting Parties' attention to the importance of the proposed initiative. This would provide an assurance that the RKC is up-to-date and can continue to be regarded as a firm foundation for effective, modern, 21st Century Customs procedures. It would also be a means of consolidating the WCO's position vis-à-vis its institutional partners and, thereby, the position of Customs as an essential partner in international trade.
3. Moreover, this would give those WCO Members that are not Contracting Parties to the RKC a unique opportunity to put forward their views and explain to the Management Committee the difficulties they are facing with their accession processes. On the basis of this input, the Contracting Parties could then provide further explanations on how to interpret the legal text and, if appropriate, envisage amending the provisions of the Convention in order to secure a higher level of accessions to this instrument among WCO Members.
4. As has been pointed out by New Zealand, if the Management Committee does decide to undertake this fundamental task it will be necessary to think very carefully about how to arrive at the right working method and set time limits for completion. In this connection, the Committee will need to look first at the question of whether this review is to cover the entire Convention or would be confined to the General Annex. Bearing in mind that a thorough review of the General Annex would be an essential part of the review process, the Contracting Parties will also need to agree that the provisions of the General Annex will have to undergo a methodical and detailed analysis. On this subject it is worth noting that during the revision of the 1973 Convention¹, many Members volunteered to take on the task of analyzing annexes and drafting texts for them. There is no doubt that this strong involvement of the Members in the revision work was a major factor in the success of that enterprise.
5. It will also be important to ensure that this review takes into account all of the developments which have taken place in the Customs environment in recent years. The request from the Netherlands is very useful in this respect, as it already identifies a substantial number of new initiatives to be taken into consideration. Where this issue is concerned, the Contracting Parties will therefore need to make sure that all developments which have taken place and which may have an impact on the Convention are taken into account.
6. On the basis of the foregoing, the Management Committee **is invited to consider** the request made by these Contracting Parties and **decide what should be done about it**. If the Management Committee gives its agreement to a thorough review

¹ A revision process which took place from 1995 to 1999.

of the RKC, the Contracting Parties will need **to agree a detailed plan on how this work will proceed**. It could be envisaged that the first phase would be to complete a gap analysis for consideration by Contracting Parties. This in turn could then lead to a second phase where consideration of how the content of the convention may be amended, where deemed necessary.
