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The Revised Kyoto Convention versus the Old One: A Capable Tool for Trade Facilitation?

Carsten Weerth*

The World Customs Organization (WCO, Organization Mondiale des Douanes, OMD) is an intergovernmental organization of 176 Member States that was founded as European Customs Cooperation Council in 1952. The first Kyoto Convention on simplification of customs procedures is one of its most important legal instruments. This article questions whether the Revised Kyoto Convention (RKC) is a success story, which countries are signatory countries, and whether the Developing countries are also participating in this area of trade facilitation.

I. INTRODUCTION: THE KYOTO CONVENTION

The International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention) has entered into force on 25 September 1974. This was a tremendous step forward into the direction of a universal customs law. However, only sixty-four states have signed the first Kyoto Convention and were until 2006 (and are practically still are) applying some (but not all) of its chapters or annexes.¹

In 2006, the Revised Kyoto Convention (RKC) on the Simplification and Harmonization of Customs Procedures entered into force in 3 February.² Up to 2009, sixty-four countries (out of 176 WCO-Member States) have signed the RKC. This article focuses on the question of which countries have signed the RKC,

which are still applying the first Kyoto Convention, and which role the Developing Countries play; it also questions why this important tool for trade facilitation is not accepted by a broader set of countries.

2. RESULTS

Six of the least developed countries (LDCs) have signed the RKC. All sixty-four signatory states are either WTO members (fifty-nine cases) or WTO observers (five cases).

The EU-27 is a signatory party and such were twenty-six out of twenty-seven EU Member States, but Malta has not signed the RKC (however, the EU is setting EU Customs Law so this omission is not relevant). All in all, thirty-two signatory states are

Notes

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1 See H.-M. Wolfgang & O. Fischer-Zach, 'Die Revidierte Kyoto-Konvention von 1999', *Zeitschrift für Zölle und Verbrauchsteuern* (2003): 84–87, 114–123 and for the view of the EU, M. Lux, 'Zollrecht und Völkerrecht in der EU', *Zeitschrift für Zölle und Verbrauchsteuern* (2005): 254–260; M. Lux, 'EU Customs Law and International Law', *World Customs Journal* 1 no. 1 (2007): 19–29.

2 See C. Weerth, 'A Short History on the World Customs Organization', *Global Trade and Customs Journal* 4, no. 7–8 (2009): 267–269.

*Table 1: Member States of the Revised Kyoto Convention (RKC) as of 2006 and their WTO Status³
(EU Member States are shown with an *)*

Kyoto Convention 2006 (RKC)	WTO Member	Least Developed Country
Algeria	Observer	No
Australia	Yes	No
Austria*	Yes	No
Azerbaijan	Observer	No
Belgium*	Yes	No
Botswana	Yes	No
Bulgaria*	Yes	No
Canada	Yes	No
China	Yes	No
Congo (Democratic Republic of the)	Yes	Yes
Croatia	Yes	No
Cuba	Yes	No
Cyprus*	Yes	No
Czech Republic*	Yes	No
Denmark*	Yes	No
Egypt	Yes	No
Estonia*	Yes	No
European Community	Yes	No
Finland*	Yes	No
France*	Yes	No
Germany*	Yes	No
Greece*	Yes	No
Hungary*	Yes	No
India	Yes	No
Ireland*	Yes	No
Italy*	Yes	No
Japan	Yes	No
Jordan	Yes	No
Kazakhstan	Observer	No
Latvia*	Yes	No
Lesotho	Yes	Yes
Lithuania*	Yes	No
Luxembourg*	Yes	No

Kyoto Convention 2006 (RKC)	WTO Member	Least Developed Country
Macedonia (FYROM)	Yes	No
Madagascar	Yes	Yes
Malaysia	Yes	No
Mauritius	Yes	No
Mongolia	Yes	No
Montenegro	Observer	No
Morocco	Yes	No
Namibia	Yes	No
Netherlands*	Yes	No
New Zealand	Yes	No
Norway	Yes	No
Pakistan	Yes	No
Poland*	Yes	No
Portugal*	Yes	No
Qatar	Yes	No
Republic of Korea (South Korea)	Yes	No
Senegal	Yes	Yes
Serbia	Observer	No
Slovak Republic*	Yes	No
Slovenia*	Yes	No
South Africa	Yes	No
Spain*	Yes	No
Sri Lanka	Yes	No
Sweden*	Yes	No
Switzerland	Yes	No
Turkey	Yes	No
Uganda	Yes	Yes
United Kingdom*	Yes	No
United States of America	Yes	No
Vietnam	Yes	No
Zambia	Yes	Yes
Zimbabwe	Yes	No

Note

³ See WTO 2003 and WTO 2009.

Table 2: Member States of the Kyoto Convention as of 1974 and their WTO Status (EU Member States are shown with an *)

Kyoto Convention 1974	WTO Member	Least Developed Country
Burundi	Yes	Yes
Cameroon	Yes	No
Congo (Democratic Republic of)	Yes	Yes
Cote d'Ivoire	Yes	No
Gambia	Yes	Yes
Israel	Yes	No
Kenya	Yes	No
Malawi	Yes	Yes
Nigeria	Yes	No
Rwanda	Yes	Yes
Saudi Arabia	Yes	No

from Europe (including Turkey, which is a candidate country for EU membership as well as Croatia; Macedonia and Montenegro have applied for EU Membership⁴).

Fourteen African states have signed the RKC. Both North American states have signed the RKC and also the most important trade nations of Oceania (Australia and New Zealand) are signatory states to the RKC. Thirteen Asian states have signed the RKC, also including major world trade nations such as China, Japan, and India. Only Cuba is a signatory country from the Caribbean countries. Surprisingly, there is no Member State from the Middle or South Americas.

Eleven countries are still applying the old Kyoto Convention 1974 (as of 30 June 2009), all of which are WTO Members. Nine of these countries are from Africa. Congo has signed the RKC but has not ratified it, so it is applying the first Kyoto Convention. Five African countries are belonging to the LDCs.

Five of the countries were WTO Observer countries, which are due to start WTO Membership negotiations within five years of gaining this status.

Table 3 shows the countries that are signatory states to the RKC but were not contracting parties to the Kyoto Convention.

Table 3: Countries that are Signatory States to the RKC but were not Contracting Parties to the Kyoto Convention

Kyoto Convention 2006 (RKC)
Azerbaijan
Egypt
Estonia*
Jordan
Kazakhstan
Macedonia (FYROM)
Madagascar
Mauritius
Mongolia
Namibia
Qatar

Eleven countries are signatory states of the RKC but were not contracting parties to the first Kyoto Convention.

3. CONCLUSIONS

The RKC has a strong signatory membership in Europe but also in Africa, Asia, North America, and Oceania. However, no single country from the Middle or South Americas is a signatory state to neither the Kyoto Convention nor the RKC (only Cuba has signed the RKC in 2009). That means that major trade nations are not trying to harmonize their Customs Law yet, such as Belarus, Russia, Ukraine, Egypt, Pakistan, Argentina, Chile, Mexico, Brazil, Indonesia, Thailand, and Philippines, but also the United Arab Emirates, Saudi Arabia, and important small transit countries such as Singapore, Costa Rica, or Panama are not applying the Kyoto Convention.

In November 2009, there are sixty-four signing countries to the RKC (of which twenty-seven parties are EU Member States and the EU as legal entity is also a Member State); therefore, there are only thirty-six parties out of the EU (see Table 1). In April 2005, there were sixty-four signatory states to the first Kyoto Convention,⁵ out of which twenty-four were EU Member States (Malta was never a signatory state to the Kyoto Convention) and the EU-25 itself was a

Notes

- 4 See C. Weerth, 'The Role of Customs Administrations in Preparation of Regional Integration in the European Union', *Global Trade and Customs Journal* 5 (2010), in print.
- 5 See 'Schweizerische Eidgenossenschaft (2006) SR 0.631.20 Internationales Übereinkommen zur Vereinfachung und Harmonisierung der Zollverfahren', <www.admin.ch/ch/d/sr/0_631_20/index.html>.

signatory member. Eleven countries are still applying this old Kyoto Convention (see Table 2). All in all, seventy-four countries out of seventy-four signatory states were either applying the first Kyoto Convention or the RKC.

For example even though the EU has signed the RKC, it is still practically applying the first Kyoto Convention because its EU Customs Code was drawn in 1992 on the basis of the old Kyoto Convention. The RKC will only be incorporated into the new EU Customs Law in 2013, when the Modernized Customs Code (MCC) as of Regulation (EC) No. 450/2008⁶ will be entering into force.

In order to be a very helpful and successful tool for the facilitation of international trade, the RKC must be applied by all countries that are still only applying the first Kyoto Convention. Furthermore, a lot more countries particularly in the Middle and South Americas, Asia, Africa, and the former Soviet Russian states should consider the signature of the RKC. This issue could also be focused with the help of the trade facilitation negotiations of the WTO in order to further enable more uniform and harmonized customs procedures around the globe. Six of the LDCs are signatory states to the RKC (however, Congo has not ratified the RKC yet). Further five LDCs are still applying the first Kyoto Convention. All LDCs as well as all other countries should harmonize their customs laws according to the RKC; however, the rich countries will most likely require to provide expertise and technical and financial assistance.

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Note

6 OJ 2008, No. 145/1.