



USAID Trade Project

WTO Agreement on Trade Facilitation and the Revised Kyoto Convention: Implications for Customs Compliance

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WTO Agreement on Trade Facilitation and the Revised Kyoto Convention: Implications for Customs Compliance

This note provides an overview of the relationship between Pakistan's compliance with the provisions of the World Customs Organization's (WCO) Revised Kyoto Convention (RKC), and Pakistan's commitments under the newly adopted World Trade Organization (WTO) Agreement on Trade Facilitation (ATF). The note emphasizes the commonalities between the Convention on the Simplification and Harmonization of Customs Procedures, commonly known as the RKC, and the ATF. The ATF implementation strategy requires member country commitment according to a scheduled timeline. As such, it is important for the Government of Pakistan (GoP) to understand its current level of preparedness with regard to the key principles/ provisions of the ATF. Furthermore, because the ATF is primarily based on the provisions of the RKC, it is important that the GoP, specifically the Ministry of Commerce (MoC) and the Federal Board of Revenue (FBR)/ Customs, review the existing level of compliance of Pakistan vis-à-vis the RKC. In October 2013, the USAID Trade Project (Trade Project) submitted a detailed legal and procedural gap analysis of Pakistan Customs' compliance against the provisions of the RKC to the FBR. The USAID Trade Project would welcome the opportunity to present its findings to relevant stakeholders, and to support the FBR and MoC in defining an action plan for improved compliance against the RKC and readiness vis-à-vis the WTO ATF provisions.

Introduction

At the WTO's ninth ministerial conference, held in Bali, Indonesia from December 3-7, 2013, the ministers adopted the "Bali Package", a series of decisions aimed, among other things, at streamlining trade. The most significant development at the conference was the adoption of the WTO ATF that aims to expedite the movement, release and clearance of goods through Customs, including goods in transit. The new ATF is principally aimed at facilitating the international movement of goods by simplifying customs procedures. Consequently, there is great similarity between the ATF and the RKC.

The RKC was opened by the WCO for signature in 1999. Pakistan deposited its instrument of accession in October 2004. The RKC came into effect on February 3, 2006, the date on which 40 countries had deposited their instruments of accession. It must be noted that Pakistan did not accede to the entirety of the RKC; nevertheless, the aspects to which it has acceded impose substantial obligations on Pakistan to reform its customs laws and practices.

To assist FBR/Customs in its efforts to harmonize customs law and procedure with the RKC, the Trade Project conducted a comprehensive gap analysis in collaboration with FBR/Customs, and shared the Gap Analysis Report (RKC Report) with FBR in October 2013. The RKC Report revealed that Pakistan is currently in compliance with approximately 46% of its RKC obligations. The RKC lacks an effective mechanism for settling disputes or ensuring that its signatories comply with their obligations, therefore Pakistan's non-performance of many of its RKC obligations has not had any repercussions. The new ATF is a WTO discipline that mirrors, almost entirely, the provisions found in the RKC. As a result, the overdue reforms in Pakistan's customs regime will be the focus of substantially increased attention. FBR/Customs requested the Trade Project's assistance in performing a Gap Analysis of the RKC in order to support FBR/Customs' goal of full compliance with the RKC.

Scope of Agreement on Trade Facilitation

The WCO and WTO share the primary objective to facilitate international trade, therefore, the scopes of the RKC and the ATF are nearly identical (see **Annex A**). In addition to the measures listed in **Annex A**, the ATF also contains: (i) provision on how upon entry into force of this agreement, each member shall implement its category A commitments, (ii) administrative and institutional arrangements for moving forward, (iii) role of the WTO preparatory committee on trade facilitation, and

(iv) obligations of the member countries in implementation, substitution and change of provisions of category B and category C commitments.

Features of the ATF

The ATF consists of Section I (Scope of the Agreement) and Section II (Implementation Strategy). The salient features of the implementation strategy are:

- The WTO general council shall meet no later than 31 July 2014, to annex to the agreement notifications of category A commitments; to adopt the protocol drawn up by the preparatory committee, and to open the protocol for acceptance until 31 July 2015 (Para 3 of the Preamble of the agreement).
- There are three categories of provisions and each developing country/ least developed country member shall self-designate, on an individual basis, the provisions it wants to include under each of the categories A, B and C (Section II (2), see **Annex B**).
- Upon entry into force of the agreement, each developing country member shall implement its category A commitments. Those commitments designated under category A will become mandatory and will be made an integral part of this agreement (Section II (3)).

In view of the above, member countries, including Pakistan, are expected to submit category A, B and C commitments to the WTO prior to July 31, 2014.

Pakistan's Accession to the RKC

During the period when the ATF was still being negotiated, Pakistan became a signatory to the RKC. The RKC consists of the Body of the Convention, General Annex, and 10 Specific Annexes. The contracting parties are bound to accept: (i) Body of the Convention, and (ii) implement the provisions of the General Annex. It was, however, left open to member countries to accede to any Specific Annex or chapter of any annex. Exercising the option to accept any Specific Annex/ chapter, Pakistan acceded to the following chapters of Specific Annexes A, B, C and J:

- Chapter 1 (Formalities prior to the lodgement of Goods Delivered) of Specific Annex A
- Chapter 1 (Clearance for Home Use) of Specific Annex B
- Chapter 1 (Outright exportation) of Specific Annex C, and
- Chapter 1 (Travellers) of Specific Annex J

RKC and ATF

Pakistan initiated the reforms process for the mandatory provisions (i.e. the General Annex and Chapter 1 of Annexes A, B, C and J) in 2005 and has achieved substantial compliance. In 2013, the Trade Project conducted a Legal Gap Analysis to assess Pakistan's level of compliance to the RKC. The Legal Gap Analysis Report revealed that of 184 mandatory Standards, Pakistan is compliant with 94 standards, substantially compliant with 21 standards, partially compliant with 35 standards, and marginally compliant with 3 standards. Pakistan is non-compliant with 25 standards (**Annex C**). The Trade Project also analyzed Pakistan's overall level of compliance vis-à-vis the entire RKC. Against a total of 514 standards, Pakistan is compliant with 236, substantially compliant with 54, partially compliant with 82, and non-compliant with 117 (**Annex D**).

In addition to obligations for RKC compliance, Pakistan must now make commitments under categories A, B and C of the WTO ATF provisions, and will be answerable to the WTO through its trade policy review mechanism. It is, therefore, prudent for the GoP and FBR/Customs to take immediate action to meet its obligations. Compliance to ATF and the RKC will help improve Pakistan's ranking in the categories of trade facilitation measures, customs procedures, and the cost of doing business. This will consequently yield dividends through a reduced cost of doing business and enhanced trade by making Pakistan more competitive in the world market.

Relevance of Ministry of Commerce

Under GoP Rules of Business, 1973, the MoC is responsible, *inter alia*, for the following matters:

- Imports and exports across custom frontiers
- Export promotion
- Commercial statistics
- Tariff policy and its implementation
- Anti-dumping duties, countervailing duties and safeguard laws

Most of these matters are covered by the new WTO ATF. A review of the scope of the ATF shows that MoC shares responsibility with FBR/Customs for import and export procedures for export promotion, generation and dissemination of trade statistics, and tariff policy implementation. Improved customs law and procedures will help achieve the goals set for MoC by its agreement and commitment to the ATF.

Annex A: Comparison of the ATF and RKC

Section 1 of the Agreement

WTO Agreement on Trade Facilitation	Revised Kyoto Convention
Article 1: Publication And Availability Of Information	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
1. Publication	RKC GA; Chapter 9 Related WCO Documents: <ul style="list-style-type: none"> • Recommendation (1999) on the Use of World Wide Web Sites by Customs Administrations • Revised Arusha Declaration (paragraph 3) • Recommendation (2001) on the Application of HS Committee Decisions
2. Information Available Through Internet	RKC GA; Chapter 9 Related WCO Documents: <ul style="list-style-type: none"> • Recommendation (1999) on the Use of World Wide Web Sites by Customs Administrations • Recommendation (2001) on the Application of HS Committee Decisions
3. Enquiry Points	RKC GA Chapters 7 and 9
4. Notification	RKC GA; Chapters 3, 7 and 9 Related WCO Documents: <ul style="list-style-type: none"> • Recommendation (1999) on the Use of World Wide Web Sites by Customs Administrations • Recommendation (2001) on the Application of HS Committee Decisions
Article 2: Prior Publication And Consultation	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
1. Opportunity to Comment on New and Amended Rules	RKC GA; Chapters 1 and 9
2. Consultations	RKC GA; Chapters 1, 7 and 9 Related WCO Documents: <ul style="list-style-type: none"> • SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE)
Article 3: Advance Rulings	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
	RKC GA; Chapter 9 Related WCO Documents: <ul style="list-style-type: none"> • Recommendation (1996) on the Introduction of Programmes for Binding Pre-Entry Classification Information • Recommendation (1998) on the Improvement of Tariff Classification Work and Related Infrastructure (Appendix, Part II) • Technical Guidelines on Binding Origin Information • Practical Guidelines for Valuation Control
Article 4: Appeal Or Review Procedures	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
1. Right to Appeal or Review	RKC GA; Chapter 10

Article 5: Other Measures To Enhance Impartiality, Non-Discrimination And Transparency	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
1. Notifications for enhanced controls or inspections	RKC GA; Chapter 6 Related WCO Documents: <ul style="list-style-type: none"> SAFE Risk Management Compendium Single Window Compendium
2. Detention	RKC GA; Chapter 6 RKC SA "H"; Chapter 1 Related WCO Documents: <ul style="list-style-type: none"> Risk Management Compendium
3. Test Procedures	RKC GA; Chapter 3
Article 6: Disciplines On Fees And Charges Imposed On Or In Connection With Importation And Exportation	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
1. General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	RKC GA; Chapters 3 and 9 RKC SA "A"; Chapter 1 Related WCO Documents: <ul style="list-style-type: none"> Revised Arusha Declaration
2. Specific Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	RKC GA; Chapter 3 RKC SA "A"; Chapter 1 Related WCO Documents: <ul style="list-style-type: none"> Revised Arusha Declaration
3. Penalty Disciplines	RKC GA; Chapter 3 RKC SA "H"; Chapter 1
Article 7: Release And Clearance Of Goods	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
1. Pre-Arrival Processing	RKC GA; Chapter 3 Related WCO Documents: <ul style="list-style-type: none"> SAFE Immediate Release Guidelines (IRG)
2. Electronic Payment	RKC GA; Chapter 7
3. Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges	RKC GA; Chapters 3 and 5 Related WCO Documents: <ul style="list-style-type: none"> SAFE IRG
4. Risk Management	RKC GA; Chapter 6 Related WCO Documents: <ul style="list-style-type: none"> SAFE Risk Management Compendium
5. Post-clearance Audit	RKC GA; Chapter 6 Related WCO Documents: <ul style="list-style-type: none"> SAFE Post Clearance Audit Guidelines Risk Management Compendium
6. Establishment and Publication of Average Release Times	RKC [None]

	<p>Related WCO Documents:</p> <ul style="list-style-type: none"> • Guide to Measure the Time Required for the Release of Goods (TRS Guide) • TRS Online Software • The Customs International Benchmarking Manual
7. Trade Facilitation Measures for Authorized Operators	<p>RKC GA; Chapter 3</p> <p>Related WCO Documents:</p> <ul style="list-style-type: none"> • SAFE; SAFE Package
8. Expedited Shipments	<p>RKC GA; Chapter 3</p> <p>Related WCO Documents:</p> <ul style="list-style-type: none"> • IRG
9. Perishable Goods	RKC GA; Chapter 3
Article 8: Border Agency Cooperation	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
	<p>RKC GA; Chapter 3</p> <p>Related WCO Documents:</p> <ul style="list-style-type: none"> • SAFE • Customs Compendium : Integrated Border Management • WCO Data Model
Article 9: Movement Of Goods Under Customs Control Intended For Import	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
	<p>RKC GA; Chapter 6</p> <p>RKC, SA "E"; Chapters 1 and 2;</p> <p>Related WCO Documents:</p> <ul style="list-style-type: none"> • Customs Compendium on a Secure and Efficient Transit System.
Article 10: Formalities Connected With Importation And Exportation And Transit	Chapter/Section of RKC Dealing With Similar/Related Subject Matter
1. Formalities and Documentation Requirements	RKC GA; Chapter 3
2. Acceptance of Copies	<p>RKC, GA Chapter 3</p> <p>Related WCO Documents:</p> <ul style="list-style-type: none"> • Recommendation (2012) on Dematerialization of Supporting Documents.
3. Use of International Standards	<p>RKC GA; Chapters 3 and 7</p> <p>Related WCO Documents:</p> <ul style="list-style-type: none"> • WCO Data Model; • Recommendation (June 2009) Concerning the Use of the WCO Data Model • Recommendation (June 1990) Concerning the Use of the UNTDED • Recommendation (June 1990) Concerning the Use of UN/EDIFACT
4. Single Window	<p>RKC GA; Chapter 3</p> <p>Related WCO Documents:</p> <ul style="list-style-type: none"> • SAFE • Single Window Compendium • Single Window Information Store (on WCO Website) • WCO Data Model

5. Pre-shipment Inspection	RKC [None] Related WCO Documents: <ul style="list-style-type: none"> Practical Guidelines for Valuation Control
6. Use of Customs Brokers	RKC GA; Chapters 3 and 8
7. Common Border Procedures and Uniform Documentation Requirements	RKC GA; Chapter 3
8. Rejected Goods	RKC GA; Chapter 3 RKC SA "C"; Chapter 1 RKC SA "G"; Chapter 1
9. Temporary Admission of Goods/Inward and Outward Processing a) Temporary Admission of Goods b) Inward and Outward Processing	Related WCO Documents: <ul style="list-style-type: none"> Istanbul Convention A.T.A. Convention RKC SA "F"; Chapters 1 and 2
Article 11: Freedom Of Transit	Chapter/Section of RKC Dealing With Similar/Related Subject Matter RKC SA "E"; Chapters 1 and 2 Related WCO Documents: <ul style="list-style-type: none"> Customs Compendium on a Secure and Efficient Transit System
Article 12: Customs Cooperation	Chapter/Section of RKC Dealing With Similar/Related Subject Matter RKC (only general applicability) Related WCO Documents: <ul style="list-style-type: none"> Recommendation of the Customs Co-operation Council concerning Bilateral Agreements on Mutual Administrative Assistance (June 1995) Model Bilateral Agreement International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi, 9 June 1977) Guide to the Exchange of Customs Valuation Information Globally Networked Customs Feasibility Study

Annex B: Agreement on Trade Facilitation **Section II (Categories of Provisions)**

Category A contains provisions that a developing country member or a least developed country member designates for implementation upon entry into force of this agreement, or in the case of a least developed country member within one year after entry into force.

Category B contains provisions that a developing country member or a least developed country member designates for implementation on a date after a transitional period of time following the entry into force of this agreement.

Category C contains provisions that a developing country member or a least developed country member designates for implementation on a date after a transitional period of time following the entry into force of this agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building.

Annex C: Pakistan's Compliance Status vis-à-vis Mandatory RKC Provisions

Mandatory provisions	Compliant				Non-Compliant	NA	Total
	Compliant	Substantially Compliant	Partially Compliant	Marginally Compliant			
General Annex	52	14	33	3	17	2	121
Chapter 1 of Specific Annex A Formalities prior to lodgment of GD	11	4	2	0	1	1	19
Chapter 1 of Specific Annex B Clearance for Home Use	0	0	0	0	1	1	2
Chapter 1 of Specific Annex C Outright Exportation	0	1	0	0	1	1	3
Chapter 1 of Specific Annex J Travelers	31	2	0	0	5	1	39
Total mandatory standards/ recommended practices and transitional standards	96	21	35	3	25	6	184
Pakistan's compliance status (%) against 184 mandatory provisions	52.17%	11.41%	19.02%	1.63%	13.58%	3.26%	

Annex D: Pakistan's Compliance Status vis-à-vis Entire RKC

Annex	Compliant				Non-Compliant	N/A	Total
	Compliant	Substantially Compliant	Partially Compliant	Marginally Compliant			
General	52	14	33	3	17	2	121
A	19	7	2	0	2	2	32
B	11	2	4	0	6	1	24
C	0	1	0	0	1	1	3
D	15	8	2	0	10	2	37
E	9	4	11	0	27	3	54
F	28	4	5	0	25	6	63
G	12	4	1	0	5	1	23
H	17	1	2	0	6	1	27
J	64	8	4	0	10	5	91
K	9	1	18	0	8	2	39
Total	236	54	82	3	117	26	514
Pakistan's compliance status (%) against all 514 RKC provisions	45.91%	10.5%	15.95%	0.5%	22.76%	5%	