

THE REVISED KYOTO CONVENTION: A PATHWAY TO ACCESSION AND IMPLEMENTATION

A Guidebook for APEC Economies to assist them to become Contracting Parties to the International Convention on the Harmonisation and Simplification of Customs Procedures



Asia-Pacific
Economic Cooperation

APEC Sub-Committee on Customs Procedures

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TABLE OF CONTENTS

GLOSSARY.....	iii
INTRODUCTION.....	1
CHAPTER 1 ABOUT THE GUIDEBOOK.....	3
1.1 What will the Guidebook do?	3
1.2 Why is it needed?.....	3
1.3 Who is it meant for?.....	4
1.4 Will it be difficult to put the guidelines into practice?	4
1.5 How is it structured?	4
1.6 How can I plan for this task?	5
CHAPTER 2 ABOUT THE KYOTO CONVENTION	6
2.1 What is the Kyoto Convention?.....	6
2.2 Why is Kyoto important?.....	6
2.3 What happened in the review of Kyoto?.....	7
2.4 Who are parties to Kyoto?	7
2.5 What is Kyoto’s purpose?.....	7
2.6 Who benefits from Kyoto?.....	8
2.7 How is Kyoto structured?	8
2.8 What is the purpose of the Guidelines?	9
2.9 What’s new about the revised Convention?.....	9
2.10 Is the revised Convention in force yet?.....	10
2.11 What role does the WCO play in the Convention?.....	10
CHAPTER 3 COMPLIANCE AND ACCESSION.....	12
3.1 What do we mean by “being Kyoto compliant” and “accession”?.....	12
3.2 What is a Contracting Party?	12
3.3 Existing Contracting Parties and the revised Convention.....	12
3.4 How can my economy become a Contracting Party?	14
3.5 Is accession to the Protocol different from accession to the Convention?...	14
3.6 What undertakings do existing Contracting Parties make when they accede to the Protocol?	14
3.7 What undertakings do new Contracting Parties make when they accede to the Convention?	14
3.8 What administrative steps are needed to accede?	15
3.9 What legal requirements must be met?	15

3.10	Are reservations allowed?	17
3.11	What happens after accession?	17
CHAPTER 4 IDENTIFYING RELEVANT KYOTO PROVISIONS		18
4.1	What do we mean by “national legislation” and “Customs law”?	18
4.2	How difficult is it to comply with the General Annex?	19
4.3	Why focus on the General Annex?	19
4.4	Who should conduct the situation analysis?	19
4.5	Briefing the KPMT and the TTE	20
4.6	How should you conduct the situation analysis?	20
4.7	Analysing the General Annex	21
4.8	Using a checklist	22
4.9	How is the checklist completed?	23
4.10	The situation analysis in summary	26
CHAPTER 5 BECOMING KYOTO COMPLIANT		27
5.1	Preliminary guidance for the management team	27
5.2	What is a “gap analysis”?	27
5.3	Readiness for the gap analysis	28
5.4	Conducting the gap analysis: completing column 6	29
5.5	Conducting the gap analysis: completing column 7	29
5.6	A reminder about existing reservations	30
5.7	Implementing column 7 - the final stage to compliance	30
CHAPTER 6 PLANNING FOR SUCCESS		32
6.1	The stages of a project	32
6.2	Planning your Kyoto project	33
6.3	Leadership	34
6.4	Developing the project	34
6.5	Implementing the project	37
6.6	Finalising the project	37
6.7	What happens after accession and compliance are achieved?	38
CHAPTER 7 NEXT STEPS		39
7.1	Next Steps	39
7.2	External assistance	39
7.3	Contacts	39

GLOSSARY

Accession	A legal term meaning to become a party to an existing international agreement
APEC	Asia-Pacific Economic Cooperation
AFTA	ASEAN Free Trade Area
Body of the Convention	That part of the Kyoto Convention containing the general provisions relating to scope, membership, accession etc
CAP	The Collective Action Plan of the SCCP
Convention	An international treaty, usually with many Contracting Parties
Contracting Party	Countries that are already party to a convention through signature, ratification or accession
CTI	APEC Committee on Trade and Investment
Customs Law	The statutory and regulatory provisions relating to the importation, exportation, movement or storage of internationally traded goods, the administration and enforcement of which are specifically charged to the Customs. It includes any regulations made by the Customs under their statutory powers
Depository	The international body responsible for the administration of an international agreement and with which an instrument of accession is lodged
EDI	Electronic Data Interchange
Gap Analysis	A technique that may be used to determine whether a country is compliant with a convention
General Annex	The General Annex to the Kyoto Convention
IT	Information Technology
KPMT	Kyoto Project Management Team
Kyoto Compliant	National legislation is consistent with the principles of the Kyoto Convention
Kyoto Convention	The original Convention on the Simplification and Harmonization of Customs Procedures, which entered into force in 1974

Kyoto Guidelines	Guidelines to implementation of the General Annex and the Specific Annex, prepared by the WCO
National Legislation	The laws, regulations and other measures imposed by a competent authority of a Contracting Party and applicable throughout the territory of the Contracting Party concerned, or treaties in force by which that Party is bound. This is a wide definition that can include documents such as operating directions, administrative advice, and other regulatory sources that do not require formal legislation. It includes all relevant provisions, whether administered by the Customs or any other Government authority
Protocol	The treaty document amending the Kyoto Convention
Revised Kyoto Convention	The Kyoto Convention, incorporating the amendments approved by the WCO in 1999
SCCP	The APEC Sub-Committee on Customs Procedures
Situation analysis	A technique that may be used to determine what national legislation is relevant to Kyoto compliance
Specific Annexes	The ten optional Annexes attached to the Kyoto Convention
TTE	Team of Technical Experts
WCO	World Customs Organization
WTO	World Trade Organization

INTRODUCTION

Welcome to the APEC Guidebook to the revised Kyoto Convention.

We have prepared this Guidebook for all APEC economies that wish to become a party to the revised Kyoto Convention, i.e. the International Convention on the Simplification and Harmonisation of Customs Procedures.

We believe that it is very important for Customs agencies around the world to deliver their responsibilities to Government, the community and business as effectively and efficiently as they possibly can. This is certainly true in APEC, where we take pride in delivering the highest level of trade facilitation that we can, whilst ensuring compliance with the law. By doing so, Customs agencies can contribute directly to increasing the prosperity and welfare of their own economies and those of their APEC partners.

The Convention helps agencies to achieve an appropriate balance between international trade facilitation and regulatory control, which is particularly important in the present climate of global unrest, where the need to maintain high levels of border security is essential. APEC Ministers have noted the importance of the revised Kyoto Convention, and have encouraged its adoption at the earliest possible opportunity.

It is an important step to decide to become a party to any Convention, but don't be put off by the size or apparent complexity of the revised Kyoto Convention. The Convention itself has been designed to make accession to it as easy as possible, and generous time frames exist to enable you to achieve compliance with its provisions.

The APEC Sub-Committee on Customs Procedures (SCCP) and the APEC Secretariat are also here to help member economies prepare for accession. The SCCP, which reports to the APEC Committee on Trade and Investment (CTI), was established in 1994. The Sub-Committee aims to harmonise and standardise regional Customs Activities thereby contributing to the broader APEC agenda of trade liberalisation and facilitation. The SCCP's work program is reflected in its Collective Action Plan (CAP). In 1997 the simplification and harmonisation of procedures based on the Kyoto Convention was first added to the CAP.

By addressing the APEC objective of harmonising and simplifying Customs activities and procedures within the region, the SCCP is making a vital contribution towards the broader APEC agenda of trade liberalisation and facilitation. In progressing its regional initiatives, the SCCP seeks to:

- Facilitate legitimate trade and investment in the APEC region;
- Maintain its role in protecting the community;
- Simplify and harmonise Customs procedures;
- Improve the speed, accuracy and transparency of Customs procedures;
- Establish levels of service to provide traders with certainty;

- Promote the professionalism and integrity of Customs Administrations;
- Encourage voluntary compliance in APEC member economies;
- Consult regularly with the APEC business community to ensure its activities meet their needs;
- Form strategic partnerships with interested APEC business representatives;
- Provide members with the required technical assistance to promote efficiency, effectiveness and equity; and
- Tailor the pace of progress to the diverse needs and abilities of APEC member economies.

INFORMATION BOX 1:

PATHFINDER APPROACH

In October 2001 the APEC leaders endorsed the “Pathfinder” approach as a means of advancing progress across APEC. “Pathfinder” refers to a group of members piloting the implementation of cooperative initiatives ahead of other member economies that may not be ready to participate in the initiative. In their statement, APEC leaders encouraged the development of Pathfinder initiatives which are open and transparent, have clearly defined objectives and provide a framework to encourage broader participation through enhanced capacity building. In February 2002 the revised Kyoto Convention was identified as an initial area in which the Pathfinder approach might be usefully adopted. This Guidebook is part of that process.

This Guidebook is an important tool for you to use. It sets out in clear steps and easy language the processes that you will need to undertake to become a Contracting Party to the revised Kyoto Convention and to become “Kyoto Compliant”. Together with the workshops and assistance missions that the SCCP will be providing, the Guidebook will indeed assist you along the path to Kyoto accession and compliance.

At first glance it may appear to be a fairly lengthy and difficult process. But it need not be, particularly if you adopt the systematic approach outlined in this Guidebook and work with the SCCP and fellow Customs agencies to achieve the goal. Remember that the returns on your effort will be substantial - the integration of your trading practices and procedures with those of all your partners in APEC - leading to a trading system that will deliver benefits for all.

APEC Sub-Committee on Customs Procedures
Singapore
September 2003

CHAPTER 1 ABOUT THE GUIDEBOOK

In this Chapter, we explain how this Guidebook is structured and what it is intended to achieve. The Guidebook assumes that the Customs agencies of APEC economies are committed to acceding to the revised Kyoto Convention and are prepared to invest the necessary time and resources to make that happen.

We discuss the benefits of becoming a Contracting Party in Chapter 2. Essentially, you need to ask the question: “can I afford not to be a Contracting Party?”, since those economies that do not accede to the Convention may be at risk of being unable to compete as effectively as others in the global marketplace.

If you are already a Contracting Party and are not sure about the need to accede to the new Convention, bear in mind that the 1974 version of Kyoto is obsolete, does not equip Customs agencies to use modern administrative practices to operate in the era of modern technology and communications, and will become an empty shell when the revised Convention comes into force. It is important for all APEC Customs agencies to modernise.

1.1 What will the Guidebook do?

This Guidebook will assist economies to:

- Understand the revised Kyoto Convention;
- Undertake a situation analysis of their current position in relation to the Convention;
- Undertake a gap analysis to identify actions necessary to comply with the Convention; and
- Implement an action plan that will enable them to become compliant with, and to accede to, the Convention.

The Guidebook is not intended to provide a detailed explanation of each provision of the Kyoto Convention. Such guidance can be found in the WCO’s Guidelines to the revised Convention; and APEC has already conducted workshops along those lines.

1.2 Why is it needed?

Currently there is no guide available to assist those economies that are seeking to comply with and/or accede to the Convention. While some valuable process aids have been developed by the WCO and within APEC, nothing currently exists that is totally focussed and instructive about Kyoto. The text of the Convention itself and the Guidelines are not enough to lead an economy successfully through the entire accession process.

1.3 Who is it meant for?

This Guidebook should prove useful to Customs agencies, other government departments and the international trading community. It will become the definitive reference document for APEC members (and hopefully others) wishing to comply with and accede to the Convention. The document has been written for both those with little knowledge of the Convention as well as those who are familiar with its provisions, and it will prove extremely useful for those who are charged with achieving accession. In Chapter 4 we recommend that economies establish a Kyoto Project Management Team (KPMT) to oversee the process of accession. This Guidebook is especially designed to assist KPMTs in meeting their responsibilities.

1.4 Will it be difficult to put the guidelines into practice?

The processes of becoming Kyoto compliant and of acceding to the Convention are not difficult, but they do need to be tackled methodically. The Convention has been drafted in a way that ensures that compliance with it, and accession to it, are as easy as possible. Equally, however, as the Convention goes to the heart of Customs administration, it deals with some relatively complex issues.

1.5 How is it structured?

In this Guidebook, we will explain the steps that are necessary to become compliant with Kyoto – or at least to work towards compliance – and then the steps that are necessary to become a Contracting Party to the Convention. The Guidebook is written in a series of “how to” chapters:

- In Chapter 2 we explain what the revised Kyoto Convention is and how it is structured, and we examine why becoming a party to the Convention is a necessary and important step for all APEC economies;
- In Chapter 3, we explain what is meant by “accession”, how to accede to Kyoto, and what responsibilities you will have as a Contracting Party;
- In Chapter 4 we explain how to undertake a situation analysis, in order to identify those elements of the Convention (both General Annex and Specific Annex) which are relevant to you;
- In Chapter 5, we help you to identify where your administration is not “Kyoto compliant”, and what you need to do to become compliant;
- In Chapter 6 we recommend a project management approach to ensure the success of the project; and
- In chapter 7 we will start you down the pathway to accession by identifying what your next steps should be.

1.6 How can I plan for this task?

You will need to regard the process of examining and acting on these Guidelines as an important project for your agency. As such, it will need to be subject to the disciplines of good project management principles. In Chapter 6 we help you to identify and implement these principles.

Conclusions: *While it is not difficult to prepare your agency for accession to the Convention, it is important that you approach the task methodically. You will find this Guidebook to be a very useful tool in helping you to reach your goal. It will guide you through a series of logical steps that will enable you to become Kyoto Compliant and to become a Contracting Party to the Convention.*

CHAPTER 2 ABOUT THE KYOTO CONVENTION

In this chapter, we explain what the Kyoto Convention is and why it is important to international and regional trade. This Chapter is relevant to Customs agencies, other Government agencies and the general trading community. It explains why becoming a party to the Convention is a necessary and important step forward for APEC economies. It will also help you to understand the way in which the Convention works.

2.1 What is the Kyoto Convention?

The Convention's full title is the International Convention on the Simplification and Harmonization of Customs procedures. The original Convention was concluded in Kyoto in 1973 and entered into force in September 1974. It was reviewed over a period of years and was ultimately amended in 1999. The amendments are contained in a Protocol of Amendment which was concluded in June 1999. For ease of reference, we shall refer to the revised Kyoto Convention as either "the revised Convention" or "Kyoto", as appropriate.

2.2 Why is Kyoto important?

Kyoto provides a foundation for modern and efficient Customs procedures and is therefore central to Customs modernisation and reform.

The need for modernisation and reform has never been greater. Since the original Kyoto Convention entered into force, there have been many developments which have changed the face of international trade. These include:

- Increased globalisation of trade;
- Rapid growth in international cargo;
- A highly competitive international business environment;
- Establishment of the World Trade Organisation (WTO) and regional trading arrangements such as APEC and AFTA;
- Reduced tariff barriers through the WTO;
- Removal of many non-tariff barriers;
- Growth in e-commerce and use of EDI for delivery of Government services; and
- Increased focus on trade security.

As a result of these changes, Customs practices and procedures have been put under the microscope. They have been identified as creating non-tariff barriers, and the WTO has called for the simplification and harmonisation of Customs procedures as a key to trade facilitation. The simplification and harmonisation of Customs procedures is therefore important to the liberalisation of international trade, including trade within the APEC region.

2.3 What happened in the review of Kyoto?

In response to calls for change, the WCO recognised that it was necessary to review the original Kyoto Convention, which was intended to be the key to simple and harmonised Customs procedures. The review, which concluded in 1999 not only confirmed the relevance of the Convention, but also improved it by making it:

- up-to-date;
- easier to understand;
- easier to join;
- easier to implement;
- harder to avoid obligations; and
- easier to adapt to the changing global environment.

The revised Convention is now the foundation for simple and efficient Customs procedures for the 21st century. The adoption and implementation of the revised Convention by APEC economies will deliver tangible benefits to the region by increasing transparency and efficiency in Customs administration while contributing to reduced transaction costs and enhanced trade security.

2.4 Who are parties to Kyoto?

There are 62 Contracting Parties to the original Convention, including nine APEC economies: Australia, Canada, China, Japan, Korea, Malaysia, New Zealand, USA, and Vietnam. With almost half of APEC already being committed to the principles of Kyoto, it is important that the rest demonstrate their commitment by acceding to the revised Convention, in order to strengthen regional cooperation and harmonise regional procedures.

2.5 What is Kyoto's purpose?

Kyoto is designed to help Contracting Parties to achieve a modern Customs administration, to achieve improved facilitation and control, and to deliver a simpler, harmonised and more flexible approach. When implemented, Kyoto will contribute to international trade by:

- Developing uniform Customs practice and procedure around the world;
- Meeting the needs of international trade and Customs for facilitation, through simplification of Customs procedures and practices;
- Ensuring appropriate standards of Customs control;
- Enabling Customs to respond to major changes in business and administrative methods and techniques; and
- Reducing the costs to traders and to Governments of Customs processing.

2.6 Who benefits from Kyoto?

The revised Convention benefits many people. Traders will benefit from improved facilitation and reduced costs. Shippers and transport operators will benefit from uniform Customs controls and quicker movement of cargoes and people. Governments will benefit from more effective controls that increase border security and reduce revenue leakage. In summary, Kyoto will provide international commerce with the predictability and efficiency that modern trade requires.

2.7 How is Kyoto structured?

This is not the place to discuss its substantive provisions at length, and you will need to study Kyoto in detail. However, it is important that you understand the basic structure of Kyoto, because the nature of the obligations you will assume when you become a party are directly related to the revised Convention's structure.

First, note that Kyoto is in three parts – the Body, the General Annex and the Specific Annexes. Both the General Annex and the Specific Annexes are divided into Chapters. In addition, both the General Annex and the Specific Annexes have detailed Guidelines explaining how they are to operate. To become a party to the Convention you must accept the Body and the General Annex in their entirety. You do not have to accept any of the Specific Annexes, but may do so if you wish (either in whole or Chapter-by-Chapter).

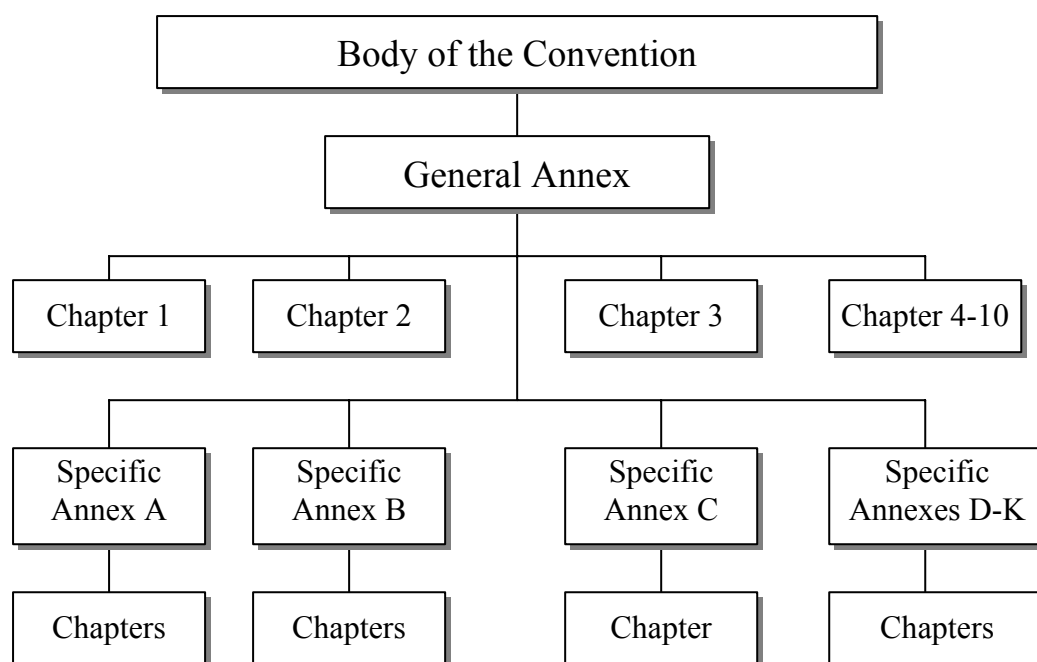
The Body is obligatory. It sets out the basic provisions of Kyoto, and contains the preamble (which sets out the goals and principles of the Convention) and provisions relating to scope, structure, administration, accession and amendment.

The General Annex is also obligatory. It contains core principles which are not repeated in the Specific Annexes. It has 10 Chapters, which contain Standards and Transitional Standards, all of which are mandatory. Detailed Guidelines have been provided to assist with implementation.

The ten Specific Annexes, which cover different aspects of Customs procedures, are not obligatory. The Specific Annexes are also divided into Chapters, and have detailed Guidelines for their implementation. It is possible to accede to either a complete Specific Annex or to one or more Chapters of an Annex. Accession to the Specific Annexes is optional and may be accomplished following accession to the Body and General Annex.

Note too that the Specific Annexes contain both Standards and Recommended Practices. If you accede to a Specific Annex or Chapter, the Standards become obligatory, but you are able to notify reservations against the Recommended Practices. In other words, if you decide to accede to a Specific Annex or a Chapter of a Specific Annex, you will be bound to implement any Standards and any Recommended Practices it contains, other than the Recommended Practices that you have lodged reservations against.

The following diagram illustrates the structure of the revised Convention:



Source: World Customs Organization

2.8 What is the purpose of the Guidelines?

All Annexes and Chapters are accompanied by Implementation Guidelines. These do not form part of the legal text. They provide guidance to Customs agencies on administrative practices that will help them to implement Kyoto effectively and, more importantly, strengthen the capability of agencies to carry out their tasks. The Guidelines are not mandatory, so agencies do not have to follow them. The Guidelines do, however, represent best current practice and should be treated as a valuable guidance tool. The Guidelines will be regularly reviewed and updated to reflect current practice, so they will continue to be flexible and progressive.

2.9 What's new about the revised Convention?

When the WCO reviewed the original Kyoto Convention, it concluded that:

- an effective mechanism was required to keep Kyoto relevant and up-to-date;
- the system of reservations needed to be more restrictive; and
- detailed implementation guidelines were needed for the legal provisions.

The revised Convention addresses these shortcomings. The amendments are easy to understand, make the revised Convention a better agreement, and make it easier for countries to become a party to Kyoto. The revision has incorporated important modern concepts, including the application of new technology (particularly the use of IT for electronic transactions), the implementation of new philosophies on Customs control (such as risk management and post-transaction audit) and new cooperative arrangements with private sector partners. The new Kyoto establishes best practice in key operational fields including:

- risk management;
- audit based controls;
- pre-arrival information;
- information technology;
- coordinated interventions;
- consultation with trade;
- information on Customs laws, rules and regulations;
- system of appeals in Customs matters

Central to the new governing principles of the revised Convention is the commitment by Customs agencies to provide transparency and predictability for all those involved in aspects of international trade.

A summary of the amendments is shown in Information Box 2.

2.10 Is the revised Convention in force yet?

The changes to the 1974 Convention have been brought about by a Protocol, which is open to signature by all Contracting Parties. Once 40 have ratified the Protocol, it – and the revised Convention – will come into force three months later (Protocol Article 3 (3)).

At the time of publishing this guidebook, only 14 were party to the revised Convention, so it is not yet in force. It is only a matter of time, however, as many countries, including the members of the European Union, have already stated their intention to become parties as soon as possible.

2.11 What role does the WCO play in the Convention?

The WCO is central to the Convention's success. It is the Depository for the Convention – i.e. it is responsible for its administration – and it is a strong promoter of the Convention to its Members and to other International Organisations. The WCO managed the review of the Convention and the WCO Council adopted the revised Convention in June 1999. Adherence to the Convention will add substantially to your agency's commitment to the WCO and will strengthen the important ties between APEC and the WCO.

Conclusions: *The revised Kyoto Convention is important. It is the basis for simplifying and harmonizing Customs procedures around the world. If properly implemented, it will increase national and regional prosperity and security. It contains world's best practice in Customs administration. The recent revisions have made it easier to join and comply, and provide a contemporary model that will benefit all APEC economies.*

INFORMATION BOX 2:

KEY AMENDMENTS TO THE ORIGINAL KYOTO CONVENTION

Changes to the Body of the Convention:

- The preamble has been modified to reflect the current international trade and facilitation environment, but this has no legal implications as the preamble is a statement of vision, not of obligation.
- Several new definitions have been added to reflect the new concepts in the Convention (such as the Management Committee) and to include terms used in the current Convention but not defined there, e.g. Standards, Recommended Practices etc.

Changes to the structure of the Convention:

- The General Annex is now obligatory for accession, contains core principles expressed either as Standards or Transitional Standards (no Recommended Practices) and does not permit reservations.
- The Specific Annexes have been revised, but there is no longer any requirement to accede to one or more of the Specific Annexes. *Accession can be on the basis of the Body of the Convention and the General Annex only.*
- A Management Committee has been established to regularly review and update the Convention.
- There is a transitional period for the implementation of Standards.
- Amendment procedures have been simplified:
 - Body - affirmative amendment (you must approve this)
 - Annexes - tacit amendment (if you don't object, you're taken to have approved these)
- Detailed Guidelines have been prepared to support implementation of legal provisions.

Other amendments

- Many of the Specific Annexes contain Chapters which deal with specific procedures. They contain Standards and Recommended Practices. No reservations are permitted against the Standards, but a party can accept either the whole Annex including the Chapters or only the Chapters that are relevant to them.
- There are transitional periods for implementation - 36 months for Standards and 60 months for Transitional Standards. *This is a very important provision. It means that you can become a party before you are compliant with the Convention, because you will have time to adapt your practices and procedures as necessary. Accession is therefore a statement of your intention to be bound by the Convention, not an undertaking to be compliant immediately.*

CHAPTER 3 COMPLIANCE AND ACCESSION

This Chapter sets out the steps that must be taken to become Kyoto compliant and to accede to the revised Convention. It is important to understand what needs to be done, and how your commitments will be seen by other APEC economies and the rest of the world. Becoming a party to Kyoto is a very positive step to take in terms of formally recognising your contribution to the global trading community.

3.1 What do we mean by “being Kyoto compliant” and “accession”?

When we say that agencies should strive to be Kyoto compliant, we mean that agencies should accept a responsibility to construct their regulatory policies and practices in a manner that is consistent with the principles laid down in the Convention. The Convention establishes international standards – once you conform to those standards, you will become Kyoto compliant. Accession is a step beyond being compliant – it is a legal act through which you recognise that you are, or intend to be, Kyoto compliant, *and that you accept the obligations of the Convention as being legally binding on you.*

The distinction is an important one. All APEC economies should aim to be Kyoto compliant. That in itself is good business practice. It will provide an unprecedented level of uniformity among APEC economies and provide a significant contribution to trade facilitation. It will effectively make Kyoto operational within the region, even if it has not formally come into force.

However, if you are not a Contracting Party at present, then accession to the revised Convention will not be possible for you until the revised Convention has come into force. Nevertheless, compliance is something that you can aim for immediately. Of course, once Kyoto has formally come into force, APEC economies which are not yet party to it will then be able to accede to it, knowing that they are already compliant.

3.2 What is a Contracting Party?

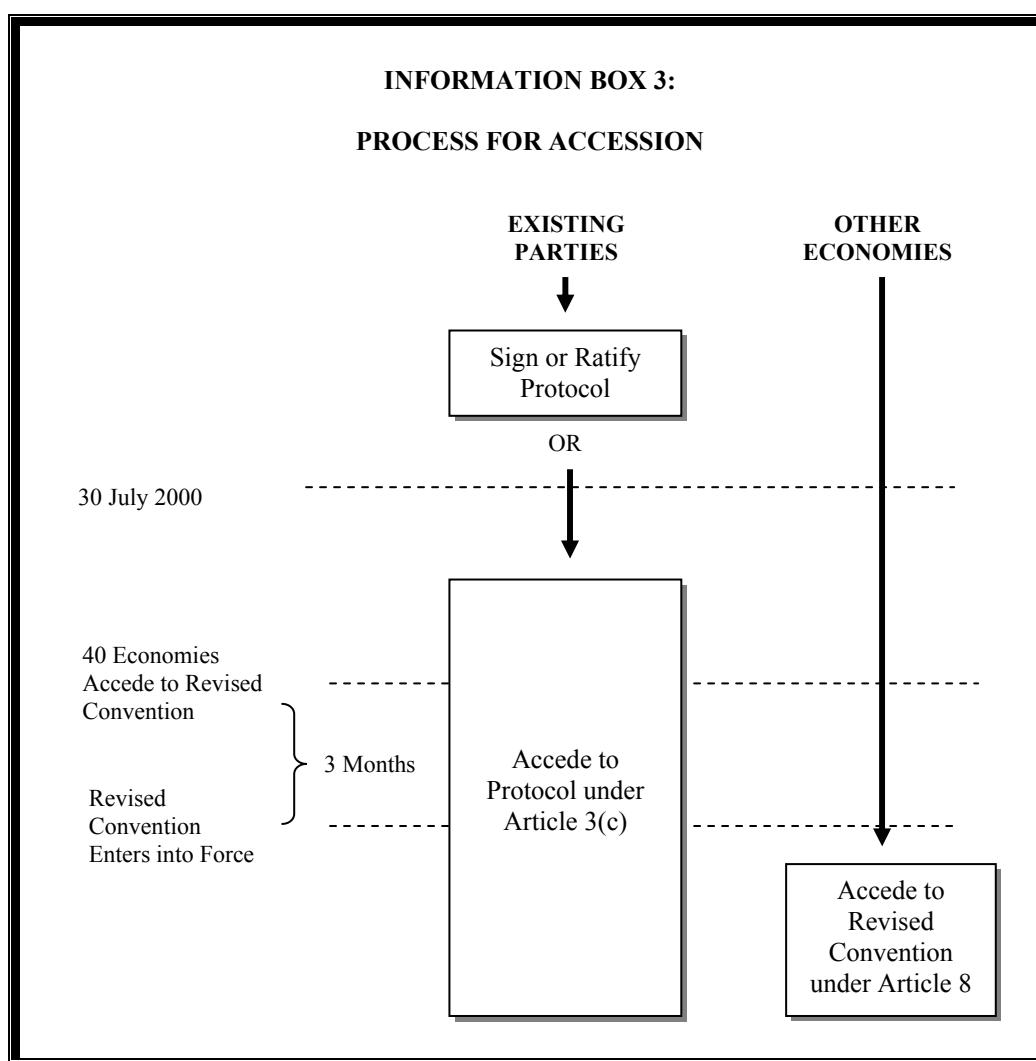
A Contracting Party is any country or Customs Union or Economic Union which has ratified or acceded to the Convention, and thereby has accepted the legal obligations set out in the Convention. APEC itself is not a Contracting Party, although a number of APEC economies are. Being a Contracting Party carries with it the obligation to abide by the provisions of the Body of the Convention and the General Annex, as well as the Specific Annexes (or Chapters thereof) which you have accepted. It also carries with it the privileges of being a Contracting Party, such as membership of the Management Committee, and with it the right to be involved in the review and development of Kyoto in years to come.

3.3 Existing Contracting Parties and the revised Convention

What is the position of countries that are already Contracting Parties to the original 1974 Kyoto Convention? As noted earlier, the original Convention was reviewed

over a period of years and was ultimately amended in 1999. The amendments are contained in a Protocol of Amendment.

When the Protocol was adopted, existing Contracting Parties were given the opportunity to signify their acceptance of the new provisions. Some APEC economies did so and are now parties to the new Convention. For those who did not, it is no longer possible to simply *sign or ratify* the Protocol, as that method of becoming a party ceased on 30 June 2000. Nevertheless, it is possible for such countries to *accede* to the Protocol at any time, even before the revised Convention comes into force. If you are a party to the existing Convention, you should aim to accede to the Protocol as soon as possible¹, in order to become one of the 40 Contracting Parties required to bring the revised Convention into force (note that if you are a party to the existing Convention but are not one of the first 40, you can still become a party to the revised Convention by acceding to the Protocol).



¹ Six APEC economies had already done so at the time of publication: Australia, Canada, the People's Republic of China, Japan, New Zealand and the Republic of Korea.

3.4 How can my economy become a Contracting Party?

If you are not already a Contracting Party, you can accede to the revised Convention (not the Protocol) as soon as it comes into force. This is provided for in Article 8 of the Convention. You should move quickly to position yourself to accede to the revised Convention as soon as the Protocol comes into force by adopting the pathway to accession that is outlined in this Guidebook.

3.5 Is accession to the Protocol different from accession to the Convention?

Accession to the Protocol (for existing parties) is technically different from accession to the revised Convention (for other economies), because two different legal instruments are involved. However, the processes are essentially the same and more importantly, you end up with the same result.

Whether or not you are already a Contracting Party, you will need to go through the process of accession. In the remaining part of this Chapter, we explain what administrative and legal steps need to be taken to accede to either the Protocol or the revised Convention. Then, in Chapters 4 and 5, we look at the processes that you will need to go through to establish your degree of compliance with Kyoto. That is a process that will need to be undertaken whether or not you are already a Contracting Party to the original Convention. For existing parties it should be easier as you will only have to satisfy yourself that you are willing to accept the changes to the Body and are compliant with the provisions of the General Annex. New parties will need to satisfy themselves that they can accept all of the Body and that they are compliant with all the provisions of the General Annex.

3.6 What undertakings do existing Contracting Parties make when they accede to the Protocol?

In acceding to the Protocol under Article 3, you are signifying that you accept the terms of the Protocol, including the amendments made by the Protocol to the Body of the Convention and to the General Annex. You may also signify your intention to be bound by one or more of the Specific Annexes, or Chapters thereof.

3.7 What undertakings do new Contracting Parties make when they accede to the Convention?

When you accede to the revised Convention as a new Contracting Party under Article 8, you are signifying that you:

- Accept the Body of the Convention; and
- Accept the General Annex.

You do not have to accept any of the Specific Annexes, but may do so if you wish – either in whole or in part. The greater the acceptance by all parties of the Specific Annexes, the greater will be the level of uniformity within APEC. However, do not feel compelled to be compliant with the Specific Annexes from the outset – once you

are compliant with the Body and with the General Annex, then you can begin to consider accession to the Specific Annexes.

In accepting the Body of the Convention, you and your Government need to be satisfied that you can agree to all the substantive provisions of that part of the Convention. Many of these provisions are standard international law provisions, and will already be very familiar to the legal experts in your Foreign Ministry or Ministry of Justice. They cover the following matters:

- Scope of the Convention – which contains the core commitment to promote the simplification and harmonisation of Customs procedures (and encourages Contracting Parties to provide greater facilitation than is required under the Convention)², while retaining the national (sovereign) right to apply national legislation with regard to either prohibitions or restrictions on goods which are subject to Customs control;³
- Structure of the Convention (see above);⁴
- Establishment and role of the Management Committee⁵, and arrangements for voting in the Committee;⁶
- Becoming a party through either ratification or accession;⁷
- The binding nature of the General Annex;⁸ and
- Time frames for implementation of the Standards and Transitional Standards.⁹

3.8 What administrative steps are needed to accede?

Let us assume that you are either fully compliant with the Body and the General Annex, or have determined that you will become compliant with the General Annex within the timeframes set out in the Body. You are now ready to accede. Each economy will need to comply with the requirements of its Government to make accession happen, so it is important as a first step that you discuss this carefully with the relevant Ministry. This is usually either the Foreign Ministry or the Justice Ministry. They will be able to guide you through the specific domestic requirements of your Government. Nevertheless, there are some steps that are common to all economies and to all conventions (refer Information Box 4).

3.9 What legal requirements must be met?

To satisfy the revised Convention's requirements, you will need to comply with the Body of the Convention as follows:

² Article 2
³ Article 3
⁴ Article 4
⁵ Article 6
⁶ Article 7
⁷ Article 8
⁸ Article 9
⁹ Article 13

- Be a member of the WCO Council or of the United Nations or any of its specialised agencies (Article 8(1));
- Deposit an instrument of accession which meets the requirements of the Depositary (Article 8 (1));
- Specify in your document of accession which if any of the Specific Annexes (or Chapters therein) you accept¹⁰ (Article 8(3));
- Signify your intention to be bound by the General Annex (Article 9);
- Declare the territories to which the accession applies (Article 10); and
- If acceding to any of the Specific Annexes or any Chapter(s) thereof, notify the Depositary of any Recommended Practices against which reservations are to be entered, stating the differences existing between the provisions of its national legislation and those of the Recommended Practices concerned (Article 12).

The Instrument of Accession is normally deposited with the Depositary (the WCO) by a Minister, a senior official or an Embassy representative. It is also usual to recognise the event with a small ceremony and some publicity. The deposit of the instrument will be a cause for celebration for both the Government and the international trading community – and the culmination of your hard work in making your economy a Contracting Party.

INFORMATION BOX 4:

ADMINISTRATIVE STEPS TO PREPARE FOR ACCESSION

- Step 1:* Consult your relevant Ministry to ascertain the process for accession to multilateral conventions.
- Step 2:* Contact other Ministries about provisions in the Convention that may impact on their requirements.
- Step 3:* Contact the relevant Ministry regarding any other treaty requirements that may have to be fulfilled.
- Step 4:* Prepare any necessary documentation to obtain Government approvals for accession (This will normally be a formal memorandum sent to Ministers to explain the purpose of, and need for, accession. In preparing this memorandum you should draw on the materials in Chapters 1 and 2 above).
- Step 5:* Collaborate with the relevant Ministry in the preparation of the instrument of accession. Given the formal nature of the instrument of accession, the Ministry is likely to have experts in this field who can prepare the instrument for you.
- Step 6:* If you intend acceding to any of the Specific Annexes or their Chapters, advise the Ministry preparing the instrument of any reservations that you intend to enter against the Recommended Practices in those Annexes.

¹⁰ In order to simplify and facilitate your accession process, you may wish to consider accepting as many Chapters of the Specific Annexes as you can, to enable you to obtain approvals in one single step and avoid the need to lodge multiple instruments of accession. Specific Annexes A, B and C are “easy targets” because they reflect practices which are already common to most Customs administrations.

3.10 Are reservations allowed?

Reservations are permitted only to Recommended Practices in the Specific Annexes. Contracting Parties are required to review these reservations every 3 years. The Depository (WCO) must be informed if reservations are to be continued.

3.11 What happens after accession?

From the day on which you accede to Kyoto, the revised Convention will be binding on you to the extent to which you have accepted it. You will be bound by the Body, the General Annex and any Specific Annexes or Chapters specified in your instrument of accession. You will have 3 years to become compliant with any Standards in the General Annex with which you are not compliant at the time of ratification, and 5 years for any such Transitional Standards.

A WCO Management Committee has been introduced to administer the revised Convention. By becoming a party you will also become a member of the Management Committee, with a full say in how the revised Convention is administered.

INFORMATION BOX 5:

KYOTO MANAGEMENT COMMITTEE

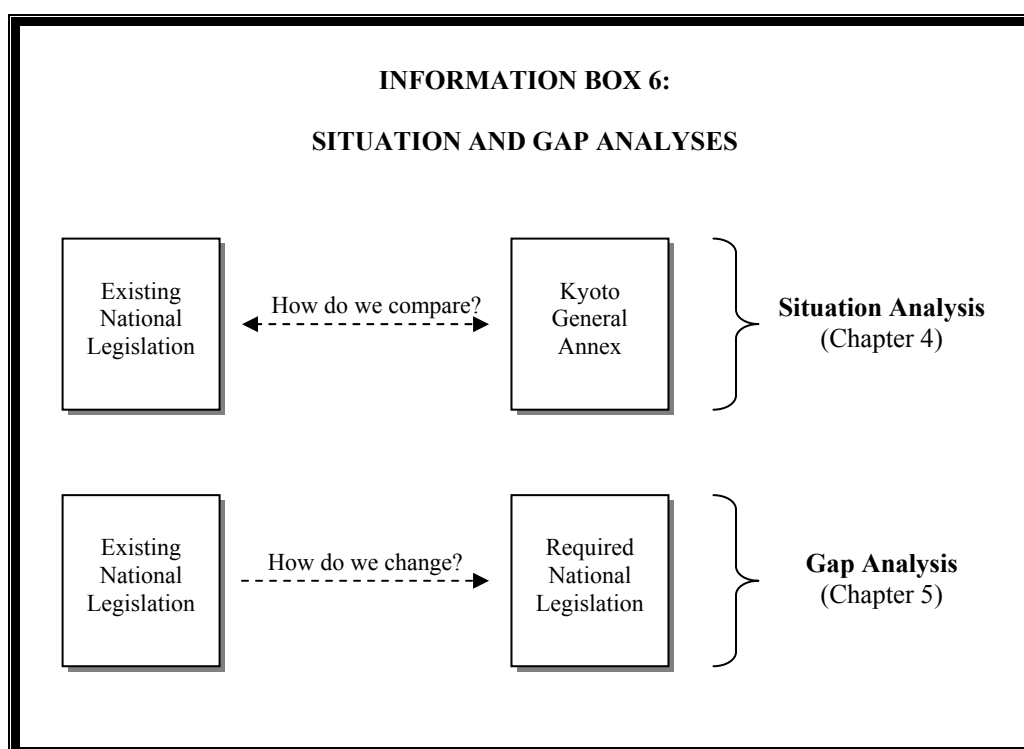
When preparing to become a Contracting Party it is important that you understand and accept the responsibilities that come with being a member of the Management Committee. You will need to ensure that your agency is prepared to take on these functions. Your rights and duties as a Committee Member include:

- Attending Committee Meetings (to be held at least once a year);
- Recommending amendments to the Body, the General Annex and the Specific Annexes;
- Recommending incorporation of new Chapters to the General Annex;
- Recommending new Specific Annexes or Chapters thereto;
- Deciding whether to amend Recommended Practices or to incorporate new Recommended Practices; and
- Deciding whether to grant extensions to Contracting Parties requesting additional time to implement the provisions of the General Annex.

Conclusions: *It is possible to accede to the revised Convention at any time if you are already a Contracting Party, and as soon as it comes into force if you are not yet a Contracting Party. You do not have to be compliant at the time of accession. By acceding, you undertake to become compliant within the timeframes permitted by the Convention. Accession is an important act, but not a difficult one.*

CHAPTER 4 IDENTIFYING RELEVANT KYOTO PROVISIONS

This Chapter explains the first step that you will need to undertake to become Kyoto compliant. In this step, you must compare the provisions of the General Annex with your existing national legislation (whether administered by Customs or by any other government agency which has an official regulatory responsibility relating to the international trade in goods and the collection of duties and taxes). This will identify the provisions of the General Annex with which you already comply, and those with which you will need to become compliant. We call this a *situation analysis*.



In Chapter 5 we will take this process to the next stage by helping you to identify the legislative and procedural work, if any, that needs to be done to “fix the gaps” where you are not already Kyoto compliant. We call this next step a *gap analysis*.

To assist with these processes, we have designed a simple matrix for you to use, and given you some examples of how it is intended to work (see page 24).

4.1 What do we mean by “national legislation” and “Customs law”?

Kyoto requires Contracting Parties to demonstrate that their national legislation, which includes Customs law, complies with the principles laid down in the Convention. Do not be alarmed by this. The revised Convention views national legislation in a very broad sense. It is not necessary for your Customs and other relevant laws to spell out in detail each and every Standard in the revised Convention.

It is sufficient for you to be able to demonstrate that within your entire regulatory framework, there are provisions that give effect to the obligations in the General Annex. Thus, you may be able to demonstrate that the provisions of the revised Convention are covered by regulations, by-laws, operating procedures, rulings, administrative advices or by other means.

4.2 How difficult is it to comply with the General Annex?

Whilst the provisions of the General Annex are obligatory, many of the Standards and Transitional Standards are worded in a way which provides Contracting Parties with a degree of flexibility in their administration. A simple example of this is Transitional Standard 3.4 – “At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls”. The words “whenever possible” enable economies to comply with this provision without the need to actually establish joint controls, *in situations where the logistics make it too difficult to do so*.

As you become more familiar with the General Annex, you may come to realise that its obligations reflect many of the practices that you already employ. This is because it has been drafted in a way that reflects widespread Customs practice, using language that, at times, provides parties with a degree of discretion. Remember too that you have 3 years in which to become compliant with the various Standards and 5 years to become compliant with the Transitional Standards. Immediate compliance with the Annex is not essential, provided there is a long-term intention at the time of accession to become fully compliant within those time frames.

Always be conscious that Kyoto provides Customs agencies with plenty of latitude to enable them to become compliant.

4.3 Why focus on the General Annex?

You will recall that, when we outlined the structure of the Convention in Chapter 1, we noted then that the General Annex is obligatory and that Contracting Parties must accept the General Annex without reservation. It is therefore important to focus on the General Annex, which we will be doing in this chapter. Nevertheless, the same process of analysis should also be applied to the Specific Annexes as and when you wish to accede to all or some of them.

4.4 Who should conduct the situation analysis?

The situation analysis is a logical first step towards compliance and accession, but it is not necessarily a simple step. It takes time and effort, and it is particularly important that agencies apply sufficient resources to it. The same applies to the gap analysis in Chapter 5. (We outline some key project management principles in Chapter 6, but it is important at this point to consider the best way to conduct these two key steps in the accession process.)

Experience in other APEC economies has shown that the best way to achieve both steps is to assemble a team of experts to do it. Why is that? The situation analysis

requires people who are technically proficient across the broad range of Customs responsibilities to study the General Annex from the perspective of their particular areas of expertise and to draw comparisons with current practice and procedure. Staff with “hands on” experience are generally best placed to determine the source of regulatory authority for the way in which Customs operations are performed. They should also be completely familiar with the national legislation, including all relevant policies, practices and procedures. As such, when they are analysing the revised Convention and its relevance to their administration, they will be dealing, in the main, with concepts with which they are very familiar.

These technical experts cannot, however, be expected to work without guidance. It is therefore also desirable that there be a Kyoto Project Management Team (KPMT) in place to supervise and coordinate their activities. The key to making the accession process work is to select the right people for the KPMT and the Team of Technical Experts (TTE). If the two teams share the workload, the task of preparing for accession is much less daunting for all concerned.

The KPMT should accept overall responsibility for preparing for accession, including responsibility for managing the implementation of any necessary policy, legislative and administrative changes. It should also have responsibility for ensuring that the domestic treaty-making process is adhered to. The members of the KPMT should therefore be senior level officers, with policy development and legislation management skills. Such qualities will complement the skills and abilities of the TTE, who will be responsible for the detail of the situation analysis.

Consider forming a Kyoto Project Management Team (KPMT) to supervise the situation analysis and undertake the gap analysis, and assembling a Team of Technical Experts (TTE) to undertake the situation analysis.

4.5 Briefing the KPMT and the TTE

At the outset, it is important that all participants in the situation analysis are fully briefed about the revised Convention in the terms set out in Chapters 1 to 3 of these Guidelines. This briefing should be performed by people with a detailed knowledge of the Convention, using this Guidebook as an aid, to ensure that their work will be conducted in the context of the Convention, its structure and purpose.

It will also be necessary for the individual members of the KPMT and TTE to become familiar with the language of Kyoto, and particularly of Articles 2 and 3. A clear understanding of these articles will greatly assist in the analysis of the document.

4.6 How should you conduct the situation analysis?

Having established the two teams, the next step is to develop the study arrangements that will work best for you. It is important that the KPMT is fully acquainted with the General Annex. This will ensure that the KPMT can properly allocate the subject matter to the TTE members. Once the tasks have been allocated, the study

arrangements can begin. Here are two relevant case studies from other APEC economies that have successfully completed the situation analysis.

Case Study #1: New Zealand

The study arrangement that was found to work well in New Zealand's situation analysis was to identify officers who were expert in relevant areas, wherever they were situated in the country, and allocate particular Kyoto provisions to them as appropriate. The expert officers (about 15 were involved) forwarded their analysis to a central office within a set timeframe. The work was then collated by the project management team.

The expert officers were volunteers who were selected according to their particular topic specialities. The Office Solicitor was included in the technical team. The team was given two months to complete the work, which was conducted alongside their normal duties for most of the time.

Case Study #2: Malaysia

At the time of publication, the Royal Customs Department of Malaysia was engaged in its Pathway to Kyoto Accession. It approached this task by forming a working committee comprising nine officers, with the responsibility of studying the revised Convention, the Department's procedures and the best practices of other WCO member countries who had acceded to the revised Convention.

Working committee commitments represented an additional duty for the officers involved, who were drawn from different operational areas, including the legal adviser to the Department. A non-compliance matrix was used by the committee to identify required amendments to national legislation and administrative instructions. Summaries of non-compliance with the General and Specific Annexes, together with proposed amendments were then submitted to senior management for decision and necessary action.

It is up to each individual administration to determine the most appropriate way of conducting the situation analysis. But you must ensure that your experts have sufficient time, opportunity and support to carry out this important task to the best of their ability.

4.7 Analysing the General Annex

The purpose of the situation analysis is to determine whether the way in which a Customs agency carries out its regulatory responsibilities is in accordance with the provisions of the General Annex. If so, they are Kyoto compliant; if not, then the differences become the subject of the gap analysis in Chapter 5. For the purposes of this analysis, we can disregard the General Annex Chapters 1 and 2 - the "General

Principles” and the “Definitions”. Our attention is on Chapters 3 to 10, which are summarised in Information Box 7.

INFORMATION BOX 7:

OVERVIEW OF KYOTO PROVISIONS

Chapter 3: Clearance/Release and other Customs formalities

There are 45 provisions in this Chapter which is larger than in any other Chapter. Matters addressed are very much central to the business of Customs, from office opening hours to the handling of declarations and documents.

Chapter 4: Duties and Taxes

- A. Assessment, Collection and Payment of Duties and Taxes
- B. Deferred Payment of Duties and Taxes
- C. Repayment of Duties and Taxes

As the headings suggest, this Chapter is about collecting and refunding revenue. Interestingly, the Chapter does not commit a Customs authority to granting the facility of deferred payment of duties and taxes.

Chapter 5: Security

This is a short Chapter that is designed to keep the taking of securities at reasonable levels and therefore ensure that they are not used for punitive purposes.

Chapter 6: Customs Control

Another short Chapter which is designed to limit Customs control to a level necessary to ensure compliance with Customs law.

Chapter 7: Application of Information Technology

While IT is now commonly used by Customs administrations, this Chapter does not insist on its introduction. The obligation to apply IT is qualified by the need to ensure that it is cost-effective and efficient for both Customs and the trade.

Chapter 8: Relationship between the Customs and Third Parties

Provides rules on how to deal with Customs brokers and other service providers.

Chapter 9: Information, Decisions and Rulings supplied by the Customs

- A. Information of General Application
- B. Information of a Specific nature
- C. Decisions and Rulings

Chapter 10: Appeals in Customs Matters

- A. Right of Appeal
- B. Form and Grounds for Appeal
- C. Consideration of Appeal

4.8 Using a checklist

You will need a diagnostic tool or “checklist” to help with the analysis, which can be used by both the KPMT and the TTE to record their results. The checklist, which should be developed by the KPMT, should list each provision of each Chapter of the General Annex (and Specific Annexes) and provide space for the TTE members to indicate the national situation that applies to that provision, together with any

comments. The checklist will then be used by the KPMT to analyse the responses received from the experts and as a basis for undertaking the gap analysis (see Chapter 5). A suggested format for the checklist is shown on page 24. For the purposes of this Guidebook, we have used Chapter 5 of the General Annex – Security – as an example.

Each APEC economy should ideally develop a checklist in their national language to facilitate its use by technical experts and others in the workplace. Care should, however, be taken when translating the Convention, to ensure that the meaning and nuances of the various provisions are appropriately maintained.

It is important to ensure that the situation analysis phase is not allowed to drag on. Two months has been found to be sufficient time for the TTE to complete its work. During this period members of the KPMT should consult TTE members to monitor progress and identify potential problems areas that may arise later in the project.

4.9 How is the checklist completed?

Each of the columns in the checklist serves an important function:

- Column 1 lists each provision in the General Annex.
- Column 2 provides the exact wording of the provision.
- Column 3 identifies whether the provision is a Standard or a Transitional Standard.
- Column 4 identifies key points about the Standard, including the degree of flexibility which it provides.
- Column 5 identifies the nature and source of national legislation that is relevant to the Standard (if any).
- Column 6 identifies whether and to what extent the national legislation complies with the Kyoto obligation.
- Column 7 identifies the appropriate measures to be taken that will make national legislation Kyoto compliant.

The first 5 columns are relevant to the situation analysis. The KPMT should be responsible for preparing the checklist format and for completing columns 1 to 4. Column 5 should be completed by the TTE. Columns 6 and 7 will be completed by the KPMT as they conduct the gap analysis, which is addressed in Chapter 5.

We have completed columns 1 to 4 to show how they might look when the checklist goes out to the TTE. When preparing the comments in Column 4, the KPMT should, in particular, draw upon the WCO's Kyoto Guidelines which provide useful insights into the various provisions. You should bear in mind that the comments in Column 4 are designed to remind TTE members of any particular points they should be aware of and watch for as they draw comparisons between the Kyoto provisions and the national legislation.

COMPARISON OF THE PROVISIONS OF THE GENERAL ANNEX WITH NATIONAL LEGISLATION

CHAPTER 5: SECURITY

Provision	Text	Type of Provision	Key Points and Issues	Relevant law, regulation, decree/ or other source of national legislation	Is national legislation consistent with Kyoto? Where is it inconsistent?	Steps required to become Kyoto compliant
5.1	National legislation shall enumerate the cases in which security is required and shall specify the forms in which security is to be provided.	Standard	<i>The legislation needs to be broad enough to enumerate the range of situations where Customs may require a security and the conditions under which security will be required. The forms of security must be specified.</i> <i>Article 3 will have relevance where goods are either prohibited or restricted.</i>			
5.2	The Customs shall determine the amount of security	Standard	<i>There needs to be clear instructions on how the amount of security is to be calculated. This provision, as with all the provisions in this Annex, should form an integral part of the legislation addressing Standard 5.1</i>			
5.3	Any person required to provide security shall be allowed to choose any form of security provided that it is acceptable to the Customs.	Standard	<i>The rights of Customs are maintained throughout this provision in that the form of security must be one of those set out in national legislation and Customs has the right not to accept a form of security where it would be incompatible with its procedures</i>			
5.4	Where national legislation provides, the Customs shall not require security when they are satisfied that an obligation to the Customs will be fulfilled.	Standard	<i>Again, the rights of Customs are maintained where they are not satisfied that the revenue obligation will be fulfilled</i>			

5.5	When security is required to ensure that the obligations arising from a Customs procedure will be fulfilled, the Customs shall accept a general security, in particular from declarants who regularly declare goods at different offices in the Customs territory.	Standard	<i>This is essentially a trade facilitation provision. Customs may, however, require additional security if the revenue is considered at risk.</i>			
5.6	Where security is required, the amount of security to be provided shall be as low as possible and, in respect of the payment of duties and taxes, shall not exceed the amount potentially chargeable.	Standard	<i>This purpose of provision is to establish the level of security, but also to indicate that a security is not the vehicle for imposing any form of penalty or interest for delayed payments.</i>			
5.7	Where security has been furnished, it shall be discharged as soon as possible after the Customs are satisfied that the obligations under which the security was required have been duly fulfilled.	Standard	<p><i>The timing here relates to the Customs decision and not to any subsequent delays that might occur in the banking sector.</i></p> <p><i>The provisions of this Annex promote good Customs administration that is fair and reasonable to the trade yet maintains the right of Customs to secure the revenue.</i></p> <p><i>It is very likely that the existing legislation of a Customs administration permits this Annex to be complied with from the outset.</i></p>			

4.10 The situation analysis in summary

Here then is a summary of the steps in the situation analysis:

- Establish a management team (KPMT) and appoint a team of technical experts (TTE) to undertake the situation analysis at the workplace;
- The KPMT should study, and become very familiar with, the General Annex;
- The KPMT then prepares the checklist and completes columns 1 to 4;
- The KPMT briefs the technical experts and allocates the work;
- The KPMT distributes the checklist and sets a timeframe for completion of the technical examinations;
- The TTE completes column 5 of the checklist and returns it to the KPMT; and
- The KPMT reviews the checklist to ensure that it has been adequately completed by the TTE.

Once columns 1 to 5 of the checklist have been correctly completed, the KPMT is ready for the next stage, i.e. the gap analysis.

Conclusions: This Chapter examines the situation analysis, a tried and tested method already used within APEC to compare existing legislation, regulations, policies, procedures and practices with the provisions of the revised Kyoto Convention. This is the essential first step of your Pathway towards accession.

A group of experts, which we refer to as the TTE, will carry out this comparison and present their conclusions within agreed timeframes to the Kyoto Project Management Team (the KPMT).

The KPMT will probably find from the comparison that your agency is already compliant with large parts of the Convention. The challenge for your agency is to identify where you do not comply and put in place your pathway to correcting this situation as a condition of accession.

CHAPTER 5 BECOMING KYOTO COMPLIANT

In this Chapter, we explain the next step in the process – how to determine what you need to do to become Kyoto compliant.

Chapter 4 outlined the method of comparing national legislation, policy, practices and procedures with Kyoto, particularly the General Annex. As a result of this situation analysis, you should now have a comprehensive checklist which covers the complete range of General Annex provisions. The next step towards Kyoto compliance is known as the “Gap Analysis”. As the name implies, this analysis identifies the “gaps” in national legislation that need to be filled to enable accession to proceed and to ensure full compliance with the Convention over time. This is a process that should involve consultation with the trading community who will be vitally concerned with changes that may impact on their business. Support from the trading community will also assist to smooth the path to accession.

In this Chapter we will again concentrate on the General Annex. As mentioned earlier in this Guidebook, acceptance of any or all of the Specific Annexes is not required to achieve accession to the Convention. The Specific Annexes are, nonetheless, a very important component of Kyoto and each Contracting Party is urged to adopt the principles of the Specific Annexes and accede to as many as possible over time. You can use the same process with the Specific Annexes as with the General Annex to ensure compliance.

5.1 Preliminary guidance for the management team

At this point the KPMT should be ready to commence the gap analysis. This is part of the overall responsibility of the team which, as indicated in Chapter 4, also includes the subsequent responsibility of implementing any policy, legislation and administration changes found to be necessary. If your administration is an existing Contracting Party, there will be additional matters for the KPMT to consider. These are addressed later in this Chapter.

Before beginning the gap analysis, the KPMT should verify the work completed by the technical experts. Experts can be wrong and sometimes their views might reflect practices that are not supported in law! The KPMT should regard the findings presented by the experts as a reliable pointer but subject to final validation.

5.2 What is a “gap analysis”?

In the gap analysis, you will closely examine each of the Kyoto provisions with the objective of determining whether national legislation is already compliant, either by virtue of its direct compliance with the specific provision, or by virtue of its compliance with a general Article of the Convention. If not, then legislative amendment may be required. In conducting this analysis, it is important to bear in mind the following three pointers.

First, **Article 3 of the Convention** provides that:

The provisions of this Convention shall not preclude the application of national legislation with regard to either prohibitions or restrictions on goods which are subject to Customs control.

This Article should never be overlooked. It overrides every Annex provision throughout the entire Convention when goods are subject to national prohibitions or restrictions, and places national legislation before the Convention in such cases. It enables you to take regulatory measures *against prohibited or restricted goods* which differ from the techniques set down in the Convention; whilst remaining compliant with the Convention.

Second, always look for the flexibilities in the language of the Standards and Transitional Standards that we referred to in Chapter 4. They allow you to interpret some Annex provisions in a less restrictive manner when considering whether or not your national legislation is compliant. They will be considered again later in this Chapter.

Third, remember that the term “national legislation” means:

Laws, regulations and other measures imposed by a competent authority of a Contracting Party and applicable throughout the territory of the Contracting Party concerned, or treaties in force by which that Party is bound.

This is a wide definition that can include documents such as operating directions, administrative advice, and other regulatory sources that do not require formal legislation.

5.3 Readiness for the gap analysis

In addition, the KPMT should not lose sight of the following when examining its national legislation in the context of the gap analysis:

- Regard the opinions of the technical experts for each Annex provision as useful advice but subject to final verification;
- Be aware of the legislation of other agencies that may need to be taken into account when considering Annex provisions, to ensure that national legislation is considered in its entirety;
- Take legal advice as a matter of course when any uncertainty of legal provisions exist;
- Remember that it is not necessary to be totally compliant upon accession, and that any necessary changes may be implemented following accession, during the transitional periods for implementation; and
- Granting greater facility than is called for by the Convention is encouraged (Kyoto Article 2).

5.4 Conducting the gap analysis: completing column 6

When conducting the gap analysis, the KPMT is required to complete columns 6 and 7 of the checklist. These steps involve asking the questions:

- Is national legislation consistent with Kyoto? If not, where is it inconsistent?
- What do we need to do in order to become compliant?

When you answer the first question, you will be able to complete Column 6. In doing so, you should consider the following supplementary questions:

1. With which provisions of Kyoto is your existing national legislation consistent?
2. With which provisions of Kyoto is your existing national legislation inconsistent or in conflict?
3. Which provisions of Kyoto are not covered by the national legislation at the present time?

As a result of asking these questions you will be able to identify in column 6 where your current practices and laws are inconsistent with the General Annex.

We expect that the results in column 6 will most likely show that your present legislation, regulations, policies, practices and procedures are largely compliant with the General Annex. As we have said before, the General Annex largely reflects common practice in Customs administration around the world.

5.5 Conducting the gap analysis: completing column 7

The next step is to determine the way in which you will change current practice and/or legislation to eliminate the inconsistencies identified in column 6. This will enable you to identify the changes that you will need to make to national legislation – and complete column 7. This again is the primary responsibility of the KPMT, but the KPMT should discuss proposed changes with the relevant member of the TTE to ensure that the changes are likely to maximise the potential benefits to the agency.

In terms of the answers to questions 2 and 3 in section 5.4 (above), the KPMT needs to answer, in every instance:

- *Why are we not compliant?*
- *What is preventing compliance?*
- *What changes will we need to make in order to become compliant?*
- *Which of these changes could be implemented prior to the time of acceptance of the revised Convention?*
- *Which of these changes could be implemented during the implementation period provided for in the Convention?*

The KPMT must recommend the necessary action – your own Pathway - to bring the national legislation into compliance with Kyoto. These changes will need to be made either before accession or following accession, but within the timeframe allowed by the Convention. There is no other alternative.

5.6 A reminder about existing reservations

If your administration is a Contracting Party to the current Convention, care must be taken to identify former reservations against provisions that will now be found in the General Annex. Those reservations will need to be withdrawn as part of the preparations to accede to the Convention. You may wish to contact the WCO, which will happily provide you with an official copy of any such reservations.

5.7 Implementing column 7 - the final stage to compliance

When you have completed column 7, you will have created a checklist of actions that need to be taken to enable your agency to be fully Kyoto compliant. The next step is to make that happen.

In practice, the changes that may need to be made are unlikely to be either difficult or extensive. They will probably range from some amendments to the Customs Act, through to changes to regulations, revised operating instructions for staff, or redrafted documents for trading community use.

What is important is that agencies recognise that the project does not end with the completion of Column 7, but with the implementation of the tasks identified in column 7. This phase of the project will need to be as properly planned and coordinated as the rest of the project. It is up to agencies to decide whether they wish to appoint a different team to manage the column 7 changes, but in the interests of continuity and project integrity, we would strongly recommend that the KPMT also be responsible for managing the changes, using agency staff as necessary to assist them in this task.

The following template may be used as the basis of an Action Plan to help you to ensure that the necessary activities are properly completed.

ACTION PLAN

Activity	Officer(s) Responsible	Resources Required	Stakeholder Communications	Timing	Milestone
<i>List each activity identified in column 7</i>	<i>Identify who is responsible for undertaking the activity</i>	<i>Identify the people and other resources they will need to complete the task</i>	<i>Identify who must be consulted (e.g. industry associations, government departments) and the method(s) of consultation</i>	<i>Determine the date by which the activity must be completed</i>	<i>Determine how progress will be assessed</i>

Conclusions: *This Chapter emphasises the importance of identifying any areas in which your administration may not be Kyoto compliant and in determining what changes will be made to become compliant.*

By the time the Management Group has completed its work your administration will have a clear position on Kyoto accession which can be pursued through the relevant governmental channels. The next Chapter of this Guidebook will assist you in this procedure.

It is at this point that you should also think of the future. It is recommended that you now put together a group to commence work over a longer term to bring your administration's legislation into line with the Convention as a whole. Your administration should continue to treat this as a high priority until full compliance is achieved.

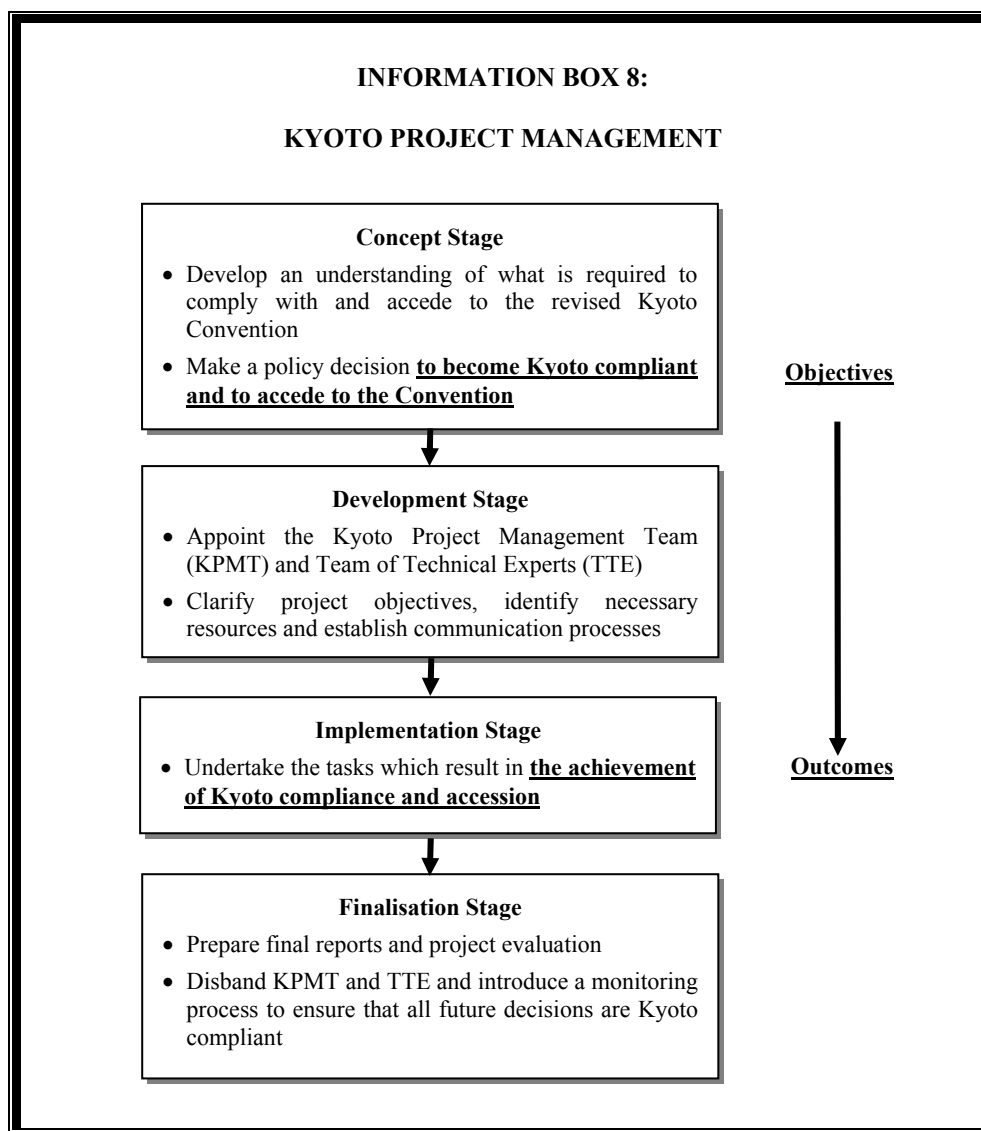
CHAPTER 6 PLANNING FOR SUCCESS

In this Chapter, we provide guidance on how to ensure a successful outcome to your Kyoto project by applying basic project management principles.

6.1 The stages of a project

What is a project? While there are many definitions of a project, in essence a project is a clearly defined task, carried out to achieve defined objectives within a certain timeframe, that will produce a clear outcome. Projects normally pass through 4 stages:

1. **Concept Stage.** At this stage, the project is little more than an idea that is still taking shape. It involves a period of preliminary thinking and consultation, and the development of a better understanding of what the idea might require for it to become a reality. For many of you reading this Guidebook for the first time, or even attending the APEC workshop, you will still be in the concept stage. That stage ends when there is a clear policy decision that the project will be undertaken. In your case, that will usually be a decision by the Senior Executive that the agency will make a conscious effort to become Kyoto compliant and to accede to the Convention.
2. **Development Stage.** At this stage, the project begins to take shape. The project team is appointed, the project is scoped (its objectives and outcomes are identified) and planned, the necessary resources for the project are identified, and a process of communication with stakeholders is begun.
3. **Implementation Stage.** At this stage, the project is implemented. The project team and those working on the project actually do the tasks that have been planned. The project becomes a reality. In the case of this project, the implementation phase would be complete with the accession to the Convention or the completion of all actions necessary to make the agency Kyoto compliant, whichever is the later.
4. **Finalisation Stage.** This final stage occurs once the project has completed its objective. At this time, the final reports are written, an evaluation of the overall process is prepared, stakeholders are advised that the project has been completed, the efforts of the project team are recognised, the team is disbanded and the project's output is absorbed into the normal administrative functions of the agency. It is also useful at this stage to identify a monitoring process that the agency will follow to ensure that all relevant matters continue to be appropriately dealt with in the context of Kyoto.



6.2 Planning your Kyoto project

We have noted throughout the Guidebook that there are several steps to be undertaken to become Kyoto compliant. These are the steps that have been analysed in Chapters 3, 4 and 5 – accession, the situation analysis, the gap analysis, and the implementation of column 7 measures.

These are all elements of your project - they are tasks that need to be undertaken to deliver two key outcomes – accession and compliance. The steps have clear objectives, a time frame for completion and resources that need to be applied. In short, preparing your agency to accede to and comply with the revised Convention meets all the criteria of a project.

6.3 Leadership

In a moment we shall look at how you can create your project, but first, a word about leadership. To succeed, major projects need to have the support and encouragement of the most senior people in the agency. Acceding to Kyoto is no exception. It is important that the head of your Customs agency both supports and promotes the key objectives of Kyoto compliance and accession. The agency head will have a role to play in ensuring that there is whole-of-government support for the initiative, that Ministers and others appreciate the significance of the revised Convention and that the agency as a whole understands the priority that is to be given to compliance and accession.

The agency head should also be closely involved in the selection of staff to undertake the project. This includes personally appointing or endorsing the appointment of the chair of the Management Team (or even volunteering to take that role), and consulting with the appointee about the members of the KPMT and the members of the TTE. It also includes seeking regular briefings on progress with the project and helping to resolve any difficulties that may arise.

6.4 Developing the project

Projects only succeed if they are competently managed, properly structured, carefully planned, and well-resourced. This particularly applies to the two middle stages of the project, i.e. development and implementation. In this chapter we examine these two stages and provide a simple planning matrix to help you get started. We shall assume for these purposes that your agency has taken the decision to accede to the revised Convention and that you are ready to move from the concept stage to the development stage.

During the development stage, you will need to do the following:

- **Create the project structure that best suits your agency.** We have already suggested that you establish a KPMT to manage the Project and a TTE to carry out the situation analysis. You will also need to consider how the KPMT will report to the agency head and other senior managers, and whether you need to establish formal arrangements with other agencies.
- **Identify and empower the members of the KPMT.** You will need to choose the right people for the KPMT. Most important of all is to choose the person who will lead the KPMT. You will also need to prepare terms of reference for the KPMT so that its members have a clear idea of what is expected of them. One of the KPMT's tasks should be to identify the TTE and delegate their functions to them. To enable them to effectively perform their functions, they will need to be expertly briefed on the revised Convention and the project itself.
- **Scope the Project.** The KPMT will need guidance as to what the agency wants done. For example, is the agency to become Kyoto compliant, to accede to the revised Convention, to accede to some or all of the Specific Annexes as

well as the General Annex, when is accession to happen, etc. Scoping is important, because without it planning cannot proceed.

- **Plan the Project.** The KPMT will need to plan the various stages of the project – who will prepare the checklist columns 1 to 4, who in the TTE will complete each chapter of the situation analysis, etc. Planning is crucial, and we have given you a simple example as a starting point. Remember, when planning, that you need to establish:
 - What is to be done?
 - By whom?
 - By when?
 - Using what resources?
 - Who needs to be kept informed of progress?
 - How will you keep them informed?

You will also need to ensure that your plans are fully documented and contain clear milestones so that you can measure and report on your progress.

- **Resource the project.** You will need to ensure that the KPMT and the TTE have sufficient resources to help them do the work. This might include computer and secretarial support, travel funds to work with the regions, time free from other duties, etc.
- **Develop a communication strategy.** Many stakeholders, both inside and outside the agency, will be affected by, or play a part in, your project. They will need to be informed of how the project is being conducted and what progress is being made. This can be done in many ways. A project newsletter that comes out regularly explaining progress is a good idea. So too is a regular report to senior management.

To assist your development of the project plan, we have designed the following simple planning matrix. This is a model only – you will need to develop your own plan to meet your own needs.

BASIC PLANNING MATRIX

Key Task	Activities	Officers Responsible	Resources Required	Stakeholder Communications	Timing	Milestone
Create Project Structure	Determine best project structure Develop terms of reference for KPMT, TTE and any other committees	DG, Senior Managers DG, Senior Officers	Meeting of senior executive	Preliminary advice to stakeholders of intention to proceed with project and anticipated project structure	Within 1 month of decision to accede to Convention	Document recording agreed structure and terms of reference for project
Identify Project Personnel	Appoint KPMT Chair and other members Identify and appoint TTE Brief KPMT and TTE members on Kyoto Convention and on project.	DG, Senior officers, KPMT Chair KPMT KPMT Chair; external consultant (if required)	Meeting of DG and senior executives Meeting of KPMT Seminar for KPMT and TTE	Advice to stakeholders of project team members and contact addresses and numbers	Within 1 month of completion of terms of reference As soon as possible after identification of KPMT and TTE	First meeting of KPMT Conduct of awareness seminar
Scope the Project	Objectives of the project to be established, including any Specific Annexes to be complied with	KPMT in conjunction with DG	KPMT to review project scope in light of objectives, knowledge of Kyoto etc	Advice to stakeholders of the full scope of the project	Within 1 month of establishing KPMT	Scoping documents approved
Plan the Project	Project planning documents to be established	KPMT	Documents to be established using suitable computer software and printed in hard copy.	Stakeholders to be provided with planning documents if required	Within 2 months of establishing KPMT	Completed planning documents approved by KPMT and DG

6.5 Implementing the project

Once you have developed your project, you will then be in a position to make it happen. You are ready to move to stage 3, implementation. There are several steps that you will need to take, some of which will make you Kyoto compliant, some of which will prepare you for accession, and all of which are interrelated. These are the steps that we identified in chapters 3, 4 and 5:

- **Develop your accession strategy.** This is where the KPMT will work with your colleagues in other agencies to prepare the necessary groundwork for accession, by meeting:
 - The constitutional requirements of your economy for accession to the Convention
 - The requirements of the WCO as Depository.
- **Determine your levels of compliance.** This is where you will undertake the steps necessary to determine compliance:
 - The KPMT will develop the checklist and complete columns 1 to 4
 - The TTE will then complete the situation analysis (column 5)
 - The KPMT will then complete the gap analysis (columns 6 and 7)
- **Achieve compliance.** Introduce the new legislation, new procedures, new instructions to staff etc that will be necessary for you to demonstrate compliance. When these changes have been successfully made, and you are fully Kyoto compliant, then you can say that Stage 3 has finished. While these changes are still in process, however, Stage 3 remains unfinalised.

6.6 Finalising the project

Once you have completed all the compliance requirements and prepared for accession to the revised Convention, the project will be completed and the KPMT can be disbanded. It is normal for the records of the KPMT, the project plans, budgets and other documents to be retained. It is particularly important that the situation and gap analyses be retained for future reference. These records will help future administrators understand what was involved in achieving Kyoto compliance.

It is also normal practice for the Chairman of the KPMT to prepare a report for the agency head on the work undertaken by the KPMT, which essentially represents an overview of the way in which the project team approached its task, and an evaluation of the efficiency and effectiveness of the agency as a whole in achieving the project objectives. The report would usefully include a recommended monitoring process that the agency should follow to ensure that all relevant matters continue to be appropriately dealt with in the context of Kyoto.

6.7 What happens after accession and compliance are achieved?

Once the project has ended, the work involved in being a Contracting Party to the revised Convention – such as participating in the Management Committee – can be absorbed into the normal administrative functions of the agency. These functions will need to include the capability to monitor any amendments that are made to the revised Convention to ensure that the agency remains compliant. Similarly, any proposed changes to national legislation should be considered in the light of Kyoto to ensure that they are fully consistent with the provisions of the revised Convention. Procedures to ensure that these critical steps are followed should be clearly identified in the ongoing monitoring process, as discussed above.

Conclusions: *The task of acceding to the revised Convention and becoming Kyoto compliant can best be achieved if it is treated as a key project for the agency and managed according to project management principles. The KPMT is the appropriate team to manage the project and the KPMT Chair would be the project manager.*

Projects only succeed if they are:

- *Imaginatively led*
- *Competently managed*
- *Properly structured*
- *Carefully planned*
- *Well resourced.*

Agencies implementing Kyoto should ensure above all that the project is given an appropriate level of priority and leadership.

CHAPTER 7 NEXT STEPS

In this Chapter, we look at what you should do next, and where you can find help.

7.1 Next Steps

What you do next will depend on where you are in relation to the stages of the project cycle. Many of you will still be considering whether to accede to the Convention. If so you are still in the conceptual stage and it will be important for you to make a definite decision with regard to your intentions. If you have already decided to become a party, you will need to undertake a self-assessment of where you have reached in the process, document that assessment and then move on from there. Have you, for example, started planning the project? Have you created a project structure? Have you scoped the project or identified who will be on your project team?

Whatever stage you are at, it is not too late to adopt a project management approach to Kyoto accession and compliance, as suggested in Chapter 6. That will give shape and direction to your project, and help you to define what has to be done, and by when.

7.2 External assistance

You should also bear in mind that there are agencies and other bodies that can support you in your endeavours and provide you with further guidance. Two key sources of assistance are the APEC SCCP Secretariat and the WCO. Both will be able to provide assistance through workshops and information about the Convention. There are other bodies with specialist knowledge of the Convention that may be able to assist you – such as the Centre for Customs Studies at the University of Canberra - and there are a number of Customs agencies in APEC which have either been through the process of accession or will be going through the process in the near future.

7.3 Contacts

For further information about this Guidebook, contact:

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Or you may contact the Centre for Customs & Excise Studies at the University of Canberra: customs.centre@canberra.edu.au

The WCO website also contains useful information: www.wcoomd.org

Conclusions: Now is the time to build on the work that you have done so far to move to Kyoto accession and compliance. There are colleagues in the Customs fraternity who will be very happy to help you along the path.

