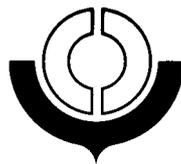


KYOTO CONVENTION

GUIDELINES TO SPECIFIC ANNEX A

Chapter 1

FORMALITIES PRIOR TO THE LODGEMENT OF THE GOODS DECLARATION



WORLD CUSTOMS

ORGANIZATION

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1. Introduction

Goods may be introduced into a Customs territory by many different modes of transport. In order to safeguard the Revenue and ensure compliance with national legislation, the carrier bringing goods into a Customs territory must produce them and the means of transport carrying them to Customs as soon as possible. The controls necessary on goods arriving in the Customs territory depend, to a large extent, upon geography; air, land and maritime infrastructures; and volume and frequency of transport arrivals.

In many cases the Customs office where the goods are to be produced and the Goods declaration lodged is situated at the place where the goods arrive in the Customs territory. In other cases this Customs office is situated some distance from that place such as an inland airport, warehouse or train yard. It is essential that Customs be able to control the conveyance of the goods to the Customs office where they will be produced without causing unnecessary delays in normal transport flows. This can be accomplished by placing regulatory obligations on the carrier or by physical controls such as sealing the means of transport until arrival at the designated Customs office.

This Chapter covers the formalities that have to be completed by the carrier before the Goods declaration is lodged and the goods are placed under a relevant Customs procedure. These formalities are an important element of the overall Customs operation since they are the initial action necessary to identify goods entering the Customs territory and bring them under Customs control. They are also of particular importance in the simplification of Customs formalities and trade facilitation. The Customs requirements should cause minimum inconvenience to international trade by ensuring that the formalities to be accomplished by the carrier are as simple as possible. At the same time these formalities should cover Customs requirements under Customs law and any other regulations that Customs are responsible for enforcing.

One of the crucial factors in Customs control and trade facilitation is the flow of information between the carrier and Customs. The formalities described in this Chapter aim essentially at better management of information flows to help Customs to perform more efficiently.

Most Customs administrations permit the declarant to lodge a Goods declaration prior to the arrival of the goods in the Customs territory. This pre-arrival information enables Customs to implement their risk management techniques and to improve control targeting well in advance of the actual arrival of the goods and thus facilitate the release of goods. Many Customs administrations also allow similar pre-arrival information to be furnished by the carriers in order to facilitate international trade.

The formalities of this Chapter do not apply to goods on board vessels or aircraft crossing the territorial seas or airspace of a Contracting Party that are not destined for a port or airport situated in the territory of the Contracting Party. Similarly this Chapter does not cover goods which arrive under a Customs procedure, e.g. international Customs transit, goods carried by post, in travellers baggage or the temporary storage of goods, except for those provisions relating to the places where these goods may be introduced into the Customs territory. Nor does it cover certain other formalities which apply for particular modes of transport, e.g. presentation of a report of the arrival of a ship.

2. Purpose and scope of the procedure

The purpose of the formalities described in this Chapter is to enable Customs to control the entry of goods into their territory as well as to help the logistical requirements of trade, industry and transport for uninterrupted movement of goods.

3. Essential features of the procedure

3.1. Benefits

The advantages of including provisions of this Chapter in Customs legislation are :

- that well-defined formalities will ensure the identification of goods entering the Customs territory and will enable Customs to control the goods effectively until they are placed under a Customs procedure; and
- that all parties involved in bringing goods into the Customs territory will be required to provide Customs necessary information regarding the ultimate destination and use of the goods.

4. Definitions

E1/F1 *“cargo declaration” means information submitted prior to or on arrival or departure of a means of transport for commercial use that provides the particulars required by the Customs relating to cargo brought to or removed from the Customs territory;*

E2/F3 *“carrier” means the person actually transporting goods or in charge of or responsible for the operation of the means of transport;*

E3/F2 *“Customs formalities prior to the lodgement of the Goods declaration” means all the operations to be carried out by the person concerned and by the Customs from the time goods are introduced into the Customs territory until goods are placed under a Customs procedure.*

All the definitions of terms necessary for the interpretation of more than one Annex to the Convention are placed in the General Annex. The definitions of terms applicable to only a particular procedure or practice are contained in that Specific Annex or Chapter.

5. Application of the procedure

Standard 1

Customs formalities prior to the lodgement of the Goods declaration shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.

The revised Kyoto Convention has a set of obligatory core provisions that are contained in the General Annex. The General Annex reflects the main principles considered necessary to harmonize and simplify all the relevant Customs procedures and practices which Customs apply in their daily activities.

As the core provisions of the General Annex are applicable to all Specific Annexes and Chapters, they should be applied in full for the formalities prior to the lodgement of the Goods declaration. Where a specific applicability is not relevant, the general facilitation principles of the General Annex should always be borne in mind when implementing the provisions of this Chapter. In particular, Chapter 1 of the General Annex on General principles, Chapter 6 on Customs control and Chapter 8 on Relationships with Third parties should be read in conjunction with this Chapter on Formalities prior to the lodgement of the goods declaration.

Contracting Parties should particularly note Standard 1.2 of the General Annex and ensure that their national legislation specifies the conditions to be fulfilled and the formalities to be accomplished prior to the lodgement of the Goods declaration.

In line with Article 2 of the Convention, Contracting Parties are encouraged to grant greater facilities than those provided for in this Chapter.

Recommended Practice 2

Customs formalities prior to the lodgement of the Goods declaration should apply equally, without regard to the country of origin of the goods or the country from which they arrived.

Recommended Practice 2 is intended to prevent discrimination in the application of the Customs formalities upon arrival of goods. Customs administrations are encouraged not to impose more requirements for the goods simply because of where they originated. This does not, however, restrict Contracting Parties from varying the degree of controls exercised due to circumstances such as the possibility that goods being introduced from a certain country might be more likely to contain contraband. This Recommended Practice also does not preclude or discourage the granting of special facilitation measures, such as the reduction of Customs facilities, to countries with whom agreements have been made.

In cases where the United Nations has imposed sanctions against particular countries, these sanctions operate independently of the Kyoto Convention. Contracting Parties applying these sanctions would not be required to apply this Standard, as provided for in Article 3 of this Convention.

6. Entry of the goods under the procedure

Standard 3

National legislation shall specify the places at which goods may be introduced into the Customs territory. Only when they consider it necessary for control purposes shall the Customs specify the routes which must be used to convey the goods directly to a designated Customs office or other places specified by the Customs. In determining these places and routes the factors to be taken into account shall include the particular requirements of the trade.

This Standard shall not apply to goods on board vessels or aircraft crossing the Customs territory that do not call at a port or airport situated in that Customs territory.

Standard 3 stipulates that goods may be introduced into a Customs territory only at designated places. The Standard further provides that Customs may specify routes that must be used to convey goods to a Customs office or other place they designate. However, routes to be taken by vessels, aircraft and rail are most commonly specified by international agreements and by national authorities responsible for such traffic. It is therefore important that Customs specify routes for these carriers only when it is essential for control purposes. Consequently, in practical terms, this Standard is most applicable for road transport. Any such routes specified by Customs would be between the place of arrival of the goods and the Customs office to which they are to be conveyed.

It is also equally important that in determining the places where goods must be introduced and the routes that should be used to convey the goods, Customs consider the particular requirements of the trade. This provision therefore should be considered in conjunction with Standard 3.1 of the General Annex that relates to designating Customs offices.

This Standard does not preclude any provisions in force concerning special procedures for tourist traffic, frontier traffic, postal traffic or traffic of negligible economic importance, on condition that Customs control possibilities are not thereby jeopardized.

Any person who assumes responsibility for the carriage of goods after they have been brought into the Customs territory, including as a result of transshipment, shall become responsible for compliance with the obligation mentioned above.

Standard 4

The carrier shall be held responsible to the Customs for ensuring that all goods are included in the cargo declaration or are brought to the attention of the Customs in another authorized manner.

Goods introduced into the Customs territory must be reported to Customs by the carrier. Standard 4 holds the carrier responsible for reporting all goods in a cargo declaration or in any other manner that is acceptable to Customs. Generally the reporting is done by a cargo declaration or by copies of bills of lading. While these are commonly submitted in paper form at the time of arrival, many administrations and carriers have developed electronic interfaces that allow Customs to receive the data automatically. This is an important facilitation measure that paves the way toward paperless international trading in the future.

Although the Standard requires all goods to be reported there are many varying practices. Some administrations only require the goods that are to be unloaded in their Customs territory to be reported, while others require all goods to be reported irrespective of whether they are unloaded

or not. In some cases goods not meant to be unloaded or meant for destinations outside the Customs territory can be reported in a simplified manner.

Some modes of transport are also covered by other international conventions governing the data required for reporting for the goods at arrival. There are also international agreements covering goods that move under carnets, such as international transit and temporary admission, which can fulfil this reporting requirement. However, when such a method is used for reporting the goods, Customs may require additional documents or information for the purposes of Customs control and risk management techniques.

The information required at arrival is to report the goods and not necessarily the same information as required for risk assessment.

Standard 5

The fact of having introduced goods into the Customs territory shall entail the obligation for the carrier to convey them directly using designated routes, where required, and without delay to a designated Customs office or other place specified by the Customs. In doing so the nature of the goods or their packaging shall not be altered nor shall any seals be interfered with.

This Standard shall not apply to goods on board vessels or aircraft crossing the Customs territory that do not call at a port or airport situated in that Customs territory.

The carrier is responsible for conveying the goods to the Customs office or other specified place without any delay. The Customs office would normally be the Customs office that is competent to process the goods concerned. However, as a facilitation measure, Customs could give approval for the goods to be conveyed to another Customs office in special circumstances such as extreme weather conditions or transport difficulties.

Customs could also give approval, in appropriate circumstances, for the goods to be conveyed directly to the importer's premises if the importer so requested. This is an element as well of Transitional Standard 3.32 in the General Annex that provides special procedures for authorized traders.

Customs would not apply Standard 5 to goods on board vessels or aircraft crossing the Customs territory that do not call at a port or airport situated in the Customs territory. These goods pose no risk since they cannot be reasonably offloaded. To impose the requirements of this Standard would unnecessarily interfere with the international movements of these conveyances.

Goods which arrive at the Customs office or another place specified by Customs should be presented to Customs by the person who brought the goods into the Customs territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry. This does not preclude the implementation of special procedures relating to goods :

- (a) carried by travellers; or
- (b) placed under a Customs procedure but not presented to Customs.

Standard 6

Where the conveyance of the goods from the place of their introduction into the Customs territory to a designated Customs office or other specified place is interrupted by accident or force majeure, the carrier shall be required to take reasonable precautions to prevent the goods from entering into unauthorized circulation

and to advise the Customs or other competent authorities of the nature of the accident or other circumstance which has interrupted the journey.

The conveyance of goods from the place of their arrival in the Customs territory to the designated Customs office can obviously be interrupted by accidents to the vehicle or involving other vehicles, or by any disruption of the transport routes, thus affecting the delivery of the goods to their destination. In the case of accidents where there is not a total destruction of the goods, the carrier should try to obtain a report of the incident from other authorities who may be present. This will assist the carrier in reporting the delay in conveying the goods to their destination. The carrier must also seek assistance in securing the goods so that they do not enter into unauthorised circulation. In all such cases the person bound by the obligation to Customs for the goods or any other person acting in his place must inform Customs of the situation without delay.

Recommended Practice 7

Where the Customs office at which the goods are to be produced is not located at the place where the goods are introduced into the Customs territory, a document should be required to be lodged with the Customs at that place only when the Customs consider it necessary for control purposes.

It is possible that goods may be introduced at a place where there is no Customs office. In this case, most administrations do not require the submission of a document at the place of introduction.

Likewise when there is a Customs office at the frontier, this Recommended Practice offers a facilitation by encouraging Customs to only require a document relating to the goods to be lodged at the frontier office if it is necessary for control purposes. When required Customs can still be facilitative to the trade by accepting a commercial, transport or other documents accompanying the goods.

7. Production of goods to the Customs

Standard 8

Where the Customs require documentation in respect of the production of the goods to the Customs, this shall not be required to contain more than the information necessary to identify the goods and the means of transport.

The principle in Standard 8 is to limit the information requirements to the minimum that will enable Customs to ensure compliance with Customs law. Customs should normally not require any more than a description of the goods and of the packages (marks and numbers, quantity and weight) and an identification of the means of transport.

Some administrations may require the lodgement of documentation once the goods have been presented to Customs. This documentation may have to follow a particular Customs model or format, but it is more facilitative to trade if Customs will accept any commercial or official document that contains the particulars necessary to identify the goods. This information can be normally obtained from commercial transport documents, the contents of which may vary from one mode of transport to another.

Recommended Practice 9

The Customs should limit their information requirements to that available in carriers' normal documentation and should base their requirements on those set out in the relevant international transport agreements.

The principle in Recommended Practice 9 is to use the available information instead of requiring it to be duplicated in a different form for Customs purposes.

The documents required for the production of goods should contain no more than the following data :

Goods arriving by sea :

- Place where the report is made;
- Name of the means of transport;
- Nationality of the means of transport;
- Name of master;
- Place of loading/place of discharge;
- Marks and numbers of packages;
- Number and kind of packages;
- Description of goods;
- Gross weight;
- Measurement;
- Numbers of the bills of lading.

Goods arriving by air :

The information indicated in the heading of the format of the cargo manifest;

- The air waybill number;
- The number of packages related to each air waybill number;
- The nature of the goods;
- A simple stores list.

Goods arriving by land :

- Holder of the goods;
- Country of departure;
- Country of destination (if applicable);
- Registration No(s). of road vehicle(s) (if applicable);
- Identification No(s). of containers (if applicable);
- Marks and numbers of packages;
- Number and nature of the goods;
- Gross weight;
- Marks and number of seals (if applicable).

Normally the carriers are obliged to have available information regarding the cargo they are carrying. Some international agreements lay down the maximum information which may be required of the carrier, (e.g. the ICAO Convention, the IMO Convention). A country that is a Contracting Party to such international agreements would fulfil its obligation for the documentation within the terms of those Conventions. In international transit the documentation for goods which have moved under a transit procedure prior to being presented to Customs should be a copy of the transit document intended for the Customs office of destination.

As with the previous provisions of this Chapter, it is recommended that the Customs use the information already available to carry out their functions.

Recommended Practice 10

The Customs should normally accept the cargo declaration as the only required documentation for the production of the goods.

When Customs require documentation for the goods produced upon or after arrival, it should normally be limited to a cargo declaration, and no further documents should be required. In most administrations a cargo manifest is accepted in place of a Customs cargo declaration as it is a document commonly used by the carriers.

Recommended Practice 11

The Customs office responsible for the acceptance of the documentation required for the production of the goods should also be competent for acceptance of the Goods declaration.

It is also recommended, as a basic facilitation measure, that the Customs offices that are responsible for accepting the cargo declaration be competent to accept the Goods declaration. This will facilitate both Customs and the trade in that both the obligations can be accomplished in the same office and the goods cleared without any delay.

Recommended Practice 12

Where the documents produced to the Customs are made out in a language which is not specified for this purpose or in a language which is not a language of the country into which the goods are introduced, a translation of the particulars given in those documents should not be required as a matter of course.

The documents available to be produced to Customs may very often be in the language of the country from which the goods arrived, even if they conform to the layout prescribed in international agreements. Recommended Practice 12 requires Customs not to impose a translation requirement as a matter of course unless the information contained in the document is ambiguous or is required for control purposes, or it would facilitate the movement of the goods. Such a requirement should be waived wherever possible.

Standard 13

The Customs shall specify the precautions to be taken by the carrier to prevent the goods from entering into unauthorized circulation in the Customs territory when they arrive at a Customs office outside working hours.

In the international movement of goods, precise time of arrival, particularly in the sea mode, is difficult to ascertain. Therefore goods may arrive at a Customs office outside the working hours and it is important that precautions are taken to prevent the goods from entering into unauthorized circulation within the Customs territory. Standard 13 requires Customs to indicate the precautions that the carrier must take. Usually when the goods arrive outside the working hours the carrier is required to keep the goods at a specific place at or in the vicinity of this Customs office and that meets Customs security requirements.

Recommended Practice 14

At the request of the carrier, and for reasons deemed valid by the Customs, the latter should, insofar as possible, allow the Customs formalities prior to the lodgement of the Goods declaration to be accomplished outside the designated hours of business of the Customs.

The carrier will often want to accomplish the Customs formalities for goods which arrive outside the working hours as soon as possible in order to facilitate the quick turn around of the means of transport after unloading the goods. In such cases the carrier should request Customs to allow the accomplishment of these formalities outside the designated hours of business. Recommended Practice 14 requires Customs to allow this facility if there are available resources. In many administrations, this request has to be submitted during the normal business hours in order to allow Customs to schedule the available personnel or other resources.

In allowing this facility, Customs may charge the carrier any expense incurred subject to the approximate cost of the services rendered. (See also the Guidelines to Standard 3.2 of the General Annex.)

Standard 15

National legislation shall specify the places which are approved for unloading.

Normally goods entering the Customs territory can be unloaded only at places that are designated for this purpose. Standard 15 requires that such places be specified in national legislation. While designating places where goods may be unloaded, Customs should normally take into account the requirements of the trade as well as changing trade patterns.

In some instances Customs may only allow certain types of goods to be unloaded at some of the designated places. Such a restriction may be placed on goods like oil or bulk goods or hazardous goods which can only be unloaded at terminals or depots that are specially equipped for handling such specialized cargo.

Recommended Practice 16

At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should allow goods to be unloaded at a place other than the one approved for unloading.

Normally goods can only be unloaded at places designated or approved by Customs. However, goods may be unloaded, according to the circumstances, at the premises of the person concerned, at premises with appropriate equipment or at any place within the Customs surveillance zone. These are special control zones extending on either side of the frontier and on certain sections of rail or road, where the Contracting Parties empower their Customs officers (and sometimes officers of the neighbouring Customs territory) to carry out Customs operations.

Once unloaded, goods usually must be stored in locked premises. However, bulky or heavy goods and low-duty goods that are little risk to the Revenue are frequently stored in un-enclosed spaces under Customs supervision.

Standard 17

The commencement of unloading shall be permitted as soon as possible after the arrival of the means of transport at the place of unloading.

Standard 17 requires Customs to permit unloading of the goods soon after the arrival of the means of transport. This is primarily based on economic factors since extended stay of a carrier will normally result in the payment of large sums as fees to port authorities as well as the loss of productivity since the carrier could be idle for prolonged periods of time. It is therefore important that there should not be any delay in permitting the unloading of goods. This principle will also prevent traffic congestion, particularly in the busy ports, and facilitate the arrival and departure of carriers without any delay.

However, such permission should not be required in the event of any imminent danger that would necessitate immediate unloading of all or part of the goods. In that case, the carrier must inform Customs accordingly as soon as possible after the event.

For the purpose of inspecting goods and the means of transport carrying them, Customs may at any time require goods to be unloaded and unpacked.

An important facilitation measure offered by many Customs administrations in this regard is prior to the arrival of the carrier to grant permission for immediate unloading upon arrival.

Recommended Practice 18

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At the request of the person concerned and for reasons deemed valid by the Customs, the latter should, insofar as possible, allow unloading to proceed outside the designated hours of business of the Customs.

Means of transport often arrive after the Customs designated hours of business. Recommended Practice 18 requires Customs, when a request is made to unload the goods outside the designated hours, to permit the unloading to proceed if at all possible. This may depend on the availability of Customs resources to supervise any such unloading. However, many Customs today allow unloading after business hours without supervision. This is contingent upon the carrier and the operator at the place of intended unloading having good records of compliance with Customs requirements and that they can provide any security Customs may require.

As with the other provisions of this Chapter, Customs must work closely with other authorities responsible for the arrival and departure of the means of transport to organize and facilitate the adequate movements of carriers and the goods they carry within ports and commercial centres.

Standard 19

Any expenses chargeable by the Customs in connection with :

- *accomplishment of Customs formalities prior to the lodgement of the Goods declaration outside the designated hours of business of the Customs;*
- *unloading goods at a place other than the one approved for unloading; or*
- *unloading goods outside the designated hours of business of the Customs,*

shall be limited to the approximate cost of the services rendered.

In fulfilment of the requirements of this Chapter, Customs may incur expenses such as cost of unpacking, weighing, re-packing, overtime payments, travel expenses of officers, and any other operations related to goods. Such expenses are charged to the person concerned. Standard 19 requires the expenses charged to be limited to the approximate cost of the services rendered, which is the principle laid down in Standard 3.2 of the General Annex.
