



MANAGEMENT COMMITTEE

PO0072E1b

Revised Kyoto Convention

13th Session

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6 – 7 November 2014

Brussels, 28 October 2014.

**REPORT OF THE CORRESPONDENCE DRAFTING GROUP ON THE POSSIBLE
REVISION OF THE REVISED KYOTO CONVENTION**

(Item V on Agenda)

1. In accordance with article 6, paragraph 5 of the Revised Kyoto Convention (RKC), it is the competence of the RKC Management Committee (RKC/MC) to recommend to the contracting parties any amendment to the Convention. Furthermore, the article, under paragraph 6, emphasizes that the competent administrations of the Contracting Parties shall communicate to the Secretary General of the Council, amongst other, requests for the inclusion of items on the Agenda of the sessions of the RKC/MC, including proposals for amending the Convention.
2. In line of the above, the RKC/MC has, on some occasions, discussed the possibility of revising or updating the Convention in the light of recent developments in the Customs and trading environment. In parallel, though, the RKC/MC has also updated many sections of the Guidelines to the Convention in order to reflect changes in current practices and future trends. As a matter of example, some of the RKC Guidelines to the General and Specific Annexes including Guidelines related to IT, Rules of origin, Postal traffic and Relief consignments were among the more recent updating work.
3. The WCO Secretariat, meanwhile, supported by Members has developed many additional tools and initiatives with a view to complementing the RKC in order to ensure that this Convention remains the blueprint for modern and efficient Customs procedures in the 21st century. The tools and initiatives were welcomed by the WCO Council and Policy Commission, particularly the Economic Competitive Package (ECP) which encompasses all other WCO instruments, tools and standards relating to supply chain facilitation and security.
4. However, a proposal to review and potentially amend the Convention was raised again at the 12th Session of RKC/MC, held on 12-13 November 2013. The Committee decided to create a Correspondence Drafting Group, comprised of willing and interested Contracting Parties, to draft a questionnaire aimed at gathering information from Contracting and non-Contracting Parties on the possible need to amend the Convention.

5. The Correspondence Drafting Group, chaired by Mr. Van Kuik (The Netherlands), held three meetings at the WCO Headquarters and produced a draft concept note together with a questionnaire. It also agreed to present the documents to the RKC/MC for further consideration and approval before sending them to Customs administrations (Contracting as well as non-Contracting parties).
6. The concept note provides historical background and a general overview of the RKC including the possibility of potential amendments to incorporate some of the new developments in the global trade supply chain and Customs environment. The questionnaire, at the same time, envisages exploring Members' interest with regard to obstacles faced by non-Contracting Parties in acceding to the RKC and challenges related to effective implementation by Contracting Parties as well as the priority areas for revision, should there be such need.
7. As the RKC Guidelines are not part of the legal text of the Convention, during the process of drafting the questionnaire the Correspondence Drafting Group agreed not to incorporate questions related to the Guidelines, but rather to place this matter for the consideration of the Committee in order to obtain guidance on whether Guidelines issues should also be incorporated into the questionnaire. The draft concept note together with the questionnaire, developed by the group, and summary reports of three meetings, are attached hereto as Annexes.

Action required

8. The RKC/MC is **invited to consider** the draft concept note and the Questionnaire developed by the Correspondence Drafting Group and decide on the way forward.

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ANNEX I

Concept Note/ Introductory document

1. History:

The International Convention on the harmonization and standardization of customs procedures (Revised Kyoto Convention) dates back to 1973. The convention has been and still is one of the cornerstones of the WCO. In 1994, it was found that the Convention was not in line anymore with modern customs practices. In 1995 the Permanent Technical Committee agreed on the development of an updated Kyoto Convention for which a dedicated working group was established. The work on the legal text of the Revised Kyoto Convention (RKC) was concluded in 1999; the accompanying guidelines were finalized in 2001. The first amendment to the original Kyoto Convention entered into force in 2006 after 40 of the 63 contracting parties of original Kyoto Convention signed the protocol of amendment. The RKC has currently 96 contracting parties, 50% more than the original Kyoto Convention.

2. Procedure for amending the RKC:

The original Kyoto Convention lacked a specific procedure to amend and update the Convention. Article 6 of the Body of the RKC provides that the Management Committee of the RKC (RKC/MC) may recommend to Contracting parties amendments to the body of the Convention, the general annex and the specific annexes, and can review and update the guidelines. Articles 15 and 16 set out the detailed procedures to amend the convention in order to protect the interests of Contracting parties. Article 15 stipulates that an objection from one contracting party will terminate the amendment procedure for any specific amendment. When no objection is submitted by contracting parties within six months after the communication of the Secretary General, the proposed amendment shall be deemed accepted and shall enter into force six months after (deemed) acceptance. Contracting parties then have an implementation period of 36 months for amended or new standards or recommended practices accepted by the Contracting parties, and 60 months for “transitional standards”.

3. Earlier attempts to update the RKC:

In 2009 a majority of Contracting parties to the RKC attending the RKC/MC meeting, was in favor of a second update. Some members, however, voiced concerns about such a process and underlined the need to proceed with caution. They mentioned the risk that a new comprehensive revision of the RKC would be a long and complicated process. There was also some concern that such a review would interfere with the then ongoing efforts of many members to accede to the RKC.

The guidelines accompanying the legal provisions of the RKC, however, have been amended on several occasions, thus reflecting a basic willingness to update that instrument on a regular basis. The update of the guidelines on information technology (in Chapter 7 of the General Annex) is a good example. Another example is the inclusion of new guidelines relating to some aspects of the SAFE Framework of Standards, such as the concept of Authorized Economic Operator (AEO). From a legal perspective, the Guidelines do not form part of the legal text and are therefore not considered to be binding in their own right. They merely give an explanation to the legal provisions in the RKC but may describe possibilities for further modernization of customs procedures.

4. Considerations in respect of the need for a new revision:

During the revision process in the late nineties, resulting in the RKC, regular updating was seen as a normal process, reflecting the basic objectives of the convention. It is, moreover, normal practice to update and revise international conventions on a regular basis. For example, the International Maritime Organization's Facilitation Convention, Annex 9 (Facilitation) to the Convention on International Civil Aviation and the Facilitation Document (Doc. 30) of the European Civil Aviation Conference are regularly amended to ensure that they keep pace with global developments.

Since 1999 we have witnessed events and developments that have had a major impact on international trade processes and customs procedures and controls. These include 9/11 and the subsequent adoption of the SAFE Framework of Standards widely adopted AEO programs, and an increased emphasis on risk management in customs controls. More examples of subjects that may be addressed in a new revision of the RKC are mentioned in Doc. PO0034 (from New Zealand, the Netherlands and India, discussed during the 6th Meeting of the RKC/MC in March 2009).

Furthermore "Customs in the 21st Century" refers to the RKC as the key instrument for modern and efficient Customs procedures, the Columbus program strongly encourages Members to accede to RKC and implement the customs procedures contained in the RKC and more recently, the WTO Trade Facilitation Agreement, adopted in Bali in December 2013, refers to and impacts on a number of RKC provisions. The RKC guidelines, as written above, provide for possibilities for further modernization of customs procedures. To give such -even more- modernized customs procedures a legal basis in the RKC, there is a need for a review of the legal texts.

5. Need for and scope of a review:

Against the background of what is written above, there is a real threat that the RKC (unchanged for the past 14 years) increasingly falls short of the objective of providing for the most modern, effective and efficient customs procedures. A second review of the RKC therefore seems appropriate and could address ways to ensure regular updates in the future. A new update or review needs to be carried out with care. The contracting parties proposing such a review earlier on (in 2009), did not aim at a comprehensive revision. The idea was to consider introducing new concepts developed over the past decade. Possible amendments to the RKC would therefore be limited to issues considered and agreed by contracting parties to be crucial in the efforts to keep the RKC relevant. Items that have been identified during this process and subsequently examined by the RKC/MC may result in proposals to amend the RKC.

The review could also be used to look into ways to encourage WCO members that apply the RKC in practice, e.g. as a result of the Columbus program, to become contracting parties. It can also serve to look at reasons why contracting parties tend to adopt only the general Annex and not specific annexes. Finally we could look at mechanisms to better monitor "on the ground" actual implementation of RKC provisions adopted by contracting parties.

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ANNEX II



Questionnaire

This Questionnaire is aimed at gathering information from the WCO members and especially Contracting Parties on the possible need and remit of revising/updating the Revised Kyoto Convention (RKC). Please send your response to Mr. Samson Bilangna (Samson.bilangna@wcoomd.org) or Mr. Oluimo Da Silva (oluimo.dasilva@wcoomd.org).

COUNTRY:

Q1. If you are already a Contracting party of the RKC, did you or are you going to have difficulties in implementing the RKC Standards and what were or are these difficulties?

Q2. If you are not a Contracting party to the RKC, is there any RKC provision that delays your accession process or other specific matters such as procedural difficulties for the accession?

Q3 Has your Administration ever considered the possibility of expressing the need for revising/updating the RKC?

Yes / No

Q4. If the answer to Q3 is Yes, which part of the RKC would you like to propose to be revised/updated and where? Could you please outline reasons of revising/updating specific part on the Convention?

- a)Body
- b)General Annex
- c)Specific Annex.
- d)Guidelines

Q5. If the answer to Q3 is Yes, please indicate any additional Customs initiative or procedure that you would like to see included (e.g. Authorized Economic Operator, Coordinated Border Management, Single Window, Origin, etc) and in which part of the Convention should the initiative or initiatives be included?

Q6. In case of any possible revision/amendment to the RKC, will the process of domesticating the changes be difficult and what path will have to be followed (e.g. ratification process via the Parliament or any other national body...)? Is there a difference in the national procedures to reflect the changes made in the body of the RKC, the General Annex or the Specific Annexes?

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ANNEX III

Summary of the 1st Meeting of the RKC Correspondence Group

Date: 03/12/2013

Place: WCO Headquarters (room 3.27).

Participants:

Secretariat: Susanne Aigner (Deputy Director Facilitation), Santos Mussamo, Toshihiko Osawa, Georges Cantone, Theo Hesselink, Milena Budimirovic and Mohammad Akbar Hossain.

Delegates: Matt Roseingrave (New Zealand), Christine Dubois (France), Usutani Yukitomo (Japan), Kuik, JR (Rob) van (The Netherlands), Roger A. Hermann and Susanne Jacobsen (EU), Joseph Rees and Shawn Beddows, Matome Mathole (South Africa), Dean Church (Australia), Tejpal Singh (India), Ding Ye (China) and Jimmy Githinji (Kenya, participation by Skype).

Objective of the meeting:

To discuss the best way for developing a questionnaire aimed at gathering information from the Contracting Parties on the possible need to amend the Revised Kyoto Convention, as agreed in the 12th Meeting of the Management Committee of the Revised Kyoto Convention (RKC/MC), held from 13 to 14 November 2013.

Main issues discussed and agreed

- The RKC seems no longer up to date because its present text had been produced at the end of the 1990s, prior to the events of 9/11, before the SAFE Framework had been introduced and ahead of the development of the AEO concept. All these events and other facts were not sufficiently reflected in the RKC.
- The questionnaire to be developed should be sent to all WCO members, not only to the RKC Contracting Parties, because many WCO Members are in the process of acceding to the RKC. This will give them the opportunity to indicate the obstacles or problems they face in their accession process.
- It was discussed that the participants in the group could explain the objectives and reasons for the questionnaire, in order to encourage Members to respond. In addition, the Vice Chairs would play their usual role as coordinators in the region.
- It was mentioned that the 33rd Meeting of the WCO/UPU Contact Committee held in November 2013 had discussed the results of the questionnaire regarding possible obstacles for accession to the RKC Chapter J.2 on Postal Traffic (doc.PU0087E1a). This was an initiative launched by the UPU and supported by the WCO. The results include suggestions for amendments of the legal text and the guidelines. The 33rd Meeting of the Contact Committee agreed to put this forward to the Correspondence Group to take into consideration in their work. This point was raised by Australia who is the WCO Spokesperson in the Contact Committee.
- An account in the WCO CLiKC! platform should be created so that everyone can easily participate in the questionnaire drafting process. In addition, all documents regarding this issue will be uploaded on the same web-forum so that participants can put their comments. Those who have access to the CLiKC! platform will be able to access the

particular Group that will be created for this purpose. Those who don't have access will receive the CLiKC! username and password. For the beginning, the UPU document mentioned above, as well as the initial document used to launch the revision in the 90s, will be made available on the CLiKC!.

- The questionnaire/survey should be simple, include open questions and cover issues such as:
 - Priority areas of the RKC to be reviewed,
 - Obstacles that non Contracting Parties have to acceding to the convention,
 - Problems with effective implementation from Contracting Parties
- The questionnaire should include an introductory page in which a general overview of the RKC would be presented, including a clear justification for the need to study its possible amendment, particularly the Customs topics that are not reflected in the RKC as well as the specific developments having taken place over recent years.
- At the current stage, there has not been yet any final decision regarding the amendment of the RKC. The Drafting Correspondence Group is only analyzing the best way to approach the WCO Members in order to explore whether or not there is a need for a review of the Convention. The results of the survey will give a clear indication on the real need to amend the Convention or not.
- The questionnaire should be drafted only after the WTO Bali Ministerial and after the Policy Commission discussions on the outcomes of Bali (both in the first two weeks of December), as this will have an important impact. It was emphasized by a Member that if an Agreement is not reached in Bali, more weight should be placed on the revision of the RKC.
- It was suggested that there should be a disclaimer describing the intention of the survey and also the process that would have to be followed in case of an amendment of the RKC. This was necessary to re-assure Members that were in the accession process that they should continue with their internal processes as they could accede to the current RKC and would not have to wait for the amended version.
- The WCO Secretariat will send the questionnaire to Members' Directors General of Customs.
- The results of the survey will be presented to the RKC Management Committee, which will then decide to amend the Convention or not based on the on concerns that will be raised by members.
- The first draft of the document of the RKC Drafting Correspondence Group (Questionnaire/Survey) should be circulated in February 2014.

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Summary of the 2nd Meeting of the RKC Correspondence Group

Date: 04/09/2014

Place: WCO Headquarters (room 3.27).

Participants:

Secretariat: Oluimo da Silva, Toshihiko Osawa, Theo Hesselink, Milena Budimirovic, Changsheng Li and Pashupati Nath Pandey.

Delegates: Matt Roseingrave (New Zealand), Usutani Yukitomo (Japan), Kuik, JR (Rob) van (The Netherlands - Chair), Mark Dillon (EU Commission), Roy Skarslettehasslette (Norway) and Ding Ye (China).

(France sent regrets but submitted a document with proposals for revision).

Objective of the meeting:

- To discuss the best way for developing a questionnaire aimed at gathering information from the Contracting Parties on the possible need and remit of revising/updating the Revised Kyoto Convention as agreed in the 12th Meeting of the Management Committee of the Revised Kyoto Convention (RKC/MC), held from 13 to 14 November 2013.

Outcomes:

- A small drafting group of interested members was constituted to develop a 'straw man' questionnaire, which can then be further discussed and finalized by the RKC Correspondence Group by 30 September 2014. The drafting group will have its first face to face meeting on 9 September 2014. The questionnaire should be simple and take into consideration the need and priority areas for revision already submitted by some members, obstacles faced by non-Contracting Parties in acceding to the RKC and issues related to effective implementation by Contracting Parties,
- A document/concept note detailing the historical background and the changes in the international supply chain as well emerging challenges for Customs in 21st century, will be developed and submitted to the RKC/MC in November 2014, alongwith the questionnaire, for its consideration and guidance on future course and scope of action.
- Based on the outcomes of the RKC/MC in November 2014 related to potential revision process, the questionnaire with a concept note/letter can be sent to the Contracting as well non-Contracting Parties with clear response time.
- The Group also discussed the possibility of having another RKC/MC committee meeting in March 2015 in the margins of the PTC which will be held 2-6 March 2015 in order to quickly review the responses to the questionnaire and decide the way forward, instead of waiting until next scheduled meeting of the RKC MC in November 2015. This question will be included in the concept note.
- The PTC in October 2014 will be informed of the current state of play of the work of the RKC Correspondence Group.

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Summary of the 3rd Meeting of the RKC Correspondence Group

Date: 09/09/2014

Place: WCO Headquarters (room 3.27).

Participants:

Secretariat: Samson Bilangna, Oluimo da Silva, Toshihiko Osawa and Changsheng Li.

Delegates: Rob van Kuik (The Netherlands - Chair), Matt Roseingrave (New Zealand), Usutani Yukitomo (Japan), Mark Dillon (EU Commission) and Ding Ye (China).

Objective of the meeting:

- To develop a draft questionnaire aimed at gathering information from the Contracting Parties on the possible need and remit of revising/updating the Revised Kyoto Convention as agreed in the 12th Meeting of the Management Committee of the Revised Kyoto Convention (RKC/MC), held from 13 to 14 November 2013.

Outcomes:

- Taking into account that the draft questionnaire needs to be simple, and that it should indicate some issues like: priority areas for revision already submitted by some members, obstacles faced by non-Contracting Parties in acceding to the RKC and aspects related to effective implementation by Contracting Parties, the participants agreed on the structure and the questions to be included in the questionnaire, and drafted it as is set out as annex hereto.
- The draft questionnaire will be sent to all the RKC Correspondence Group, with a view to obtain their respective inputs and comments in order for it to be revised and approved as a final version during the next Group meeting, scheduled for 30 September 2014. The questionnaire concept note will also be discussed at the next RKC Correspondence Group. This note will be based on existing paper which related the historical background and the changes in the international supply chain as well emerging challenges for Customs in 21st century, which had been presented at the 1st RKC Correspondence Group meeting.
- The questionnaire together with the concept note will, as agreed at the 2nd meeting of the RKC Correspondence Group, will be presented to the RKC/MC in November 2014 for further consideration and approval before being sent to Customs administrations (Contracting parties or not) by the secretariat.
- The participants also discussed the possibility on whether information regarding the RKC Guidelines should be included in the questionnaire. As the Guidelines are not part of the legal text of the Convention, it was agreed that the matter will be taken forward to the next RKC/MC for its decision.