

FACILITATION PANEL (FALP)

(Third Meeting, Montreal, 12 to 16 February 2001)

Agenda Item 2: Cargo facilitation – Chapters 1 and 4 of Annex 9

PROPOSED ADDITIONS AND AMENDMENTS TO SARPS

(Presented by Mr. J. Manning, Australia)

SUMMARY

This paper addresses the proposed texts of Chapters 1 and 4 of Annex 9 and considers the text against current practices covering air cargo management.

1. INTRODUCTION

- 1.1 The Facilitation Panel members and ICAO Secretariat staff who participated in the inter-session Cargo Drafting Group should be congratulated. It is apparent that the work on the revision of Chapters 1 and 4 of Annex 9 has progressed very positively since FALP/2.
- 1.2 The SARPs associated with the facilitation of air cargo across borders need clearly to recognize the inherent benefits of air transport and at the same time enhance the effectiveness and efficiency of transport and Customs services to allow Contracting States to reap the benefits of international trade.
- 1.3 The work already undertaken on the SARPs in Chapters 1 and 4, as presented in WP/2 REV and WP/3 REV, goes a long way towards achieving those aims. It is noted that particular care has been taken in the revision to harmonize/align the text with the provisions of the revised Kyoto Convention. Some specific comments on the draft text follows.

2. PROPOSED AMENDMENTS TO CHAPTER 1

2.1 Definitions

2.1.1 *Authorized agent.* It is noted that this definition would not cover transportation intermediaries who move goods under their own issued transport documents and accept the responsibilities and liabilities associated with a contracting carrier. To overcome this fundamental change in structure and segmentation of air cargo, a new definition of “cargo declarant”, that would be applicable principally to Chapter 4, is proposed. See further comment below.

2.2 **General Principles**

2.2.1 *Standard 1.3.* It is suggested that the text be as follows:

“Contracting States shall use risk assessment in the application of border control procedures for travellers and for the release/clearance of goods.”

3. **PROPOSED AMENDMENTS TO CHAPTER 4**

3.1 **Definitions**

3.1.1 *New suggested definition.* It is suggested that a definition is necessary to properly assign responsibility when dealing with air waybills and the cargo declaration. The definition of operator (or carrier) is not sufficient because in many instances the person held responsible is a freight forwarder, courier or some other party and not the operator or their authorised agent. Suitable text would be as follows:

“*Cargo Declarant.* The person who provides the information required by Customs relating to cargo brought to or removed from the Customs territory.”

3.1.2 *Declarant.* Given the suggested references in the text to the cargo declarant it will be necessary to make this definition applicable to the “*Goods Declarant*”.

3.2 **General Principles**

3.2.1 *Standard 4.9.* To encourage Contracting States to employ electronic interchanges to the greatest extent possible, it is suggested that the following text would focus the SARP more relevantly:

“Subject to the technological capabilities of the Contracting State, documents for the importation or exportation of goods, including the cargo manifest and/or air waybills, shall be accepted when presented in electronic form transmitted to an information system of the public authorities.”

3.2.2 *Standard 4.10.* The following is suggested:

“The production and presentation of the cargo manifest and the air waybills shall be the responsibility of the cargo declarant. The production and presentation of the other documents required shall be the responsibility of the owner, the importer or exporter or another person acting on behalf of the owner.”

This text better covers all situations that could arise. Firstly, the cargo declarant is responsible for the reporting of the cargo. The cargo declarant may be the operator but just as likely will be a freight

forwarder or some other party. Limiting the responsibility to the operator or carrier or their agents is not sufficient.

Secondly, it may also be that there is no goods declaration required and the liability for production and presentation may lie with a freight forwarder or Customs broker or some other representative of the owner.

3.2.3 *Standard 4.11.* As above it is suggested that “operator or his authorized agent” be replaced by “cargo declarant”.

3.2.4 *Recommended Practice 4.16.* It is suggested that an expansion of this Recommended Practice to encourage Contracting States to reduce documentary requirements would be advantageous. Suggested text follows:

“Recommended Practice.– *Contracting States should, to the greatest extent possible, remove any requirement to manually produce supporting documents and establish procedures whereby they can be produced by electronic means.*”

3.2.5 *Standard 4.21.* This is a practice which should be discouraged and it is suggested that the text needs to be made much stronger by re-phrasing as follows:

“When goods have been exported from a Contracting State, evidence of their arrival abroad shall only be required by that State in very limited circumstances. If evidence of arrival abroad is required, the public authorities concerned shall accept, as evidence, the normal commercial transportation documentation generated in the transfer of the goods and not require specific certification documents to be prepared.”

3.2.6 *Standard 4.25.* The value added by the 4th indent to this provision is queried and its deletion suggested. Unless the provision addresses the terminology used i.e. “goods of a specified type” and “authorised persons” and explains what they mean, there will be confusion in application that could lead to contrary interpretations.

3.2.7 *Recommended Practice 4.27.* It is suggested that, for ease of reference, this Recommended Practice be spilt into two. The second Recommended Practice should commence with the second sentence. As per 3.2.2 above, it is necessary to insert the words “cargo declarant” after the words “Public authorities”.

3.2.8 *Recommended Practice 4.36.* It is suggested that this proposed text needs the qualification that the goods referred to in this SARP are not “stores to be taken away”. This could be achieved by the addition of the words “intended for use” after the words “commissary supplies”.

3.2.9 *Standard 4.50.* The value of this provision is queried and its deletion suggested. It does not add any value towards facilitating cargo flows and states the obvious that Contracting States are obliged to comply with the UPU and other agreements.

4. ACTION BY THE PANEL

4.1 The FAL Panel is invited to consider these proposals.

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