



WORLD CUSTOMS ORGANIZATION

THE RELEVANT KEY PRINCIPLES OF THE SAFE FRAMEWORK OF STANDARDS, IN FURTHER FACILITATING THE PROCESS OF CLEARING RELIEF CONSIGNMENTS

Introduction

1. The issues surrounding international relief operations are many, varied and obviously go beyond the scope of Customs alone. Challenges may range from delays in the entry and exit of international humanitarian personnel, goods and equipment as a result of Customs requirements and immigration laws which are ill-suited to emergency situations, the development of bottlenecks at ports of entry, to the importation of unnecessary or inappropriate relief equipment. Additionally, the imposition of duties and taxes on relief items and activities, failure to co-ordinate with national authorities and other relief providers, the use of inadequately trained personnel or failure to consult with beneficiaries are additional issues affecting the quality of international relief operations.
2. Issues concerning the transit of relief goods to another State affected by a disaster, including delays upon entry and exit of international humanitarian personnel, goods and equipment bound for another State are also highly relevant in ensuring the timely delivery of humanitarian aid to its destination.
3. This document aims to address the issues linked to the role of Customs in natural disaster relief, by examining the degree to which the key principles of the SAFE Framework of Standards may prove useful in further facilitating the clearance process for relief consignments.
4. When a disaster occurs, overall experience shows that the affected Member benefits greatly from a pre-established clear legal framework and effective Customs clearance procedures in order to manage the movements of priority goods and the co-ordination of international humanitarian assistance, thus meeting the immediate needs of disaster-affected communities. Experience has shown that it was unrealistic to seek to develop new rules and systems to address these kinds of problems in the immediate wake of a disaster.
5. Customs administrations should participate/contribute in their national government's overall planning and preparation of natural disasters as necessary and appropriate. At this juncture, it should be borne in mind that it is first and foremost the responsibility of the government of the affected State to organize relief operations, although domestic and international civil society stakeholders play a key supporting role.

6. The international humanitarian assistance community should consequently be entitled to provisions for certain legal facilities, expedited procedures or other arrangements in order to respond to humanitarian needs effectively and efficiently. These facilities, principally described in the Revised Kyoto Convention (RKC), may include the granting of authorization for these organizations, the establishment of expedited procedures for their personnel, relief goods and equipment as well as other measures to facilitate relief transport or exemptions from fees and taxes. The SAFE Framework also contains measures that may improve the quality of international relief.
7. Given the diversity of Customs regulations and systems in application throughout the world, and especially the different approaches to disaster management adopted at the national level, it is obviously understood that each of the measures envisaged will not have the same relevance in every country. Customs response plans will consequently have to be tailored to local circumstances on each location and host of potential scenarios.

Application of the key principles of the SAFE Framework of Standards (SAFE) to emergency situations

Authorized Economic Operator concept

8. Overall, the SAFE creates the conditions for securing international trade, but also facilitates and promotes international trade. This simplifies and encourages buyers and sellers to move goods between countries. The SAFE takes account of, and is based on, modern international production and distribution models, by nature positioning itself within a trading environment.
9. The Authorized Economic Operator (AEO) programme is a model programme used by many Customs administrations with a view to securing and facilitating international trade, while offering incentives to Customs and trade having decided to work together in partnership. The SAFE is a document offering general guidelines in this respect, as well as progressive guidelines for developing and implementing an AEO programme.
10. In this regard, the SAFE defines an AEO as “*a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. AEOs include inter alia manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors.*” It is worth noting the high degree of flexibility of the AEO concept which, in view of its definition, may apply to a range of contexts.
11. In planning responses to potential disasters, the objective of the Customs administration is to determine how to facilitate the assisting actors to deliver relief consignments, with the understanding that their activities are focused solely on humanitarian relief over a limited period of time. These actors, responding to disasters, may be national or international and include what are known as Non-Governmental Organizations (NGOs) that may or may not have offices on the territory of the affected Member. Additionally, such actors may be private companies.
12. In terms of assisting actors, mention should also be made of assisting States, meaning any foreign government providing disaster relief or initial recovery assistance, whether through civil or military institutions. The other international assisting actors can

include competent intergovernmental organizations, such as the United Nations institutions and regional organizations.

13. Over recent years, the number of actors involved in humanitarian operations has multiplied and the type of actors has also diversified to encompass smaller NGOs, private companies and individuals not previously operating in this field. With so many different actors, compliance with standards and the quality of operations inevitably vary. Nevertheless, when such a large number of international actors offer their assistance or arrive in the country to provide assistance, it is crucial for the affected State that the most relevant and effective assistance be given priority. The idea would therefore not be to grant the same Customs treatment to all relief consignments, but rather make a distinction (through simplified/accelerated procedures) for those organizations that operate appropriately.
14. Granting some of these actors greater facilities consequently has a dual objective. Firstly, it will expedite procedures relating to the entry or exit of international assistance as a whole because of the assisting group's capacity to respond. Secondly, this process is aimed at mitigating the risks for the affected State and ensuring that the humanitarian assistance is tailored to requirements because of the assisting group's expertise. These facilities will only be granted to actors considered as having sufficient capacity and operating according to humanitarian principles and established quality standards.
15. In the context of emergency situations, Members can therefore grant certain facilities solely to assisting actors deemed eligible according to criteria laid down by domestic law. Any eligibility consideration should incorporate processes to consider eligibility requests ahead of a disaster for this kind of recognition and/or licensure. This special recognition should remain valid for a specified period from the date of issue (after which a new request would have to be submitted).
16. Some international assisting actors could even enjoy presumed eligibility as a result of their status (such as States or intergovernmental organizations, or even highly respected NGOs) and past demonstrated abilities.
17. When granting these authorizations, Members could model themselves on the SAFE which allows for flexibility and the customization of facilities and security plans based on an AEO's business model. In particular, Chapter 5 of the SAFE sets out AEO conditions, requirements and benefits; however additional benefits are also described in the Private Sector Consultative Group (PSCG) contribution on benefits. In this particular case, this is not a set of benefits that all administrations must necessarily offer, but rather an indicative list of example benefits that each administration may choose to consider, offer and approve.

Advance information

18. By way of reminder, advance information is a central tenet of Pillar 1 of the SAFE, aimed at identifying high-risk containers and cargo. Using automated targeting tools, Customs administrations identify shipments that are high risk as early as possible in the supply chain, at or before the departure point. The SAFE recommends making provision for the automated exchange of information based on harmonized and interoperable messages.
19. More specifically, Standards 1.3.1, 1.3.2 and 1.3.3 (export, import and cargo declarations) of the SAFE clearly state the data elements on which information sharing

should be based and the persons responsible for submitting it. For security purposes, Customs should not require more than the details listed.

20. In addition, the RKC makes provision for the simplification or reduction of documentation required for the exportation, transit or importation of relief goods and equipment in the event of a disaster. In particular, Specific Annex J5 (Standard 3) to the RKC invites States to authorize "lodging of a simplified Goods declaration or of a provisional or incomplete Goods declaration". Annex B.9. to the Istanbul Convention stipulates that temporary admission can be granted without a Customs document or security being required and that the Customs authorities may only require a simple inventory of the goods, together with an undertaking to re-export them. Other appropriate measures to speed up the delivery of humanitarian assistance may also make provision for eliminating the requirement to provide certificates of origin, consular invoices and fumigation certificates or dispensing with import/export licences.
21. Although the documents required and stipulations relating to controls need to be simplified and reduced, States may and should also insist on relief consignments being packaged and labelled appropriately. Additionally, States should still receive minimum amounts of information on the contents of consignments in order to expedite their release and guard against abuses that could arise following a relaxation of clearance procedures
22. For greater effectiveness and efficiency and insofar as the infrastructures allow, it is advisable for Customs to request such information on relief consignments prior to arrival at their destination. Such an advance information transmission procedure, if clearly established, would permit advance risk management, better distribution of tasks (for both Customs and operators) and a substantially expedited clearance and/or release procedure for relief consignments.
23. The submission of advance information, when carried out in the manner requested by the Customs authorities, should provide information relating to the person responsible and the nature of the relief goods, as well as other details as required by national regulations. This could be provided by the owner of the goods or by a third party, including a Customs broker, agent or carrier.
24. Some Customs practices also require separate documentation for each consignment sent by the same entity, even if they arrive simultaneously. The authorized single transmission of information for all the consignments from the international assisting actor that arrive all at once should also speed up the Customs clearance process.
25. Customs in the 21st Century has also acknowledged the need to adopt a new approach to managing the movement of goods through international trade supply chains and across borders, based on exchange of information. In particular, the first building block for this New Strategic Direction is Globally Networked Customs (GNC) requiring closer real-time collaboration between Customs administrations in facilitating legitimate trade and undertaking Customs controls. The GNC concept is currently in the process of being developed and it is anticipated that the information that could be shared between Customs administrations might cover relief consignments.

Export controls and use of new technology

26. To begin with, it is worth recalling that the RKC stipulates that Customs of the exporting country of relief consignments may (1) examine, on the basis of risk analysis and against the summary declaration, the contents of these consignments and certify the

results of this examination on the said declaration; and (2) where possible, place such consignments under Customs seals where such action is likely to avoid delays in the forwarding of goods at later stages of their journey.

27. The RKC also recommends that examination and/or sampling of the goods should occur only in exceptional circumstances and that when clearing relief consignments, Customs control should be restricted to the absolute minimum necessary to ensure compliance with the laws and regulations in application. Customs should use risk management for the application of Customs controls.
28. Within the SAFE, the third core element requires that at the reasonable request of the receiving nation, based upon a comparable risk targeting methodology, the sending nation's Customs administration will perform an outbound inspection of high-risk containers and cargo, especially using non-intrusive detection equipment such as large-scale X-ray machines and radiation detectors. Additionally, Customs should facilitate the voluntary use of new technologies to assist in ensuring the integrity of the consignment along the supply chain.
29. Specifically, point 1.2.3 of the SAFE Framework states that the Customs office of departure must take all necessary action to enable the identification of the consignment and the detection of any unauthorized interference along the supply chain. In addition, the Customs administrations along the supply chain should agree to use an electronic messaging system to exchange Customs data, control results and arrival notifications, in particular for high-risk consignments.
30. Point 1.2.4 adds that in the interest of supply chain security and the integrated Customs control chain, Customs should apply a seal integrity programme as detailed in the revised Guidelines to Chapter 6 of the General Annex to the RKC (see 3.3.). Such seal integrity programmes, based on the use of a high-security mechanical seal as prescribed in ISO 17712 at the point of stuffing, include procedures for recording the affixing, changing and verification of seal integrity at key points, such as modal change.
31. When conducting international relief and assistance operations in the event of disasters, and to assisting actors to expedite the entry of personnel, goods and equipment, Customs administrations require a rapid and effective Customs control mechanism. The effective implementation of the third core element of the SAFE Framework should enable them to achieve this objective.
32. In this case, administrations need to agree in advance (bilaterally or multilaterally) with a view to mutual recognition of Customs controls. These controls must form part of an ongoing and shared process commencing at the time when the goods are being prepared for export by the exporter and, through ongoing verification of consignment integrity, avoiding unnecessary duplication of controls. This mutual recognition of controls will consequently require Customs to agree on common control and management standards, the sharing of intelligence as well as the routine exchange of Customs data.

Trade recovery / Initial recovery assistance

33. The national provisions concerning the facilitation and regulation of international assistance operations in the event of a disaster often relate to relief operations as well as initial recovery assistance operations. These operations constitute the initial phases of the response and recovery assistance, and not the longer-term reconstruction and development phases. During these initial phases, time management is crucial in order to

provide effective assistance. A specific legal framework for reducing the time required is consequently justified in this situation.

34. The initial recovery assistance phase covers the period following a disaster and may begin at the same time as the international relief phase, as soon as a request for international aid is made. In the event of a disaster, the initial recovery assistance phase is longer than the international relief phase, given that the recovery activities take place within a wider timeframe.
35. In reality, governments are often faced with the need to declare an end to the relief phase, transitioning into an international initial recovery assistance phase. This transition can leave international assisting actors operating within a poorly regulated mechanism if there is no clear delineation between the two phases to tell that steady state regulation once again has become the norm. This can cause problems if there is no provision for an orderly winding-up of relief activities in the event of a disaster, whereby the assisting actors are given adequate notice that phases are drawing to a close. Customs administrations and host governments should plan how to manage the implications for Customs Duties after the relief phase
36. From an operational perspective, emphasis should be placed on the relevance of the WCO Trade Recovery Guidelines developed to facilitate and resume the international flow of goods following the occurrence of an incident. Effective trade recovery is supported by the implementation of both Pillar I and Pillar II of the SAFE Framework. Close Customs-to-Customs co-operation and Customs-to-Business partnerships are essential in this regard. Trade recovery plans should make provisions for the maintenance/replacement of Customs infrastructure damaged as a result of a natural disaster.
37. It is particularly striking to note the extent to which the Plan of Action, actions by Customs and communication mechanisms set out respectively in points 4.1, 4.2 and 4.3 of the Guidelines are applicable in the event of natural disasters. The two Annexes to the WCO Trade Recovery Guidelines, relating to basic and supplemental elements of information, are also extremely useful in terms of sharing information concerning the incident.
38. Moreover, Customs Administrations may also need to send a public alert to the trade community, informing on restoration of efficient trade flows following a particular interruption of an incident.