



FACILITATION PANEL (FALP)

EIGHTH MEETING

Montréal, 24-28 November 2014

Agenda Item 2: Amendments to Annex 9

FACILITATION OF AIR CARGO

(Presented by the Kingdom of the Netherlands)

SUMMARY

In recent years, a number of new developments in the Customs area have contributed to the facilitation of the logistical process, specifically in relation to Customs procedures and practices.

Some of these developments are based on the increased use of information technology, which makes it possible to exchange reliable information quickly between Customs, other governmental agencies and other parties involved in the international movements of goods.

The use of modern information techniques could also facilitate Customs requirements where a (Customs) security dimension has been incorporated. Specific facilitative measures for Customs procedures and practices and security requirements have been developed to enable Customs, other State entities and trade organizations to adapt to the new security environment, and to meet the need for harmonised procedures and practices.

In particular, the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) of the World Customs Organization incorporates a set of standards and guidelines providing for such harmonisation.

It is proposed that Annex 9 of the Convention on International Civil Aviation be updated by amending it to include these Customs facilitative measures.

Action by the FAL Panel:

The FAL Panel is invited to consider the proposal described in this paper and agree that Annex 9 be amended, as set out in the Appendix.

1. INTRODUCTION

1.1 Article 37 of the Chicago Convention 1944 states that:

“... the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with (...) (j) Customs and immigration procedures; (...) and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.”

These obligations have resulted in the development of Annex 9 (Facilitation) to the Convention with a first edition in 1949.

1.2 Customs formalities have been a major part of Annex 9 (Facilitation) to the Convention for many decades. Initially, the main approach of Annex 9 was to reduce delays due to cumbersome formalities by the reduction of paperwork, standardize internationally the documentary requirements and simplify the procedures required to clear aircraft, passengers and cargo.

1.3 Over the years, traffic volumes increased and states' resources for traditional inspection regimes could not keep pace with the increased volume. Furthermore the facilitation of clearance formalities became a much more complex issue. Therefore the focus of Annex 9 changed. In its 11th edition (2002), Annex 9 shifted its focus to inspection techniques based on risk management, more harmonization and standardization of procedures and the electronic exchange of information. This with the objectives of increasing efficiency, reducing congestion at airports and enhancing security; controlling abuses such as narcotics trafficking and travel document fraud; and supporting the growth of international trade and tourism.

1.4 For cargo formalities these new developments were based on the International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention, 1973) of the World Customs Organization (WCO) for which a complete revision was concluded in 1999. This revision entered into force on February 3, 2006 and is referred to as the revised Kyoto Convention.

1.5 Air transport procedures have changed over the years by the increased use of information technology. The paper environment is more and more replaced by the electronic exchange of information. Therefore, the procedures of Customs and other governmental agencies have changed considerably.

1.6 Information technology also makes it possible to introduce new procedures and practices which will have also a facilitative effect on the requirements by Customs and other governmental agencies. This will not only facilitate normal Customs requirements but also the new security requirements.

1.7 In addition to the traditional role of Customs, which is of a fiscal nature, Customs nowadays also plays a crucial role in protecting society. Part of this role lies in the area of security, taking into account the roles and responsibilities of other governmental agencies. Customs had to adapt to their new role and new security requirements were introduced, which could put the relation between control and facilitation out of balance.

1.8 A number of initiatives have resulted in new facilitation measures connected with standard customs procedures, but also to requirements related to security. This has made it possible for Customs, other governmental agencies and industry, to adapt to the security environment and also satisfies the need for harmonised procedures and practices.

1.9 For that purpose, the World Customs Organization (WCO) adopted in 2005 the SAFE Framework of Standards to Secure and Facilitate Global Trade (WCO SAFE Framework). This framework, which covers all transport modalities (air, maritime and land), contains Standards and Guidelines which cover and promote, amongst other items, advance cargo information requirements, risk

management based on the provision of the advance cargo information, a renewed focus on export controls (including outbound inspections) and benefits for legitimate trade based on the concept of the Authorised Economic Operator (AEO).

1.10 Most of the standards included in the WCO SAFE Framework, although developed from a security viewpoint, *also cover the facilitation aspects* related to these security measures and connects closely to the non-security customs procedures. Consideration should be given to incorporating these facilitative measures into Annex 9.

1.11 It should be noted that Customs sees “security” not only as related to the airplane. It is the security of society (e.g. prohibited items, intellectual property rights and food safety) as a whole that Customs is taking care off.

1.12 Furthermore, Customs has no intention in coming in the realm of, for example, the authorities responsible for aviation security. Customs however seeks, where feasible, the cooperation of such other authorities and thus not place a burden on the industry more than necessary. Customs is an advocate to coordinated border management, as stated in the Dubai Communiqué of 16 May 2013.

1.13 A number of new Customs concepts, which are not directly related to security, have been introduced, such as the developments in the field of information technology leading to new automated applications. With the introduction of these concepts, Annex 9 will again ensure that a balance is struck between the different functions of Customs agencies, namely exercising appropriate controls for the protection of society and levying taxes while providing facilitation for legitimate trade. A number of these concepts have already been included in the Recommendations of the United Nations, and in the facilitation instruments of both the International Maritime Organization and the European Civil Aviation Conference.

1.14 Most of the proposed amendments are also included in the new Agreement on Trade Facilitation of the World Trade Organisation (WTO), the so-called Bali Agreement from December 2013.

1.15 The proposed amendments to Annex 9 were submitted to ICAO for discussion and adoption at the FAL Panel (FALP/7) in October 2012.

1.16 Except for one, the proposals amending Annex 9, some with small changes, have been accepted by the FAL Panel (FALP/7).

1.17 Based on the ICAO State letter EC 6/3-13/14, ICAO received comments from ICAO Members on a number of proposals, including those related to cargo matters. Due to the complexity of some of the questions, the ICAO Secretariat was of the opinion that these proposals should be send back to the FAL Panel for further examination and clarification. This proposal was accepted by the ICAO Council.

1.18 The comments from ICAO Members on the State letter are contained in the ICAO Council document C-WP/14064, Appendix B and are provided with a response.

1.19 It seems that the comments are motivated due to a lack of knowledge on customs matters and are too much assessed from the security angle.

1.20 Most proposals, however, relate primarily to *normal customs procedures and practices*. They can, to a certain extent, also be used in the security environment, but they *remain* customs procedures and practices.

1.21 The proposed amendments have been reassessed, taking into account the comments made by some of ICAO members. More emphasis is placed on the customs aspects of the proposals.

2. DISCUSSION

2.1 Authorised Economic Operator

2.1.1 The WCO SAFE Framework of Standards includes the concept of the Authorised Economic Operator (AEO). An AEO is an entity that has satisfied Customs with pre- determined security standards for which it will receive the benefits of enhanced facilitation.

2.1.2 Granting the status of AEO to an economic operator is an important *Customs instrument* for facilitating international trade in the face of strengthened security requirements. An AEO maintains high security standards in its role and responsibilities in the international supply chain.

2.1.3 In return, the AEO status will, among other benefits, provide for the faster clearance of goods by Customs, through, for example, reduced examination rates. As one of the other benefits an AEO may receive is early notifications, before the arrival of the aircraft in the country of destination, that goods have been selected for physical inspections. This will prevent delays in the logistical chain caused by administrative procedures, and eliminate waiting times for responses from authorities.

2.1.4 Although there are similarities, the AEO programme should **not** be confused with the Regulated Agent / Known Consignor programme (RA / KC programme) as there are also differences between the programmes. The AEO status, for example, is granted by *Customs* while the RA / KC status is granted by the authorities responsible for air cargo security.

2.1.5 As a number of similarities between both programmes have been recognised, it is recommended that both authorities cooperate, where possible and beneficial, to avoid duplication of work, which could be a burden to trade. Some states have already carried out this recommendation and have, for example, made legal proposals in which the similarities between the AEO and the RA / KC programmes are recognized.

2.1.6 The status in one programme is then taken into consideration when applying for a status in the other programme.

2.1.7 Cooperation could also bring synergies to the work of both customs authorities and those responsible for air cargo security . The joint ICAO and WCO conferences on air cargo security in 2012 and 2014 called for such cooperation. Furthermore a Joint Working Group on Advance Cargo Information that comprises of ICAO-members, WCO-members and Industry has been established.

2.1.8 The concept of Authorised Operators is now also included as a possibility in the new WTO Agreement on Trade Facilitation (Section 1, article 7, 7.1 – 7.6). This concept resembles closely that of the WCO: the Authorised Economic Operator.

2.2 Advance Cargo Information

2.2.1 During FALP/6 in 2010, Standard 4.4 with a general statement on advance cargo information was introduced. Further details on advance cargo information, specifically with regards to advance security information, are now desirable.

2.2.2 In this context, complete and reliable advance data is essential to ensure the conduct of an effective security risk analysis. The outcome of such analysis should benefit from appropriate and secure handling arrangements in order to avoid any unauthorised use of information it contains. In Annex 9 reference could be made to standardised security data sets developed by the WCO in the SAFE Framework of Standards.

2.2.3 In December 2011 the Policy Commission of the WCO agreed on a resolution on air cargo security with the statement that advance information for air cargo security purposes should be available at least at the time of loading the aircraft in the country of departure.

2.2.4 Currently, pilot programmes have been concluded and are ongoing for the further development of advance security cargo information in Canada, the United States and the European Union for express air cargo consignments and for the traditional air cargo consignments.

2.2.5 These pilots are works in progress; risk analyses for security purposes are carried out on the basis of a limited number of data elements which are available at an early stage in the logistical chain. It is important to note that the outcome of these pilots would not be in conflict with the more general approach covered by the proposal to include more detailed information in Standard 4.4 of Annex 9.

2.2.6 Advance cargo information can also be used for the Customs procedures on import and export to allow beneficiary expedited release / beneficiary clearance of goods. For that purpose separate procedures are in place which are not covered by this proposal.

2.3 **Single Window**

2.3.1 An important concept in facilitating the exchange of information between trade and competent authorities, including Customs, is the Single Window concept.

2.3.2 The Single Window makes it possible for all information required by regulatory agencies dealing with cross border movement of goods, to be lodged at a single point and at the same time. The Single Window is an effective tool for the streamlining of the required information, but it will only work with necessary data harmonisation.

2.3.3 The Single Window would enable cross border regulatory agencies to make arrangements for coordinated risk management and coordinated controls (One Stop Shop). The Single Window concept is not specifically developed for security purposes; however, for the submission of security related information, the Single Window could be used.

2.3.4 The Single Window concept is already recognised and promoted by several international organisations in relation to trade facilitation. The United Nations Economic Commission for Europe (UN/ECE) and its Centre for Trade Facilitation and Electronic Business (UN/CEFACT) have developed a number of recommendations on the Single Window concept, which is introduced in UN/CEFACT Recommendation number 33. Other international organizations, such as the International Maritime Organization (IMO), the World Customs Organisation (WCO) and the Association of Southeast Asian Nations (ASEAN) have recognized the Single Window concept, the inclusion of which in Annex 9 would bring ICAO alongside the other international organizations.

2.3.5 The Single Window concept is also included in the new WTO Agreement on Trade Facilitation (Section 1, article 10, 4, 4.1 – 4.4).

2.3.6 A common definition of the term "Single Window" is:

“A facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic then individual data elements should only be submitted once.” (Recommendation nr. 33 from UN/CEFACT)

2.3.7 This definition should be included in Chapter 1 of Annex 9.

2.4 **Airport Cargo Community Systems**

2.4.1 In a number of places the airline industry has introduced electronic systems which allow for the exchange of information between all parties at the airport involved in the air cargo supply chain.

Annex 9 could support these initiatives by making reference to them and promoting them to all parties involved. These parties could include regulatory agencies dealing with cross border movement of goods such as Customs.

2.4.2 These electronic systems are generally referred to as “Air Cargo Community Systems” and can be initiated by the government, the industry or jointly.

2.4.3 An Air Cargo Community System could be established in addition to a (government) Single Window. Alternatively, it might include the functions of a government Single Window in case of public-private community systems which serve as trusted third parties and facilitate multiple filing. At the same time, an Air Cargo Community System could provide valuable information, e.g. shipments status and performance indicators to the respective parties in the chain.

2.4.4 Air Cargo Community Systems should, as a matter of course, be interconnected, and should support multiple filing. Multiple filing is the concept of filing detailed information on one single shipment which is filed by the different parties involved in the picking, packing, loading, transportation, unloading and unpacking process.

2.4.5 Every party in the air cargo chain is a source of specific information, and an Air Cargo Communication System should enable all parties in the chain to refer to each other's data. A carrier, for example, may refer to the airway bill (AWB) data provided by a forwarder; while a forwarder sends information which refers to the packing lists, commercial invoices and electronic certificates he received from the shipper or consignor. The latter may even refer to a purchase order uploaded by the consignee or the forwarder at the final destination, which in return may provide for pre-clearance benefits.

2.4.6 An air cargo community system could be considered as a specific form of a Single Window and an example of the application of information technology.

2.4.7 See also the new WTO Agreement on Trade facilitation on Single Window (Section I, Article 10, 4.1-4.4 and the WTO Implementation guidance). More information is to be found in:

- the Trade Facilitation Implementation Guide of the UNECE / UN/CEFACT: (<http://tfig.unece.org/contents/airport-community-systems.htm>)
- the WCO Implementation Guidance to the new WTO Agreement on Trade facilitation: (<http://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/atf.aspx>)

2.5 **Special procedures for authorised persons**

2.5.1 In addition to the current Recommended Practice 4.30 in Annex 9, a new Recommended Practice is suggested in order to specify a number of possible special procedures for authorized persons.

2.5.2 These special procedures are in line with the benefits mentioned in Transitional Standard 3.32 of the WCO Revised Kyoto Convention and include the release of goods based on minimum information, the clearance of goods at the person's premises, the lodgement of a goods declaration based on an entry in the records of the authorized person and the lodgement of a supplementary goods declaration in addition to entry in the records.

2.5.3 In the current Recommended Practice 4.30 in Annex 9, the reference to the supply of advance cargo information should be deleted, since this is not a part of the suggested special procedures mentioned in the new Recommended Practice in the WCO Revised Kyoto Convention.

2.5.4 Although the authorised persons mentioned in Transitional Standard 3.32 of the WCO Revised Kyoto Convention have been the basis for the development of the WCO concept of Authorised Economic Operator, it must be noted that it is not the same concept. The special procedures for authorised persons cover the customs procedures import, export and transit, while the AEO is related to the security requirements of the supply chain.

2.5.5 The authorised operators are now included as possible concepts in the new WTO Agreement on Trade Facilitation (Section 1, article 7; 7.1 – 7.6).

3. **RECOMMENDATIONS**

3.1 The above mentioned measures, concepts and practices could be usefully included in Annex 9.

3.2 Accordingly, the Kingdom of the Netherlands proposes to amend Annex 9 as presented in the Appendix.

APPENDIX

Amend Annex 9 as follows:

1. CHAPTER 1. DEFINITIONS AND GENERAL PRINCIPLES

under **A. Definitions**, the following new definitions should be added alphabetically:

Authorised Economic Operator. AEO is 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 may include manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors and freight forwarders.

Single Window. A facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic then individual data elements should only be submitted once.

2. CHAPTER 4. ENTRY AND DEPARTURE OF CARGO AND OTHER ARTICLES

a) under **A. General**, the following new Recommended Practices 4.9.1 and 4.9.2 should be inserted after Standard 4.9:

4.9.1 Recommended Practice.– *Contracting States should consider the introduction of programmes for Authorised Economic Operators, allowing for facilitative Customs control measures relating to security.*

Note:–*Facilitative Customs control measures may include a reduced level of physical inspections and examinations, the submission of a limited set of security data elements, a notification of an intended inspection before the arrival of the goods and other facilitative measures. The control measures should be based on the required information provided in advance to Customs and by using risk assessment procedures.*

4.9.2 Recommended Practice.– *Contracting States should encourage the establishment of agreements / arrangements for the mutual recognition of their respective Authorised Economic Operator or equivalent programs with other countries.*

b) under **B. Information required by the public authorities**, the following new Recommended Practice 4.10.1 should be inserted after Standard 4.10:

4.10.1 Recommended Practice.– *Contracting States should, to facilitate the processing of advance cargo information for security purposes, limit the data requirements to those necessary to identify the quantity of the goods, the nature of the goods at arrival and the persons motivating the transaction of the goods together with a unique identifier, in order to perform security risk analysis.*

Note:– *This information may be ascertained from commercial documents. Data requirements should be based on international standards, specified in national*

legislation and determined in co-operation with all parties involved in the transport and handling of air cargo.

c) under **B. Information required by the public authorities**, the following new Recommended Practice 4.11.1 should be inserted after Standard 4.11:

4.11.1 Recommended Practice.– *Contracting States should consider, where feasible, the use of the available advance cargo information in subsequent import, export or transit procedures for the release / clearance of the goods.*

d) under **B. Information required by the public authorities**, the following new Recommended Practices 4.17.1 and 4.17.2 should be inserted after Standard 4.17:

4.17.1 Recommended Practice.– *Contracting States should consider the introduction of arrangements to enable all parties involved in air cargo operations to submit all the information required by public authorities, including advance cargo information, in connection with arrival, stay and departure of an aircraft and air cargo, to a single entry point (Single Window).*

4.17.2 Recommended Practice.– *Contracting States should encourage all participants in the transport, handling and clearance of air cargo to simplify relevant procedures and documents and to cooperate or participate directly in the development of electronic air cargo community systems using internationally agreed standards with a view to enhance the exchange of information relating to such traffic and assuring interoperability between the systems of all participants.*

e) “**C. Release and clearance of export cargo**”

should be amended to read:

C. Release and clearance of export and import cargo.

f) under **D. Release and clearance of import cargo**, Recommended Practice 4.30 should be replaced as follows:

~~4.30 **Recommended Practice.** – *For authorized importers who meet specified criteria, including an appropriate record of compliance with official requirements and a satisfactory system for managing their commercial records, Contracting States should establish special procedures, based on the advance supply of information, which provide for the immediate release of goods.*~~

Contracting States should establish special procedures, based on the advance cargo supply of information, which provide for the expedited release of goods on arrival or departure for authorized importers, traders and other persons. These authorized importers, traders and other persons should meet specified criteria, including an appropriate record of compliance with official requirements and a satisfactory system for managing their commercial records.

g) under **D. Release and clearance of import cargo**, the following new Recommended Practice 4.30.1 should be inserted after Recommended Practice 4.30:

4.30.1 Recommended Practice. – *Special procedures for authorised persons may include:*

- a) *release of the goods for import or export on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final goods declaration;*
- b) *clearance of the import or export goods at the authorised person’s premises or at another place authorised by Customs;*
- c) *lodgement of a goods declaration for import or export, based on the entry into the records of the authorised person;*
- d) *lodgement of a single goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person.*

h) under **D. Release and clearance of import cargo**, in recommended practice 4.31:

“4.27 to 4.30” is replaced by “4.27 to 4.30.1”

i) Title “**D. Release and clearance of import cargo**”

should be deleted (~~**D. Release and clearance of import cargo**~~)

j) Consequently, the letters in subsequent sections will change, for example, “E” will become “D”, and so on.

— END —