

Recommendation 13

FACILITATION OF IDENTIFIED LEGAL PROBLEMS IN IMPORT CLEARANCE PROCEDURES

The Working Party on Facilitation of International Trade Procedures, a subsidiary organ of the United Nations Economic Commission for Europe, is working on the legal problems connected with the facilitation of international trade procedures. Identification of some of these problems was made in 1976 (document TRADE/WP.4/GE.2/R.79 dated 21 September 1976) and this was followed by a more comprehensive study, resulting from the work of a small team of experts, entitled "An overview of legal problems of trade facilitation" (document TRADE/WP.4/GE.2/R.102 dated 10 November 1977), which described some of the known problems, identified the parties more concerned with them, and suggested ways in which the search for solutions might be assisted and speeded up.

In September 1978 an informal team of experts which had been set up to deal with "Legal Problems" – task team GE.2/TT.2, convened by the International Chamber of Commerce – submitted a study on legal problems of import procedures and a draft recommendation thereon to the Group of Experts on Data Requirements and Documentation for discussion at its nineteenth session. The Group of Experts forwarded the text to the Working Party which adopted it at its ninth session in March 1979.

RECOMMENDATION

The Working Party on Facilitation of International Trade Procedures,

Being aware that the Customs Co-operation Council has sought in the annexes to the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), and especially in Annex B.1, to encourage Customs authorities to grant special facilities for the expeditious clearance of goods;

Being aware that the main concern of import authorities in the completeness and correctness of the information submitted rather than the form in which it is presented, and that problems often centre on the requirements of satisfactory supporting information;

Recalling that in some countries special procedures have been introduced whereby detailed physical inspection of

goods and presentation of the formal evidence at the point of importation are no longer required, allowing approved importers to take the goods directly to their own premises, sometimes on a deferred payment basis, on condition that:

- the goods may be inspected;
- the Import Declaration and satisfactory supporting evidence is made available when required;
- such information is retained for later verification; and
- security of payment and responsibility for the goods are assured;

Recalling that national rules and regulations are being developed either to create wider definitions of the terms "document" and "signature" in view of electronic or other automatic methods of data transfer, or to allow for the use of such methods of data transfer under acceptable conditions;

Noting that the Customs Co-operation Council has already identified many of the problems and has already included consideration of them in its programme of work;

1. ***Recommends*** to Governments to take account of the developments referred to above with a view to the further promotion of all steps which would facilitate international trade procedures;
2. ***Recommends*** to Governments to take note of the provisions contained in the Kyoto Convention and especially in Annex B.1 concerning clearance for home use and to examine the possibility of introducing them into their national legislation;
3. ***Recommends*** to Governments to study and evaluate the possibility of accepting data transmitted by electronic or other automatic techniques under specific criteria;
4. ***Invites*** Governments to communicate their views on the enclosed study to the Economic Commission for Europe; and
5. ***Draws*** the above recommendations and the attached study to the attention of the Customs Co-operation Council and the General Agreement on Tariffs and Trade.

At the ninth session of the Working Party representatives attended from: Austria; Belgium; Bulgaria; Canada; Czechoslovakia; Denmark; Finland; France; German Democratic Republic; Germany, Federal Republic of;

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Hungary; Netherlands; Norway; Poland; Romania; Sweden; Switzerland; Turkey; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland, and United States of America; and from Australia, Japan and Kenya.

The following specialized agencies, intergovernmental and non-governmental organizations were also represented: United Nations Food and Agriculture Organization (FAO); International Maritime Consultative Organization (IMCO); General Agreement on Tariffs and Trade (GATT); European Economic Community (EEC); Customs Co-operation Council (CCC); Central Office for International Railway Transport (OCTI); International Chamber of Commerce (ICC); International Road Transport Union (IRU); International Union of Railways (UIC); International Organization for Standardization (ISO); International Chamber of Shipping (ICS); International Railway Transport Committee (CIT); International Federation of Freight Forwarders Associations (FIATA) and International Cargo Handling Co-ordination Association (ICHCA).

The problem area

1. Legal problems of trade facilitation which are related to import procedures stem from the fact that, for reasons of national laws and regulations, import authorities often require a variety of paper documents, properly authorized, before goods can be released. Some of these documents (often called shipping documents) have to be prepared and presented at the place of export at the time of dispatch, and they may not always be available at the place of import clearance when the goods arrive. This can cause delay and seriously add to the costs which in the end will have to be paid by the residents of the importing country, either in the form of higher prices for goods, or higher taxes, or both. Incompatibility of data content of documents, or lack of essential items, add to the problems.

2. These particular problems have been specially identified in two sections of document TRADE/WP.4/GE.2/R.102, paragraphs 35-38, which cover import procedures, and paragraphs 90-93, which deal with documentary requirements of a regulatory nature. The legal requirements which give rise to these procedural and documentary demands can slow down international trade, and it is important to study ways in which Customs and regulatory bodies can share in the benefits of technological progress, particularly in respect of the transmission of information by electronic or other automatic means, within a legal framework. A quotation from an earlier paper is worthy of repetition:

“Without law, there is anarchy, so that we must not sweep our regulations away, but must modify them and bring them up to date.”

3. The present study suggests ways in which this objective might be achieved. It shows that the real concern of import authorities is with identification of the goods and

the commercial parties concerned, verification of the nature and value of such goods, their origin and correct classification and valuation for import clearance, and for health, safety and technical standards purposes. A formal document—the Import Declaration—has to be submitted at the point of importation by a person who is legally responsible for import dues and the correctness of data and goods. The demand for a declaration does not, in itself, usually pose problems of trade facilitation. The problems centre on the requirement of satisfactory supporting evidence, which basically can only be made available at the point of exportation at or after the dispatch of the goods; and with traditional documents, such evidence frequently cannot be provided sufficiently quickly at the place where it is needed, i.e. at the point of importation.

Import procedures and requirements

4. Import authorities concerned with the release of goods which have been imported have many aspects to consider, and their requirements are usually embodied in statutory form. Often, however, they are given fairly wide powers under an act to frame detailed regulations. Such regulations usually call for a formal document, an Import Declaration, to be given by the importer or forwarding agent on his behalf. This declaration can take different forms, depending upon:

- (i) the nature of the importation (i.e. goods for duty payment, for process/repaid and re-exportation, for deposit in warehouse, etc.);
- (ii) national requirements which may e.g. specify different forms for air/sea/postal traffic; or
- (iii) arrangements for groups of countries within Customs Unions or similar associations.

5. The main purposes of Customs declarations are to enable any duty, tax or other charge payable on the goods to be assessed and collected, to control the importation of goods with special regard to those which are subject to national limitations, e.g. by the use of licence, quota or other restrictions, or by outright prohibition, to control the grant of relief from duty, and often to provide information from which trade statistics are compiled. They also provide the basis for legal action to be taken in cases of contravention of requirements. Because the Customs declaration is required to fulfil so many different purposes, it often becomes a complicated document, and it has to be accompanied by a variety of supporting documents, such as a copy of the commercial invoice (or a special Customs invoice), a value declaration, an import licence, a certificate of origin or other document to support a claim for reduced duty (or no duty). Responsibility for supplying the Customs declaration and any necessary supporting documents rests with the importer of the goods or his agent (Customs agent, shipping and forwarding agent, Customs broker, etc.).

6. Information which is required for import declarations is collected by the importer or his agent from a number of sources, and can be broadly described under headings as follows:

- (i) the goods – packages, description, value, quantity, origin
- (ii) the parties involved – importer, consignor, agent
- (iii) transport – mode and means of transport, place of loading and discharge, container number
- (iv) special conditions – licence, quota, goods for warehousing

Some of this information can be obtained by the declarant before or shortly after the goods have been dispatched by the exporter, from commercial invoices, packing notes and bills of lading, particularly when this information is transmitted as soon as it is available—for example, commercial invoice data sent by telex, or transport document data sent by computer link. Transport information is sometimes only available when the goods actually arrive, and transit documents may often be carried by the drivers of international freight vehicles. Importers will be well aware of special conditions once they have details of the consignment, and will be responsible for ensuring that import licenses are available, and the certificates of origin, health, etc., are coming forward as required. In some cases importers are required to make provisional assessments of charges payable.

Problems of supporting evidence

7. The requirement for an import declaration does not of itself create a serious problem of trade facilitation, as the document can be prepared and authenticated in the country of import for presentation at the place where the goods are to be cleared. Naturally enough, difficulties can arise if the document is not correctly made out. However, the regulations usually call for additional supporting evidence to satisfy the import authorities. The barrier to trade is more likely to be found in the added requirement of presentation of supporting evidence, and its authentication and verification.

8. Here it is possible to differentiate. Documents that travel with the goods, such as ships' manifests or copies of transport documents, may be inconvenient, but they do not pose major problems of facilitation. The main documentary requirements which do pose problems are:

- the commercial invoice, which often has to be signed and sometimes even further authenticated;
- a Customs or a consular invoice, similarly signed and authenticated;
- certificates of origin, signed and authenticated; and
- special certificates of health, weight or other characteristics.

9. Much of the data content of this documentation is vital to import authorities for efficient import clearance. It should be realized, however, that the need is for identification, verification, classification and evaluation purposes. The formal requirement of a paper document and signature meets historic needs and has no doubt been fully justified, but changing conditions demand a reappraisal of the needs. In any case, the value of the document lies not so much in the paper itself as in the information which it carries. The advantage of paper document is that it remains stable and can be a carrier of additional information without losing its identity. Even though it may often be lacking in information or may be partly incorrect, or even faulty, it retains its main characteristics. The problem, however, is that a paper document does not lend itself to speedy transfer of data.

Development of import procedures

10. In general, Customs will not release the goods at importation until they have received the import declaration and have given their consent to the removal of the goods. However, with recent changes in the methods of transport of goods, roll-on/roll-off traffic, and containerized traffic, Customs authorities have introduced various concessionary arrangements which have been designed to speed up the removal of the goods from the airport/port/frontier post, on presentation of simplified declarations, with clearance of the goods taking place at inland sites when full declarations are presented.

11. There has been an increasing tendency, particularly in the European land-mass areas, to move Customs controls away from the port/frontier post to offices inland, or indeed to the traders' own premises. The ultimate aim of such removals is the replacement of physical controls by a system based on the inspection of traders' accounts, subject to some preventive checks when the goods actually arrive at the port or cross the frontier.

12. The development of concessionary methods of treatment of imported goods by Customs authorities has been extremely variable, and reflects the different pressures to which the authorities have been subjected, associated with aspects of natural geography, port placement and growth, traffic flows and changes, trade requirements, and the ability of the authority, within financial and other constraints, to redeploy resources and adapt procedures. Allied with such changing attitudes has been an increasing but equally variable willingness by Customs authorities to participate in more novel methods of data and document transmission, by computerized methods or facsimile transmission. Document TRADE/WP.4/GE.2/R.81 (issued on 16 September 1976) exemplifies the diverse approaches which authorities may make to a problem – in this case, the acceptability of facsimile documents and signatures.

ADP considerations

13. Willingness on the part of Customs authorities to change from traditional documentary procedures to electronic or other automatic information exchange has been linked, to a certain extent, with the problems of signatures and evidence. Two of the main requirements which have been identified previously on the administrative or regulatory side are:

- (i) the need to secure the enforcement of legal requirements; and
- (ii) the need to control the authenticity of documents.

The presentation of a signed declaration is a legal requirement which embodies penalties for non-compliance, for errors of substance and for fraudulent irregularities.

14. Most Customs authorities have a duty laid upon them to enforce the legal requirements so as to protect the revenue against fraud and/or under-declaration or under-payment of duty. In some cases, this requires the provision of legal proof of an offense in the Court; and the absence of a signed document has been regarded as an obstacle to a successful prosecution. Legal opinion in some countries is now turning towards the view that, whilst the signature of a document remains a desirable element of evidence, its absence in other than absolute offence cases can be compensated by other evidence.

15. It remains necessary, however, to ensure that, if traditional documents give way to electronic or other automatic information exchange, national judiciaries will admit information stored on computer in evidence, and will accept that information stored in a computer is an accurate record of what was fed in to the computer.

16. As regards the authenticity of data supplied in any information transmission system which takes advantage of such methods, the responsibility of the declarant to provide accurate information remains, and the adoption of new techniques to establish this responsibility (input devices, input security badge, security password system) can be undertaken if Customs authorities are prepared to revise their legislation.

Alternatives to paper documents

17. It must be recognized that, even when the bulk of trade data is transmitted by non-paper means, there will probably always be a residual amount of paper. In these cases, the utilization of improved facsimile transmission machines may provide the answer, or there could be an extension of the system of undertakings required by certain Customs authorities, whereby goods are released before all supporting documents are received, subject to an undertaking to produce the documents within a specified period of time. There are various alternatives:

- Telecopying retains most of the advantages of the original document, but it is costly, time-consuming

and slightly less acceptable as evidence;

- Ordinary telex is good for identification of source, but not so good for accuracy of data content; and
- Electronic data transfer is swift and very efficient and does, under certain conditions, offer many advantages. Contrary to the permanent representation of data on paper, data transferred by any electronic method are converted into electronic signals during the transmission and must be reconverted to become visually meaningful. However, printouts can be made at both ends for verification and several control methods are being developed and gradually finding acceptance in law. Such methods of transfer of information are being increasingly used and may offer a speedier and more reliable alternative under certain conditions, i.e.:
 - that the original data are correct;
 - that correct transfer of data is assured;
 - that retention of data for later verification can be established; and
 - that unauthorized use can be avoided.

Essentially, it must be up to national authorities to establish under what conditions “satisfactory supporting evidence” can be accepted. It would seem important also for relevant international organizations to establish acceptable guidelines.

18. If a national statutory law lays down requirements of documents and signature, it may be a question of introducing broad definitions of “document” and “signature” and investigating the time when such signed document should be available. In certain cases, a change of national law may be essential. When national law gives import authorities power to make detailed regulations, the situation is more adaptable to the very fast developments taking place in transport, trade and data transfer.

19. Within the context of the urgent need for more efficient import clearance, the following points are essential:

- the vital need of import authorities for speedy verification of correct and sufficient data;
- the need for an import declaration and or a person at the point of importation to accept responsibility for the import dues, the correctness of data and the goods;
- the need for legal security; and
- the need to provide solutions that will create more efficient import clearance with retention of traditional paper documents as well as with the development of steadily more sophisticated methods.

Possible solutions

20. The Customs Co-operation Council has, as one of its major aims, the securing of the highest degree of harmony

and uniformity in the Customs systems of its members. In May 1973, the CCC adopted an international Convention on the simplification and harmonization of Customs procedures, known widely as the Kyoto Convention, containing a number of annexes which introduce standards and recommended practices on many aspects of Customs procedures. The Council hopes that Customs authorities will progressively adopt the various Annexes, and that thereby procedures will gradually become harmonized.

21. Whilst welcoming the continuing action already initiated within the Customs Co-operation Council in respect of a number of the problems discussed in this paper, it is felt that widespread publicity should be given to the need for the adoption of modern procedures and technical development by Customs authorities.

22. Subjects for consideration, which would concern predominantly – but not exclusively – imports, and which could provide benefits to the Customs authorities as well as to the trading community, might include the following:

- (i) the use of magnetic tapes, for advising periodic declarations of imports, or statistical information, linked to quick release procedures at ports/frontier posts;
- (ii) the acceptance of telex information, or computer-transmitted data, required for import declaration purposes, to permit early release of goods;
- (iii) the acceptance of documents sent by facsimile transmission, when such documents are needed to support import declarations;
- (iv) the facility for traders with computer systems to be linked to Customs computer systems for import declarations;
- (v) the acceptance of export invoices produced by computer link in the import country, where multinational traders are involved;
- (vi) the acceptance of arrangements for immediate removal of goods inland, subject to lodgement of an abbreviated declaration, duty deferment arrangements and an audit-type control exercised at traders' premises;
- (vii) the extension of the practice of permitting provisional clearance of goods subject to formal legal undertakings to produce the required documents in due course;
- (viii) the use, where legally permissible, of export documents, on the commercial side;
- (ix) the possible acceptance by Customs of commercial documents providing the information required for Customs purposes as currently under discussion in the United States of America and in other countries in lieu of the more formal import declaration;
- (x) a study of changes which are necessary to national laws to admit as evidence information which is stored on computer;
- (xi) a study of the changes which are necessary to national laws to accept that information stored in a computer is an accurate record of the input to the computer; and
- (xii) a study of the alternative methods of authentication of data which are open to Customs authorities when customary documents are dispensed with.