

# KYOTO CONVENTION

## GENERAL ANNEX GUIDELINES

### *Chapter 4*

### *DUTIES AND TAXES*



WORLD CUSTOMS ORGANIZATION

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## 1. General information

### 1.1. Introduction

In a modern global marketplace, Customs administrations should be responsive to the needs of the business community, through the introduction of procedures which expedite legitimate trade. Traditionally, goods have not been released until the Customs administration has received payment of the applicable duties and taxes. However, to facilitate trade, many Customs administrations have considered procedures that allow the release of the goods, under a guarantee, if required, prior to the final assessment and payment of Customs duties, taxes, fees and charges where the final determination of such Customs duties, taxes, fees, and charges is not done prior to or upon arrival, or as rapidly as possible after arrival. This is referred to as "Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges" in Article 7.3 of the WTO Trade Facilitation Agreement. It is also suggested that the incurrance of a liability to pay Customs duties and taxes should not automatically be linked to the physical arrival of goods in a Customs territory.

These Guidelines provide a framework of modern Customs processes and procedures, covering assessment, collection and payment (including deferred payment) and repayment of duties and taxes. The increased use of new and improved automated processes and information technology reduces paperwork and gives importers a quicker and more efficient service. This helps them to stay competitive in an ever-changing commercial environment, while maintaining Customs administrations' ability to collect the revenue.

These Guidelines seek to introduce best practices, the application of which, while not obligatory, is highly recommended. This Chapter does not include provisions for duties and taxes on travellers and postal traffic. These subjects are dealt with explicitly in Specific Annex J on Special procedures. These Guidelines should be read in conjunction with the legal text contained in Chapter 4 of the General Annex. Therefore, for ease of reference, the appropriate Standards are indicated before each paragraph which deals with the particular subject matter of that Standard.

### 1.2. Background

The clearance of goods usually involves the lodgement of a Goods declaration with/without supporting documents (e.g. import/export permit, certificates of origin, etc.) and the payment of applicable duties and taxes. General release is granted as long as payment has been entered into the books of the importer. Most Customs administrations allow payment to be deferred and made on a transaction-by-transaction or periodic (usually monthly) basis, provided the importer/owner meets certain conditions. Security may be required to guarantee payment. The issue of security is dealt with in detail in Chapter 5 of the General Annex and the related Guidelines.

National legislation must outline the requirements for duties and taxes and the circumstances under which liability may be incurred. The requirements for assessment, collection and payment of duties and taxes are found in Standards 4.1 to 4.14, Part A of Chapter 4 of the General Annex. Part B of Chapter 4 includes Standards 4.15 to 4.17, which deal with deferred payment of duties and taxes for specified persons. Repayment of duties and taxes is governed by Standards 4.18 to 4.24, in Part C of this Chapter.

**Commented [PD1]:** WCO Secretariats supplementary input.

**Commented [PD2]:** Relevant elements added as per the rationale and explanation provided by the proponent (AC) for Concept 13.

**Commented [PD3]:** 31st RKC/MC Meeting:

NL: RKC refers to "Guarantee" as "Security". To change the word Guarantee to Security as indicated by NL..

JP: Suggested to move this new addition to other appropriate place in Chapter 4, GA of the RKC Guidelines. Also suggested to that 'separation of release' to be considered under Standard 4.9.

TH: Not clear on the last sentence of the new addition as Article 7.3 does not say it cannot be linked....

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**Standard 4.1**

*National legislation shall define the circumstances when liability to duties and taxes is incurred.*

*(Components 1 and 2: Incurrence of a Customs debt on import and export and “regular” Customs debt and Customs debt in “irregular” cases, Amendment of Standard 4.1, Chapter 4, General Annex; Concept No. 13: Electronic Payment of Duties, Proponent: AC)*

Standard 4.1 of this Chapter indicates that the national legislation shall define the circumstances when liability to duties and taxes is incurred. Such circumstances arise when goods are cleared for home use after their arrival in the Customs territory or when they are cleared for home use from a free zone or a warehouse, or after inward processing or from a fulfillment center or facilities under the control of the Customs authority [NZ]. Similarly other circumstances may also arise in administrations that have export duties and taxes when the goods are exported from the Customs territory. In addition, goods under a temporary admission procedure that are not exported within the stipulated time period may also be subjected to duties and taxes.

Commented [PD4]: WCO Secretariats additional input.

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Under specific circumstances some goods may be cleared by Customs free of duties and taxes irrespective of their normal tariff classification or liability. Such relief from duties and taxes is covered in detail in Specific Annex B, Chapter 3, which deals with relief from import duties and taxes on goods declared for home use. Relief from import and export duties and taxes for goods in Customs transit is covered in Specific Annex E, Chapter 1, and more specifically in Standard 3 of that Chapter.

(Component 3: Incurrence of a Customs debt for prohibited and restricted goods; NEW concept/provision/element to be considered to/after Standard 4.1, Chapter 4, General Annex; Concept No. 13: Electronic Payment of Duties, Proponent: AC)

"Subject to national legislation, liability may be incurred even if goods are subject to measures of prohibition or restrictions." (PDT)

## 2. Essential features

### 2.1. Assessment and collection of duties and taxes

#### 2.1.1. Assessment

#### Standard 4.2

*The time period within which the applicable duties and taxes are assessed shall be stipulated in national legislation. The assessment shall follow as soon as possible after the Goods declaration is lodged or the liability is otherwise incurred.*

Contracting Parties must ensure that their national legislation describes the point in time when duties and taxes are assessed. The assessment must follow as soon as possible after the Goods declaration is submitted or the liability is otherwise incurred. The final assessment must clearly indicate the total amount of duties and taxes owing for the transaction(s).

#### Standard 4.3

*The factors on which the assessment of duties and taxes is based and the conditions under which they are determined shall be specified in national legislation.*

The definitions in Chapter 2 of the General Annex include the following : "assessment of duties and taxes" means the determination of the amount of duties and taxes payable. The assessment of duties and taxes ~~is~~ generally based on the following criteria :

- tariff classification;
- value and/or quantity, according to whether the duties and taxes applicable are ad valorem or specific or a combination thereof; and
- country of origin or consignment, where liability depends upon these factors.

Customs ~~a~~ Administrations must ensure that these criteria are specified in national legislation. The rules for determining tariff classification, dutiable value or quantity and origin should be set out in explanatory notes drawn up by the competent authorities. National legislation must also specify the point in time when duty liability is incurred and the point in time

**Commented [PD5]:** Considering the core rationale and explanation of the proponents on Components 1 and 2, and after reviewing the details and explanation provided in the relevant Chapters of the GA and SAs, to large extent, it is covered in the specific Chapters of the SAs which complements Chapter 4 of the GA. Some of the key Guidelines to be referred in the SAs in addition to Chapter 4 of the GA are:

1. Definition of "Clearance for Home Use", E1/F2, Chapter 1, SA-B
2. Chapter 3, SA-B, Relief from Import Duties and Taxes
3. Chapter 1, SA-C, Outright Exportation
4. Chapter 1, SA E, Customs Transit
5. Chapter 1, SA-H, Customs Offences

**Commented [PD6]:** Suggest to drop this Component even from the Guidelines unless the proponent could provide some explanatory text with some clarity especially on the "Prohibition" aspect.

**Commented [wcr7R6]:** JP: does not support this proposal, agree to drop it.

**Commented [wcr8R6]:** Senegal agrees

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to be used for determining the exchange rate. The determination of the “dutiable quantity” is more relevant to the application of specific duties.

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**Standard 4.4**

*The rates of duties and taxes shall be set out in official publications.*

Imported goods must first be classified under a tariff heading that, with other factors, determines the amount of Customs duty payable. Goods are usually classified under the Harmonized Commodity Description and Coding System (HS), which is an internationally agreed tariff classification system developed under the auspices of the World Customs Organization (WCO). The HS performs a dual function of standardizing tariff classification and recording statistics. It does not, however, bind parties to tariff rates. Customs tariff levels are negotiated by members of the World Trade Organization (WTO) with the objective of ensuring progressive mutual reduction of their rates. National legislation determines the quantum of the duties and taxes.

For most commodities, the duty is expressed as an ad valorem rate (i.e. a percentage of the value), while for others, the rate is specific, e.g. so much money per litre. Occasionally, the rate is expressed as some combination of ad valorem and specific rates. The duties are generally found in the Customs tariff and, in some countries, in other legislation also. Various rates of duty may be indicated for each item. The appropriate rate depends on the item's country of origin.

Contracting Parties must set out the rates in official publications. This requirement is harmonious with the Standards contained in Chapter 9 of the General Annex regarding Information, Decisions and Rulings supplied by the Customs. The publications which contain the rates should be easily accessible by clients and could be in the form of directive memoranda, electronic database publications, Internet web sites, etc. An example of an electronic publication is the TAPIN (Tariff and Precedents Information Network) searchable Customs database in place in Australia. TAPIN, which is accessible by their brokers, contains an electronic Customs Tariff, a History Tariff, the Brussels Explanatory Notes, a list of concessional items and a compendium of Valuation and Classification rulings.

**Standard 4.5**

*National legislation shall specify the point in time to be taken into consideration for the purpose of determining the rates of duties and taxes.*

The point in time used for determining the rates chargeable may, for example, be the time when the goods arrive, the time when the Goods declaration is lodged, the time when the declaration is accepted by Customs, the time when the duties and taxes are paid, or the time when the goods are released. Most administrations choose the time when the declaration is accepted by Customs. Whichever time is chosen, Customs must ensure that it is specified in national legislation.

In order for importers and brokers to be able to establish what the actual rate is on the determined date, there should be a published list of the rates for exchanging foreign currencies to the domestic currency on that particular day in question for each import transaction. Customs should not be arbitrary in preparing these lists and they should be market based, i.e., rates could be sought from the central bank of the nation.

Once the appropriate rate of duty is established, the basis on which the duty is calculated (value for duty) must be determined. Usually this is the price paid or payable. The Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT), generally known as the Customs Valuation Code (the Code), is the basis used for most domestic Customs valuation systems. Article VII of the GATT deals with the issue of valuation for Customs purposes by providing basic Guidelines for national legislation. The

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Code is based on the application of the transaction value method for determining the Customs value ~~offer~~ imports, which is the price the importer and exporter agree to pay for the particular import, subject to specified adjustments.

**Commented [PD9]:** "Component 5: Factors on the assessment and conditions of determination of duties and taxes (Cat-2)" of Concept 13 is covered in the Guidelines to Standards 4.3, 4.4. & 4.5, of Chapter 4, GA.

### 2.1.2. Self Assessment

In some modern Customs administrations the declarant may be authorized to assess the amounts of duties and taxes. Under this procedure, the Customs are not required to indicate the amount chargeable. However, the Customs administration has final responsibility for the assessment of the duties and taxes which can be established via audits, for example. Self-assessment is a recommended progressive procedure which can expedite the processing of goods through the border. Self-assessment involves the application of risk management principles, post-transaction auditing, administrative penalties, binding rulings, Customs responsibilities and red/green line lodgements. In some administrations, self-assessment is only permitted by certain clients; ~~f~~For instance, those with proven compliance records. For a full description of self-assessment, please see the Guidelines to Chapter 3 of the General Annex, Clearance and other Customs formalities.

**(Component 6: Time and place at which a Customs debt is incurred; NEW concept/provision/element to be considered to/after Standard 4.1, Chapter 4, General Annex; Concept No. 13: Electronic Payment of Duties, Proponent: AC)**

~~["Subject to national legislation, the amount of import or export duties and taxes shall be determined on the basis of the rules for determining the duties and taxes which were applicable to the goods concerned, at the time the Customs liability was incurred or in specific cases, a deemed time." (PDT)]~~

**Commented [PD10]:** This Component seems to be covered by various Standards (4.1, 4.3, 4.8 etc.) of this Chapter.

### 2.1.3. Payment

#### Standard 4.6

*National legislation shall specify the methods that may be used to pay the duties and taxes.*

All forms of payment of the duties and taxes accepted by a Contracting Party and the criteria applicable to each must be identified in national legislation. To facilitate the accounting procedure, Customs should accept payment of duties and taxes in forms other than cash, such as travellers cheques, money orders, certified cheques, uncertified cheques (in specified circumstances), bonds, credit cards, securities, etc.

Customs authorities may make certain conditions to safeguard these alternative forms of payment. For instance, if allowing payment by cheques drawn on a foreign bank, the bank may need to have an office in the country of importation.

A modern practice which is highly recommended is that electronic funds transfer systems be established wherever possible, allowing for quick and efficient payment. This is especially useful for Customs brokers and traders who import/export frequently on a large scale, paying considerable amounts of duties and taxes on a monthly basis. The use of electronic data interchange (EDI) is also useful in expediting payment.

**(Component 1: Electronic payment of all duties, taxes and charges, Amendment to Standard 4.6, Chapter 4, General Annex; Concept No. 13: Electronic Payment of Duties, Proponents: TH, GEA and EC)**



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In connection with the concept of facilitating Customs procedures through the use of IT technologies, the need for electronic payment (e-payment) services is widely recognized, together with the need for electronic declarations. The WCO E-Commerce Framework of Standards includes Standard 7 on the e-payment option, while the WTO Trade Facilitation Agreement has a dedicated provision on electronic payment (Article 7.2). Recommended Practice 15 of Specific Annex J1 of the RKC recommends the use of credit cards or bank cards as a means of payment for travellers, and this could also be utilized in the context of e-commerce. Private sectors in general also emphasizes the application of e-payment as a vital option to pursue it as a means to ensure supply chain continuity during a pandemic.

In general, the e-payment of duties and taxes is carried out using methods such as, but not limited to: payment into the Customs administration's account through a financial institution's website (banks, credit cards, digital wallet, etc.); direct interface between the Customs IT system and the financial institution's system.

#### Standard 4.7

*National legislation shall specify the person(s) responsible for the payment of duties and taxes.*

**(Component 7: Person(s) responsible for the payment of duties and taxes; Amendment to Standard 4.7, Chapter 4, General Annex; Concept No. 13: Electronic Payment of Duties, Proponent: AC)**

It is necessary that national legislation specify the person(s) or the declarant responsible for the payment of duties and taxes. It should stipulate whether it is the importer, exporter, owner, consignee, agent, broker, or carrier/transporter who is accountable, to provide clarity for Customs and the trading community. In some instances two or more persons can be held jointly responsible. In cases of non-compliance, the person who was responsible for compliance with the Customs law, or who was aware or should reasonably have been aware of the non-compliance, could be held accountable and liable.

#### Standard 4.8

*National legislation shall determine the due date and the place where payment is to be made.*

Contracting Parties must also specify in their national legislation the due date and place where payment of duties and taxes must be made. Due date is defined in Chapter 2 of the General Annex as *"the date when payment of duties and taxes is due"*. Usually duties and taxes are paid at the Customs office where the Goods declaration was lodged or in some cases where the goods are released. In some countries payment is allowed to be made through another agency (i.e., banks) or office designated by the Customs. In some cases, one Customs office may be selected for payment of all the transactions, regardless of where the transactions were cleared.

#### Standard 4.9

*When national legislation specifies that the due date may be after the release of the goods, the date shall be at least ten days after the release. No interest shall be charged for the period between the date of release and the due date.*

Many Customs administrations allow payments to be made periodically (usually monthly), as well as on a transaction-by-transaction basis. If periodic payment procedures are allowed, security deposits are usually required. Sometimes security level requirements can be kept to a minimum for traders who have a large volume of monthly transactions by allowing them to make interim payments throughout the month.

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When Customs administrations allow periodic payment, they are advised to provide traders with daily and/or monthly statements listing all transactions accepted by Customs the previous business day or month. These statements should include the total amount payable for the transactions processed within the billing period, and indicate the date when payment is due. All interim payments made within the billing period should also be indicated in the statement. Statements can be provided either electronically or on paper depending on the systems in use. Once generated, the amount on the monthly statement should be paid in full. After that point, any outstanding amounts are usually subject to interest charges.

Duties and taxes must usually be paid at the time when a Goods declaration is lodged or accepted or before the goods are released. When national legislation specifies that duties and taxes may be paid after the release of the goods, the period allowed for payment must be at least ten days.

**Standard 4.12**

*When the duties and taxes have been paid, a receipt constituting proof of payment shall be issued to the payer, unless there is other evidence constituting proof of payment.*

A receipt or other evidence constituting proof of payment, whether in electronic or paper form, ~~it~~ must be issued to the payer ~~unless there is other evidence constituting proof of payment~~. Often the receipt or proof of payment is given on the declarant's copy of the declaration or, in the case of periodic payments, on the monthly statements. Sometimes, the receipt or the proof of payment may be issued by an authorized body other than a Customs office.

(Component 9: Extinguishment of Customs debts; Amendment to Standard 4.12, Chapter 4, General Annex; Concept No. 13: Electronic Payment of Duties, Proponent: AC)

~~In addition, possible circumstances under which a Customs liability to duties and taxes may be extinguished should be considered in national legislation.~~

(Component 8: Time frame for legal action to collect duties and taxes not paid by the due date, Chapter 4, General Annex; Concept No. 13: Electronic Payment of Duties, Proponent: AC)

**2.1.4. Collection**

**Standard 4.10**

*National legislation shall specify the period within which the Customs may take legal action to collect duties and taxes not paid by the due date.*

When duties and taxes are not paid by the due date, it may be necessary for Customs administrations to take legal action to collect the duties and taxes. The period within which they may do so must be indicated in national legislation. Indication of this period within which legal action must be taken ensures that Customs take action in a timely manner and also provides certainty to the trade such as the period for retention of records. In addition legislation may provide that this time period shall not apply if there has been a criminal or illegal intent and empower the Customs to take legal action to collect the duties and taxes beyond this period.

**Standard 4.11**

*National legislation shall determine the rate of interest chargeable on amounts of duties and taxes that have not been paid by the due date and the conditions of application of such interest.*

**Commented [PD11]: 31st RKC/MC Meeting:**

JP: Sought clarification on the word Extinguishment and informed that only with this clarity will JP be able to indicate their consideration for this Component.

AC: Idea is that national legislation should reflect provisions when the liability ends. The complete life-cycle of Customs duty liability should be considered in the RKC.

**Commented [PD12]:** Since the proposal and its rationale and explanation were not clear, further details could not be considered in the Guidelines. Also, words like "extinguishment" and "economic circuit" still needs to be clarified properly. It is important to note here that in the current RKC, words like "Clearance for Home Use" and "Goods in Free Circulation" are used in context of "economic circuit".

**Commented [PD13]: Component 8: Time frame for legal action to collect duties and taxes not paid by the due date (Cat-2)**

"RKC should define a time frame on the period within which the Customs shall and may take legal action to collect duties and taxes not paid by the due date."

Within the scope of Standard 4.10, it could be a better option to collect practices of CPs/Members on this Component and accordingly incorporate it in the Guideline.

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Also, late accounting penalties may be levied in certain circumstances. The penalties should be applied for each transaction not accounted for in the time specified. The application of these penalties could vary depending upon the value of the shipment, e.g. higher penalties or shorter time limits for high value shipments. Importers and brokers should be made aware of any overdue releases by means of a daily report issued by Customs, such as an Outstanding Transaction Status Client Report.

Importers and brokers who, notwithstanding the levying of the initial penalty, still delay accounting for the payment of duties and taxes, may be issued with a notice as a final reminder to comply within a specified time. Failure to do so may subject the importer or broker to an additional penalty. Also, in the case of deferred payment regimes, a client who continues to delay in accounting for the payment of duties and taxes may lose future deferred payment privileges.

The cancellation of late accounting penalties should be considered when Customs errors, omissions or other failures have been the cause of the late accounting. For example, Customs may reject documents in error or not process them quickly enough, or there may be operational or transmission line failures in the Customs' automated system.

Requests for the cancellation of late accounting penalties should be submitted in writing to the Customs office where the goods were cleared. In cases where late accounting resulted from neglect or lack of awareness on the part of the importer or broker, the request for cancellation should not be approved.

If there are further delays in payment, it may be necessary to apply a lien against the importer and a claim could be made against the security posted for the clearance of the goods prior to payment. In addition, if an importer or broker does not account on time, causing a transaction to move from one billing period to another, duties and taxes on that transaction should still be due as if the accounting had been done on time. Interest should then be charged from the next calendar day after the payment due date until the outstanding accounting is submitted. The conditions and rates of these interest charges must be indicated in national legislation.

#### 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 declarant<sup>1</sup>.

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 ~~below~~<sup>under</sup> which ~~amount of~~ duties and taxes will not be collected as these amounts are negligible.

#### Impact of e-commerce

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. In the e-commerce environment, goods are ordered online, payments are made online, and delivery instructions are given online, thus the information flow on these consignments is available electronically along the supply chain. However, 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 should ensure that they are ready to respond to this 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.

The RKC Management Committee (RKC/MC) at its 14<sup>th</sup> ~~M~~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 together with new and efficient collection mechanisms<sup>s</sup> for duties and taxes and the move to electronic transmission of information to Customs authorities.

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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 from deciding on

i) the amount of the “*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.

**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, the Customs-administration must not collect or recover it.

The minimum threshold established need not 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.

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<sup>1</sup> Definition E14 of Chapter 2 of General Annex

2.2. Deferred payment

**Standard 4.15**

*Where national legislation provides for the deferred payment of duties and taxes, it shall specify the conditions under which such facility is allowed.*

Standards 4.15, 4.16 and 4.17 of this Chapter pertain to deferred payments and are a set which must be implemented as a whole. Standard 4.15 aims to encourage a move toward se.

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deferred payment, although it does not impose an absolute requirement for Customs to provide such a facility. The Standard indicates that where a Contracting Party does permit deferment, it must specify the conditions in its national legislation/regulations.

**Standard 4.16**

*Deferred payment shall be allowed without interest charges to the extent possible.*

The deferred payment system prescribed in Standard 4.15 could mean either deferring the payment of duties and taxes or in some cases, deferring the due date itself and the payment. However, distinction must be made between deferred payments and late payments. While late payments, even when approved by the Customs, could still be subject to interest charges, deferred payments may be subjected to interest charges only at the expiry of the deferment period. Some Customs administrations fix a date and then allow deferred payment, while others allow a date after release of the goods as a fixed date. This is not true deferment under the terms of the revised Kyoto Convention.

A previous study conducted by the WCO Secretariat has found that two ways were used by Customs administrations to defer payment. Some allowed the facility to all traders, while others restricted it to identified traders who met specified criteria. In the second case, the facility for deferred payment was usually linked to the facility for periodic lodgement of Goods declarations. An application form was usually required from a trader wanting permission to defer payment.

When deferred payment is allowed, interest is normally not charged during the period of deferment. However, in exceptional circumstances, such as when inflationary effects need to be accounted for in the provision of deferred payment, interest may be charged but it should be limited to the actual or anticipated rate of inflation.

Deferment, when it also includes a facility to off-set duty owing against repayments due, helps a trader's cash flow.

**Standard 4.17**

*The period for deferred payment of duties and taxes shall be at least fourteen days.*

Currently, where deferment is allowed, the period authorized by most Customs administrations appears to be around ten working days. Standard 4.17 stipulates that the period for deferred payment should be at least fourteen days. This clause "at least fourteen days" can therefore be equated to ten working days and two weekends. Knowing that there is a specified time limit for deferment is useful for the business community, and setting it encourages harmonization of the very broad range that could otherwise result.

Different time limits may be fixed for each type of tax. Some countries may wish to restrict the privilege by holding certain traders to a shorter deferred time either on a trial basis or as a sanction. Customs may agree that the duties and taxes on imports during a given period are payable on a fixed date.

**2.3. Repayment**

"Repayment of duties and taxes" is defined in Chapter 2 of the General Annex. It means "the refund, in whole or in part, of duties and taxes paid on goods, and the remission, in whole or in part, of duties and taxes where payment has not been made". For instance,

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remission of duties and taxes could occur when there is a system of deferred payment or where periodic settlement is available.

In the event that duties and taxes have not been paid, they may be remitted. A remission is a waiver, in whole or in part, of the Customs duties and/or taxes normally payable on imported goods. Remission programs are usually established in order to assist national industry and are usually subject to very restrictive conditions. The remission, in whole or in part, of duties and taxes covers the cases in which the Customs make remission of some and not all kinds of duties and/or taxes on goods which are subject to more than one kind of duties and/or taxes.

Standards 4.18 to 4.24 deal with repayment and are based on the generally accepted principle that the persons concerned must be able to obtain a refund, in whole or in part, as appropriate, when duties and taxes have been overpaid. Customs should establish procedures for repayment that are as simple and prompt as possible. The use of electronic funds transfer is also recommended in expediting repayments. The provisions of this Chapter do not apply to repayments made under the drawback procedure or to the refund of deposits taken as security for the payment of duties and taxes although security deposits should also be paid back promptly. The provisions relating to Security and Drawback are dealt with in detail in Chapter 5 of the General Annex and Chapter 3 of Specific Annex F respectively.

Refunds should not be made on transactions where duties and taxes have been paid back, i.e. in the case of a transaction under the provisions of re-importation in the same state. Please refer to Chapter 2 of Specific Annex B and the related Guidelines for further detail on this subject.

Repayment may be granted in respect of goods already released by Customs, provided that they are satisfied that there is an entitlement. Evidence of entitlement may be obtained from records or other documents produced by the trader or from physical examination of the goods if these are still available for inspection and have not been modified. The examination by Customs may be necessary to verify any alleged damage, deterioration, or destruction in order to establish the proper rate or amount of reduction, and to ensure that the goods in question are those specified in the invoice and accounting document. Should the importer/owner dispose of the goods prior to Customs approval of the refund claim, he would be responsible for establishing the bona fides of the claim.

**Standard 4.18**

*Repayment shall be granted where it is established that duties and taxes have been overcharged as a result of an error in their assessment.*

During the clearance procedure, or after the release of goods, it may be discovered, either by the importer/exporter or by Customs, that the basis upon which the duties and taxes were calculated was incorrect. This may be due to, for instance, an error on the part of Customs, the declarant or some other person (e.g. the consignor or shipper). The assessment may have been based on a value which is higher than the dutiable value, or an incorrect rate of exchange was used in the calculations, or goods were deficient in quantity or of inferior quality, or there may have been a mistake in the arithmetic or typing. As a result, the duties and taxes charged or to be charged are greater than those actually chargeable.

To facilitate processing, the refund application should be clear and concise in its description of the reason for the claim, and should refer to the transaction number of the accounting document on which the goods were cleared by Customs. If the claim is based on a clerical, typographical, or similar error, the refund application should identify where the error occurred, e.g. an extension error on a Customs invoice, a transposition error, a mathematical



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error, or other error which caused the duties to be paid or overpaid. If the error is not obvious, documentation may be required to confirm that it is clerical or typographical.

It may be necessary for Customs to make repayment subject to certain conditions or special safeguards against fraud or abuse. For instance, to ensure that refund claims are not being submitted on the presumption that there may be a discrepancy, such claims must include sufficient detail to satisfy Customs that the intention to file a refund claim is valid. Where the error is due to recklessness or repeated carelessness, Customs may decide to take action against the person concerned under appropriate legislation while nevertheless granting the repayment of duties and taxes.

**Standard 4.19**

*Repayment shall be granted in respect of imported or exported goods which are found to have been defective or otherwise not in accordance with the agreed specifications at the time of importation or exportation and are returned either to the supplier or to another person designated by the supplier, subject to the following conditions :*

- *the goods have not been worked, repaired or used in the country of importation, and are re-exported within a reasonable time;*
- *the goods have not been worked, repaired or used in the country to which they were exported, and are re-imported within a reasonable time.*

*Use of the goods shall, however, not hinder the repayment if such use was indispensable to discover the defects or other circumstances which caused the re-exportation or re-importation of the goods.*

*As an alternative to re-exportation or re-importation, the goods may be abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Such abandonment or destruction shall not entail any cost to the Revenue.*

Goods may be damaged, destroyed or irrecoverably lost, by accident or through force majeure. This may also happen while they are still under Customs control (in transit, in bonded warehouses or under temporary admission procedures). In these instances, for reasons of equity, the duties and taxes already charged might be refunded in whole or in part.

Standard 4.19 of this Chapter is about repayment of duties and taxes for goods that are found to be defective or otherwise not in accordance with the agreed specifications at the time of importation/exportation. This provision only applies if the goods have not been worked, repaired or used in the country of importation or exportation, unless such use is necessary to detect the fault. The goods must be re-exported or re-imported within a reasonable time either to a foreign supplier or to another person designated by the supplier. Also, any sums chargeable as a result of repayment or remission of or conditional relief from duties and taxes or of any subsidies or other amounts granted in connection with exportation must be paid. The first indent of this provision deals with import duties and taxes. The second indent deals with export duties and taxes and does not apply to administrations that do not charge export duties and taxes. This provision only stipulates cases in which repayment of duties and taxes must be made, and the procedure to be used is left to the discretion of the Contracting Party; however, with the advancement of technology, it is recommended that electronic options be used to facilitate the repayment process.

Modern commercial practice often does not require the signing of a formal contract of sale. This Standard applies, therefore, as long as the Customs are satisfied that the goods are defective or otherwise not in accordance with the specifications which have been agreed between the supplier and purchaser. Customs usually require proof that this situation existed at the time of importation, and that the goods have not deteriorated after Customs clearance. This proof may be in the form of a statement from the carrier or warehouse operator giving the

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particulars of the damage, as well as an appraisal or credit note to indicate the loss in value of the goods.

In some cases, a notice of claim must also be submitted. This should contain a reference to the accounting document which effected release of the goods and a clear and concise explanation of the reason for the claim. Usually, if the claim involves perishable goods, the time allowed for submitting the notice of claim will be limited.

The refund provisions usually do not apply to goods which have exceeded their shelf life or their recommended storage-before-use period (e.g. expired food products).

The expression “rendered commercially valueless” which is found in Standard 4.19 means that the goods have been reduced to such a condition that they not only have no value in the commercial area for which they were originally intended, but also have no value in any other commercial area, so that they cease to have any revenue interest.

Standard 4.19 provides more liberal facilities than does a previous WCO Recommendation regarding repayment or remission of duties on goods refused by the importer as not conforming to contract. For example, whereas the Recommendation provided for either the return of the goods to the foreign supplier or for their destruction under official control, this Standard also provides for the goods to be returned to another person designated by the supplier or, at the discretion of Customs, abandoned for revenue purposes or rendered commercially valueless. Administrations may want to refer to the WCO Recommendation, Ref. T2-341, which is still valid and may provide additional guidance.

**(Component 3: Use of a compensation system for defective items, proposed as a NEW PDT, Chapter 4, General Annex; Concept No. 13: Electronic Payment of Duties, Proponents: TH, GEA and EC)**

One alternative option that could be considered within the scope of national legislation is to grant compensation in lieu of repayment or in other forms to persons entitled to repayment under the conditions and/or requirements specified by Customs. Such compensation may include, for example, exemption from duties and taxes for goods imported/exported to replace the identical goods which were previously imported/exported and were found to have been defective and thus returned to the supplier (re-exported/re-imported) or abandoned, destroyed or rendered commercially valueless.

#### **Transitional Standard 4.20**

*Where permission is given by the Customs for goods originally declared for a Customs procedure with payment of duties and taxes to be placed under another Customs procedure, repayment shall be made of any duties and taxes charged in excess of the amount due under the new procedure.*

Transitional Standard 4.20 indicates that repayment should also be allowed in cases where goods are originally declared under one Customs procedure and are then placed under another that either reduces or eliminates the amount of duties and taxes chargeable. Normally, such permission would be sought within a short time of the original declaration, for example because an error was made in indicating the Customs procedure to be applied to the goods. In any case, if time limits for the acceptance of claims for repayment are fixed, the provisions of Standard 4.23 apply in determining whether a claim under this Standard will be accepted.

#### **Standard 4.21**

*Decisions on claims for repayment shall be reached, and notified in writing to the persons concerned, without undue delay, and repayment of amounts overcharged shall be made as soon as possible after the verification of claims.*

**Commented [PD14]:** 31st RKC/MC Meeting:

NOTE:

- This Component does not directly fit within the scope of Standard 4.19, nevertheless, it is the most relevant provision in Chapter 4.

- It may also seem that Chapter 3, SA-F would be more relevant but its Guideline clearly excludes it from its scope.

**Commented [wcr15R14]:** TH: outside of the scope of 4.19

**Commented [wcr16R14]:** Cameroon thinks that this Component could be dismissed.

**Commented [wcr17R14]:** Meeting agreed to dismiss this Component

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*(Component 2: Electronic repayment of all duties, taxes and charges; Amendment to Standard 4.21, Chapter 4, General Annex; Concept No. 13: Electronic Payment of Duties, Proponents: TH, GEA and EC)*

The decision on whether to allow repayment should be made as early as possible in writing and the repayment made without undue delay. Furthermore, as Customs use the e-payment option to collect duties and taxes, a similar option should be widely considered for the repayment of duties, taxes and charges. Also, the claims and decision-making processes for repayments should be made electronic, to the extent possible. It would be sufficient, if the accounting system in the Customs IT system enabled simple refund/repayment claims to be processed automatically (NL).]

Standard 4.21 does not restrict the making of arrangements for periodic payments covering a specified period for claimants who regularly submit a substantial number of claims for repayment of import duties and taxes.

Most administrations establish set time scales for the rendering of a decision and/or repayment on the refund claim. Some administrations have established service standards or charters with their clients specifying the level of service they are committed to provide. One example is, 90 days from the date of receipt of the refund application. Where a refund is granted beyond that period, interest should be paid. For example, in the case of the 90-day time limit, interest would be payable on the 91st day after the application for refund is received, and ending on the day the refund is granted.

**Commented [PD18]:** 31st RKC/MC Meeting:

JP: more details on methods of the repayment process are necessary to be elaborated here.

**Standard 4.22**

*Where it is established by the Customs that the overcharge is a result of an error on the part of the Customs in assessing the duties and taxes, repayment shall be made as a matter of priority.*

If duties and taxes are overpaid as a result of an error by Customs in assessing the duties and taxes, Customs must repay or remit the amount overcharged as a matter of priority. This provision promotes the principle of fairness and ensures that, whether errors are committed by the trader or the Customs administration, they will be dealt with in an equally fair manner.

**Standard 4.23**

*Where time limits are fixed beyond which claims for repayment will not be accepted, such limits shall be of sufficient duration to take account of the differing circumstances pertaining to each type of case in which repayment may be granted.*

Customs administrations usually establish time limits for acceptance of repayment claims. Standard 4.23 also stipulates that these time limits should be of sufficient duration to take account of the differing circumstances for each type of case. Adequate consideration of the differing circumstances could be the type of cases where repayment claim is being made. These could refer to circumstances such as repayment of duties and taxes resulting from a request to place the goods under a different procedure, repayment arising when defective goods are returned to the sender, goods that have deteriorated or perishable goods, etc. Each of the circumstances could have a different time period within which the repayment claim should be made. Other differing circumstances could refer to the period specified in national legislation as the due date of payment of duties and taxes. The period of time for making a claim for repayment will commence after the point in time specified in national legislation when the final duties and tax liabilities are assessed or paid and would be different for goods under different procedures. It is only at the completion or termination of a procedure that a declarant will be able to accurately estimate whether there is a case for making a claim for repayment of duties and taxes. Differing circumstances in this type of case could be when assessment of duties and taxes done on the basis of a provisional declaration and the time period for making a claim for repayment would only commence after the provisional declaration is finalized. Similarly in the case of procedures such as inward or outward processing, procedures applied in a Free Zone etc. the time period would commence from the point in time when the procedure is terminated.

Usually the time limits for the acceptance of claims for repayment of import duties and taxes by Customs are the same as the statutory time limits for the collection of import duties and taxes.

**Standard 4.24**

*Repayment shall not be granted if the amount involved is less than the minimum amount specified in national legislation.*

Repayment, however, is not necessary when the amount of the overpayment is less than the minimum amount specified in national legislation. Some administrations may, however, choose to make the repayment as a service to the trader.