



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

PO0152Ea

7 - 11 June 2021

Brussels, 30 April 2021.

**INTERPRETATION OF STANDARD 8.1 IN CHAPTER 8 OF THE RKC GENERAL ANNEX**

**(Item V on the Agenda)**

**I- Background**

1. In March 2021, the Director General of Guatemala Customs (Superintendencia de Administración Tributaria (SAT)) submitted a letter (Annex I to this document) to the Chairperson of the Revised Kyoto Convention Management Committee (RKC/MC), with copy to the World Customs Organization (WCO) Secretariat, to request the support of the RKC/MC in order to confirm if Guatemala is compliant with the provisions of Standard 8.1 stating that "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."
2. Responding to that request, the Chairperson acknowledged Guatemala's efforts to accede to the Revised Kyoto Convention (RKC) and proposed adding this topic, as a substantive item, to the Agenda of the 25<sup>th</sup> Meeting of the RKC/MC in order to enable the Secretariat to prepare the requisite working document before the Meeting so as to facilitate the discussions on this item
3. In the meantime, the Secretariat responded by making reference to the provisions of the RKC, even though Guatemala is not a Contracting Party to this Convention, and confirmed that the request as addressed to Chairperson of the RKC/MC was relevant. The WCO Secretariat supported his idea of bringing this issue to the attention of the Management Committee in the next meeting scheduled to be held in June 2021.
4. Paragraph 1 of Article 6 of the RKC sets out that the RKC Management Committee (RKC/MC) has been established in order "*to consider the implementation of this Convention, any measures to secure uniformity in the interpretation and application thereof, and any amendments proposed thereto.*"

**II- Relevant provisions of the RKC General Annex**

5. In general, Chapter 8 of the RKC General Annex concerns third parties and their relationship to Customs. A third party is defined in the RKC as "any person who deals directly with the Customs, for and on behalf of another person, in connection with the

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importation, exportation, movement or storage of goods". Examples of third parties covered by Chapter 8 are Customs agents and brokers, freight forwarders, modal and multi-modal carriers and delivery services. The most common of these are Customs brokers or Customs agents who are essentially concerned with presenting and processing Customs documentation on behalf of importers or exporters.

6. Standard 8.1 gives the "person concerned", who is usually the exporter or importer and the owner of the goods, the option of either dealing directly with Customs or designating a third party to deal with Customs. Other "persons concerned" could also include sellers, buyers, consignors or consignees, depending upon the particular transaction. The third party is thus the person who is designated by the "person concerned" to transact business with the Customs on the latter's behalf. Customs' authority in approving third parties is covered by Standard 8.2.
7. The detailed interpretation of these two provisions (Standards 8.1 and 8.2) are provided in the RKC Guidelines and an extract is appended to this document as Annex II. It should be noted that, according to the Convention, "**guidelines**" means a set of explanations of the provisions of the General Annex, Specific Annexes and Chapters therein which indicate some of the possible courses of action to be followed in applying the Standards, Transitional Standards and Recommended Practices, and in particular describing best practices and recommending examples of greater facilities.
8. Against the above backdrop, the RKC/MC **is invited to :**
  - examine the request from Guatemala;
  - share their national experiences in relation the implementation of Standard 8.1 of Chapter 8 of the RKC General Annex; and
  - provide guidance to Guatemala as well as to other WCO Members in the region and advise on the compliance of the regional legislation with the RKC.

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CAR-SAT-IAD-0159-2021  
Guatemala March 1, 2021

Mr.  
Chairperson David Coyles  
Management Committee of the Revised Kyoto Convention  
World Customs Organization

Dear Mr. Chairperson Coyles:

Receive a cordial greeting from the Guatemalan Customs Administration, wishing you success in your activities.

The Guatemalan Customs Administration, within the framework of the WCO-SECO Global Program for Trade Facilitation, has been making efforts to enable my country to ratify the Revised Kyoto Convention (RKC). Said ratification, in addition to being an important achievement for my Customs Administration and promoting Guatemalan national competitiveness, will mean an important milestone for our Central American Customs Union, since it will surely promote the adherence of the rest of the States party to this instrument.

In this sense, derived from the technical assistance received by that international organization, this institution considers that the applicable regulations comply with those established in Standard 8.1 of the General Annex of the CKR, which provides that interested persons may choose between conduct your business with Customs directly or by appointing a third party to act on your behalf.

For such purposes, it is necessary to point out that the Resolution of the Council of Ministers of Central American Economic Integration 224-2008 (COMIECO XLIX) Regulation of the Central American Uniform Customs Code -RECAUCA-, in its articles 87 and 88 in those modalities, operations and procedures in the that the customs agent is not required (art. 87) or is optional (art. 88).

These articles are listed below for your quick reference:

**"Article 87. Non-intervention of the customs agent.** The intervention of the customs agent will not be necessary in the modalities, operations and procedures indicated below:

- a) In the case of customs operations carried out by the government and its dependencies, the municipalities and the autonomous or semi-autonomous institutions of the State;
- b) When the goods subject to customs operation or processing are found in any of the following conditions:
  - a) Are covered by a customs form of a Central American free trade agreement, bilateral or multilateral;
  - b) Small non-commercial shipments;
  - c) They are received or dispatched through the international postal system without a commercial nature; or

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Gerente Operativo de Aduanas  
Intendencia de Aduanas

Miguel Ángel José Pérez Rodas  
Director Adjunto a la Gerencia de Guatemala  
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- d) They have been received through express delivery systems or courier and comply with the rules of this modality;
- c) Passenger luggage and goods other than luggage;
- d) Those carried out by legal persons represented by a special customs attorney;
- e) Provisions on board;
- f) Relief shipments;
- g) Samples without commercial value;
- h) Non-commercial imports when their value does not exceed one thousand Central American pesos;
- i) Other modalities, operations and procedures that are expressly indicated in these Regulations.

**Article 88. Optional intervention of the customs agent.** Unless otherwise provided by law, the intervention of the customs agent will be optional in the following cases:

- a) Final exports;
- b) Temporary export with re-importation in the same state;
- c) Free zones;
- d) Customs warehouse;
- e) Temporary export for outward processing;
- f) Temporary admission for active improvement; and
- g) Other regimes, which are expressly indicated in these Regulations".

Likewise, derived from the provisions of subsection d) of aforementioned Article 87, Article 119 of RECAUCA establishes the figure of the **Special Customs proxy**, which consists of a natural person designated by a legal person to be in charge of the customs clearance of the goods that are consigned.

The special customs proxy can carry out, on behalf of the legal entity that designates him, all the modalities, operations and procedures related to the dispatch of merchandise without the need for the use of a third party or a customs agent.

This attorney-in-fact must undergo an authorization process by the customs authority prior to complying with the requirements and conditions established in Section IX of said instrument, which are set out below:

- a) Be a national of any of the States Parties;
- b) Possess an academic degree in customs matters or possess an academic degree in other disciplines of study, in which case the applicant must prove at least two years of experience in customs matters<sup>1</sup>;
- c) Have a labor or contractual relationship with the principal and that he or she grant power of attorney before a notary. In the case of public institutions, the power of attorney will be granted by appointment made by the head of the granting institution;

<sup>1</sup> The Customs Service may dispense with the requirements established in literal b) of this Article.



- d) Not having the quality of a public or military servant on active duty, except in the case where the principal is a public institution. For this purpose, a sworn statement will be presented before a notary; and
- e) Others established by the Customs Service.


However, for this institution under my charge it is important to ensure that our interpretation of compliance with the Standard in question is adequate, so I would like to request the support of the Management Committee of the Revised Kyoto Convention that you worthy head, in order to confirm if our country is fully compliant. Which would allow us to considerably speed up the accession process.

It is important to indicate that in the World Customs Organization region of the Americas and the Caribbean only 6 countries are members of the Revised Kyoto Convention and we share that one reason why the issue is not being advanced is because of the above in said standard, for which we are sure that your response will help to clarify the process to more countries in our region.

Any extension to our query can be made to Mr. Héctor Ruano email [haruanoc@sat.gob.gt](mailto:haruanoc@sat.gob.gt) and Mr. Victor Pérez email [vperezr@sat.gob.gt](mailto:vperezr@sat.gob.gt)


I would like to take this opportunity to reiterate the signs of my highest and distinguished consideration.

Sincerely



Mgter. Werner Ovalle Ramirez.  
Intendente de Aduanas  
Superintendencia de Administración Tributaria  


C.c.: Mr. Kunio Mikuriya Secretary General of WCO  
Mr. Ricardo Treviño Deputy Secretary General of WCO  
Mr. Pranab Kumar Das Director of Compliance and Facilitation of WCO



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INTENDENCIA DE ADUANAS  
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**EXTRACT OF RKC GUIDELINES**  
**STANDARDS 8.1 AND 8.2 OF CHAPTER 8 OF THE GENERAL ANNEX**

## **Introduction**

This Chapter of the General Annex concerns third parties and their relationship to Customs. A third party is defined in the Kyoto Convention as "any person who deals directly with the Customs, for and on behalf of another person, in connection with the importation, exportation, movement or storage of goods".

Examples of third parties covered by Chapter 8 are Customs agents and brokers, freight forwarders, modal and multi-modal carriers and delivery services. The most common of these are Customs brokers or Customs agents who are essentially concerned with presenting and processing Customs documentation on behalf of importers or exporters.

Third parties are not persons who deal with Customs in their own right. For example a port authority who is responsible only to present goods to Customs for physical inspection on behalf of an importer or exporter or a bank that is responsible for producing an original bill of lading to comply with documentary credit arrangements are not third parties as defined for the purposes of the Kyoto Convention.

The facilities granted to third parties in this Chapter offer advantages to all concerned. Importers and exporters are able to employ specialists to deal with complicated and detailed Customs procedures that may be unfamiliar to them and who can act on their behalf at times and places which they themselves would find inconvenient. Carriers and delivery services are able to expedite the movement of goods in their charge through Customs controls and to service the steadily growing proportion of time-sensitive consignments. Customs are able to more steadily and predictably clear goods, thereby better managing their own resources and the release times for the trade. In some countries, Customs also benefit from dealing with agents and brokers who are often more expert at handling the requirements for Customs procedures than some of their customers.

### **Standard 8.1**

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

This Standard gives the "person concerned", who is usually the exporter or importer and the owner of the goods, the option of either dealing directly with Customs or designating a third party to deal with Customs. Other "persons concerned" could also include sellers, buyers, consignors or consignees, depending upon the particular transaction. The third party is thus the person who is designated by the "person concerned" to transact business with the Customs on the latter's behalf.

While some Customs administrations are liberal in their dealings with third parties, some have imposed certain restrictions on third party transactions. These restrictions are to ensure that the third party acts with a certain degree of professionalism and responsibility, thereby allowing Customs to fulfil its own responsibilities to ensure compliance with Customs law. Some administrations require third parties by law, regulation or Customs ruling to be licensed. These licensing requirements may stipulate specified criteria that the third party must meet such as age, education, professional competence or moral and financial integrity. Additional criteria generally are that the third party have a registered business premise and meet professional standards for record-keeping. In some countries, third parties must pass

qualifying examinations to meet these requirements. Customs' authority in approving third parties is covered by Standard 8.2.

## 2. Conditions and Liability

### Standard 8.2

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

This provision calls for the national legislation to specify the conditions for persons to act as third parties and to stipulate their liability to Customs. This ensures that Customs can safeguard the revenue and other control requirements as thoroughly in dealing with the intermediary as with his principal.

In particular the relevant national legislation should cover the third party's liability for any duties and taxes and for any irregularities in compliance with Customs requirements.

In some countries third parties and the persons they represent may be held jointly and severally responsible to Customs for duties and taxes and any irregularities, as well as for any concomitant fines or penalties.

In enforcing these and other regulations involving third parties, Customs may wish to take account of certain practical differences between a principal, that is, the direct declarant, and someone acting on his behalf. The principal usually has a closer knowledge of and a clearer responsibility for the accuracy of the information set out in the declaration or other submission to Customs than does the agent, broker or representative. Thus while Customs should hold third parties firmly accountable for all duties and taxes, they could give sympathetic consideration to lifting or mitigating certain penalties. For example, if the infraction is a misstatement and a similar offence that arose solely from defects in the data supplied by the principal, and the third party can show that he had taken reasonable steps to provide accurate and correct information, Customs could take these factors into account before deciding to impose a penalty.

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