

No. 13561. INTERNATIONAL CONVENTION ON THE SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES. CONCLUDED AT KYOTO ON 18 MAY 1973¹

ENTRY INTO FORCE OF ANNEX G.2² to the above-mentioned Convention

A N N E X G.2

ANNEX CONCERNING THE RELATIONSHIP
BETWEEN CUSTOMS AUTHORITIES AND THIRD PARTIES

INTRODUCTION

In connexion with the fulfilment of Customs formalities required under the law for the importation, exportation, movement and storage of goods, the Customs authorities may deal either directly with the persons concerned or with third parties designated by them.

The types of control exercised by Customs authorities over third parties vary according to country and according to category of third party. In some countries certain types of third parties are subject to examination and licensing while in other countries no explicitly stated controls exist.

This annex is generally concerned with third parties who are in direct contact with the Customs in connexion with the importation, exportation, movement and storage of goods for and on behalf of the person concerned. It relates primarily to those third parties who are responsible for arranging for the clearance of goods. The annex specifically includes Customs clearing agents but also relates to other third parties who perform clearance functions for and on behalf of persons concerned even though that is not their major business (for example, a carrier or freight forwarder who clears goods through Customs as an incidental part of his main functions). On the other hand, this annex also relates to third parties who are not involved in the clearance of goods but who otherwise intervene in the movement and storage of goods which are still under Customs control (for example, those operating carting or similar services for goods under Customs control).

This annex does not apply to those third parties who are only responsible for the financial and insurance arrangements of a goods transaction.

DEFINITIONS

For the purposes of this annex:

(a) The term "person" means both natural and legal persons, unless the context otherwise requires;

¹ United Nations, *Treaty Series*, vol. 950, p. 269, and annex A in volumes 958, 981, 987, 989, 1019, 1023, 1025, 1029, 1031, 1041, 1043, 1049, 1055, 1057, 1059, 1066, 1078, 1081, 1088, 1094, 1102, 1122, 1128, 1130, 1135, 1137, 1146, 1151, 1153, 1156, 1157, 1162, 1166, 1172, 1181, 1197, 1198, 1212, 1215, 1224, 1225, 1235, 1237, 1247, 1253, 1256, 1257, 1262, 1271, 1276, 1279, 1283, 1291, 1293, 1295, 1297, 1323, 1331, 1344 and 1347.

² The said annex came into force on 28 January 1984, i.e., three months after the five following States had accepted it, in accordance with article 12 (3) of the Convention. The pertinent notifications of acceptance were received by the Secretary-General of the Customs Co-operation Council as indicated hereafter:

State	Date of receipt of notification of acceptance	State	Date of receipt of notification of acceptance
Israel*	6 July 1982	United States of America*	28 October 1983
Kenya*	31 August 1983	Yugoslavia	12 November 1982
New Zealand*	13 April 1981		

* See p. 313 of this volume for the texts of the reservations made upon acceptance.

(b) The term “third party” means any person who deals directly with the Customs, for and on behalf of another person, in connexion with the importation, exportation, movement or storage of goods;

(c) The term “Customs clearing agent” means any third party who carries on the business of arranging for the Customs clearance of goods;

(d) The term “clearance” means the accomplishment of the Customs formalities necessary to allow goods to be exported, to enter for home use or to be placed under another Customs procedure;

(e) The term “security” means that which ensures to the satisfaction of the Customs that an obligation to the Customs will be fulfilled. Security is described as “general” when it ensures that the obligations arising from several operations will be fulfilled.

PRINCIPLES

1. *Standard*

The relationship between Customs authorities and third parties shall be governed by the provisions of this Annex.

2. *Standard*

National legislation shall set out the conditions under which a person may act for and on behalf of another person in the latter's dealings with the Customs.

3. *Standard*

Persons concerned shall have the choice of transacting business with the Customs either directly or by designating any person to act as third party.

NOTE. The person acting as third party may be a person not normally engaged in dealing with the Customs on behalf of others or a person who normally deals with the Customs as his main business or as part of his main business.

4. *Standard*

Customs transactions where the person concerned elects to do business on his own account shall not be treated less favourably or be subject to more stringent requirements than those Customs transactions which are handled for the person concerned by a third party.

PROVISIONS RELATING TO ALL THIRD PARTIES

Authorization, rights and liability of third parties

5. *Standard*

Where Customs authorities deem it to be necessary, third parties shall be required to produce proof of their right to transact business with the Customs for and on behalf of another person.

NOTE. The proof to be produced normally consists of a document which gives authority to the third party to transact business with the Customs for and on behalf of another person. In some countries this proof may even be the possession of the goods or evidence thereof.

6. *Standard*

A person designated as third party shall have the same rights as the person who designated him in those matters related to transacting business with the Customs.

7. *Standard*

National legislation shall lay down the liability of third parties before the Customs for any duties and taxes, as well as for any irregularities and any consequent penalties or fines.

NOTE. In some countries, persons concerned and third parties may be held jointly and severally responsible before the Customs for duties and taxes. This joint and several responsibility may also apply to any irregularities and any consequent penalties or fines.

*Retention of records and papers*8. *Recommended Practice*

Customs authorities should require that third parties retain, for audit and inspection, only those records and papers which are necessary to ensure that third parties have carried out their functions in a legal and responsible manner.

9. *Recommended Practice*

Customs authorities should not require third parties to retain records and papers required for audit and inspection for a period longer than persons concerned are themselves required to keep such records and papers.

NOTE. The required period of time is normally not longer than five years.

10. *Recommended Practice*

With the exception of those documents bearing official stamps and signatures, Customs authorities should allow third parties to maintain their records and papers required for audit and inspection on media other than paper documents.

NOTES. 1. Customs authorities may allow records to be kept on media such as microfilm, magnetic tape, etc.

2. Normally these records are required to be produced to the Customs upon request in written format for audit and inspection.

*Security*11. *Recommended Practice*

Where Customs authorities require third parties to provide security in order to ensure the proper conduct of their business with the Customs, a general security should be accepted and the amount of such security should be fixed at the lowest possible level consistent with the obligations assumed by the third party in relation to the Customs.

NOTE. In some countries, third parties have formed associations which regulate the activities of member third parties and which, in addition, provide general security on behalf of their members.

12. *Recommended Practice*

Where Customs authorities require security to be provided, the choice between various acceptable forms of security should be left to the respective third party.

NOTE. Customs authorities generally specify the acceptable forms of security.

*Refusal by the Customs to transact business with a third party*13. *Standard*

National legislation shall specify the circumstances where the Customs may refuse to transact business with a third party.

NOTE. Customs authorities may refuse to transact business with a third party if, for example, the third party has been convicted of a serious Customs offence within the past five years or he has acted in a reprehensible manner by consistently not fulfilling his responsibilities to the person who designated him or to the Customs authorities.

14. *Recommended Practice*

With the exception of cases where a third party has committed a reprehensible action of a very serious nature (e.g., Customs fraud), Customs authorities should issue written warnings to a third party for reprehensible actions taken by him in connexion with his dealings with the Customs before suspending or revoking any licence or authorization or refusing to transact business with him.

NOTE. A written warning would normally state the type or types of reprehensible actions as well as the measures which are open to the Customs to deal with future reprehensible actions.

15. *Recommended Practice*

Customs authorities should give written notification to the third party of a decision to suspend or revoke a licence or authorization or a refusal to transact business with him.

16. *Recommended Practice*

Where Customs authorities have suspended or revoked a licence or authorization, or where they have refused to do business with a third party, he should be reconsidered upon request for permission to deal with the Customs after a certain period of time.

NOTE. Generally, permission to do business with the Customs is reconsidered after not more than five years.

17. *Recommended Practice*

Written warnings, suspensions and revocations of licences or authorizations, or refusal by the Customs to transact business with third parties should be open to appeal through an appropriate administrative procedure.

NOTE. Appeal to the Customs is normally a first remedy for a third party and does not limit him from seeking redress through other channels including the courts.

SPECIAL PROVISIONS CONCERNING CUSTOMS CLEARING AGENTS

18. *Standard*

National legislation shall set out the requirements to be met and the formalities to be accomplished by persons establishing themselves as Customs clearing agents.

NOTES. 1. Where Customs clearing agents are legal persons, there may also be requirements and formalities in respect of their employees.

2. It is normally required that Customs clearing agents be legally established within the Customs territory where the transactions with Customs take place and be of legally responsible age.

19. *Standard*

Customs authorities shall take measures sufficient to ensure that Customs clearing agents are properly conducting their business with the Customs.

NOTES. 1. Where the licensing of Customs clearing agents is required, the Customs may conduct suitable examinations to ensure that the responsible person(s) possess an adequate knowledge of Customs laws, regulations and procedures.

2. In some countries Customs authorities monitor the activities of Customs clearing agents to determine their competence and manner of dealing with the Customs and with persons concerned, especially as concerns the handling of funds for the payment of required duties and taxes.

20. *Recommended Practice*

Customs authorities should not restrict the number of locations at which a Customs clearing agent may do business with the Customs.

NOTE. Customs clearing agents may be required to obtain separate authorization to transact business for each Customs office or region of desired operation.

21. *Recommended Practice*

Customs authorities should not restrict the number of persons who may establish themselves as Customs clearing agents.

INFORMATION CONCERNING THE RELATIONSHIP
BETWEEN CUSTOMS AUTHORITIES AND THIRD PARTIES

22. *Standard*

Customs authorities shall ensure that all relevant information concerning the regulations and procedures applicable to the relationship between Customs administrations and third parties is readily available to any person interested.

NOTE. In some countries, Customs authorities provide lists of Customs clearing agents.

RESERVATIONS MADE UPON ACCEPTANCE

ISRAEL

Standard 3

National legislation provides that only a Customs agent, authorized under the Israeli Customs Agents Law, may deal directly with the Customs for and on behalf of another person in connection with the importation, exportation, movement or storage of goods.

KENYA

Recommended Practice 21

Customs authorities must satisfy themselves that the applicant is sufficiently conversant with Customs laws, regulations and practices, that he has enough clients and that he is capable of paying any duties and taxes that the Customs may lawfully demand.

NEW ZEALAND

Standard 3

New Zealand legislation requires that a person handling the business of another person with the Customs department is a licensed Customs agent.

UNITED STATES OF AMERICA

Standard 3

A system of licensed Customs clearing agents (termed Customs brokers) existing in the United States and only these persons along with the person directly concerned have the right to file Goods declarations with Customs in respect of commercial transactions.

Authentic texts: English and French.

Certified statement was registered by the Secretary-General of the Customs Co-operation Council, acting on behalf of the Parties, on 28 January 1984.