



MANAGEMENT
COMMITTEE
Revised Kyoto Convention
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Brussels, 20 October 2016

**DRAFT REVISED RKC GUIDELINES ON TRANSITIONAL STANDARD 4.13 AND
STANDARD 4.14 OF THE GENERAL ANNEX (THE “DE MINIMIS REGIME”)**

(Item VI on the Agenda)

I. Background

1. The scope and remit of Transitional Standard 4.13 and Standard 4.14 (with regard to the application of the “*de minimis*”) of the General Annex of the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention - RKC) were considered by the RKC Management Committee (RKC/MC) at its 14th Meeting, held on 8-9 October 2015.
2. The RKC/MC decided that the RKC set out broad standards and principles, and did not prohibit the adoption of a flexible approach towards the implementation of its provisions related to “*de minimis*”, which could potentially include exclusion of certain goods and routes, bearing in mind different national specificities, economic environments, and geographical contexts. It also noted the need to apply a fair, transparent and consistent policy on the “*de minimis*” regime, while also providing a level playing field to all actors in the supply chain.
3. Bearing in mind its competence to review and update the Guidelines as stated by Article 6, paragraph 5 (d) of the Convention, the RKC/MC further decided to develop/enhance the RKC Guidelines on Transitional Standard 4.13 and Standard 4.14 by providing more detailed elaborations and Members’ best practices.

II. Review/Update of Guidelines

4. Following the RKC/MC decision, the review and update work of the Guidelines was undertaken intersessionally, facilitated by Australia and supported by Singapore, Japan and the EU.
5. The updated RKC Guidelines to Transitional Standard 4.13 and Standard 4.14 are appended at Annex I hereto.

III. Action Requested

6. The RKC/MC is invited to examine and, if appropriate, adopt the updated RKC Guidelines relating to Transitional Standard 4.13 and Standard 4.14.

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**Draft Updated RKC Guidelines relating to
Transitional Standard 4.13 and
Standard 4.14**

Transitional Standard 4.13

National legislation shall specify a minimum value and/or a minimum amount of duties and taxes below which no duties and taxes will be collected.

The collection and payment of duties and taxes should not be required where this is not cost-effective both for the Customs and the declarant¹ in terms of processing costs, the compliance burden and delivery times.

Transitional Standard 4.13 requires national legislation to specify such minimum thresholds based on:

- i) value and/or
- ii) amount of duties and taxes.

Value specifies a price of goods (for example, 100 USD or 200 Euro or at own local currency equivalent), and if the price of goods is under the specified value, no duties and taxes will be collected.

Amount of duties and taxes specifies the sum total of duties and taxes such as 1 USD or 1 Euro under which amount of duties and taxes will not be collected as these amounts are negligible.

Impact of e-commerce

~~With the advent of the next millennium the number of transactions that will occur over the Internet will increase tremendously in the next few years. Cross-border trade of goods over the internet has seen strong growth in recent years which is expected to continue. Electronic commerce (e-commerce) has become a very convenient shopping choice for consumers with rapid growth in trade volumes based on on-line purchasing. Normal duty and taxes systems will still be effective in the collection of the relevant duties and taxes on these transactions as these purchases will still entail the physical delivery of these goods at the border. Of course, the number of low value shipments and deliveries by couriers will increase along with the number of these electronic transactions. In the e-commerce environment, goods are ordered online, payments are made online, and delivery instructions are given online, but goods still cross borders when it comes to international shipments and are subjected to Customs and other regulatory requirements. The number of low-value shipments and deliveries by couriers and postal operators has increased substantially along with the number of these electronic transactions. This growing trade of low-value shipments is posing challenges in terms of potential revenue leakage.~~

Customs ~~administrations~~ must should ensure that they are ready to respond to this ~~flourishing trend~~ growing low-value cross-border e-commerce. It is also important to ensure the correct application of duties and taxes on cross-border e-commerce and to establish and manage minimum value and/or amounts in national legislation in accordance with Transitional Standard 4.13 of the General Annex to the RKC. Lack of their proper application and enforcement may result in distortions of competition on the domestic market of the importing country or jurisdiction.

¹ Definition E14 of Chapter 2 of General Annex

~~However, the collection and payment of duties and taxes should not be required for negligible amounts of revenue that incur costly paperwork, both for the Customs administration and the importer/exporter. Customs administrations must establish and specify in national legislation amounts below which duties and taxes need not be collected or paid.~~

The RKC Management Committee (RKC/MC) at its 14th meeting in October 2015 decided that the RKC set out broad standards and principles, and did not prohibit the adoption of a flexible approach towards the implementation of the Transitional Standard 4.13 related to “de minimis”, bearing in mind different national specificities, economic environments and geographical contexts. The RKC/MC also noted the need to apply a fair, transparent and consistent policy on the “de minimis” regime, while also providing a level playing field to all actors in the supply chain.

In the process of determining a “de minimis” threshold, it should normally be borne in mind that the cost of processing (both to Customs and declarant) of low-value shipments should not outweigh the actual revenue collection. This process needs to be a dynamic one, allowing for regular reviews reflecting new circumstances and opportunities as provided in the WCO Immediate Release Guidelines.

The threshold at which the “de minimis” level is set may be variable and dependent on relevant fiscal and socio-economic factors. As such the level of “de minimis” should, therefore, be considered in light of potentially affecting the efficient revenue collection and conditions of distortive competition in the domestic market.

The Transitional Standard 4.13 does not prohibit Customs administrations to decide on i) the amount of “de minimis” value and or duty/tax amount for each mode of transport (land, sea, air), ii) the mode of transport for which “de minimis” is applicable, and iii) types of goods which could potentially be excluded from “de minimis”. So, it is possible for each Customs administration to effectively manage the risks and deal with the unique conditions at various border posts.

(Additional inputs from Singapore)

[When considering the mode of transport for which “de minimis” are applicable, Customs administrations may consider the typical value of shipments transported via that particular mode of transport. For instance, the value of commercial sea-freight shipments would be typically higher than small value packages transported by air or land. While a much higher de minimis value for sea shipments would allow more sea shipments to enjoy tax savings, it is not the intent of the de minimis regime, which is to balance between revenue collection and the cost of doing so. Customs administrations may also consider the logistical and practical challenges in applying the same “de minimis” at land borders, which typically sees a much higher volume of travellers making daily commute between borders. Applying the same “de minimis” at land borders may cause commercial entities to take advantage of the close geographical distance to import goods through de-consolidation of consignments into numerous vehicles or by making multiple trips, leading to congestion at the borders, which would also impede trade flow.]

Standard 4.14

If the Customs find that errors in the Goods declaration or in the assessment of the duties and taxes will cause or have caused the collection or recovery of an amount of duties and taxes less than that legally chargeable, they shall correct the errors and collect the amount underpaid. However, if the amount involved is less than the minimum amount specified in national legislation, the Customs shall not collect or recover that amount.

Sometimes errors will be discovered by Customs in the Goods declaration or in the assessment of the duties and taxes which will result or have resulted in an underpayment. If such errors are found, Customs must correct the errors and collect the amount underpaid. When the underpayment is determined to be the result of inadvertent errors on the part of the declarant, and there is no evidence of illegal intent, Customs may choose not to impose penalties.

Some Customs administrations allow the declarant to pay the additional amount without having to amend the declaration. If the amount of the underpayment is less than the minimal threshold established by the Customs administration, the ~~latter Customs-~~ administration must not collect or recover it.

The minimum threshold established need not to be the same amount as the “de minimis” established under Transitional Standard 4.13.

Normally most legislations provide a specific time period beyond which the Customs cannot take action to correct the errors and collect the amount of duties and taxes underpaid. However it is also normal to include a provision indicating that this period of limitation will not apply if there has been a fraudulent, deliberate or illegal intent to evade duties and taxes. In such instances Customs could take legal action to collect the duties and taxes beyond this specified period, but within a longer period that may be specified in national legislation.