

---

PROTOCOL OF AMENDMENT TO THE INTERNATIONAL CONVENTION ON  
SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES  
(TREATY DOC. 108-6).

---

JULY 28, 2005.—Ordered to be printed

---

Mr. LUGAR, from the Committee on Foreign Relations,  
submitted the following

REPORT

[To accompany Treaty Doc. 108-6]

The Committee on Foreign Relations, to which was referred the Protocol of Amendment to the International Convention on Simplification and Harmonization of Customs Procedures (Treaty Doc. 108-6) (hereafter “Protocol”), done at Brussels on June 26, 1999, having considered the same, reports favorably thereon with reservations as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to accession thereto, including certain Specified Annexes, as set forth in this report and the accompanying resolution of advice and consent.

CONTENTS

	Page
I. Purpose .....	1
II. Background .....	2
III. Summary of Key Provisions of the Protocol .....	2
IV. Implementing Legislation .....	3
V. Committee Action .....	3
VI. Committee Recommendation and Comments .....	3
VII. Text of Resolution of Advice and Consent to Accession .....	4

I. PURPOSE

The Protocol amends a 1973 Customs Convention (the “original Convention”) in force since 1974 that has 63 parties, including the United States and many of its largest trading partners, and has served as the main international framework for customs procedures. Since 1984, when the United States became a party to the original Convention, the growth of international trade and advancements in technology have made the original Convention out-

dated. The Protocol modernizes the original Convention and further harmonizes customs procedures without compromising standards of customs control.

## II. BACKGROUND

The Protocol was adopted by the members of the World Customs Organization following four years of study and deliberation. The United States participated actively in the negotiations, working with interested private sector groups. The Protocol will enter into force three months after forty of the parties to the original Convention have indicated their consent to be bound. To date, 38 parties have done so, including the European Community and 22 EC member states.

## III. SUMMARY OF KEY PROVISIONS OF THE PROTOCOL

A detailed article-by-article discussion of the Protocol may be found in the Letter of Submittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 108–6. A summary of the key provisions of the Protocol is set forth below.

The Protocol requires parties to implement standardized customs procedures that are simple, transparent, predictable and efficient. It calls for Parties to continuously modernize their customs procedures; to apply their customs procedures predictably, consistently, and transparently; to make available information on their customs laws, regulations, guidelines, and practices; to adopt modern techniques, such as risk management, audit-based controls, and the maximum use of information technology; to cooperate with the customs authorities of other countries; to implement relevant international standards; and to provide a transparent system of administrative and judicial review of customs decisions.

The Protocol replaces all of the Annexes to the original Convention with a General Annex binding on all parties and ten Specific Annexes that address more specialized customs procedures. Accession to the Protocol binds parties to the amended Convention and the General Annex, and parties may accept any of the ten Specific Annexes or chapters of such annexes.

The General Annex contains general principles and definitions, as well as standards for core customs functions such as collection of duties and taxes, risk management, the use of information technology, pre-arrival processing, transparency of customs regulations, appeals procedures, and consultation between customs and industry. Standards must generally be implemented within 36 months of entry into force, while the implementation period for “transitional standards” is 60 months. The Specific Annexes contain standards and “recommended practices” governing areas such as warehousing, transit, and temporary admission. Although the term “recommended practice” might be read to be non-binding, in fact, unless a party enters a reservation to the applicable Recommended Practice, it is considered to be a binding legal obligation under Articles 12(2) and 13(3) of the Convention as amended by the Protocol.

U.S. industry was consulted throughout the negotiation process and has expressed its strong support for U.S. accession. The Execu-

tive Branch has testified that the new Protocol will have no financial impact on U.S. customs infrastructure or operations.

#### IV. IMPLEMENTING LEGISLATION

No implementing legislation is required for the Convention.

#### V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the Protocol on June 17, 2004, at which it heard testimony from representatives of the Department of State and the Bureau of Customs and Border Protection of the Department of Homeland Security (S. Hrg. 108–721). On July 26, 2005, the Committee considered the Protocol and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to its accession, including certain Specific Annexes, subject to the reservations contained in the resolution of advice and consent.

#### VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations believes that the proposed Protocol is in the interest of the United States and urges the Senate to act promptly to give advice and consent to its accession, including certain Specific Annexes, subject to the reservations contained in the resolution of advice and consent.

By establishing more predictable, standard, and harmonized customs procedures governing cross-border trade transactions, accession to the Protocol is expected to facilitate greater economic growth, increased foreign investment, and stimulation of U.S. exports. In addition, the Protocol provides security and anti-corruption benefits. For example, the requirement that parties use and standardize information technology will facilitate the U.S. security initiative to collect advance information related to inbound cargo and passengers. Moreover, by increasing transparency in customs procedures, the Protocol will reduce the possibility for corruption in foreign customs practices.

The Committee agrees with the recommendation of the Executive Branch that the United States accept in their entirety Specific Annexes A (arrival of goods in a customs territory), B (importation), C (exportation), D (customs warehouses and free zones), E (transit), and G (temporary admission), and chapters 1–3 of Specific Annex F (processing), and chapters 3–5 of Specific Annex J (special procedures). The Executive Branch initially recommended that the United States also accept Specific Annex H and Specific Annex J, Chapter 1. However, in light of questions raised by the Committee in connection with the hearing, the Executive Branch determined that it was not clear that the standards contained therein on personal searches of travelers were consistent with U.S. law and practice. As a result, the Executive Branch recommended that the United States not accept Specific Annex H and Chapter 1 of Specific Annex J. The Committee agrees with this recommendation.

The Committee recommends that the Senate's advice and consent be made subject to reservations to certain recommended practices contained in Specific Annexes A, B, D, E, F, G, and J, as proposed by the Executive Branch. These reservations will ensure that

the obligations undertaken by the United States are consistent with existing U.S. law and procedures, and obviate the need for implementing legislation. The text of these reservations is contained in the enclosure to the report of the Secretary of State contained in Treaty Doc. 108–6. Due to the length and technical nature of these reservations, the Committee has incorporated them by reference to the Secretary’s report. Since, as noted above, the Committee recommends that the United States not accept Chapter 1 of Specific Annex J, the Committee has not included a reference to the reservation to a recommended practice in that chapter that is contained in the enclosure to the Secretary’s report.

#### VII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO ACCESSION

*Resolved (two-thirds of the Senators present concurring therein),*

The Senate advises and consents to the accession to the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures (the “Protocol”) done at Brussels on June 26, 1999 (Treaty Doc. 108–6), including Specific Annexes A, B, C, D, E, and G; Chapters 1, 2 and 3 of Specific Annex F; and Chapters 3, 4 and 5 of Specific Annex J; subject to the reservations to certain Recommended Practices (as set forth in the enclosure to the report of the Secretary of State in Treaty Doc. 108–6) in Specific Annex A, Chapters 1 and 2; Specific Annex B, Chapters 2 and 3; Specific Annex D, Chapters 1 and 2; Specific Annex E, Chapters 1 and 2; Specific Annex F, Chapters 1, 2 and 3; Specific Annex G, Chapter 1; and Specific Annex J, Chapter 4.