ANNEXES

ANNEX I

Public Consultation on the draft modernized Customs Code Rev. 3

1. Summary of traders' comments

Revision 3 of the draft modernized Customs Code (CC) was the subject of a public consultation during July and August 2004. The significant level of feedback from the trade (56 responses from 47 traders — cf. Annex I) has been carefully evaluated and taken into account where it accorded with the objectives of the proposed modernization.

The results have been consolidated and collated with the individual Articles of the draft Rev. 3. Tables containing the position of the Commission on all of the critical issues are presented, together with a list of contributors, in the sections following this summary.

The following main conclusions were drawn from the open consultation:

Modernisation, simplification, harmonization

Traders are very much in favour of modernizing the Customs Code. In particular, the concepts of centralized clearance, single access point, single window and one-stop shop, based upon the electronic exchange of data, were the subject of very positive comments. Traders are convinced that these initiatives will improve the competitiveness of European traders. The consolidation and simplification of the customs legislation, particularly with regard to special procedures (Title VIII), and the harmonization of IT systems were aspects also very well received by traders.

Implementing provisions and comitology

As a number of rules will be specified in implementing provisions (IP), many traders found it difficult to judge the consequences of the new rules in the CC without information on the relevant IP. Some traders expressed concern about the tendency to transfer more provisions to the IP and to use the management procedure for their creation.

Right to restrict customs representation (Art. 9)

Understandably, the withdrawal of the right to restrict, by national legislation, representation for customs declarations to customs agents established in the Member State concerned is not seen favourably by customs agents, who are presently protected by such restrictions from competition from representatives established in other Member States. They argue that liberalization will have a negative impact on the quality of customs representation and, in their opinion, an appropriate record of compliance with customs requirements, proven financial solvency and safety and security standards are indispensable for their profession. On the other hand, the users of such services are convinced that withdrawing the right to restrict customs representation will lead to cost savings and improve importers' and exporters' competitiveness.

Authorised Economic Operator and Single European Authorisation (Art. 10, 104)

Traders widely agree that common standards and Community-wide recognition of Authorised Economic Operators and Single European Authorisations for simplified procedures are essential for the Single Market. Numerous traders also emphasise the need for reciprocal recognition of facilitations with third countries. Many traders would like to have more precise provisions concerning the link between the concept of Authorised Economic Operator and Single European Authorisation.

Administrative penalties (Art. 19)

Traders generally agreed with the need to harmonize administrative penalties and to improve their transparency. However, some traders have, for legal and practical reasons, concerns about the feasibility of such harmonization.

Community-wide, comprehensive guarantees (Art. 35)

Traders generally welcome Community-wide comprehensive guarantees, covering customs debts, VAT and excise duties.

Responsibility of the declarant (Art. 46, 51)

The consolidation of the current rules on non-compliance in a single Article is very much welcomed by traders. Some traders are, however, opposed to making direct representatives liable for their mistakes and, furthermore, raise concerns about subjective criteria (negligence) being used to determine the responsibility for customs debt. However, there is a wide consensus that, in the collection of a customs debt, priority must be given to persons who have deliberately infringed the customs rules.

Pre-arrival and pre-departure declarations (Art. 73, 74; 158 [the latter replaced by Art. 154])

Pre-arrival and pre-departure declarations were introduced by a security-related amendment to the present Customs Code and are incorporated in the modernised Customs Code. Even though most traders are aware of the need to improve security-related customs controls and to make risk management more efficient, they still fear that these measures will lead to additional burdens to trade. Traders request the application of global standards.

Simplified procedures (Art. 104)

Many traders would like to continue using the local clearance procedure, without customs having access to their IT systems. Several traders would like to see clarification in the CC of the link between summary and simplified declarations. They are very interested in merging incomplete and simplified declarations.

Exportation and re-exportation (Art. 163, 164 [replaced by Arts. 155, 156 & 157])

Most traders would like to maintain the distinction between exportation and re-exportation as they have different legal consequences.

2. List of trade associations and companies which contributed comments

AAC	Association des Amidonneries de Céréales de l'Union Européenne *aac@aac-eu.org*
AMCHAM	American Chamber of Commerce to the European Union *amchameu@amcham.be*
Ahlers & Vogel	Ahlers & Vogel Rechtsanwälte, Notare *kluever@ahlers-vogel.de*
BDI	Association of German industries *H.Willems@BDI-ONLINE.DE*
CC SE	Chamber of Commerce and Industry of Southern Sweden *info@handelskammaren.com*
CELCAA	Liaison Committee of European sectoral organisations representing agri-food traders *CELCAA@schumann9.com*
CIAA	Confédération des industries agro-alimentaires de l'UE *ciaa@ciaa.be*
CLECAT	European association for forwarding, transport, logistic and customs services *info@clecat.org*
CNSD	Consiglio Nazionale degli Spedizionieri Doganali *info@cnsd.it*
CONFIAD	Confédération Internationale des Agents en Douane *fernando@carmo.mail.pt*
Deutsche Post	*R.Fischer-Zoll@deutschepost.de*

EAMA	European Automobile Manufacturers Association
ECSA	European Community Shipowners' Association *Alfons@ecsa.be*
EEA	European express association *mhellstr@hillandknowlton.com*
EGMF	European Garden Machinery industry Federation *Guy.Vandoorslaer@orgamile.org*
EICTA	European Industry Association - Information Systems, Communication Technologies, Consumer Electronics
ESBA	European Small Business Alliance *secretariat@esba-europe.org*
ESIA/EDIA	European Semiconductor Industry Association / European Display Industry Association *secretariat.gen@eeca.be*
EUROCOMMERCE	Association of European Chambers of Commerce and Industry verbrugghe@eurocommerce.be
EUROFLOUR	Association Européenne des Meuniers Exportateurs *euroflour@grainindustry.com*
FEPORT	Federation of European Private Port Operators *info@feport.be*
FFI	Freight Forward International *info@fastforward.uk.com*
Fuchs	Karl Fuchs, Dep. Dir. Gen. Ret., AT *Karl.Fuchs@gmx.at*

FVG	Riccardo Illy, Friuli Venezia Giulia
GAM	Groupement des Associations Meunières des Pays de l'UE *gam@ecco-eu.com*
GE Int.	General Electric International, Inc. *philip.challen@corporate.ge.com*
Hannl und Hofstetter	Hannl und Hofstetter Internationale Spedition GmbH *karl.hannl@hannl.at*
ICC	International Chamber of Commerce, IT *icc@cciitalia.org*
KPMG	Tax Advisors, BE *jpauwels@kpmg.com*
MEDEF	Mouvement des Entreprises de France
Meyer & Meier	Meyer & Meyer Internationale Spediteure GmbH *rschulte@meyermeyer.de*
OCEAN	Organisation de la Communauté Européenne des Avitailleurs de Navires *vds@shipsuppliers.de*
Orgalime	Orgalime Liaison Group of the European Mechanical, Electrical, Electronic and Metalworking Industries *Marcelle.Holloway@orgalime.org*
Port de Bruxelles	*portdebruxelles@port.irisnet.be*
Port of Dover	*john.knox@doverport.co.uk*
PostEurop	PostEurop Customs Working Group *posteurop@posteurop.org*

Santacroce/Fruscione	Benedetto Santacroce, Alessandro Fruscione, lawyers *studio@benedettosantacroce.it*
SITPRO	Trade facilitation agency, UK *info@sitpro.org.uk*
SNCF	Société Nationale des Chemins de fer France *fabienne.vaisson@sncf.fr*
TAG	Trade Action Group mhellstr*@hillandknowlton.com*
UNICE	Union of Industrial and Employers' Confederations of Europe *main@unice.be*
UPU	Universal Postal Union *info@upu.int*
VCI	Verband der Chemischen Industrie E.V. *kurz@vci.de*
G. Vitos	Georgios Vitos, Athens
VNO-NCW	Confederation of Netherlands' Industry and Employers *lammers@vno-ncw.nl*
WKÖ	Austrian Federal Economic Chamber *callcenter@wko.at*
Zollas Verzollungen	Zollas Verzollungen GmbH *mp@zollas.de*

3. Comments submitted by traders and others, by Title

Title I	**GENERAL PROVISIONS**	**(Articles 1 – 24)**

General comments shared by several traders

Summary overview: traders' comments		**Commission comments**
1a	**<u>Modernization in general</u>** Concerns: new rules in force before IT system in place.	The rules are needed as a legal basis for the introduction of IT systems.
1b	Concerns: new barriers to legitimate trade doing away with existing trade facilitations, such as local clearance.	Local clearance will remain available to authorised economic operators and will be merged with the current simplified declaration procedure .
1c	Common security policy belongs to EC Treaty or Constitution, not to CC.	Either customs or border police will have to deal with security.
1d	Extension of IT environment to e.g. certificates of origin, veterinary and phytosanitary certificates.	The CC can only deal with customs requirements; matters to be laid down in international agreements or fields other than customs cannot be covered by the CC.
1e	Investment in IT may be a significant burden for many companies.	Harmonized data and data exchange rules will save traders having to invest in different IT systems in the Member States.
1f	Single European Authorisations (SEA) must be expressly and prominently included in the modernized CC. Clarify whether or to what extent the status of AEO covers SEA.	The link between the two concepts is clarified in Articles 104 and 114 and the Explanatory Introduction.

2	**Structure of the CC**: No real simplification by regrouping the customs procedures and splitting them into different procedures again (Articles 4 and 72).	The number of customs regimes has been reduced, notably by merging inward processing with processing under customs control and abolishing the inward processing drawback system and control type II free zones. The distinction between 'customs procedures', 'other customs approved treatment or use' and 'temporary storage' has also been abolished; they will all be 'customs procedures'.
3	**IP, comitology** Concerns about the tendency to transfer more provisions to the IP and to use the management procedure: lack of transparency; European Parliament should be involved; keep the existing reaction period for the Council. Wish to attend the Committee meetings as observers or as active participants.	Modernizing customs procedures, adjusting them to international trade facilitation agreements and automating customs clearance systems requires a certain flexibility in the legislative process. All interested parties will be consulted when implementing provisions are drafted. Since the CC came into force, the Parliament has never exercised its right to comment on the process of adopting the implementing provisions for the CC. Due to the large number of Member States represented on the Customs Code Committee, it would not be helpful to add more participants. In individual cases, a presentation by traders is possible. Written comments are distributed to the Committee.
4a	**Agricultural products** Opposition to the deletion of standard coefficients (advantages: no differential treatment of exporters / Member States, no discussion on small differences, no unnecessary administrative controls, faster customs procedures, etc.).	Standard coefficients laid down in Regulations can only be changed every year or even less often; they are therefore not be in step with economic and technological developments. The abolition of standard coefficients contributes to deregulation, as generally requested by traders.

4b	References to all existing controls in the field of food security (including ISO-certified internal controls).	The CC cannot list all types of controls on goods in detail. Therefore, a general reference has been introduced.
4c	Reference to the unit value system for fruit and vegetables should be maintained (alleviation of administrative burden).	It is not appropriate to fix customs values by means of a Regulation. A solution will be provided in the implementing provisions for cases where no transaction value exists.
5a	**Various** Reference to the principle of confidentiality at control level.	 This has been introduced in Article 5 REV4.
5b	Avoid inconsistencies of interpretation.	This is one of the aims of the proposal.
5c	Counterfeit products and the consequent threat to consumer confidence in the safety of garden machinery: coordinate the development of a centralised market information system with the modernisation of the CC.	This is outside the scope of the CC.
5d	The economic function of customs duties ('Wirtschaftszoll') should be clearly laid down in the CC.	The current CC is already based on this principle; this aspect will be strengthened in the modernized CC by reducing the number of cases where obvious negligence leads to customs debt.
5e	CC must include all specifications of the Kyoto Convention (actual wording).	The principles of the General Annex have been respected. Most of the substance of the Specific Annexes has also been incorporated in the proposal, except where these specifications are to be taken on board in the implementing provisions.

Article 1

1	Put this general political declaration into a preamble to the new Customs Code.	Community Regulations do not have a preamble. What appears in the recitals must be specified in the Code itself. The mission statement contains the objectives of customs. From a legal point of view, there is no option other than putting it into an Article.
2	Title 'The mission or the role of customs legislation' (mission of customs falls under the organisational competence of the Member States).	The aim of this provision is to have a common mission and vision for all customs administrations in the Community.
3	Add clause on dialogue between customs and traders before changes are implemented (principle of transparency).	This has been done already (cf. Articles 1, 5, and 162(4)).
4	Second indent: 'keeping customs formalities and controls to a minimum level...'	This has been taken into account: '…a level necessary…'.
5	Seventh indent: Single window, one-stop shop, and cooperation between authorities will improve competitiveness of EU traders if international standards (e.g. UNECE, UN CEFACT) are adhered to.	International standards will be followed as much as possible.
6	Eighth indent: 'security' and 'safety' translated with one German word ('Sicherheit'); definitions of the English meanings of the two terms.	Two different expressions have been found (see German version).

Article 2

1	Can customs legislation subject to Regulations other than the Customs Code (CC) be incorporated in the implementing	Yes. A reference to the customs tariff has been added.

	provisions for the CC?	
2	'Customs rules': overall term; 'other Customs legislation' is therefore superfluous.	The terminology has been aligned.

Article 3

1	(1), Tenth indent: add 'and of the Free Port of Trieste's free zones designated and protected under Annex VIII to the Peace Treaty signed in Paris on 10 February 1947, in which goods are considered to be situated outside Community territory'.	Any extension of national derogations must be avoided, as the objective of the reform is to abolish them as far possible. International treaties will, however, remain applicable.

Article 4

1	Arrangement in alphabetic or other order.	Alphabetic order is impossible (20 different Community languages); the definitions have been rearranged generally in the order in which the terms appear in the modernized CC.
2	Add definition of postal traffic in order to avoid express couriers benefiting from rules valid only for UPU members	A definition is provided in the Articles on transit (Articles 122(2)(f), 125(2)(f)).
3	Add definitions of 'appointment' and 'representatives'.	The term 'representative' is defined in Article 9 Rev4.
4	Add definitions of 'safety' and 'security'.	These terms are in common usage and have no other meaning in the context of the CC
5	(2) 'Person established in the Community': Inclusion of fiscal representation (B-to-B and B-to-C e-commerce).	This has been done (cf. Article 9).

6	(10) 'Import duties': The deletion of term 'and taxes of equivalent result' is not in line with Article 24 of the EC Treaty (tax of equivalent effect).	Article 24 applies to intra-Community trade, the CC to extra-Community trade.
7	(14) 'Customs controls': 'and other legislation' is superfluous (Article 2(1)).	Customs authorities also perform acts based on Regulations other than the Customs Code.
8	(16) 'Customs formalities': doubt as to whether the draft covers all possibilities. Replace by definition in General Annex, Chapter 2 E9./F16. of the Kyoto Convention: 'all operations which must be carried out by the persons concerned and by the Customs in order to comply with Customs law.'	No example has been given of formalities not covered by the current definition. The CC definition is more precise, but does not contradict the one in the Kyoto Convention.
9	(19) 'Presentation of goods to customs': Specify the minimum requirements for the notification.	Given the variety of situations under which goods arrive, this is impossible.
10	(21) 'Holder of the goods': Keep the Rev 2 definition: 'Holder of the goods means the person who is the owner of the goods or who has a similar right of disposal over them'. Clarify which person is responsible for making the declarations; link to the declaration.	This definition is too narrow for certain cases (e.g. temporary storage where no owner or person with similar rights is available). The link to the declaration is made in the operational part of the CC.
11	(25) 'Risk': Is it really possible to define 'risk' without making it too wide or too narrow?	The current definition is a compromise which should essentially cover the contents of this term in the context in which it is used.
12	(26) 'Risk management': Central management of risk criteria by the Commission. Rules on data protection are opposed to the exchange of	This is intended (cf. Article 8(4), 20(2)). If a trader wants to be recognised in other Member States, he must

	information concerning economic operators. Multinational traders face risk of unequal treatment because of common system: Wrong customs declaration (entry mistake) in one given Member State (MS) could lead to disadvantages in all MS.	accept the exchange of information on infringements of the customs rules.
13	(27) & (28) Clarify the use and the legal value of 'Guidelines' and 'Explanatory notes' (freely available to operators and legally binding?). Will operators be consulted before guidelines and explanatory notes are agreed upon and published? Rules in new instruments like explanatory notes will not replace national guidelines (too complicated).	Explanatory notes and guidelines already exist. They constitute an aid to the uniform interpretation of Community law and are publicly available. Yes, this will be the case as far as possible. The aim of these instruments is to replace the corresponding national instructions.

Article 5

1	(1) What are the exceptions to the mandatory IT link between customs and economic operators to be determined under the committee procedure? As long as there is no single, EU-wide computer system, all economic operators that are neither established nor have representatives in a given Member State should be exempted from the obligatory use of a data processing system in that Member State.	This problem will be solved through the 'single access point' concept. Already, a trader who wants to enter goods for the Community or common transit procedure must do this electronically in the MS where the procedure starts.
2	(2) Provide for strict data protection rules.	The Community data protection rules apply.
3	Participation of traders in meetings of the Customs Code Committee.	Prior consultation will take place and, where technical expertise is required, experts can be invited..

Article 6

1	Concerns: data protection.	The Community data protection rules apply.
2	Giving access to the computer systems of economic operators should not be a prerequisite for the memorandum of understanding.	This is not the case.
3	Access to the computer systems of economic operators by the customs authorities may create technical hazards. Transfer of data is preferable.	The operator can choose whether to send the data or give customs access to them.
4	Barrier to trade rather than facilitation; inclusion of a reference to enhanced facilitation for traders. Purpose and implications of MOU?	The aim of memoranda of understanding (MOU) is enhanced facilitation and reciprocal assistance.
5	MOU on voluntary basis.	This is the case.
6	For cooperation in identifying and countering risks, the economic operator should be provided with a higher level of facilitation.	COM shares this view.

Article 7

1	(3) Representatives of European associations as observers on the Customs Code committees.	Invitation as experts is possible. Written documents will be submitted to the Committee..
2	(3) Kyoto Customs Convention, General Annex, Chapter 1, Standard 3: 'The Customs shall institute and maintain formal consultative relationships with the trade to increase co-operation and facilitate participation in establishing the most effective	The substance of this provision is reflected in the CC. See Article 7(3).

	methods of working commensurate with national provisions and international agreements'.	

Article 8

1	Reciprocal assistance between customs and traders.	This is what memoranda of understanding are intended for (Article 6).
2	Not every person involved in the transport will be able to lodge all necessary documents and information.	This is not a new requirement.
3	Liability for false information is prohibitive and incalculable.	The issue covered by this provision is who bears the *consequences* of false information.
4	Principle of proportionality must be respected as regards mandatory assistance.	The principle of proportionality is part of primary Community law.
5	Articles 8 and 46: Responsibility of customs representatives: for any irregularity within their control, for any negligence; for acts of their customers where they assume this responsibility. Direct representation: binding on the principal and the third party. No shift of public responsibilities to the private sector if the latter cannot control them.	By signing a declaration, the person signing takes over some responsibility (cf. current Article 199 CCIP). The financial burden of errors and the extent of this responsibility are arguable.
6	(2): No sanction for infringements? Relation between Articles 8 and 46?	The framework for sanctions will have to be laid down under the committee procedure (cf. Articles 18, 19). In certain cases, it may be sufficient to apply only administrative penalties, in others (e.g. smuggling) a customs debt will be incurred as is already the case today.

Article 9

1	Support withdrawal of the possibility to restrict customs representation to customs agents (charges of licensed brokers — cost savings, competitiveness). Opposed to withdrawing the possibility for Member States to restrict the right to lodge customs declarations to specific categories of designated qualified professionals with an appropriate record of compliance with customs requirements, proven financial solvency, satisfactory system of commercial management and safety and security standards. Opposed to withdrawal of the right to restrict customs representation: customs agents provide better performance; skills and access conditions necessary. Subsidiarity principle – most appropriate national approach to combat fraud and tax evasion.	Understandably, the representatives of customs agents are arguing for the maintenance of restrictions in their favour, whilst the users of customs representation favour liberalisation. The reasons for the balanced approach of the Commission are set out in the Explanatory Introduction.
2	Responsibility of the driver: financial situation often uncontrollable; it's not the driver who introduces goods into the customs territory.	According to a recent judgment of the European Court of Justice, the company employing the driver is normally liable as well.
3	Arrangements to permit customs representation on the part of legal persons?	Both natural and legal persons are covered (cf. Article 4(1) CC).
4	(6) Why added to Article 9? No preference with regard to Article 10 should be given to a particular person involved in the supply chain. Appreciation of the insertion of an explicit reference to customs service providers. But opposed to the withdrawal of the right to	As the controversial comments show, the text is a balanced compromise.

	restrict customs representation, unless there is a definition of the criteria for the recognition of customs agents (financial solvency, compliance record, competence). Appreciation of AEO status for commercial customs agents. Representatives must be able to apply for AEO status, even if not acting on a regular basis on behalf of all their clients. Delete 'or on behalf of another person'. 'on behalf of' is not explicit as to direct or indirect representation; better: 'in the name of or on behalf of' (includes both). 'regular and commercial basis' should be replaced by 'on a professional basis'. Better to add to para. 1 of Article 10, in the first subparagraph: 'acting in its name or in the name of or on behalf of another person'.	Criteria for the recognition of AEO will be established in the implementing provisions; customs agents can benefit from this status both with regard to security and with regard to facilitations. These terms aim at excluding persons who act either on an occasional basis (i.e. regular) or without remuneration (i.e. professional).

Article 10

1a	**<u>Recognition in all MS; common standards</u>** In favour of status of AEO being valid in all Member States. AEO is an opportunity to establish a genuine single procedure in the EU: same simplified procedures allowed in all MS, without further auditing requirements set by national administrations. Having common standards in all Member States for the authorisation of economic operators is essential to ensure predictability for economic operators approved for simplified	The conditions for withdrawals will be laid down in the implementing provisions. Interested parties will be consulted. It is the obligation of the Commission to ensure a level playing field within the Community.

	border crossings. Authorisations without different conditions in the MS are inevitable given the Single Market, the Customs Union and the need to conclude agreements with third countries on the reciprocal recognition of facilitations. AEO status includes the Single European Authorisation (SEA), valid in all Member States. Only the customs office which has authorised the AEO should be able to withdraw the authorisation. Mistakes at one place should not lead to the withdrawal of the authorisation for all Member States. Doubts: harmonisation of customs systems throughout the EU, including the new MS.	
2a	**<u>Simplifications for AEO</u>** Costs entailed by the new system should be minimised and compensated by simplifications based on a cost/benefit approach.	If there were no benefits, traders would not apply for AEO status.
2b	AEO should not be subject to the same level and type of controls applicable to other operators. Simplifications of customs procedures and audits. At least the current level of authorisations and simplifications; transition period for existing authorisations. Simplifications should not be limited to the security measures but cover the whole field of customs law. AEO status: goods can land or depart in any MS whilst the	The AEO status will be linked to different types of simplification. The frequency of audits will be influenced by the reliability of the traders in question. The CC can support a common approach, but it cannot regulate VAT,

	declaration is lodged with the supervising office of just one MS, not only for customs, but also for VAT, trade statistics and import/export licences.	statistics, or licences.
	The goods can move from the point of release to the final destination or from the point of departure to the external border without any customs formalities. After the release of incoming goods: deemed to be under the customs warehousing procedure; arrival at destination: transferred to any customs procedure by entering them into the accounts. Control of import/export transactions is fully based upon business records. The administrative controls and periodic audits are uncoupled from the physical goods flow.	These options will be provided for; however, it will also be possible to release goods for free circulation at the customs office of entry under centralised clearance.
	The AEO should be exempted from the obligation to submit (summary) declarations, to present the goods to customs during the physical goods movement. Instead: customs authorities may access the transaction data in the operator's electronic system. AEO status covers release into free circulation, export and customs regimes with economic impact.	This option is provided.
	Ideal solution for AEO: entire customs process handled in one operation (any further tariff declaration and NCTS operation superfluous).	Transit can be avoided if the goods are immediately entered for another procedure.
2c	Stairway concept (higher ranking, more substantial simplifications). Type and extent of facilitations should depend on level of compliance. Framework for classifying and certifying economic operators recognised by all Member States.	This is also COM's aim.

2d	Simplifications for some AEO will lead to repercussions for small economic operators. Risk management should not favour large operators.	Smaller firms can also benefit from the AEO concept.
3a	**<u>Criteria and responsibilities of AEO</u>** Criteria for the qualifications of AEO: selective, but: moderate solution concerning the responsibility of customs agents (significant risks and a highly competitive environment). Criteria and rules for AEO should be based on measurable and assessable objective standards, allowing periodic benchmarking and evaluation. Ideally: independent organisation for monitoring. Clarify scope of authorisation, type of simplification, qualifications of different service providers. Safety and security criteria: clear, harmonized at global level, accepted by all EU Member States. Certification by security organisation recognised by the EC; for all parts of a company including its affiliates and subsidiaries; recognised by all Member States. Random checks. Avoid duplication of security requirements (many industries already comply with strict security requirements). Whole supply chain taken into consideration (not just economic operator which directly interacts with customs). Agricultural food sector: already subject to strict controls (food safety in the whole supply chain). Additional controls and consequent costs would lead to a competitive disadvantage for smaller companies.	 A balanced approach is sought. These are matters for implementing provisions. Where global standards exist, they will be taken into account. Customs security standards cannot differ according to branches of industry. Security standards are of a general character, safety standards are product-specific.

	Security-related requirements must not be a pre-condition for obtaining or keeping fiscal simplification.	COM shares this view.
3b	Automatic status of AEO for basic postal services. No guarantee if financial solvency can be proved.	COM will aim to create a level playing field for all competitors.
3c	Personal conditions or criteria for receiving an authorisation should figure in one place only.	See Rev. 4, Article 10, AEO, and Article 114, Special Procedures; these Articles cover different cases and cannot be merged.
4	Authorisation in principle for an indefinite period.	This issue will be addressed when the implementing provisions are drafted..
5	Insufficient link between the risks related to customs and those related to terrorism. Security against terrorism should be assured by police measures and structural interventions, whereas customs-related security should relate to goods and economic operators and be enforced by preventive measures and strict procedures.	Both types of control need to be brought together (single window, one-stop shop). Police deal with people, customs with goods.
6	Authorisations should still be granted to operators outside the EU as well.	This remains possible (Article 10(2)).
7	Customs procedures should not be moved from the border to inland customs offices at any price; declarants' quality is a primary objective.	The importer keeps both options.
8	For a simple comprehensive guarantee, an authorisation should not be necessary.	A comprehensive guarantee may be permitted as a means of facilitation..
9	Implicit reference to Article 76 (simplifications with regard to customs supervision): problematic as the scope of Article 76 risks	An explicit reference has been added.

	being too closely related to the AEO concept on the one hand and being very wide on the other.	
10	There is no clear definition of 'security'. Translation problem: no German distinction between security and safety.	This is a common language term. Two different expressions have been found (cf. German version REV4).
11	(2), first indent: 'an appropriate record of compliance with customs requirements': would exclude any new person and should be replaced by: 'an appropriate record of compliance with customs requirements or other evidence of professional competence in complying with customs requirements'.	The alternative proposal would not solve the problem of newcomers either because they do not have professional competence in the customs area.
12	(2) and 9(6) No special treatment for licensed or accredited brokers to the detriment of other traders. Equal conditions throughout the Community.	The question as to whether specific qualifications are required for customs representatives will be addressed when implementing provisions and guidelines are drafted.

Article 11

1	In favour of obligation for customs authorities to issue decisions and notify the applicant in writing within two months. What legal consequences if the customs authorities do not keep the deadlines (reply or notification within 2 months)?	An appeal can be lodged.
2	Application in electronic form — response should be in the same format.	This is in principle one of the aims of the proposal.
3	(2) What happens if the request is made orally? A short uniform	Oral requests will normally be answered orally as well.

	time limit may run into difficulties. Unclear: 'as soon as possible': only for the rare verbal requests?	This applies to all requests.
4	(4) closely linked with Articles 12 and 13 of the draft — making an unfavourable decision more onerous should be subject to very much the same rules as amending or withdrawing a favourable decision. Customs authorities may annul, amend or revoke any decision that does not conform to the interpretation of the customs rules: far too suggestive; could mean that customs authorities could revoke any decision at all times: unacceptable, undermines the value of decisions.	The rules for unfavourable decisions apply if a decision has an unfavourable effect, e.g. the rejection of an application for an authorisation. Errors must be corrected. The proposal only clarifies what is already the case today.
5	(5) How could the validity of decisions throughout the Community be enforced? Great improvement.	National administrations and courts are bound by Community law.

Article 14

1	Opposed to binding character prejudicial to the holder (appeals would have to be lodged at an early stage).	Clarifying the situation from the outset is, indeed, the intention behind the proposal: anyone who disagrees must appeal without delay.
2	Explicit reference to valuation decisions would be helpful.	The proposal aims at allowing more possibilities than just valuation decisions.
3a	<u>Validity of decisions</u> Concerns: shortening the validity of classification decisions to	The validity of classification and origin decisions has been aligned. The

	three years (even rapid changes in technology and patterns of trade will, in most cases, not change the classification decisions). In favour of a shortened validity period, reissuing decisions must be possible in an easy way.	three-year period is more in line with the pace of technological change.
3b	No retroactive effect of decisions means that excess duties paid can only be recovered through a duty refund procedure, not through appeal.	These procedures are independent from each other and can be pursued in parallel. However, an appeal against a classification decision does not automatically lead to the repayment of duties.
3c	Clarification: validity throughout the Community. Decisions valid for all subsidiaries of a company group.	As all decisions will be valid throughout the Community, unless otherwise stipulated, such clarification is not necessary This is possible.
4	What will happen to the BTI and BOI databases? Concerns: validity throughout the Community will make the administrations try to find a way around taking formal decisions. Better: 'Binding tariff decisions' and 'binding origin decision'.	Only the BTI database will continue to exist. Anyone applying for a classification decision is entitled to receive such a decision. Decisions are, by definition (cf. Article 4(24)), binding.
5	Possibility of issuing future classification and origin decisions to several holders should be indicated.	This is laid down in Article 4(24) REV4.
6	(1) The tariff number may be necessary to determine the applicable VAT rate — information independent of import/export.	The CC only deals with extra-Community trade and customs duties.

7	(3), second indent: There should be no obligation to use the origin decision. European importers are satisfied with the present system.	If someone applies for an origin decision, he ought to use it. If he disagrees with the decision, he must lodge an appeal.
8	(5) better: 'every *material* respect' (many BTI rulings indicate features that do not affect classification).	The description on the BTI has to be precise in order to allow customs officials at the border to clearly and quickly identify whether the products presented correspond to those described in the BTI. The adding of the word 'material' does not resolve the underlying problem, which is that only features relevant for classification purposes are taken into account for deciding whether or not the goods declared correspond to those described in the decision.
9	(7) Proposal: grace period if a decision is revoked due to an error by the customs authorities.	As under the current Code, a period of grace will be granted in these cases.

Article 15

1	(2) The ECJ has indicated that the initial step of appeal should not be considered compulsory (not fully reflected). Unclear: 'may'. The right of appeal should be two-tiered at both Customs and independent-body level.	An appeal may be directly lodged before a court where national legislation provides for this (Article 15(2)(a)). This reflects the jurisprudence of the EJC.
2	'Appeals' should be placed towards the end of the new Code.	As appeals are directed against decisions, both issues belong together.

Article 18

1	Unclear: line between administrative sanctions and other criminal sanctions.	Administrative sanctions are imposed by administrations and not by a court

2	Provisions for such measures after the 'Customs debt – Chapter'.	Reason for this structure: administrative sanctions are decisions.
3	Article 18 denies the right of appeal to importers in countries that base their customs legislation on criminal law (UK: any appeal based on criminal law). Unclear.	As long as the sanction is imposed by the administration, even if later vetted by a court, this provision would apply.

Article 19

1	<u>General</u> Opposed to administrative penalties. However: if they exist there should be a level playing field for all operators in the Community. Administrative penalties are very different in the EU-25. Idea of harmonisation is in principle acceptable, but practical and political problems. Too early.	COM intends to pursue the objective of a level playing field for economic operators in the Community.
2	<u>Legal basis – MS competence</u> Reg. 2988/95 adopted on the basis of Article 235 [308] EC; comparable rules cannot be enacted in the Customs Code on an entirely different basis in the Treaty. Measures going beyond customs matters (compensation of unnecessary administrative efforts or delay in receiving money) in separate legal act based on Article 308 EC. Criminal law of Member States cannot be ruled out by this provision. Administrative penalties linked to infringements; competence for their definition, the verification of the circumstances and the	As in the agricultural sector, administrative penalties exist already; the legal possibility of harmonizing administrative penalties should no longer be a contentious issue.

	determination of the penalties belongs to the MS, even the accessory ones such as the so-called administrative penalties. No legal foundation for criminal law in CC. Infringements listed could be viewed as acts that can be prosecuted under criminal law — repercussions for the (extended) period for additional assessments.	
3	<u>Objectives</u> Specify conditions of control, information of companies, rights and obligations of companies under investigation; improve transparency in the process of deciding penalties. Aim of draft to compensate for non-incurrence or remission of customs debt is not met by penalties, which require intention or negligence.	These issues will be considered once a framework for harmonizing administrative penalties has been agreed. If agreement on penalties is reached, certain cases of negligence may not need to be treated under the rules on customs debt.
4	<u>Criteria, elements</u> Reference to operators' rights during controls and possible investigation procedures, assurance of a transparent decision-making process on penalties and general principle of confidentially. Administrative penalties must be relevant and proportionate. General Annex, Chapter 3, of the Kyoto Convention, Standard 39 (no substantial penalties for inadvertent errors without fraud or gross negligence).	Detailed rules can only be laid down in implementing provisions or guidelines.

	Customs agents should at least be held responsible for gross negligence. Criteria should be set out in CC rather than in CCIP or guidelines. Harmonisation of administrative penalties throughout EC is a crucial issue that will require close monitoring by the European Commission to ensure fair and equal application amongst all EC Member States.	It is impracticable to set out the criteria in the CC, given that the rules that would be infringed are set out in both the CC and the implementing provisions.
5	Right to appeal against decisions, safeguards protecting against arbitrary decisions; in line with WCO Kyoto Convention.	As administrative penalties are decisions, the provisions on decisions will apply. This Article reflect the substance of the WCO Kyoto Convention.

Article 20

1	References to existing controls (including ISO-certified internal controls) to avoid unnecessary additional controls.	This may be considered when implementing provisions and guidelines are drafted. However, customs authorities have an unrestricted right to control goods
2	Risk analysis implies that conscientious companies will have fewer controls; controls to concentrate on other activities.	COM shares this view.
3	(2) 'Spot checks': Customs would have to explain that this means checks without any 'suspicion' or to determine whether there is a risk. Guidelines on risk analysis should be accessible to trade and industry.	This term has been changed to 'random checks', which better describes the method used. This will be considered. However, certain parts must necessarily remain confidential.

4	(4) No limitation of use (goes beyond administrative assistance according to Reg. 45/2001); but limitation to pure cooperation and assistance for the execution of controls?	Yes, this is correct.

Article 22 [replaced by Article 23 in REV4]

1	If changes in exchange rates during a working day are reflected, application would cost more than the financial result. Exchange rates for the next monthly period should be established on a fixed date. Obsolete article. Easily possible to have real-time access to rates of exchange; unnecessary for customs to publish rates of exchange.	The exchange rate will be established on a fixed date and maintained for a certain period (e.g. 2 weeks or one month), as is already the case today. Cf. opposite opinion of other traders. Customs will not publish exchange rates.
2	Rules in CCIP: less transparent.	Implementing provisions are just as transparent as rules in the CC, given that they are both published in the Official Journal.

Article 24 [replaced by Article 25 in REV4]

1	Economic operators should be associated with the simplification process (e.g. information to the trade, observation at meetings, consultations between trade and national administrations).	This is and will remain the case. Only participation in meetings of the Customs Code Committee is exceptional.
2	Deviation from the base legislation by providing simplifications in the CCIP is not legally possible. Welcomes possibility for simplification.	This provision exists already today (Article 19 CC).

3	Main legal bases in CC instead of IP.	Not everything can be foreseen in advance.

Title II	**FACTORS ON THE BASIS OF WHICH IMPORT DUTIES OR EXPORT DUTIES AND OTHER MEASURES PRESCRIBED IN RESPECT OF TRADE IN GOODS ARE APPLIED**	**(Articles 25 – 34)**

Article 26 [replaced by Article 27 REV4]

1	Abolition of textile and clothing quotas and special proof of origin at the end of 2004.	This does not require a change to the customs rules.

Article 27 [replaced by Article 28 REV4]

1	Enumeration of goods originating from a Member State: essential (cf. Article 23 EC Treaty); should be in the CC, not in the implementing provisions.	Only a change of habits is required when detailed technical rules are transferred to the implementing provisions.

Article 28 [replaced by Article 29 REV4]

1	What kind of additional proof? (Certificate of origin = officially issued document — additional proof should have official status).	This is not a new rule. No change of practice is intended.

Article 29 [replaced by Article 23 REV4]

1	General relief for goods of Community origin: EU goods or those of EU origin should be put on the same footing as goods of origin according to origin agreements; relief should not be limited to specific conditions for returned goods.	Duty relief for goods of EU origin poses problems relating to proof and to the processing of goods outside the customs territory for which no import duties could be charged upon re-importation.

Chapter 3 (Articles 30-34 [replaced by Arts. 31-34])

1	Rules are not shortened by shifting them to the IP. WTO provisions in particular will certainly not require rapid amendment.	One of the aims of the modernized CC is to transfer detailed technical rules to the implementing provisions where they can be updated in a more flexible manner.
2	Valuation declaration (now form DV1) superfluous in a widely computerised customs system.	This issue will be considered when implementing provisions are drafted.

Article 32

1	Possibility of allowing adjustments for certain data which are not quantifiable at the time the customs value is declared (cf. Explanatory Introduction) not yet in Article 32. (1) (e): Costs of transport and insurance under (i) may also only be added until arrival at the place of introduction into EC customs territory.	As such a provision already exists today (Article 145 CCIP), there is no need for a specific legal basis. This has been transferred to the implementing provisions.
2	(6) Not only additions but also deductions should be listed in the CC.	Both will be dealt with in the implementing provisions in order to achieve the requested coherence.

Title III	**CUSTOMS DEBT**	**(Articles 35 – 72)**

General comments shared by several traders

1	Place of Title III is not justified (depends also on the obligations resulting from the procedures).	This place is motivated by the fact that the title dealing with customs debt (title III and formerly title VII) also covers guarantees, which are requested at the beginning of a procedure. Moreover, the customs debt is closely linked to the customs tariff, customs value and the origin of goods.
2	Member State in which the debt is due should be able to waive the collection of duties in order to prevent serious economic or social difficulties.	A pure and simple renouncement of the collection of duties in such circumstances would be unfair vis-à-vis other traders and debtors. Such difficulties should be alleviated more appropriately through payment facilities and a guarantee waiver. This is provided for in Article 65 REV4.
3	Principle of economic purpose of customs duties ('*Wirtschaftszoll*') is well reflected in the modernized CC. In favour of withdrawal of distinction between Articles 202, 203).	This is reflected in the new Article 46 REV4.

Chapter 1 (Articles 35-43)

1	Too rigid guarantee requirements.	More flexibility would entail a risk of divergence between Member States.
2	VAT and excise duties should not be subject to rules in CC.	This is only a *reference* to VAT and excise rules. This reference will be

		amended so as to read '**other charges**, such as VAT and excise duties'.
3	Waiver for certain means of transport should be re-introduced.	This is a matter for the implementing provisions. A level playing field for all competitors should be achieved.

Article 35

1	Some traders are in favour of mandatory guarantees, except for VAT (if subject to deduction system), others are in favour of guarantees covering customs debt, VAT and excise duties. Some traders would be in favour of guarantees covering several operations, declarations and procedures. (2) Clarify: the guarantee will cover not only the customs debt but also VAT and excise duties, where the provisions for these duties allow for this (Explanatory Introduction) and where the 'VAT and excise provisions' mentioned in the text refer to EC legislation or to EC and national VAT and excise provisions.	This issue will be considered. This will be possible where authorised.(Article 35(5) REV4). As there is no reference to Community provisions, both Community and national duties or taxes are covered. See point 2 under 'Chapter 1 (Articles 35-43)'.
2	(3) Community validity of guarantees: it must not be possible to restrict their validity to a national territory.	If an operation covers only one Member State, no additional costs for a Community-wide guarantee should be incurred.
3	(6) States and public corporations should not be required to provide mandatory guarantees. Clarify that this provision applies only to Member States and corporations of MS.	This rule already exists in Article 189(4) CC. It appears necessary to limit this provision to the activities where these authorities act as public authorities.

Article 36

1	Guarantees should be the exception rather than the rule (if there is genuine doubt as to the importer's ability or willingness to pay potential duties).	Where duties are suspended or payment is deferred, the State must have sufficient guarantees that they will be paid.
2	Put in place a provision permitting commercial organisations to provide blanket guarantees and deferment accounts.	Such a provision would be more suitable for the implementing provisions. See current Article 857 CCIP.

Article 38

1	If an applicant under Article 38 has to be an AEO, the criteria of paras. 1 and 2 should already be met by the authorisation under Article 10. Is there a need for an AEO if the same or similar requirements are set for various simplifications and issues? In favour of setting out the criteria for obtaining a comprehensive guarantee reduction or waiver based on the existing transit provisions. Criteria must not exclude SMEs.	There is a link between Article 10 and 38, but not in all cases (see transit). The holder of a comprehensive guarantee must, however, be an AEO (Article 38(2) Rev4). This is reflected in Article 38. SMEs are not excluded.
2	(2) How should deferred payment operate with individual guarantees? Why should a reliable debtor not benefit from a guarantee waiver?	Where payment is generally deferred, a general guarantee will be requested. It appears necessary to treat differently situations where the debt is potential (transit for instance) and situations where the debt is incurred (situations where deferred payment may be used). In the second case, a guarantee covering the amount of the debt should be provided in any case. In the other cases, where duties are suspended, the authorities must have sufficient guarantees that, where a debt is incurred, its amount will be paid.

Article 40

1	(3) Guarantees by instruments equivalent to cash (e.g. securities, 'Verpfändung von Wertpapieren') should be recognised by other MS.	This will be considered. However, it is worth noting that any further harmonisation that may appear necessary in this field would fall outside the scope of the Customs Code (see, as evidence of this difficulty, current Article 857 CCIP).

Article 41

1	No discrimination between banks in different Member States, but what about banks in an EEA State? Acceptance of a guarantor not established in all Member States may lead to legal problems with recoveries.	The principle of the Single Market (and for transit in an EEA country) must be respected.
2	Responsibility for amounts levied as a result of post-import verification extends the guarantor's liability excessively (Articles 41 and 43: post-import verification — guarantees only released after 3 years). Clarify: accessory surety instead of 'guarantee' in the proper sense (akzessorische Bürgschaft, nicht Garantie).	The intention is not to increase excessively the amount of the guarantee. The existing guarantee should be used where it appears that an amount covered by a guarantee at the time of payment of the debts has not been paid. A guarantor undertakes to pay for the debtor without any reservation that customs tries first to receive payment from the debtor.

Article 44

1	Partial relief: there should be no customs debt on release but only when the conditions excluding total relief are fulfilled like in other cases of temporary importation.	The current wording of Article 201 CC has been kept in order to avoid the retroactive incurrence of a customs debt.
2	Debt should arise on release of the goods, not on acceptance of the declaration.	The declarant is responsible for the content of the declaration. This declaration has legal effects from the time of its acceptance. Making

		incurrence of the debt dependent upon the release of the goods would contradict this logic.
3	Direct representative should not be debtor.	The text has been changed and aligned with the current Article 201(3) CC; the condition that national law must provide for being a debtor has been lifted in order to create a level playing field.
4	(3) Opposed to liability of declarant, even when acting in bad faith.	Please note that 'declarant' is used in Article 44(3) in the meaning of the definition given in Article 4(14) of the draft. Moreover, anyone who makes a wrong declaration in bad faith ought to be liable to duties (unless the goods are not subject to duties). There is no reason to exempt declarants from this principle.

Article 45

1	Proof of origin issued retrospectively: when will the customs debt be incurred (acceptance — interest on late payment)? There should be exceptions to the principle laid down in Article 45(2).	The text is clear: there will, of course, be no interest on late payment if the proof of origin is issued retrospectively.
2	If the person issuing the proof of origin is neither the declarant nor the sender of the goods, he never becomes debtor.	The issue is not that the person in question never becomes debtor but rather that it is impossible to effectively recover the debt from him.
3	'No drawback rule': clarify the relationship between the origin protocols referring to 'destination for domestic consumption' and provisions in the CC.	The purpose of this provision is to determine the event which leads to the incurrence of a customs debt.
4	Clarify that the customs debt is incurred when the goods are released for free circulation.	The two cases in which a customs debt is incurred are clearly defined.

Article 46

1	In favour of combining the current provisions (Articles 202, 203, 204 and 206) in one Article. Afraid of restrictive interpretation of the term 'obvious negligence' by the customs authorities.	This term is not used in Article 46..
2	Even though customs declarations will be of much better quality if the declarant is responsible for them (common usage in Switzerland), his responsibility should not be exclusive.	There is no such principle in the Customs Code as 'exclusive responsibility' (see Article 51 REV4).
3	Articles 46, 77 and 79: Clarify: the driver who introduces goods into customs territory should not be responsible (or jointly with the represented person).	Normally, the person represented is liable as well (cf. Article 74(2), 77(2), 79(1)).
4	Articles 8 and 46: the responsibility of customs representatives must be limited to irregularities within their control, for any negligence; they should only be held responsible for acts of their customers if they *decided* to assume this responsibility. Rules concerning the responsibility of representatives should be left to civil law not to the CC. Articles 8 and 46: Violation without penalty?	Customs law cannot make the incurrence of a customs debt dependent on the contractual arrangements between the importer and his representative. Infringements of customs rules may lead to a penalty and in certain cases to the incurrence of a customs debt.
5	(2) (a) Clarify: non-fulfilment of the first obligation in the course of an operation or procedure will cause the debt to arise.	No, the purpose of this provision is to have a more global approach than hitherto.
6	(3) Change current practice which has led to various responsibilities with regard to customs debts and penalties. No debtor without knowledge of smuggled goods. Current economic	The idea behind the proposal is to hold liable for the duties those people who are responsible for fulfilling the obligations linked to them.

	reality: often no controls by shipping companies. (3) (a), second indent: 'any person who acted on behalf': add 'and who was aware or should reasonably have been aware that an obligation under the customs rules was not fulfilled'.	 Representatives will not be privileged (cf. answer to comment 4 above).
7	(4) Opposed to liability of the direct representative. Only 'substantial' errors should determine the incurrence of the debt (not if immediately rectified). Responsibility for the customs debt should depend on objective criteria and be in line with the Member States' rules on direct and indirect representation. Why the distinction between direct and indirect representatives if they can both be considered debtors? Contradiction with the concept of direct/indirect representation and the principles in Article 9. The receiving postal operator should not be punished for wrong information provided by the sender. Postal operators should be exempted (conflict with their obligations under the Universal Postal Convention). Restrict responsibility of the acting person/principal to fraud.	Why should certain representatives be privileged? This issue is dealt with under the rules on the extinction of customs debts. The application of the CC cannot vary according to national rules. The text has been changed. This issue will be considered. However, it is not possible to release certain economic operators from all obligations under the customs rules. As fraud is difficult to prove, obvious negligence has been maintained.

Article 50

1	Possible for COM to make provisions 'for the purposes of criminal law'?	This has been taken over from the current CC.
2	Re-draft last sentence as follows: 'If a Member State takes customs duties as the basis for taking penal proceedings or for determining penalties, this Member State shall be free to proceed for these purposes as if the customs debt had arisen.'	This can be considered at a later stage.

Article 51

1	To what extent will this principle (according to which the debt should first be recovered from persons who deliberately infringed the rules) be obligatory for authorities?	National authorities' obligations should consist of making reasonable attempts to recover the debt from 'deliberate offenders'.
2	In favour of the principle of priority given to persons who have deliberately infringed the customs rules. 'priority should be given' should be replaced by 'priority shall be given'. 'Priority': attempts or simple assessment of possibilities to collect duties from such persons? What if the 'priority' debtor is insolvent? Liability of declarant acting in good faith?	Attempts must be made to hold the 'priority' debtor liable; if he is insolvent, the other debtors will be called upon.

Article 53

1	(2) Clarify that this special assessment rule also relates to non-Community goods.	This remark is unclear as the provision concerned only relates to non-Community goods.

Article 54

1	If rules regarding the place where the customs debt is incurred also determine the Member State competent for recovery or prosecution, this could influence the decision on where to apply for a Single European Authorisation (SEA).	The implementing provisions will set out clear rules regarding the place where a multinational company can apply for SEA.
2	(2) All authorisations granted by the office where the applicant is established in the EC; problem: VAT debt will continue to arise in the Member State of entry in the EC or at the end of a suspensive procedure.	The Customs Code cannot change the rules where a VAT debt is incurred.
3	(3) Allow the establishing authority to collect duty irrespective of the sum; instead of assistance procedure: all taxes collected together and transferred to the other Member State.	Collection of VAT and excise duties is not covered by the CC.

Chapter 3 (Articles 55 – 71)

1	Reverse order to 'Payment and recovery of duty' (payment is the regular way of settling the customs debt).	'Recovery' should be understood as a general term encompassing any action to recover the amount of duties, thus including payment. The correct order of terms is therefore 'recovery and payment'.

Article 55

1	Collection of duties (time limits and dates) should be left to MS;	This provision does not concern traders but only competent authorities

	EC budgetary provisions set time limits by which duties must be placed at the disposal of the Commission; where payment is effected before release of the goods or under deferred payment, these limits should run from the incurrence of the customs debt. Otherwise: normal time limit according to Article 57 (but: 2 days is very short).	of the Member States.

Article 56

1	(1): Single entry in the accounts may exceed 31 days with permission of customs (4-4-5 week calendar).	Article 56(1) corresponds to the current Article 218(1). The period of aggregation may not exceed 31 days. The customs authorities must enter the amount in the accounts within 5 days from the end of this period.

Article 58 [replaced by Article 57]

1	Opposed to withdrawal of the part concerning 'an error by the customs authorities' (ex-Article 220(2)(b) CC): EC will be in total control of Article 58 (national courts of law would no longer play a role).	This provision has not been deleted but moved to a new Article 71(1) Rev4.
2	(2) These cases belong to the provisions concerning remission/repayment.	Concerning Article 58(2)(a), the judicial grounds for non-collection of duty make non-recovery provisions more suitable than remission / repayment provisions. Concerning Article 58(2)(b), Article 71(1)(b) already provides for recourse to the committee procedure with a view to determining situations where repayment or remission may be granted. Despite the merger of the provisions of former Article 239 with those of former Article 220(2)(b), it appears appropriate to maintain a legal basis for the current Article 869(a) CCIP.

Article 59

1	How can the three- or ten-year period be suspended or interrupted?	Such a provision exists already today: Article 221(3) (second sentence) CC.
2	(3) One or two months instead of 10-day deadline for the debtor to make his views known. Time limit superfluous where contacts with the debtor had been established before or where the debtor himself asked for the measure.	This issue will be addressed when the implementing provisions are drafted.
3	(4) Repayment/remission procedure should also suspend the time period for the notification.	In the case of a repayment or a remission, the amount of the debt has already been notified to the debtor.
4	(6) 'Criminal court proceedings': No intervention in the administrative and judicial structure of Member States when drafting the CCIP (AT: administrative competence for penal prosecution).	The issue may simply require a linguistic streamlining. In any case, a level playing field for economic operators ought to be established.

Article 60

1	Specify: debtor intending to appeal against the duty decision benefits from extension of the 10-day period to define the litigation.	This 10-day period no longer exists (will be dealt with in the implementing provisions; cf. comment 2 on Article 59 above).

Article 62

1	Comprehensive guarantee, reduction and waiver of guarantee under Article 38 of the draft must not be excluded.	As explained above (comment on Article 38(2)), it is considered appropriate, for the purpose of assessing whether a flexible approach may be adopted towards guarantees, to take into account the actual financial risk and thus to differentiate between debts which have been incurred and those that may be incurred.
2	Many traders would welcome the abolishment of fees for the granting of deferment of payment.	These are now covered by Article 22 REV4.
3	Limiting deferment to the 'person concerned' prevents companies from taking out efficient deferment facilities to cover a group of companies. Single pan-European deferment accounts.	The person concerned is the debtor; it is this person who has to request deferred payment. The issue raised, which is different and concerns the guarantor, will be considered.

Article 64

1	Payment cannot be expected before communication of the amount of duty. Only delays caused by the debtor should be subject to 'sanctions'.	COM entirely shares this view.
2	Opposed to denial of deferment.	If the conditions are met, there is a right of deferment.

Article 65

1	Interest could vary country by country, not in line with the interest ordinarily charged on error or underpayment.	The rules are being harmonized, but there are still different interest rates in the EURO zone and other Member States.

Article 66

1	5-day grace period before interest on arrears is charged.	This would in effect be a prolongation of the period for payment.
2	Para. 2 (interest on customs debt incurred after non-compliance) is an *alternative* solution to administrative penalties and should be dropped if administrative penalties are provided for.	Payment of interest and sanctions have different purposes and may thus co-exist (interest only intended to correct wrongful acquisition of a financial advantage to the detriment of the Community's budget).
3	(3) Waiver of collection of interest on arrears: add 'where non-compliance is due to an error/mistake and has not led to a financial advantage'.	Would be almost impossible to implement (due to subjective nature of 'mistake' and difficulty in proving absence of financial advantage).

Article 67

1	Refer only to 'remission' and take out 'which has not been paid' in subparagraph b. Make clear that the decision must be entered in the accounts (like amounts to be paid) and executed without delay.	No reason to change this provision (see current Article 236). Remission (duties have not been paid) is opposed to repayment (duties have been paid).
2	(3) Repayment of duties not legally owed: customs' obligation to establish the amount of refund and take the relevant decision and effect repayment without delay. Interest payments after three months (decision granting repayment): positive move towards parity with interest on late payments to customs.	Where customs has the information, they are obliged to repay duties which are not due. It is clearer to have a fixed deadline for repayment than to use terms such as 'without delay'. Yes, national provisions 'so stipulating' (see current Article 241) will no longer be necessary.

Article 68

1	Only place in the Code saying that duties are determined by a decision; consistent language.	Alignment of terminology has been sought throughout the CC.

2	(1), last subparagraph: even in the case of fraud, duty collected in the amount legally due; right to demand remission of any surplus charged or paid; appeals not limited to benevolent operators.	This limitation is in line with well-established ECJ jurisprudence.

Article 70

1	Destruction under customs control should remain an option for remissions.	This is the case. However, destruction after release for free circulation cannot in itself justify repayment.
2	Reason for returning goods abroad should not be taken into consideration. Remission when the goods are not returned to the supplier or exported at his order but sold to another country.	This would lead to a general right of drawback. Instead, the rules on inward processing have been liberalised. Some of these cases are dealt with under Article 900 CCIP.
3	(3) Deadline should not be set from the application for remission but from the acceptance of the export declaration.	The deadline for application for remission or repayment is fixed from the time of acceptance of the declaration.

Article 71

1	Cases mentioned in Article 58(2) to be included in this Article (Article 58: subsequent entry into accounts): One provision referring to duties to be entered in the accounts to correct an earlier assessment; another to deal with special circumstances.	See comment 2 on Article 58.
2	Companies acting in good faith should not be held responsible for	The inattentive exporter is the chosen contracting partner of the importer, who must therefore carry the consequences and cannot shift

	a foreign administration or an inattentive exporter.	the burden to the State.
3	(1)(a), fifth subpara.: add: '…, except if he can prove he has taken all reasonably necessary steps to check the applicability of the certificate'..	This provision is already a limited exception to the possibility to plead good faith and including a further exception would weaken it excessively.
4	(1) (b) Repayment or remission should not depend on the absence of 'obvious negligence'. (1) (b) 'shall be repaid or remitted' should be deleted.	This is a reasonable requirement of equity. This has been corrected in REV4.
6	(3) The appeal and request could be processed simultaneously (different principles for these procedures).	The possibility to follow the two routes at the same time is not excluded but the suspension of the deadline for applying for repayment or remission pending an appeal has been introduced so as to stress that the right order between the two must be established depending upon whether the debtor is contesting the debt or essentially basing his request on equity reasons.

Article 72

1	(2) Is there no decision concerning the extinction of customs debts?	If duties are paid, no decision on the extinction of the debt is necessary; in other cases, e.g. remission, a decision is necessary.
2	(2) Avoid need for negative proof (e.g. absence of deception) by replacing the introduction to para. 2 by 'A customs debt on importation shall also be extinguished where it is evident, or is made evident, to the customs authorities that: …'.	The text only determines who bears the burden of proof.
3	(2)(a) Extinction of customs debt where there is no significant	This issue ('no significant effect on the correct operation of the

	effect on the correct operation of the procedure: a mirror provision should be inserted in the section on customs debt on exportation.	procedure concerned') has been taken from Article 204 CC (irregular incurrence of the debt on importation). If a mirror provision were to be created for export, it would thus have to be under Article 72 as well. This issue will be considered.
4	(2)(a): Problems of interpretation; not all relevant cases will be included. Customs debts caused by procedural errors should be eliminated if the goods in question have left the customs territory or have been released into free circulation elsewhere after the customs duties have been paid there.	Customs duties will not be charged twice in the Community. Re-export is dealt with under paragraph 2(d) and (e).
5	(2)(e)(i) Operators should be able to provide evidence that 'goods have not been consumed or used…' (in line with Article 137).	Included in REV4.

Title IV	**ARRIVAL OF GOODS IN THE CUSTOMS TERRITORY OF THE COMMUNITY**	**(Articles 73 – 83)**

Article 73

1	<u>Pre-arrival declaration:</u> Additional burdens; endangers existing simplified procedures. Long pre-declaration times would endanger the competitive position of the European semiconductor industry.	The impact upon traders of these measures, particularly the requirement for pre-arrival, is likely to be minimal, as the time limits to be set for these declarations will not simply mirror those imposed elsewhere, e.g. the 24 hours before shipment demanded by the USA, but will be set at the shortest reasonable period that will allow for effective risk analysis and will take account of the various types of trade and modes of transport. In reality, the vast majority of existing trade already meets these deadlines for declarations; pre-arrival information is already commonly available and widely electronic. Prior declarations, together with a uniform Community risk-selection criteria for controls, supported by computerised systems, and the exchange of information between customs administrations and with other relevant authorities (e.g. police, veterinary bodies) will bring forward risk analysis and open the way for total pre-selection for controls. Customs resources can be better planned and deployed, with the consequence not only of better security, the primary objective, but also of instant release of all innocent goods upon their arrival at offices of entry and exit. This speeding up of border processing is a benefit for Community traders that will equal, if not exceed, any cost or disadvantage of providing information earlier than is presently required and electronically rather than on paper.

		Furthermore, a major element in the amendments to the Customs Code is the establishment of a legal framework to expand the opportunity for reliable traders to benefit from simplifications and facilitation through the development of an authorised economic operator programme. General provisions for Community-wide accreditation are introduced and the existing concept of authorised traders will be extended to take account of security aspects and to allow for traders of proven responsibility to benefit from reduced customs controls.
2	Security risk prevention has to be before the loading of containers. Global norms (US norm). Bilateral agreements with third countries in order to avoid new trade barriers and duplication of formalities.	Given that security requirements have already been introduced by several of our trading partners (e.g. USA), it would have been easy to limit the EU's response to identical or reciprocal arrangements. However, while the Community fully respects and supports those requirements that are already in place, it believes that a global approach to security and safety is necessary. The Commission contends that it should not simply adopt restrictions imposed by any one trading partner, e.g. the 24 hours before shipment demanded by the USA, but should set the shortest reasonable period that will allow for effective risk analysis and should take account of the various types of trade and modes of transport, as well as any international agreements that may exist. The Community has a duty to protect not only its own trade and citizens, but those of all its trading partners as well. The Commission has therefore looked beyond measures restricted to the control of imports and now looks to promote reciprocal arrangements founded upon risk-based controls of exports as well; to assure the security and safety of the Community's own exports and, in this way, to reduce the need for its trading partners to impose increased controls on import. Reciprocally, traders in countries that undertake to control their

		own exports to the EU to similar standards will benefit, under international arrangements, from similar facilitation as provided to authorised EU operators.
3	Summary declarations can be submitted only on paper when the truck arrives at the border. How will pre-arrival declarations be possible without the electronic system in place?	Whereas the onus for prior declarations lies primarily with the carrier, in certain circumstances such as this the importer must take the responsibility. It is unlikely that goods are to be imported without someone in the EU knowing they are coming. The introduction of these measures does mean that traders will, in certain circumstances, have to obtain and provide certain information they may not hold at present. This is an inescapable consequence of the safety and security concerns that have led to these measures.
4	Who is responsible for the data included in the summary declaration? Rectification: amendments to declaration *a posteriori* — what happens in case of error? Data must correspond to physical flow.	These responsibilities are clearly defined in Article 74. The responsibility for lodging a pre-arrival declaration, or summary declaration, lays primarily with the carrier. However, the same Article provides for others to make the declaration instead, essential in cases where authorised traders wish to lodge the customs declaration rather than a summary declaration as the pre-arrival declaration with a view to the immediate release of goods under a simplified procedure. The declarant may also amend the declaration under the provisions of this Article.
5	How will pre-arrival declarations be lodged when the customs office of entry is not known?	As the onus for prior declarations lies primarily with the carrier, it seems unlikely he will not know the office of entry. Otherwise, the comments in 3 above apply.
6	(1) and Article 46(1): Non-submission of a summary declaration at the time when the goods are brought into customs territory should lead neither to the incurrence of a customs debt nor to	The liability for a debt will only occur if a debt is actually incurred. Debt cannot be used as a penalty. The rules for extinction of a customs debt in Article 72 make this clear and will cover most cases in this

	administrative penalties. (2) and Article 105(2): Article 105 — incurrence of the customs debt, but Article 72 will prevent the debt from being incurred?	context. However, should the unlawful introduction of goods directly result from failure to meet an obligation, than a debt will be incurred. Failure to submit a pre-arrival declaration would lead to a customs debt only in cases where goods are also withheld from customs supervision. Infringements of customs rules may, separately, attract administrative penalties in accordance with Article 19. The cases where sanctions are to be applied and the seriousness of the infringements leading to sanctions will be determined below the level of the CC.
7	(3) 'Reasonable' maximum deadlines for the lodging of summary declarations or data; shortened where agreed after consultation with trade.	The time limits will be laid down in the implementing provisions, in order that these can be shortened or, if circumstances so dictate, extended quickly when necessary. Provisions in the Code could take many months to change.
8	(3), fourth indent and Article 158(2), third indent — discrepancy: 'authorised economic operators' vs 'economic operators'. Delete 'authorised' in Article 73(3).	Noted. The word 'authorised' has been deleted from Article 73(3) in Rev4, in alignment with the wording of the associated Article 36a, contained in the recent amendments to the Customs Code.
9	<u>Postal consignments</u> Orientation towards the guidelines of the WCO. Postal organisations cannot comply with the requirement for a pre-arrival/departure declaration (no direct contact between postal organisations and clients in different countries). Postal traffic is not as advanced with regard to paperless solutions as express services. Exemption possible?	The detailed rules for postal consignments and the requirement for a summary declaration will be addressed in the implementing provisions.
10	(1) and Article 77(6): Simplify formulations; rules with equal	Noted. Article 77(6) has been aligned with Article 73(1).

	content should contain the same text.	

Article 74

1	Support requirement for a standardised summary declaration to be lodged for risk analysis and the proper application of customs controls. But the HTC should be part of the summary declaration (unless an international agreement; the HTC provided by a shipper should not be binding on an importer or his appointed representative).	This will be considered during drafting of the implementing provisions to determine the common data set and format of the summary declaration, in accordance with Article 74.
2	Articles 161 and 74 should follow the same guidance (criteria for determining the format of the import and summary declarations). Common data set and format are vital for the functioning of the new provisions — explicit mention.	Both of these provisions have been replaced in Rev4 by a single new provision in Article 5 for the committee procedure to be used to determine the data and format for all messages to be exchanged under the customs rules.
3	Transport document should be accepted as summary declaration.	The declaration must be electronic and contain all of the mandatory data required. Provided that these criteria are met, some flexibility can then be allowed for under the implementing provisions.
4	(1) and (5): No distinction between security and safety in German.	Common usage in other languages and already adopted at Council level in relation to the recent amendments to the Customs Code.
5	(3) Responsibility for the declaration according to the 'incoterms'.	The text has been improved but, given the different delivery variants, it is difficult to come up with a precise yet simple text. The responsibility must lie, in the end, with the carrier, as the person who 'brings the

		goods into the customs territory' and it will be up to him to collect the proper information from the exporter or the receiver. See the reply to Article 73, comment 3, above.
6	Why have the previous provisions (Rev. 2) relating to the place where the pre-arrival declaration can be lodged (customs office of entry, customs office of import) been omitted?	These issues will be dealt with in implementing provisions because different channels of communication may be developed in the forthcoming years.

Article 75

1	Summary declaration should replace the customs declaration in simplified procedures as well.	The option of combining a summary declaration with a simplified declaration will continue to exist.

Section 1 (Articles 76 – 78)

1	Intra-Community sea crossing between Calais and Dover: maintain the ban on controls that has existed for over 10 years.	A new paragraph (6) has been added to Article 20 REV4; 6. No control or formalities shall be carried out in respect of: - the cabin and hold baggage of persons taking an intra-Community flight, - the baggage of persons making an intra-Community sea crossing. The provisions of this paragraph apply without prejudice to: - the safety and security checks carried out on baggage by the authorities of the Member States, port or airport authorities or carriers, - checks linked to prohibitions or restrictions laid down by the

		Member States, provided they are compatible with the Treaty.

Article 76

1	(2) 'They shall remain under such supervision …until they have entered a free zone…'.	As a consequence of the measures associated with the recent amendments to the Customs Code, pre-arrival and pre-departure declarations will necessary for goods directly brought into or out of a free zone. Free zones are part of the customs territory of the Community and goods in free zones remain under customs supervision for safety and security reasons

Article 77

1	Opposed to the removal of 'traffic of negligible economic importance'. Clarify its application (Immediate Release Guidelines as published by the WCO).	As such traffic can pose a security risk, it cannot be excluded from customs supervision. This term has also given rise to divergent application by Member States.
2	Despite growing privatisation, postal organisations still hold rights/obligations under the World Postal Agreement. Postal documents should remain valid.	Postal paper documents will continue to be used but, at some point in time, electronic customs declarations will also have to be used by postal services.
3	(1) Clarify person responsible for the correct introduction of goods into the customs territory and for the conveyance of such goods to a customs office.	The definition of the 'person bringing the goods into the Community', together with para. 2, is deemed sufficient.
4	(1) Why 'immediately'?	Immediate presentation of goods is essential for effective risk-based controls, particularly as regards safety and security.

5	(4) Restriction with regard to letters, postcards, printed matter etc. should apply to all postal traffic. Change the wording from products to postal traffic in general.	The Regulation aims at creating a level playing field for postal services and their competitors, including the use of simplified procedures.
6	(5) : Amend: 'Paragraphs 1 to 4 and Articles 73 to 75 and 78 to 81 shall not apply to Community goods moved under the conditions referred to under Article 86.'	Article 86 relates only to Community goods. Article 77(5) also includes non-Community goods carried on these services, which must, of course, be under the transit procedure; (re)presentation of such goods is governed by that procedure, not by Articles 73 to 75 and 78 to 81.

Article 78

1	The obligations under paras. 1 and 2 should also be applicable to other circumstances (e.g. pilferage of the transport).	Falls within the definition of 'unforeseeable circumstances'.

Article 79

1	Clarify: responsibility for presentation of goods: person (suggestion: both the person in physical charge of the goods (driver) and the person for whom that person acts when introducing the goods) and content of the notification.	Article 79 has been amended, as have Articles 4(19) and 77, in order to clarify the notification of arrival and presentation, and who is to do this.
2	Clarify: 'Authorised operators may be relieved from the requirement to present the goods to customs provided they have lodged the declaration stipulated under Articles 73 and 74'.	The explanatory reference is to authorised operators within free zones, not to authorised economic operators in general, and is legally supported by paragraph 2(b) of this Article and by Article 135.
3	(1) Reference to the summary declaration will be difficult to achieve when there are various parties.	See reply to Article 73, comment 3, above.

4	(2) Amend: all goods in postal traffic that are not subject to customs levies: not affected by bans and prohibitions; if below the statistical thresholds for fiscal purposes: no presentation to customs. Random checks at offices of exchange.	See remarks on Article 77.

Article 81

1	Where non-Community goods delivered to a port terminal are taken over under a single transport contract for transport to a third country and the final destination is given in the transit declaration of the person responsible for the procedure under which goods were delivered to that port terminal, Article 83 and especially the obligations under Article 81 should not apply. Any stay under customs supervision, between the time of arrival at the port terminal and the time of shipment and forming an integral part of transhipment, should be dealt with under Title IX (Article 163).	These Articles refer to non-Community goods after a transit movement has ended in accordance with Article 116, i.e. within the Community, and which must, therefore, remain subject to customs controls until they are re-exported. The export procedure does not apply to these goods and there is no export equivalent of temporary storage, so normal temporary storage, as a result of the application of Article 81, must apply, albeit momentarily. This applies equally to non-Community goods directly transhipped within a Community port without leaving it.

Article 82

1	Should Articles 73 to 75 really apply to goods that arrive under a transit procedure and should therefore already have been controlled once? Fears that TIR transports which started outside the Community might otherwise come in uncontrolled are not founded, because in a TIR transport goods do not arrive under a transit procedure, as the TIR Convention provides for a common document but not for a common procedure. Pre-arrival declaration for TIR/ATA runs counter to the idea of such documents (transport through several states avoiding controls	See reply to Article 73, comment 3, above. With the introduction of electronic declarations, paper-based systems

	at all borders). Controls at departure office; plumbs; no pre-arrival declaration; goods under customs supervision.	will have to change, though gradually.

Title V	**GENERAL RULES ON CUSTOMS STATUS AND CUSTOMS PROCEDURE**	**(Articles 84 – 105)**

Article 85

1	(b) Delete 'insofar as the customs rules allow for this'.	This clause may not be necessary, but it clarifies the rules.
3	(c) 'destroyed' instead of 'abandoned to the Exchequer'.	Both are possible.

Article 86

1	Proof of Community status and status of approved shipping services to be replaced by electronic communication between customs offices of the EU ports involved.	The responsibility for the proof of status must remain with the carrier or trader.
2	No customs formalities for goods with Community status.	Goods leaving the customs territory lose their Community status, unless special rules prevent this.

Article 87

1	(2) List incomplete (measures of trade policy and national measures allowed under the Treaty) or superfluous.	The list has been completed and transferred to Article 1.

Article 88-94

1	Establish a link between the summary declaration and the final	This can be included in the implementing provisions. The summary and

	declaration. What if there is a difference between the two declarations?	customs declarations may be combined, but there will be no obligation to do so. The rules of this section, e.g. for amendment or invalidation, apply equally to summary declarations (Article 104(5) Rev4)

Article 88

1	(2) 'destroyed' instead of 'abandoned to the Exchequer'.	Both are possible. Not all goods abandoned to the Exchequer are destroyed.

Article 90

1	Can data processing technology be required without any registration or authorisation to identify the declarant in the system?	A trader identification number will be required.
2	Universal Postal Convention: CN 22/23 forms (basis for customs clearance) in paper form. Postal operators should be exempt from the obligation to submit an electronic customs declaration until the required information systems can be developed and put in place by all postal operators.	Special rules for specific traders will be the exception. At the end of a transitional period, everybody will have to comply with electronic customs requirements.
3	(c) Replace 'holder' by 'declarant'.	The word 'declarant' is reserved for the person who makes a customs declaration (cf. Article 4(14)).

Article 91

1	Data requirement should ensure harmonisation in all EU Member States (to avoid trade distortion).	These are indeed the aims of the proposal.

	Avoid too extensive data definition for summary and simplified declarations (avoid additional requirements; confidentiality).	
2	Indicate that imaged / electronic supporting documents are sufficient and will be accepted (not necessarily to be held on a server in a specific country).	Article 5(1) Rev4 applies to this.
3	Reference to the CCIP is missing.	Reference is not necessary.

Article 92

1	This provision hinders pre-declarations: at the moment when the pre-arrival declaration must be lodged, the goods are not yet within the customs territory of the EC. Therefore this declaration could not be accepted. Combined summary/simplified declaration: acceptance prior to arrival or when the goods are within the territory of the Community?	Pre-arrival declarations are summary declarations. Article 92 relates to the normal declaration (cf. title of Section 2). Even if the summary declaration is combined with the simplified declaration, it is only accepted at the time when the goods may be released, thus when they have arrived and are available for control.
2	Problem: unforeseeable changes of route.	This issue will be addressed in the same way as under NCTS.
3	'and are available for control' should be replaced by 'and can be made available for control'.	'Available' means that the goods can be controlled within a short deadline.
4	Clearance at a central point within the EU?	Centralised clearance will be possible under a Single European Authorisation.

Article 99

1	Add second exception: after customs clearance, the declarant can challenge the representativeness of the sample provided that he can prove that the goods have not been altered in any way.	Article 99 revised in Rev4.

Article 102

1	Can the prohibitions and restrictions only be based on measures of commercial policy or on any other legislation?	Any type of prohibition and restriction is covered.

Article 104

1	Explicit mention that the summary declaration may constitute the simplified declaration. Does waiver for simplified declaration also apply to summary declaration?	This will be laid down in the implementing provisions. This question is dealt with under the rules for summary declarations.
2	Allow for economic operators to assign the goods definitively to any customs procedure after release. The final customs procedure should not be included in the simplified declaration. Import: in order to prevent unnecessary remissions, mention of customs procedure only in the supplementary customs declaration.	At the moment of release it must be clear under which procedure the goods are placed. The default procedure is temporary storage.
3	Local clearance should remain possible for AEO, even without customs' access to their IT system. The summary declaration combined with the entry in the AEO's books would constitute the full declaration.	Local clearance will continue to exist. However, the customs office of entry or exit must be informed that the goods have been placed under a customs procedure. This requires a flow of information to this office, but this need not be by customs access to the trader's system.

4	Provide for the possibility of releasing goods based on the summary/simplified declaration instead of generally requiring release by the customs authorities.	As today, this will remain possible if the goods have arrived at the trader's premises.
5	Import: supplementary declaration also to the customs offices of control.	This is the case.
6	Maintain existing simplified procedures. As this Article promotes simplified procedures for Authorised Economic Operators (AEO) which must be recognised by all Member States there is a risk of a low level of simplification. Waiver of presentation if summary declaration is compulsory?	Paper-based procedures cannot be maintained. Electronic procedures will be maintained, but harmonized. A high level of simplification will be aimed at. If the goods have been presented at the customs office of entry and placed under a simplified procedure, the second presentation can be waived.
7	Maintain waivers of guarantees, for certain means of transport. Postal operators should continue to benefit from simplified procedures even though some may be in private ownership (private customers allowed to provide fewer data).	In principle, the rules will be the same for all economic operators. On a level playing field, a particular operator should not be able to benefit from more favourable conditions than his competitors.
8	Afraid that the data content of the summary declaration will be more detailed than today (risk assessment); requires additional data communication between supplier (shipper) and forwarder; additional cost and sources for errors.	Presently, the data required for a summary declaration are left to the individual Member State. The security requirements may lead to data not commonly included at present being required, but the data requirements will be harmonized so as to be the same in every Member State, and will include fewer total data than presently required by many Member States. Traders will, in certain circumstances, have to obtain and provide certain information they may not hold at present. This is an inescapable consequence of the safety and security concerns that have

		led to the recent amendments to the Customs Code.

Article 105

1	Unlimited right of abandonment may lead to the customs being left with such goods.	The text has been adjusted.
3	(1) More detailed rules at Community level.	This will be considered when the implementing provisions are drafted.
4	(2)(b) Precise definition with regard to security-related measures.	Cf. Article 1.

Title VI	**RELEASE FOR FREE CIRCULATION**	**(Articles 106 – 107)**

Article 106

1	Add provision on the lines of existing Article 866 IP.	This proposal has been taken on board.
2	Re-introduction of Article 80 CC, allowing for the reduction of customs duty after acceptance of the declaration (goods can be put back in temporary storage after invalidation of the declaration).	There is no need for this in an electronic environment, where there is normally only a short period between the acceptance of a declaration and the release..
3	Reference to VAT and excise duties excludes the application of energy tax and national taxes. VAT and excises are due when the goods are released for consumption, not on release for free circulation.	The reference to VAT and excises is not exclusive (‘any duties legally due, such as…’). The references do not introduce new obligations, but clarify the legal situation. The problems raised exist even without these references.

Article 107 (replaced by Article 105 in REV4)

1	This provision requires prior classification. The main goods in terms of quantity and/or value should be taken as basis (additional criterion: statistical threshold).	Taken on board in REV4

Title VII	**RELIEF FROM IMPORT DUTIES**	**(Articles 108 – 112)**

Article 108

1	(3): According to Article 85(b), goods which have been placed under a procedure lose their Community status (status T1). How will returning goods be recognised as Community goods?	This provision already exists (Article 185 CC). It has to be proved that they had Community status (e.g. by proving that they have been released for free circulation or that they have been bought in the Community as Community goods).

Article 109

1	(2) Details for the calculation of partial relief after outward processing in the Code.	Transferring these rules from the CCIP to the CC would make any adaptation more difficult.

Article 110

1	Term ‘export’ for the export of Community goods and the re-export of non-Community goods is confusing because the two situations lead to very different legal consequences.	This has been taken on board in REV4.

Article 112

1	Maximum amount for duty-free import (EUR 45) should be mentioned in either the CC or the CCIP. Limit for duty-free import should be set at a reasonable level	In order to allow for more flexibility in the future, this will be placed in the implementing provisions.
2	Relief should not be completely left to the committee procedure.	The proposal follows the current example of temporary importation with

		full duty relief.

Title VIII	**SPECIAL PROCEDURES**	**(Articles 113 – 157)**

General comments shared by several traders

1	Principle of equivalence: Should be used for inward processing, outward processing and warehousing; not only at a given stage of processing, but also for completely processed products; common storage of Community and non-Community goods should generally be possible.	This will, in principle, be possible under the proposal.
2	Title: 'procedures for provisional relief' or 'procedures for conditional relief'.	Since outward processing has been included, such a title would no longer be appropriate.
3	Suspension system: risk of circumvention due to advantage of delaying payment of customs duties and lower value after use.	The philosophy was and is to levy import duty on non-Community goods at the moment when the goods are put on the Community market, i.e. when the goods are declared for release for free circulation. Each special procedure has its own economic justification, for instance to promote processing operations in the EU (inward processing). Using a suspension system cannot be considered as a circumvention of import duties.

Article 113

1	Application of principle of equivalence should not be restricted.	Unlimited application of the principle of equivalence could lead to abuse, especially in the agricultural sector.

Article 114

1	This approach leaves much discretion for national initiative. More harmonisation.	Uniform application throughout the Community is ensured because, if the conditions are fulfilled, customs authorities have to (not may) grant an authorisation
2	(2), first indent: waiver from the condition of establishment in the EC for temporary admission.	As today, such a waiver will be stipulated in the implementing provisions for certain circumstances.
3	(2), third indent: include the place where the applicant's major operation takes place.	The introduction of a second criterion would lead to conflicts of competence.
4	(2), fourth indent: administrative reasons should not hinder authorisation.	This clause may only be applied in extraordinary cases.
5	(2), last indent and (6): include the presumption that conditions are deemed to be fulfilled as a general rule.	The text has been changed.

Article 116

1	(1), second indent: disregards the fact that irregularities in transit are often detected after the procedure has been discharged on the basis of formal consistency.	After the procedure has ended, irregularities can lead to administrative penalties and post-recovery.
2	(1) Management of guarantees should be introduced in NCTS. End of procedure: goods and the transit document are properly delivered to the authorised consignee; principal's obligation fulfilled; irrelevant if messages IE 44 and IE 25 exchanged.	NCTS does provide for management of guarantees. The other points here concern the implementing provisions.

Article 117

1	Can a transfer take place without customs being informed? Conditions for the transfer of rights and obligations should not be left to the competence of customs administrations.	Rights and obligations under the customs rules cannot be transferred without involving the competent customs authorities.
2	Could a trader operate a 'virtual warehouse' in the EU (no limitation to a specific country in the EU)?	Yes.

Article 119

1	Will there be a catalogue of usual treatment?	The current catalogue could be transferred to the guidelines.

Article 120

1	Recourse to equivalent goods is conditional upon using the IPR system. Strict controls instead of restricting the current possibility of using equivalence.	This will remain possible. In certain cases (e.g. agricultural goods), restrictions are necessary.
2	(3), second indent: import under bilateral preferential trade agreements allowed as equivalent under the IPR system?	For the granting of equivalence, it is irrelevant whether or not the import goods benefit from a preference (as long as they are under IPR, no customs debt is incurred).

Article 121

1	Important rules must be in the CC.	COM shares this view; there are only differing appreciations of what is 'important' and what are technical details for the CCIP. .

2	MS's possibility of establishing simplified procedures should remain (Article 97(2), (3) CC).	The Single Market requires a level playing field for all operators. Simplifications should be the same throughout the Community

Article 122

1	(1)(b) Permission to forward mixed ship supply consignment under the external transit system.	It will be possible to place Community goods under external transit if the conditions to be laid down in implementing provisions are fulfilled, but the goods will lose their Community status.
2	(2) (c) Include Annex A to the Istanbul Convention (replaced, between contracting parties, the ATA Convention).	A reference to the Istanbul Convention should suffice. The details will be laid down in the implementing provisions.

Article 124

1	Exemptions from guarantees?	Guarantee waivers will be possible.
2	Provision for mandatory seals should be in CC.	In order to maintain flexibility, this will be dealt with in the implementing provisions.

Article 125

1	Suspension of internal Community transit while the goods are outside the EC (cf. Article 123; Article 5 of the Convention on Common Transit).	Nothing will change (implementing provisions).
2	(2)(c) Annex A to the Istanbul Convention (replaced, between	A reference to the Istanbul Convention should suffice in the CC.

	contracting parties, the ATA Convention).	

Article 126

1	No possibility to store Community and non-Community goods together?	This will be possible where authorised.
2	Does export to warehouse lead to repayment?	Yes.
3	(a) '...duties, and/or ...'. These goods should be subject to neither import duties nor commercial policy measures.	The text is correct. In legal terms, 'or' means 'and/or'.
4	(1)(b) –Article 85: as goods loose their status, duties can be charged; if duties are lower than any refund, the export refund will be reinstated and a sanction may be imposed. Result: excessive treatment.	This is not problematic because (normally) duties are not lower than any refund. In any event, nobody is obliged to enter Community goods for the customs warehousing procedure.

Article 127

1	'Public warehouse', mentioned in this Article, is not defined until Article 130(2) and not before Article 127.	Article 127 is part of the common provisions for all kinds of storage. Specific terms only used for specific kinds of storage ought to be defined in provisions laying down the rules for the storage procedure in question.
2	(2) Public customs warehouse: depositor should not be responsible if the holder of the authorisation does not comply with the obligations arising from the procedure.	This provision corresponds to the current Article 102(1) CC. This is the legal basis for type B customs warehouses. This type should exist in future as well (Article 525(1)(b) CCIP). No change in substance is

		intended.

Article 128

1	Many traders welcome the new rule that there will not be any time limit for temporary storage.	Comment is welcome.
2	(3) Add ‘unforeseeable circumstances’.	The text has been changed.

Article 129 [replaced by Article 130 REV4]

1	Minimal treatment in temporary storage.	The scope of usual forms of handling / minimal treatment has been extended. Therefore, allowing usual forms of handling is justified only under the procedures mentioned in Article 119.
2	Ending of a warehousing procedure in the case of onward carriage should be allowed under external transit (not exportation).	This is possible.
3	Simplifications, e. g. accepting in-house bookkeeping as records and waivers for the guarantee.	For temporary storage, there is no authorisation holder who can be granted simplifications.
4	(1) Replace ‘the holder of the goods’ by ‘the person making the summary declaration’.	In some cases, this person may no longer be around.

Article 130 [replaced by Article 131 REV4]

1	Virtual warehousing must remain possible. Opposed to limiting customs warehousing to areas approved by customs (D or E warehouse permits).	No change with regard to the current situation is intended.

Article 132

1	Free zones could be amalgamated with customs warehouses.	With regard to free zones of control type II this has been done. Further steps could be considered at a later stage.

Article 133

1	(3) Reference to para. 2 instead of 1	The text will be changed.

Article 134

1	(1)(b): 'end use procedure' instead of 'use procedure'.	The text has been changed.

Article 135

1	Where goods that directly enter free zones from third countries must be presented to customs, only Community goods do not have to be presented. Is this intended?	Yes, where goods directly enter free zones from third countries, they usually have the customs status 'non-Community goods' (see also Article 85(a)). This is the reason why in principle all goods must be presented. However, Community goods covered by internal transit or Article 86 may benefit from Article 136.
2	(2)(a) reintroduce clause '…where the customs procedure in question permits exemption from the obligation to present goods,	It is assumed that this provision is not needed in practice, at least not throughout the Community.

	such presentation shall not be required' (Article 170(2)(a) CC).	

Article 140

1	Temporary admission should not be limited to persons established outside the EU.	This is the principle of temporary importation but there are exceptions.
2	(2), first indent: export is not always intended (Article 576 IPCC).	Exceptions will be laid down in the implementing provisions.

Article 141

1	(2) EC-wide communication to find out who had already used which goods for what time in the EC is too complicated.	This provision is taken from Article 140(2) CC. An electronic environment will simplify the exchange of information. Furthermore, the current Article 583 stipulates that the relevant documents must contain the indication 'TA goods'.

Article 142

1	At the time of presenting the declaration, the operator should be sure whether the conditions for total relief can be fulfilled. Partial relief should be retained only if present experience proves its necessity. Time limit and establishment in the EC could be taken as the essential basis for the decision (made at the end of the operation) on total or partial relief. Additional cases under the committee procedure.	These rules are taken from the Istanbul Convention.

Article 144

1	As it is very similar, end-use could be merged with release for free circulation before tariff classification has been definitely established. Separate procedure not necessary.	The end-use procedure allows for customs supervision of the goods, which is not necessary in other cases of release for free circulation.

Article 145

1	'Destruction' is not a procedure (no authorisation, declaration, release or suspension of duty). Instead of merging it with inward processing: provision in Article 105 (together with abandonment) and one on extinction of the customs debt in Article 72(2)(b).	Apart from destruction within the meaning of Article 105, it is also necessary to permit destruction under inward processing (see current Annex 76, Part A, Point 2 CCIP).
2	Alternative to merging processing under customs control and inward processing: allowing immediate release of goods for free circulation under the tariff heading to be achieved by processing.	This is not possible because inward processing suspends import duties.

Article 146

1	Keep standard coefficients.	The current system is not in line with technological and economic changes.

Article 147

1	Doubts about removal of examination of the economic conditions: equivalent treatment of operators in the EU difficult. MS could send large number of applications to COM to slow down process.	Equivalent treatment of operators in the EU is ensured because the examination of the economic conditions must take place at Community level (this will be provided for in the CCIP**).** The examination is mandatory only if evidence exists that the essential interests of Community producers are adversely affected by an authorisation.

2	Strengthened controls instead of restricting the principle of equivalence.	Unlimited use of the principle of equivalence may lead to abuse.
3	(2), first indent: cases except repair, second indent: exchange. What about repairs without exchange?	Repair is a processing operation and may be carried out under inward processing in accordance with Article 147(1.)

Article 154 [replaced by Article 150 REV4]

1	Opposed to restricting relief to the holder of the authorisation.	The rights and obligations can be transferred.
2	Maintain the possibility for operators in the non-Annex-I sector to use the current system of 'differential taxation'.	This proposal does not contribute to the simplification of the CC.

Article 156 [replaced by Article 152 REV4]

1	No need for standard exchange as a special case (cf. Article 120(1)(a): principle of equivalence).	The consequences differ from other cases (duty-free import).
2	(2) 'Same combined nomenclature code': re-examine wording (e.g. standard exchange of defective automobile tires: HS codes 4011 and 4012).	Normally, the standard exchange of defective automobile tires is permitted in accordance with Article 152(3).
3	(3)(2) Waiver of obligation to exchange used goods: Community-wide liberalisation instead of national competence.	Provision will be revised accordingly.

Title IX	**DEPARTURE OF GOODS FROM THE CUSTOMS TERRITORY OF THE COMMUNITY**	**(Articles 158 – 166)**

General comments

1	Clarify: terms 'export' and 'goods leaving the customs territory' used as supposed synonyms.	Not all goods that leave the customs territory are exported, e.g. transit via Switzerland. They are not intended to be synonymous and the term export or exportation is used only for Community goods traded to a third country.

Chapter 1, Section 1 and 2 (Articles 158-162) [Replaced by Articles 154, ex-155, 156, 157 & 158 Rev4]

General

1	Allow goods of different status and from different procedures to be carried to the office of exit under one procedure.	The question of mixed consignments will be addressed in the implementing provisions. The status of the goods must be known to the customs authorities.
2	Pre-departure declaration; Lodging of customs declaration (export/transit): time limit set before goods (irrespective of origin, customs status) are to leave the customs territory; lodging by the trader responsible for this transaction or by representative. Long pre-departure declaration periods hinder flexibility of last minute loading of containers (urgent shipments).	The time limits to be set for prior declarations need not and will not simply mirror those imposed elsewhere, for example the 24 hours before shipment demanded by the USA. These limits will be set at the shortest reasonable period that will allow for effective risk analysis and will take account of the various types of trade and modes of transport. Special rules will be created for authorised economic operators, for postal traffic and for shipments between neighbouring countries, such as Switzerland, or for goods moving under computerised customs procedures, such as the New Computerised Transit System. In practice, the majority of existing trade already meets the likely

		deadlines for declarations, which, in most cases are likely to be 2 hours before departure, for electronic declarations, or 4 hours for paper, as pre-departure information is already commonly available and widely electronic.
3	Opposed to systematic security checks on export (only consignments to countries that have imposed the obligation on the exporter to deliver security-related information and European obligations concerning air freight exports). Information in addition to what is required of foreign competitors: distortion of competition.	It would be easy to limit the EU's response to identical or reciprocal arrangements. However, while the Community fully respects and supports those requirements that are already in place, it believes that a global approach to security and safety is necessary and that it has a duty to protect not only its own trade and citizens but those of its trading partners as well — all of them, not just those imposing additional security measures on their own imports. The Commission has therefore looked beyond measures restricted to the control of imports and now looks to promote reciprocal arrangements founded upon risk-based controls of exports as well, to assure the security and safety of the Community's own exports and, in this way, to reduce the need for its trading partners to impose import restrictions. Reciprocally, traders in countries which undertake to control their own exports to the EU to similar standards will benefit, under international arrangements, from similar facilitation by the EU.
4	Concerns: security checks should not result in lorries being delayed.	EU policy, reflected in the modernized Code, is that export controls, including security and safety checks, are primarily carried out at the place where the exporter is established, i.e. at inland offices of export rather than border offices. Only additional risk-based checks, for substitution or interference, will be carried out at the border office of exit. Most goods should pass through unhindered. The Port of Dover (which made this comment) is not a border office of exit so such checks should not affect them. If non-local traders were to be discouraged from

		using it as an office of export, then delays would not occur.
5	Concerns: reversion to transaction-based instead of system-based targeted control methods. Periodic or aggregated customs declarations no longer used.	A simplified declaration or notification, which invariably precedes a periodic or aggregated customs declaration, is, in itself, a customs declaration, so will meet the requirement (Article 154 Rev4). A periodic or aggregated customs declaration can still be lodged later, as at present.
6	Global notification only with access to trader's records? Authorisation on accompanying document?	Will be addressed, as it is now, in the implementing provisions. Security and safety requirements will, however, require electronic notification to the office of exit (See Article 104(2) Rev4)

Article 158

1	Contradiction: pre-departure declaration to office of export which is responsible for security checks vs. global supply chain security (security checks at the final point of loading in the EU). Heavy administrative burden for traders.	The Commission believes that this emphasis on control of exports and the use of the customs declaration itself as the pre-departure declaration for goods leaving the Community under a customs procedure is very much in line with recent WCO documents on the responsibilities of parties in an end-to-end international supply chain. Given that export controls will primarily be undertaken at the place where the exporter is established, this may actually ease the burden on Community exporters.
2	Definition of 'customs office of export'? What is its position?	See comment 4 on General above, and Article 154(4) of Rev4. Definitions will be laid down in the implementing provisions, where necessary.
3	Common data set and format are vital for the functioning of the new provisions — explicit mention.	A single new provision in Title I (Article 5(2)) Rev4 provides for the committee procedure to be used to determine a common data set and format for the data messages to be exchanged under the customs rules.

Article 159

1	(1) add 'Where goods leaving the customs territory of the Community require a customs declaration, this declaration shall be lodged under the rules for the procedure involved.'	Included in principle in Article 156 Rev4.

Article 160

1	Add: 'Where goods leaving the customs territory of the Community do not require a customs declaration, a summary declaration…'. Summary declaration for Community goods?	Included in principle in Articles 157 &158 Rev4.

Article 161

1	Articles 161 and 74 should follow the same guidance (criteria for determining the format of the import and summary declarations).	Both of these provisions are replaced by a single new provision, Article 5(2) in Rev4, for the committee procedure to be used to determine the data and format for all messages to be exchanged under the customs rules.
2	(3) Responsibility for declaration according to 'incoterms'.	The text has been improved in Article 158 Rev4, but, given the different delivery variants, it is difficult to come up with a precise yet simple text. The responsibility must lie, in the end, with the carrier, as the person who 'brings the goods into the customs territory' and it will be up to him to collect the proper information from the exporter or the receiver.

Chapter 2, Section 1 (Article 163, 164) [Replaced by Articles ex-155, 156 & 157 REV4]

General

1	Maintain distinction between 'exportation' and 're-exportation'	New Articles 156 and 157 Rev4 re-establish this distinction.

	(entirely differing legal consequences; clarity and legal security: international conventions; present Customs Code).	

Article 163

1	Opposed to additional administrative burden: non-Community goods leaving the customs territory of the Community need to be reported (e.g. goods in customs warehouses that are shipped outside the Community: export declaration).	The current provisions that privilege free zones in that, in certain cases, no presentation of the goods to customs and no summary declaration, for either import or re-export, is required are obviously an unacceptable loophole in terms of security and safety. In such cases, however, the import summary declaration will normally serve as the export declaration as well. Consignments of goods re-exported, e.g. ex warehouse, are already subject at least to the requirement of notification to customs, under Article 182(3). The changes in the modernized Code do not add to this burden, except that additional, security-related data may be required in the notification. The introduction of these measures does mean that traders will, in certain circumstances, have to obtain and provide certain information they may not hold at present. This is an inescapable consequence of the safety and security concerns that have led to these measures.
2	(3) 'Goods dispatched to Heligoland shall not be considered to be exports from the customs territory of the Community' (Article 161(3) CC): general principle; should be in CC (not IPCC).	The general principle is that goods dispatched to territory outside the customs territory of the Community are considered to be exports. As goods dispatched to Heligoland are an exception to this principle, that exception can be properly defined, along with others, in the CCIP.
3	(4) Goods delivered to a port in transit, for which Article 83 and the obligations under Article 81 should not apply: Article 163 to	The transit procedure is ended by the presentation of the goods at the port, and the goods are placed, albeit for a short period or even

	be extended: 'Where goods are delivered in transit to the port of exit for consequent carriage outside the customs territory, the acceptance of the goods by the carrier, or on his behalf, shall require no separate declaration provided the latter assumes responsibility for the normal stay under customs supervision as an integral part of transhipment, with reference to the preceding transit declaration'.	momentarily, into temporary storage. The transit document is the customs declaration under Article 81(2). NCTS will generally meet the requirements of 81(3), but otherwise the transit document is the summary declaration as well. The goods are subsequently re-exported as a transhipment. In such cases, the import summary declaration will normally serve as the export summary declaration as well. In practical terms, reference to the transit declaration within a simplified re-export declaration, or manifest, may be sufficient.

Article 164

1	Global instead of single messages (AEO). Authorisation number on accompanying document. Customs office of exit can check data online; no access to the IT system of the AEO. AEO register number.	All of these matters are to be considered in the implementing provisions.
2	AEO system will not work without common database at AEOs.	Article 8(4) of Rev4 addresses this point.
3	(1) Possibility of lodging an export declaration in a different Member State and in a different location, based on a Single European Authorisation, should be explicitly mentioned.	The *e*Customs vision statement includes the aim that 'an exporter can lodge his export declaration in electronic form from his premises, irrespective of the Member States in which the goods are leaving the Community'. The reconsolidated export requirements (Articles 154-159) in Rev4 CC, together with Articles 92 and 102, provide the framework for this objective.
4	(3) Clarify: declaration which has been lodged by the declarant must be transferred to the customs office of exit by the customs authorities.	The rules for the transfer of data between customs offices will be laid down in CCIP, under Article 5(2) Rev4 CC. The ECS will provide for the transfer of necessary data between the office of export and the office of exit.

Chapter 2, Section 2 (Article 165) [replaced by Article 159 Rev4]

Article 165

1	'Benefiting from duty relief': Community status of the goods would not be maintained (as is the case in outward processing).	The purpose of this new Article is to cover certain cases of temporary export (notably under the ATA carnet system) which are dealt with in the CCIP but without an explicit basis in the former Code. These goods lose their status under Article 85.
2	Welcomes temporary export in the Customs Code.	Noted.

Chapter 3 Article 166 [replaced by Art 160 Rev4]

Article 166

1	Opposed to laying down the rules on relief in the CCIP.	Noted, but there is no movement of rules here from CC to CCIP.

Title X	**FINAL PROVISIONS**	**(Articles 167 – 170)**

Article 167 [replaced by Article 161]

1	Explicit reference to Article 1 (ensure that the Committee is guided by the objective of facilitating trade).	The Committee is bound by Article 1, even if there is no explicit reference.

Article 168 [replaced by Article 162]

1	Need for increased transparency.	COM will continue to contribute to a transparent legislative process.
2	(3) 1 month deadline: too short to examine decisions of the Committee.	Since the CC has been in force, Parliament has never made use of the possibility to intervene in the legislation process leading to the adoption of CCIP provisions.

Article 169 [replaced by Article 163]

1	Worried about the replacement of Reg. (EEC) No 918/83 by Articles 112 and 116 (cases do not require continuous review by a committee).	Since 1983, the thresholds have never been changed. However, in principle, no new rules are intended.

Article 170 [replaced by Article [replaced by Article 164]]

1	Date of application: future Member State candidates must have the complete text sufficiently in advance.	This will considered at the time of adoption.
2	Analyse CCIP before decision on the date from when the	The modernized CC and the new CCIP will enter into force on the same

	modernized CC is to apply.	date.

ANNEX II

Modernised Customs Code – Annex to Impact Assessment

EVALUATION OF THE QUESTIONNAIRE FOR PARTIES INTERESTED

IN THE MODERNISED CUSTOMS CODE

I. Purpose of this document

This document summarises the results of the consultation exercise on the potential impact of the modernised Customs Code on business and trade, which was carried out during December 2004 and January 2005, based upon a questionnaire published on the Internet in December 2004. The responses from business and trade stakeholders are evaluated in this document.

II. Background

The Communication from the Commission on a simple and paperless environment for customs and trade, dated 24 July 2003, proposed a complete overhaul of the Customs Code, an objective which was endorsed by the Council resolution of 5 December 2003. As a result, a modernised Customs Code has been drafted by the Commission, and progressive versions of this draft have been discussed with Member States' customs administrations and European trade federations for more than a year.

The main reasons for simplifying customs legislation are:

- reducing costs to business by easier access to the rules and a more uniform application of them, creating a level playing field for economic operators throughout the EU;
- increasing legal certainty for citizens (better regulation); and
- allowing traders fully to benefit from the possibilities offered by IT procedures in the Single Market.

During the summer of 2004, an open public consultation was carried out on the Internet. The numerous comments received from various economic operators, Member States, and third countries have been taken into account in the latest drafting of the modernised Customs Code, Revision 4.

In December 2004, a questionnaire was published on the Internet, in order to give all interested parties a final opportunity to submit comments on how the implementation of the modernised Customs Code will impact their business.

A total of **236** replies to the questionnaire have been lodged:

- 14 European trade federations and associations;
- 198 national traders, trade federations, chambers of commerce and other stakeholders;
- 23 national administrations of Member States and 1 candidate country. (These comments are not included in the following assessment. The likely impact on customs administrations is to be separately evaluated.)

All Portuguese customs agents who answered the questionnaire sent in identical replies. The same replies were also used by Spanish customs agents. There were 123 entries of this kind in total. For statistical reasons, they will be identified in the following presentation of the results.

III. Evaluation of the questionnaires

1	What are the current priorities of your business for changing the Customs Code?

Summary of the main issues brought up by the stakeholders

The top three priorities of stakeholders are simplification and rationalisation of rules and procedures, harmonisation of data across the EU, and the one-stop shop. They all agree that the ultimate goal of modernising customs in the EU must be savings in time and, thereby, in costs.

Numerous stakeholders pointed out that it was difficult to differentiate between priorities because all issues are interlinked and are largely of equal value with regard to the vision of a paperless environment for customs and trade.

Simplification and liberalisation

Some stakeholders expressed their opinion that new solutions must support the supply chain and be based on modern IT solutions instead of paper-based procedures. They should also be simple, in order to save costs for business in terms of operation and education. The stakeholders strongly support common standards in the application of regulations and controls in the Member States.

Other issues which have been raised included further liberalisation and simplification:

- rules of origin;
- control of agricultural products (no obligatory certificates for non-sensitive products);
- reference to existing controls (including ISO-certified internal controls) in order to prevent multiple controls.

Harmonisation of data across EU

Many stakeholders pointed out that even slightly different approaches by the Member States would raise the time and effort required for customs transactions. Therefore, many stakeholders favour not just a single set of rules but also a single common IT system, rather than harmonised data sets based on today's solutions. In the same context, some stakeholders suggested opting for best practices rather than merging today's systems. Some stakeholders would like to see closer cooperation with the WCO with regard to standard data elements and global standards for authorised traders.

Single window, One-stop shop and single access point

Numerous stakeholders mentioned that they would like to lodge their declaration to a single customs office and to have to communicate with this office only. Some of them suggested that every Member State ought to have its own single access point.

Other essential issues

Most stakeholders would like a single authorisation for AEO, recognised by all Member States. Some of them see single comprehensive European authorisations as a priority.

Statistical overview

A	Simplification and rationalisation of rules and procedures (please specify if there are any particular rules that you have in mind)	1.) 29* + 12** 2.) 16* + 123*** 3.) 2*
B	Harmonisation of data across the EU	1.) 20* + 10** + 123*** 2.) 17* + 1** 3.) 11*
C	Harmonisation of customs-trader interfaces across the EU	1.) 12* + 3** 2.) 6* + 6** 3.) 10* + 6**
D	Common Customs Information Portal (information needed for customs transactions in all Member States)	1.) 5* + 3** 2.) 2* + 1** 3.) 10* + 6**
E	Single Access Point for customs transactions (e.g. customs declarations)	1.) 15* + 6** 2.) 7*+ 3** 3.) 5*
F	"single window" interface with each EU customs administration for all services linked to import/export transactions, even if they are provided by other authorities and agencies than customs	1.) 12*+ 6** 2.) 6* + 7** 3.) 7*
G	"one stop shop", for goods to be controlled by different competent authorities at the same time and at the same place	1.) 14* + 5** 2.) 15* + 4** 3.) 7* + 1**

2	**Would you consider it to be sufficient if the current customs procedures should be handled under national automated systems without any changes being made to the Customs Code?**

Summary of the main issues brought up by the stakeholders

The majority of other stakeholders expressed the opinion that it is necessary to modernise the Customs Code for the following reasons:

The two main objectives of modernising the Customs Code – higher security standards and trade facilitation – can only be reached if customs systems are automated and made more consistent. Harmonised procedures and IT systems, possibly worldwide, are key priorities for most international companies. Today's systems and procedures lead to high costs for business, market distortions and inefficiencies. EU business will therefore be at a competitive disadvantage unless there are changes to the Customs Code.

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* National customs agents, traders, trade federations, chambers of commerce and other stakeholders.

** European trade federations and associations.

*** Identical replies by Portuguese and Spanish customs agents.

The concept of authorised economic operators and simplifications of customs legislation can only be realised by changing the Customs Code. The same is true for taking into account security concerns. Some stakeholders expressed their wish to maintain simplifications already achieved.

Portuguese, Spanish and a minority of other stakeholders believe that the current Customs Code would be sufficient for the following reasons:

Portuguese and Spanish stakeholders think that, in the short and medium term, the systems established in Member States are "safer" than an EU system. They believe that it is impossible to establish systems as provided for in the multi-annual strategic plan within the next 15 years.

Other stakeholders also consider today's customs systems to be sufficient. They are opposed to stipulating the use of automated solutions and would prefer leaving the choice between paper and automated solutions to the traders. Some stakeholders would like to introduce the customs systems before defining the legal basis for them.

Some traders believe that changes to the CC will have only limited effect throughout the EU, because the CC will be interpreted in different ways by the MS.

Statistical overview

A	Yes	16* + 1** + 123***
B	No	51* + 13**
C	I don't know.	1*

3	**Would you consider it to be sufficient if for each customs procedure, a national automated system existed which would not be interoperable with other Member States' systems? Please give reasons for your answers.**

Summary of the main issues brought up by the stakeholders

The majority of traders expressed the opinion that it is necessary to provide for automated systems which are interoperable with other Member States' systems for the following reasons:

Interoperable customs systems are fundamental for the concepts of single window, one-stop shop and single access point. These are the clearly defined objectives of *e*Customs and the Lisbon agenda. Furthermore, interoperable customs systems are essential if security-related measures are not to damage legitimate trade.

Maintaining national systems which are not interoperable would continue to create unnecessary costs, due to the fact that international traders have to implement the various systems and deal with this complexity. Some stakeholders believe that interoperability will encourage administrations to become more customer-oriented and competitive.

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* National customs agents, traders, trade federations, chambers of commerce and other stakeholders.

** European trade federations and associations.

*** Identical replies by Portuguese and Spanish customs agents.

Portuguese and Spanish stakeholders gave the same answer to this question as to question No 2. Two traders are satisfied with their national system because they are not international operators and believe that most shipments are subject to control by only one Member State.

Statistical overview

A	Yes	5* + 123***
B	No	60* + 14**
C	I don't know.	2*

4	**Which of the following changes of the modernised Customs Code do you anticipate will save costs to your business or will simplify the way that you conduct your business after the change-over period? Please tick each box below that applies. If you expect increased costs after the change-over period, please specify what you anticipate these costs to be.**

Summary of the main issues brought up by the stakeholders

Implementing new customs systems

Most stakeholders believe that business costs will be higher if the Customs Code is not modernised and interoperability between customs systems of the Member States is not ensured.

Some stakeholders from countries with automated customs systems which allow for electronic communications between customs and traders believe that the costs of implementing new customs systems and education will be higher than potential savings. Other stakeholders are afraid that their traffic may be delayed if the accompanying paper documents must be converted into electronic format.

National restrictions on customs representation

This issue is controversial among stakeholders throughout the EU. Portuguese, Spanish and a small minority of other stakeholders are opposed to the abandonment of national restrictions on customs representation. Most of the latter suggest a clear definition of the status of customs service providers, based on customs compliance record and a proven standard of competence, experience and educational qualifications, at EU level, in order to ensure a high standard of qualifications.

Most of the other stakeholders expressed the opinion that these restrictions must be abandoned. This will reduce costs of compliance and increase the level of standardisation. These stakeholders also point out that common professional qualifications, which guarantee high standards with regard to customs declarations, should apply to all those that could benefit from centralised customs clearance, single European authorisations and simplified procedures.

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* National customs agents, traders, trade federations, chambers of commerce and other stakeholders.

*** Identical replies by Portuguese and Spanish customs agents.

** European trade federations and associations.

Authorised economic operators (AEOs)

Most stakeholders welcome common rules on AEOs in the draft modernised Customs Code (which mainly incorporates amendments to the present Customs Code which have recently been accepted by the Council and the European Parliament).

Some stakeholders pointed out that the concept of AEOs must not lower existing levels of facilitation for economic operators. Some stakeholders suggest freeing AEOs from the requirement to make transaction-based declarations and advocate periodic customs audits instead, in order to save costs, rather than reduced exposure to physical inspections.

Numerous stakeholders were not prepared to make a statement before the relevant implementing provisions are known.

Pre-arrival/departure declarations

This issue, although resulting from a recent amendment of the Customs Code, is still controversial among stakeholders throughout the EU. However, numerous stakeholders believe that pre-arrival/departure declarations in the context of security-related measures may reduce costs on their business if the goods are released at arrival, giving predictability for customers.

Some of the stakeholders relate cost saving to the following conditions being in place:

- sufficient deadlines;
- use of international data sets;(controversial: same procedures and data requirements as US);
- no more data required than today;
- re-use of data for export or import declarations; not exclusive use for security purposes; export/import declaration may be used as pre-declaration
- prior introduction of a common customs IT system, to ensure no paper-based pre-declarations;
- setting out of advantages for AEOs;
- no mandatory pre-declarations;
- exemptions for minimum value or quantity, in order to prevent logistics problems for SMEs.

Numerous stakeholders expect increased costs caused by the obligation to lodge pre-arrival/departure declarations for the following reasons:

- delayed release of goods;
- extra work load; invoicing often takes place after the goods have left the consignor's premises;
- transaction-based concept;
- necessity to remodel well established IT systems for simplified procedures.

Administrative penalties

Many stakeholders welcomed the Commission's attempt to harmonise administrative penalties throughout the EU. They point out that divergences in the level of infringements and administrative penalties imposed in different MS have caused distortions. Some of them would prefer to see more precise and clearer rules in the Customs Code.

Customs fees

Numerous stakeholders welcomed the harmonisation of customs fees. However, many consider that they should be totally abolished.

Disassociation of customs declarations from the location of the goods

Most stakeholders are in favour of this change. Some stakeholders are concerned that they may not know the identity of the means of transport or who to contact in some cases as the accompanying documents will be sent with the goods, which are rarely physically checked by the declarant.

More flexible changes of the customs rules; guidelines, explanatory notes

Numerous stakeholders are in favour of these issues. Some traders stress the importance of trade consultation.

Other essential issues

- Deadlines for keeping accompanying documents.
- No traders register; registration of AEOs should suffice.
- Simplification of Swiss corridor T2.

Statistical overview

A	General use of IT procedures and interoperability (Art. 5, 6, 162)	53* + 11**
B	Harmonisation of data across the Community (Art. 5)	54* + 11** + 123***
C	Abolition of monopolies for customs representation; providing for common quality standards (Art. 9)	32* + 9**
D	Community-wide simplifications for Authorised Economic Operators (Art. 10, 104)	42* + 10**
E	Stricter deadlines for decisions and appeals, extension of the right to be heard before a negative decision is taken (Art. 11, 17. 59)	34* + 10**
F	Extension of binding information to other areas, such as valuation (Art. 14)	31* + 9** + 123***
G	Common rules on administrative penalties (Art. 19)	30* + 5** + 123***
H	Harmonisation and limitation of customs fees (Art. 22)	29* + 9** + 123***
I	Community-wide guarantees and rules for comprehensive guarantees (Art. 35 – 43)	34* + 10** + 123***
J	Improved rules on the incurrence and extinction of the customs debt in case of non-compliance (Art. 46, 72)	26* + 6** + 123***
K	Simplification of the rules for the determination of the customs debt (Art. 52, 53)	20* + 5** + 123***

* National customs agents, traders, trade federations, chambers of commerce and other stakeholders.
** European trade federations and associations.
*** Identical replies by Portuguese and Spanish customs agents.

L	Centralisation of the place of the incurrence of the customs debt (Art. 54, 104, 114)	17* + 4**
M	Better aligned rules on repayment/remission (Art. 67-71)	24* + 6** + 123***
N	Pre-arrival declarations bringing forward risk-analysis and opening the way for pre-selection for controls, so that Customs resources can be better planned and deployed, with the consequence not only of better security, the primary objective, but also of instant release of innocent goods upon their arrival at offices of entry (Art. 73-75)	26* + 6** + 123***
O	Disassociation of the customs declaration from the presentation /location of the goods, allowing, where authorised, immediate release without using transit (Art 92, 102)	31* + 12**
P	Simplification of rules for amendment/invalidation of declarations (Art 94, 95)	29* + 7** + 123***
Q	Simplification and alignment of special procedures (Art. 113 - 153)	32* + 9** + 123***
R	Extension of usual forms of handling (Art. 119)	17* + 2** + 123***
S	Extension of the principle of equivalence (Art. 120)	23* + 5** + 123***
T	More flexible changes of the customs rules; more widespread use of guidelines and explanatory notes; imposition of an obligation to resolve problems resulting from a divergent application of the customs rules (Art. 162)	31* + 5** + 123***
U	Pre-departure declarations based on existing export declarations or notifications (Art. 154)	26* + 8** + 123***
V	Summary prior declarations for goods leaving the Community for which neither an export declaration or re-export declaration is required, e.g. direct transhipments in free zone	17* + 6** + 123***
W	Other	11* + 2**

5	**Do you anticipate that the proposed changes in the modernised Customs Code, taken as whole, will save costs to your business or will simplify the way that you conduct your business after the transitional period?**

Summary of the main issues brought up by the stakeholders

Apart from Portuguese and the Spanish stakeholders, most believe that, taken as a whole, the modernised Customs Code will, in the long run, save costs to their business by abandoning paper-based procedures and providing for Community-wide approval for AEOs, for centralised clearance, for a single customs portal and for the one-stop shop. Some of the stakeholders, however, fear a movement back to transaction-based solutions because of mandatory pre-arrival/departure declarations.

Some stakeholders are also afraid that the implementing costs of new IT systems will be higher than the potential savings, particularly in Member States which already have automated customs systems and simplifications for authorised traders. Others believe that the additional safety provisions will lead to higher costs.

Numerous stakeholders found it difficult to judge the impact of the modernised Customs Code on their business before the implementing provisions are known.

Statistical overview

A	Yes	44* + 11**
B	No (please specify)	24* + 3** + 123***

6	**Which of the proposed changes are, in your view, not radical enough and which additional changes to the current Customs Code should be made? Please tick the relevant boxes and give reasons for your answers.**

Statistical overview with summary of the main issues brought up by the stakeholders

A	General use of IT by traders and administrations (Art. 5)	17* + 7**	• Deadline for all MS: 2007. • Data sets must comply with international standards. • CC must be more detailed with regard to single IT customs system. • Instead of computerising today's paper-based procedures: use simplified procedures, stairway concept instead of transaction-based procedures. • Customs systems must be implemented simultaneously in all countries in EU. • Paper documents should not be part of these requirements.
B	Merging customs regimes	10* + 2**	• Cost-effective solutions (best practice) based on supply chain concepts instead of merger; goal: unitary relief. • Harmonisation of national legislation, other than customs legislation, in context with imports/exports (import VAT, Stat, excise, etc.). • Art. 156/157: different procedures for European and

* National customs agents, traders, trade federations, chambers of commerce and other stakeholders.
** European trade federations and associations.
*** Identical replies by Portuguese and Spanish customs agents.
* National customs agents, traders, trade federations, chambers of commerce and other stakeholders.
** European trade federations and associations.

			other goods. Almost impossible to separate goods and use different procedures. Merger of procedures.
C	Merging simplified declaration systems	11*	• Deadlines for implementation.
D	Community-wide simplifications for Authorised Economic Operators (Art. 10, 104)	33* + 11**	• Authorisations making the status of AEOs valid in all MS, without additional national criteria. • Controversial: simplifications ought to be accorded Community-wide or not. • Periodical instead of transactional declarations; local clearance with reduced data set. • More precise information about simplifications must be set out in the CC.
E	Common rules on decisions and administrative appeals (Art. 11, 17)	15* + 2**	• Simple and rapid border crossing based on commercial documents • Establish a decision board for all EU binding decisions • Art. 11(2): 2-month deadline for customs. • No extension period.
F	Common rules on administrative penalties (Art. 19)	14* + 4**	• Administrative penalties will not be necessary in an environment with modern customs systems. • Simple system is necessary to avoid distortion of competition. • More precise common rules.
G	Guarantee requirements (Art. 35-43)	12* + 5**	• Single EU-wide comprehensive customs guarantee covering all customs procedures. • AEOs should not be required to provide a guarantee.
H	Incurrence and extinction of the customs debt (Art. 46, 72)	6* + 2**	• Principle of economic duties must be enforced. • Criteria must be clarified.
I	Repayment/remission (Art. 67-71)	8*	• Repayment/remission if goods have been destroyed. • Automatic notifications of exchange rates on a daily basis instead of OJ consultation. • Art. 67(3): 30 days instead of 3 months. • Art. 68: Interests if duty has been overcharged.
J	General provisions on special procedures (Art. 114-121)	10* + 4**	• More simplifications with regard to authorisations, follow-ups and audits. • Application for cross-border customs activities filed at place where main activities take place. • Change between special procedures without declaration (e.g. storage, processing).

K	Storage (Art. 126-130)	15* + 3**	• Transit could be abandoned if the entire EU customs territory was deemed to be a warehouse.
L	Processing (Art. 145-153)	13* + 4**	• Simplify the system of equivalence. • Maintain alternative systems of equivalence *and* exchange.
M	Others	20* + 7**	Cf. below.

Other essential issues brought up by the stakeholders

Risk management and physical inspections

- EU-wide risk management with identical risk criteria.
- Risk analysis and release at first point of arrival in the EU; physical inspection, other than related to security measures, at final destination.
- Allow non-fiscal customs checks on transhipment cargo at final port of destination in EU.

Other issues

- Common customs audit methods.
- Declaration of the intended procedure not necessary in a summary declaration; supplementary declaration should be sufficient.
- Postponed accounting: Periodic accounting should include customs duties, excises and other charges.
- Reduce customs documentation burden on cargo carried between Member States by sea.

ANNEX III

Outcome and conclusions from joint customs/trade seminars on the modernized Customs Code and electronic customs

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1. TOLEDO FORUM ON ELECTRONIC CUSTOMS (MAY 2002)

The Forum was a milestone in the further development of electronic customs, for the following main reasons:

- Trade, and also candidate countries and Member States (MS), endorsed the general approach of the Commission and thus gave the "green light" to take this initiative further
- Trade wants to be actively involved in further developments.

1. Vision

The Commission presented the following vision statement:

- Making the Single Market a reality for customs and trade
- Electronic declaration to be the normal method
- Harmonisation of requirements
- Common electronic interface/single entry point with customs at EU level
- Admissibility checks at frontier, other controls inland
- Increased facilitation for good compliance (Stairways concept)
- Partnership of customs and trade
- Access to traders' commercial records to improve level of facilitation
- Use of Internet
- Community-wide risk management approach
- Customs processes to be re-engineered and transformed using the developing electronic environment as a catalyst
- Single Window/One-Stop-Shop
- Single European Authorisation

The conclusions of the participants were as follows:

- General principles acceptable for both customs and trade
- Other governmental requirements must be integrated, including agriculture (CAP) and excise
- A timetable, methodology and specific milestones are needed
- Mechanism necessary to ensure standard application across the Community
- Simplified requirements must be agreed and legal practicalities addressed before developing IT solutions
- Genuine simplification is required and not simply the existing complex arrangements with new names
- Legislation must be transparent and in line with WTO requirements
- Closer coherence with tax requirements necessary

- Commission's responsibility to promote cooperation at Community level
- Need to overcome language difficulties in communication
- Commercial confidentiality must be respected
- Customs simplification should lead to reduced costs for both business and customs
- Efforts should be aimed at a single speed of development across the Community

2. Cost/benefit analysis

Conduct a cost/benefit analysis of different options

3. Operational issues

Single European Authorisation (SEA)

– Avoid the need to register for customs purposes in every MS
– Findings of Project Group to be taken into account
– Joint audits by Member States' teams

Roles and responsibilities at border and inland customs offices

Need for Community legislation

NCTS/EMCS:

These developments need to be merged in order to avoid duplication of controls over the movement of goods

Single Window/One-Stop-Shop:

– Customs are the natural contact point
– Wider government support is necessary
– A governmental network is needed for proper communication
– Introduce quickly for maximum benefit
– Commission to promote at Community level

Access to information for trade

– Commission to coordinate national initiatives
– Definition of "traders"

Access to commercial systems

– Trade to agree to such access in exchange for an increased level of facilitation
– Examine possible simplifications with regard to declaration requirements.

4. Legal issues

- Redrafting of the Customs Code and the implementing provisions; re-engineering of procedures
- Operational development in parallel
- Future legislation must be clear, transparent and unambiguous
- High level of security necessary
- Digital signatures, encryption and certification must be addressed
- Satisfactory level of security needed for the use of the Internet
- SEA to be binding across all Member States
- Reduction to three types of customs regimes (import, export and duty suspension) to be carefully handled
- Need to consider harmonisation of penalties
- Legal framework for memoranda of understanding to be considered
- Data protection and liability issues to be taken into account

5. Standards

- International standards (UN, WCO) to be used wherever appropriate (same standard at EU level)
- Usable unique consignment reference number (UCRN) is needed

6. Future steps

- Action plan with dates and methodology
- Dialogue between customs and business is essential
- Current Transit Group as a model?
- Virtual Consultation Group
- Take forward Customs/Trade partnership (e.g. Swedish EMPACT model)
- Build on NCTS and CCN/CSI experience
- Customs Business Reference Model for Community applications
- Commission to be a proactive leader and co-ordinator and to secure political commitment and necessary funding
- Export procedure to be developed as the first pilot implementation of electronic customs
- Training of staff at all levels necessary for new working practices
- Operational staff to be involved in the developments
- Benchmarking and best practices to be promoted under Customs 2007
- Short to medium-term developments must go ahead in parallel
- The needs of third parties have to be taken into account

2. SEMINAR ON AUTOMATED EXPORTATION IN VUOKATTI

(DECEMBER 2002)

2.1. Objectives

The seminar on electronic customs was the follow-up to the Toledo seminar (May 2002) and its purpose was to launch a pilot project on automated exportation, as well as to thoroughly examine data issues. Both questions were examined from the legal/operational and IT points of view and, as part of electronic customs, they were discussed in connection with the Container Security Initiative (CSI).

2.2. Main conclusions and results

The seminar conducted an in-depth examination of data (requirements, reliability, security, data flows) and automated exportation, in particular.

In the short term, while awaiting the overhaul of the Customs Code, it has been proposed to set up a pilot project on automated exportation (taking into consideration CSI requirements that may have to be included).

2.2.1. Pilot project (PP) on automated exportation

Only three Member States volunteered to participate to the pilot project (PP), namely DE, IT and BE. Traders expressed an interest in participating through selected companies.

The scope and criteria set out in working document TAXUD/801/2002 have been endorsed and the PP would cover exports from one MS via another (normal and simplified export procedures, cases involving outward processing and re-export of non-Community goods) by road, sea, air or rail. A sub-group identified data elements to be exchanged between the customs office of export and the customs office of exit.

The PP would also cover accompanying documents (electronic reference or electronic document).

Member States not participating in the PP would be kept informed of developments.

2.2.2. Data issues

In general:

Customs access to "commercial information" was discussed. It was agreed that the trader must first decide what to do with the goods (release for free circulation, re-exportation etc.); then, in accordance with pre-determined standards, the trader could enter the data in a file and give access to customs. One delegation stressed the responsibilities of traders and emphasized that their obligation to lodge customs declarations should remain.

Although in most Member States electronic signature is not a problem because a specific coded access key has been given to each trader, in terms of interoperability between Member States an electronic signature will be necessary for reasons of accountability. Centralized clearance will remove some of the problems, as traders can be identified in their own country.

A clear distinction must be made between "release of goods" and "clearance of goods" (the latter meaning entry for a specific procedure).

On import

The principle of a seamless transaction wherever possible (i.e. same information on import and on export) was endorsed. The group was of the opinion that the differentiation between normal and simplified declarations should be maintained, but accepted that a trader should have the option to provide a full declaration at once.

On export

Future data on exports should be based on the work done in the SAD section of the Customs Code Committee (CCC).

Traders suggested that,although significant progress has been made, real efforts for data simplification and harmonisation should continue.

The US requirements for maritime transport (24-hour rule and data elements)were discussed.

Data elements required by the US will be part of the pilot project on exports. However, difficulties in complying with the 24-hour rule were mentioned by Member States and traders and the group urged the Commission to continue negotiating export conditions with the US.

Derogations (both on time and data) should be allowed for authorised traders.

2.2.3. Unresolved issues:

The US currently requires export data from carriers and/or customs authorities, depending on the Member States concerned. In some Member States, there are national customs agreements with the US and, although information is required from traders, customs "filter" that information before giving it to US, while in other Member States the data go directly from the carriers to US customs.

The discussion highlighted a divergence of views. Some Member States do not agree that pre-arrival information should be given directly to US customs, while others are reluctant to involve customs in the flow of export data between the traders and US customs.

The need to amend Art. 793 CCIP was discussed in order to better address the responsibility of the customs office of exit, where two or more Member States are involved at exportation. The question will be further examined and discussed in the CCC.

2.2.4. Convergence framework

The discussion was based on the IT strategy paper and action plan. The Group agreed on the methodology proposed and on the need to further pursue the convergence framework.

The following priorities were identified:

– security aspects (data and operators),
– data communication standards
– common reference data/services.

The Group suggested the creation of a task force for each priority.

2.2.5. Interfaces and data exchange

The Group suggested the following: to re-use the experience and products from the NCTS project wherever applicable, to define standard messages and a communication platform, to

use industry standards where they exist and to undertake actions to develop standards, where necessary.

Member States should concentrate on the data exchange with traders and include other agencies (VAT, police etc.). Interfaces between Member States are a priority.

Co-operation with trade is important, inter alia because of trade's experience on this issue. Understanding of business needs is essential for IT.

2.2.6. IT and export procedure

The Group suggested the following:

- to create an interface with Member State automated export systems based on NCTS requirements,
- to provide a solution for the transfer of data towards CSI requirements,
- to examine the use of security-related data coming from the US.

2.2.7. Risk Management

The Group recommended examining the possibility of a single risk management framework for all customs processes, as well as the possibility of common risk profiles and central storage facility for risk data.

2.2.8. Co-ordination

The Group stressed the importance of co-ordination between the different working groups and the clear definition of roles and responsibilities.

If these working groups (task forces) are created, priorities in Member States should be reconsidered in terms of the allocation of human and financial resources.

3. WORKSHOP ON AUTOMATED EXPORTATION (BRUSSELS, JUNE 2003)

3.1. Objectives

The main objectives of the workshop were:

– to inform all Member States and traders about the ongoing discussions with pilot Member States and discuss user specifications and milestones of the pilot project, in order to submit a definitive document to the Directors-General of Customs in July 2003,

– to identify potential adaptations to NCTS, in order to address all requirements for an EU-wide automated exportation system,

– to discuss the main features of an EU-wide automated exportation system,

– to encourage Member States which export via another Member States and/or have experience with an automated export system to join the pilot project,

– to present and discuss a work plan for the pilot project and a timetable for the transition of all Member States towards the definitive system of automated exportation.

3.2. Main conclusions

During the workshop, four other Member States expressed their wish to be part of the pilot project, bringing the total number of participants to seven.

The participants at the workshop appreciated the positive impact of creating an automated export system; it will improve the quality of the administration's work. Other positive aspects and goals mentioned were simplification and facilitation for the administration and for traders.

However, trade representatives requested that:

- extra costs for trade should be avoided while new systems were being designed,
- there should be coherence between existing and future automated systems,
- NCTS and EMCS should be merged or aligned in order to avoid duplication for trade.

During the ensuing discussion the following specific conclusions were reached:

First phase of the pilot project

There was broad agreement to continue with the first phase of the pilot project (common domain, exchange of data between Member State customs administrations)

The export pilot project and the current legal framework

There were concerns that, even with the pilot system, the automation of the export system would impose requirements which are not covered by the present legal system, although the presumption was that the export pilot system would be implemented within the present legal framework (e.g. exit messages). The export system should not be tailored to fit into NCTS, as that would have a major impact on customs staffing and resources.

Discussion of the inclusion of a deadline followed by an inquiry procedure in the export system - similar to NCTS – proved controversial, as current legislation contains no such instrument and no obligation to export. It was agreed that the issue will have to be looked into in further detail by the Committee and with the VAT and excise duty departments.

From the second phase onwards the automated export system should cover all the various legal aspects connected with export

There was a consensus that an automated export procedure should cover and comply with VAT requirements, excise duty requirements, CAP requirements etc. There should no longer be a number of different procedures and systems. The automated export system should be accepted by the different administrations as covering the other systems. As for EMCS, it was stated that once the automated export system is in place no extra EMCS messages should be exchanged alongside the export system.

The participants asked for the VAT/excise duty/CAP administrations to be included and to play an active part in the development of the automated export system at EU and national levels, so that special legal requirements from these sectors can be included in the automated export system. However, these special requirements would not be applicable to all export goods, but only to those which fall under these regimes.

The customs administrations pointed out that a way must be found to ensure that, given the present staffing and resources, work would not be shifted from VAT/excise duty/CAP administration to the customs administrations.

Participants agreed that VAT authorities have to accept the message from the customs office of exit as proof of export. Otherwise there are no real benefits for trader.

How many messages and which messages will have to be exchanged to make the system work and to satisfy the legal requirements and needs of the different administrations/parties concerned

There was agreement that these questions should be dealt with once the functional specifications have been drawn up. The need for VAT/CAP/excise duty administrations and the trader to know and prove that the goods have left the EU must be taken into consideration.

It was noted that there should be a link between the functional specifications for transit and the functional specifications for export

The need to standardise data between Member States was underlined several times.

The number of messages and data should be reduced to the minimum required.

Security versus trade facilitation

Some customs administrations need to receive the export data (communicated to the US by the trader) in order to perform risk analysis, although not all Member States share this view.

Traders are willing to give the data required by the US for security checks to their local customs administration also, provided there is an agreement between US and EU.

Accompanying documents

It was accepted that, in a Single Window environment, accompanying paper documents would not be necessary.

However, a solution has to be found for the transitional period. This solution should be within the scope of the PP.

Pilot Member States should contact other (fiscal, agriculture, etc.) administrations to create a Single Window internally.

Common or national interface between customs and trade?

Traders stressed that the needs of multinationals and SMEs might differ. It was therefore agreed to initiate discussion using a step-by-step approach.

Need to streamline procedures

There was a general consensus on the need to streamline customs procedures and avoid divergences at national level in the export procedure.

Technical solutions for matching the export declaration to the presentation of goods at the office of exit

The use of a barcode was suggested.

The utility of the UCRN was questioned, especially for « mixed » consignments; this issue should be given further consideration.

Installation of a Minimum Common Core (MCC)

It was felt that the question of whether a MCC ought to be installed for the export system, along the lines of NCTS, should be postponed until further detailed discussions have taken place with the various Member States.

The workshop defined the following special cases for which solutions will have to be found:

- What will happen if the customs office of exit has received no export message from the office of export?
- How to deal with partial exports (partial exit and partial shipments to different countries)?
- How to deal with exports where the consignor is situated in a different country from the exporter?
- How to deal with simplified procedures?
- How to deal with the archiving of electronic messages?
- How to create a link between the automated export system and NCTS?
- How many messages are needed for the automated export control system?
- UCRN or MRN or both?

3.3. Timetable

There was agreement that the pilot countries should start operating the pilot export system from 1 January 2005. Other countries were invited to take part in the first phase of the PP.

It was suggested that the non-pilot countries join in on the date the amended Single Administrative Document comes into force, i.e. 1 January 2006. Finland stated that they were aiming for that date. However, other non-pilot countries took the view that the functional specification will have to be drawn up first before they can make a commitment with regard to the date.

4. SEMINAR ON THE MODERNIZED CUSTOMS CODE IN BUDAPEST (MARCH 2005)

The European Commission, together with the Hungarian customs administration, hosted a conference on the modernisation of the Customs Code from 9 to 11 March in Budapest, Hungary, in the presence of Mr Kovács, Member of the Commission responsible for Taxation and Customs Union.

The conference brought together traders and customs and information technology experts from national customs administrations and the European Commission.

The conference was the final stage of the consultations on the draft modernized Customs Code. Stakeholders had already been given the opportunity to comment on the Commission's plans via a public consultation held in 2004.

4.1. Main results of the Conference

The participants (both Member States and traders) welcomed in principle the modernisation of Customs Code and the Commission's transparency in consulting all stakeholders.

Traders expected a radical simplification and streamlining of customs procedures, and would like to see customs administrations act as one.

There was a strong request by trade representatives that traders should be involved at every stage of the legislative procedure, for both the Customs Code and its implementing provisions.

4.2. Summary conclusions by Working Groups

Four working groups, made up of representatives of customs administrations and trade, examined key issues of the modernized Customs Code (Revision 4) and reported the following results to the Plenary:

4.2.1. Working Group 1: Rights and obligations of the declarant under the modernized Customs Code

There was general approval of the direction of the modernized Customs Code, but reservations surrounding key issues of customs representation and the AEO concept (Articles 9 and 10).

Should representation be restricted?

There was general consensus that representation should be open.

However, some participants requested that a definition of the term “customs representative” be included in Article 4.

Should professional representation be limited to accredited agent, with AEO status?

No automatic link between professional accreditation and AEO status.

General agreement on the importance of AEO status and the right of representatives to be granted this status.

Views on a proposal to delete Article 9(6) were equally divided.

No consensus on official accreditation

*Should the criteria for accreditation be set by the industry (self-regulation), or by EC regulation**?***

General agreement that professional representatives should meet common quality criteria, e.g. financial solvency, integrity and competence.

Some participants indicated that regulation of the profession is a matter for subsidiarity or for other EU regulations, rather than for the Customs Code.

Some participants believed that market forces must apply.

Some participants felt that accreditation should be by administrations or by the federations themselves.

Should such accreditation only be mandatory for practice in more than one MS?

General consensus that no geographic restriction should apply.

Should there be any limit on the number of accreditations?

No.

What benefits should result from this status?

Under the AEO scheme, the same benefits should be applied to operators and customs representatives (provided the conditions are fulfilled).

Conclusion

The meeting welcomed the Commission's commitment to transparency and considered that further discussions with representatives were needed on this key issue.

4.2.2. Working Group 2: Facilitations and simplifications under the modernized Customs Code

1. *Should all simplifications/facilitations be part of the AEO concept? - Which simplifications/facilitations should be granted to AEOs operating in more than one Member State?*

- All simplifications and facilitations under the AEO concept.
- Minimum requirements to be set to become an AEO.
- Common EU criteria and obligations for customs and trade.
- An AEO can apply for one or more simplifications at the same time.
- For one or more Member States, a single application should be lodged at the customs administration where the trader's main office is located.
- Customs to consolidate “approval” from other Member States within an agreed time frame.
- Depending on simplification/facilitation needs, security and other measures come into effect.
- The standardization of the sanctions systems was welcomed.

2. *Is centralised clearance attractive for economic operators even in cases where VAT and excise duties must be paid in a different Member State from that in which the customs debt is incurred?*

   - YES.
   - Support for fully centralised clearance.
   - Harmonization of national differences.
   - Closer cooperation and alignment of practices between customs, VAT and statistics processes and procedures.
   - Member States and Commission to find solutions to the sharing of 'own resources'.

3. *Do you agree that customs/fiscal representatives should be able to benefit from local/centralized clearance? To what extent can representatives benefit from these facilitations?*

   - YES**.**
   - Requirements and obligations are to be set.

4. *Should companies with different legal personalities be able to benefit from a single authorization?*

   - YES.
   - Better use of the possibility of ONE Community legal entity.

5. *Should the same criteria be applied where a trader operates only in one Member State?*

   - YES.
   - The same criteria even for customs and trade.

6. *AOB*

   - Pre-arrival/pre-departure declarations.
   - Paper documents in an electronic environment.
   - SAD harmonization should involve 100 % of the data.
   - Sharing of control between office of entry and office of import.

4.2.3. Administrative Penalties

- 13 different countries
- 13 different systems
- 13 different opinions

Harmonisation is DESIRABLE – but is it POSSIBLE?

Working on the assumption that something is possible, and working as a group of experts, the group concluded as follows:

Aspects for consideration:

- Financial interests of the Community
- Treaty obligations

- EU Constitution
- Fundamental rights
- Community or national competence
- Impact on national judicial process

Article 19 CC should include:

- Definition
- Scope/boundaries with criminal sanctions
- Types of administrative penalties (monetary amount, withdrawal of privileges)
- Jurisdiction (important for centralised clearance)
- Liability (responsible person/s)

CCP should include:

- List of infringements
- Aggravating and mitigating factors
- Minimum and maximum penalties
- Special circumstances
- Corrective measures

Definitions to be laid down

- Monetary charge
- Withdrawal, suspension or revision of authorisations

Formal Warnings

A Formal Warning is a penalty in some Member States, in others it is an administrative act. Opinion was divided on its inclusion.

Confiscation

In some Member States, confiscation can be an administrative penalty, in others it is a sanction under criminal law.

Types of infringement

- Customs debt affected,
- No debt, e.g. safety and security issues,
- Exclude matters not directly under customs competence (e.g. responsibilities imposed by non-customs legislation).

Issues of scope

Objective is to harmonise administrative treatment of infringements.

Should not limit criminal penalties at national level.

Text should be revised taking the above into account.

Minimum/Maximum

Dissuasive, effective and proportionate

Aspects to be considered:

- Related to the debt
- Related to the infringement

- Related to both
- Nature of offence
- Scale of offence
- Other factors associated with an operator

Jurisdiction

Principle:

Avoid double jeopardy in respect of administrative penalties in cases where more than one Member State is involved.

4.2.4. Customs debt: Changes under the modernized Customs Code

- Overall, simplifications were welcome, although the trade expressed concern that the CCIP will have a significant effect, and that a similar degree of consultation will be required when drafting the CCIP.

- The essence of the changes remained uncontested apart from few technical areas that require further consideration.

Guarantees

- As regards guarantees, administrations supported the new provisions resulting in increased protection of Community financial interests, while the trade is concerned that there may be an exponential increase in costs.

- Two issues were raised by the trade concerning the increase in the level of the comprehensive guarantee, resulting from :

- 1) the future coverage of non-declared or incorrectly declared goods including further a posteriori checks,

- 2) harmonisation of the period of limitation in the case of criminal liability

- Concerning the validity of the guarantee, the mention of fiscal debt to be covered as well as the Community coverage was emphasized by administrations. The trade would welcome the simplification of the procedure for obtaining the guarantee.

Incurring of customs debt

- The merger of the current Articles 202 to 204 in Article 46 was welcomed by the trade and administrations. The trade called for a single comprehensive article in the CCIP. One customs administration stressed the need to make sure that no debtors are lost in this new structure.

- The place where the debt is incurred should be stated more clearly in Article 54(1) (reference to the simplified procedure needs to be clarified as regards the place of the establishment).

Recovery/Repayment of duty

- Several administrations considered the right to be heard as redundant because the existing right of appeal at the national level achieved the same objective. They also feared that

debtors may use the insolvency procedure in order to escape their responsibility. This provision could dramatically increase the administrative work.

- It was stated that Regulation1150/2000 would have to be amended in so far as it refers to both the establishment of the debt and to the notification to the debtor.

- Doubts were expressed as to whether compensatory interest could be replaced by interest in case of late entry in the accounts because of the time difference between the debt being incurred and being notified. Conversely, the risk of abuse of inward processing and temporary admission was raised.

- The merger of the non-recovery and repayment/remission procedure and the alignment of deadlines were welcomed.

Settlement of the debt

- The extension of the cases of settlement of the debt was welcomed, but administrations recommended that administrative penalties should actually be put in place before the extended settlement cases enter into force.

- A problem relating to a mistranslation in Article 72(1) (a) (iii) was raised.

- Administrations considered Article 72(2)(e) to be too broad and wanted to limit it further.

4.3. Follow-up

The draft modernized Customs Code will be amended to take the fullest possible account of the views expressed during the Conference.

After a second consultation between the relevant services of the Commission, the text will be translated and submitted to the Commission, and subsequently to the Council and European Parliament.

5. SEMINAR ON ELECTRONIC CUSTOMS IN WROCLAW (APRIL 2005)

The Member States have committed themselves to introducing electronic services, within the framework of e-Europe and, in particular, e-Government. The Council Resolution of 5 December 2003, which endorsed the Communication by the Commission on a simple and paperless environment for customs and trade, calls on the Commission to "draw up, in close co-operation with Member States, a multi-annual strategic plan, aiming at creating a European electronic environment, which is consistent with the operational and legislative projects and developments scheduled or underway in the areas of customs and indirect taxation". The objectives, responsibilities, timeframes and funding of the implementation of electronic customs will be laid down in a Council/EP Decision.

The main purpose of the seminar in Wroclaw, Poland, was for Member States, traders, IT solution providers and third countries to review a non-paper containing elements for a

Commission proposal for this Decision, based on the Electronic Customs Multi-Annual Strategic Plan (MASP). The Council Decision, supplemented by a more detailed strategic plan, will be the 'road map' to electronic customs in the Community.

5.1. Main results

The participants of all working groups agreed that the aim is the speedy and well co-ordinated implementation of electronic customs. Traders' expectations of the simplification and streamlining of customs procedures are very high. Therefore, the setting of binding deadlines in the Decision was generally seen as essential. However, there was some disagreement among participants as to whether or not a more detailed description of all issues relating to electronic customs was necessary before a binding timetable was agreed upon.

There was a general consensus that there should be a dedicated standing committee, in order to ensure effective, comprehensive management. Furthermore, traders must be closely involved in the development and implementation of electronic customs initiatives; the Commission and all Member States will provide trade consultation mechanisms.

5.2. Summary conclusions by Working Groups

Five working groups made up of representatives of the customs administrations of Member States and of third countries, trade and IT solution providers examined key elements of the proposal for a Council decision on electronic customs. They reported the following results to the Plenary:

5.2.1. General remarks

There was a consensus among all working groups that electronic customs was both desirable and necessary and should be implemented as soon as possible and practicable. Both Member States and trade agreed that a paperless environment, as proposed in the MASP, will simplify trade, including for small and medium-sized enterprises. A Decision on electronic customs would be very much welcomed by most participants at the seminar.

Scope

One Working Group (WG) expressed the participants' impression that the general approach of the non-paper was comprehensive and that the document struck an acceptable balance between a high-level political decision (brief political statement of intent) and an enduring reference document (detailed commitments). Two WGs expressed their participants' opinion that the scope of the paper ought to be broader, encompassing business processes associated with electronic customs. Two WGs also wanted the scope to include the secure and systematic electronic exchange of data with third countries.

Level of detail, multi-annual strategic plan and relationship to other initiatives

Numerous participants called for a descriptive business plan of the overall project, in order to have a full picture of what should be achieved and to avoid misunderstandings. Some of the participants would have preferred discussing the Multi-Annual Strategic Plan rather than the non-paper on elements for a Commission proposal for a Decision on electronic customs. One WG warned of potential conflicts between electronic Customs and other initiatives.

Terminology and definitions

Numerous participants considered that some of the terms, such as Community, non-Community components, and some of the concepts, such as Single Window, Single Access Point, One-Stop-Shop, economic operators etc., needed to be further clarified.

5.2.2. Justification (Title 1)

Numerous participants felt that a stronger case needed to be made for the electronic customs programme. They suggested placing the emphasis on economic and political reasons (added value for European business and customs administrations; cf. vision and objectives) in favour of electronic customs, rather than legal justifications, which two WGs would prefer to see in a preamble to the Decision. Some participants expressed the opinion that a cost/benefit analysis must be included in the non-paper. Another working group came to the conclusion that electronic customs must be placed within a broader perspective (WCO developments, WTO, creation of a "True Uniform Trade Bloc"). Some participants suggested omitting the reference to the modernized CC because it has not yet been adopted.

5.2.3. Vision and objectives (Title 2)

Presentation of the vision

Two WGs expressed the opinion that the vision as such ought to be separated from the objectives and the means to achieve the vision. They suggested reformulating the vision:

- WG 1: An integrated, secure and open Community customs system which allows Member States to act as if they were one administration;
- WG 2: Reference to the added value to supply-chain logistics, to customs processes and to the value for society.

Register of economic operators

Both trade and administration representatives recognized the need for registration on a Community-wide basis. However, the members of one WG expressed the opinion that it is not yet clear whether a centralised database is the best solution. In their opinion, the main objective must be that economic operators have to register only once.

Single electronic access point

Traders generally expect a uniform system throughout the EU, a common system with common interfaces, including a unique set of minimum data to be exchanged, whereas Member State administrations expressed the opinion that a common interface ought to be implemented, but not necessarily a common customs system. They did conclude, however, that there must be an agreement on a standard message format to be used.

Other objectives mentioned by the participants

- Alignment of customs procedures;
- Standardised customs processes/systems; standardised set of data (basis: WCO model);
- Uniform treatment of traders in customs processes;
- Recognition of the diversity of trade across the EU;
- Electronic exchange of declarations and accompanying documents;

- Paperless environment, not only within the Community, but also internationally;
- Availability of systems (24h/365d);
- Conformity with "European interoperability framework for pan-European *e*Government services";
- Increased safety and security;
- Environmental benefits.

5.2.4. Milestones and deadlines (Title 2)

Most participants agreed that clear deadlines and an ambitious timetable are necessary. Numerous representatives of customs administrations believe that the draft Decision should not be tabled before the undefined elements, such as business processes, standards, and requirements, have been discussed and approved by all Member States. The trade representatives had reservations about this suggestion.

One WG suggested a detailed review of the multi-annual strategic plan (MASP) to fix all milestones, while another WG felt that this plan should evolve and that certain milestones should be able to move.

Some representatives of Member State administrations expressed the opinion that it was essential that the map attached to the Multi-Annual Strategic Plan be approved by the competent authorities. Some of them suggested delegating this task to the Customs Policy Group instead of including it in the decision. Trade representatives, however, felt that this would not solve the problem, because it was necessary to engage other Commission services and national agencies involved in the control of import and export goods in addition to customs. Furthermore, the Decision would have to stress that the various projects must be implemented by all Member States at the same time.

5.2.5. Responsibilities (Titles 3- 5)

There was a general consensus on the statements in section 3 of the non-paper.

Commission

One WG suggested that the Commission should take the lead in delivering common standards and requirements.

One WG expressed the opinion that the Commission ought to co-ordinate both Community and non-Community components.

Co-operation between Member States and the Commission

The participants of one WG called for the requirement for prior approval by the Commission of development work by the Member States to be reviewed, with a view to more efficient co-operation. Another WG expressed the opinion that a communication plan must be established between Member States and the Commission in order to avoid blocking Member State initiatives which move more quickly than the MASP time schedule.

One working group expressed the view that the nature of the Commission's support for Member States must be further specified in the Decision.

One working group asked the Commission to clarify "escalation paths" for all stakeholders. It also suggested that the Commission should play a key role in promoting electronic customs solutions to the traders, even within the Member States.

Co-operation between Member States

One working group suggested that co-operation between Member States should be enforced, with a view to adopting cost-sharing models.

Other issues

One working group suggested that the role of government agencies other than customs must also be covered.

The members of one working group agreed that national customs authorities should not charge fees for access to the customs system. However, free access points, established by the Member States, remained controversial.

5.2.6. Management and implementation (Titles 6, 7, 9)

Management structure

There was general consensus that there must be an effective integrated management structure for the entire electronic customs programme, involving both the Commission and Member States, in consultation with trade.

One WG presented the idea of a management structure, consisting of a Steering Committee, a Programme Management Body and Project Management Bodies.

Everyone agreed that the scale, significance and complexity of the project warranted a dedicated standing *Steering Committee*; however, whether this Committee should be the Customs Policy Group, assisted by the Electronic Customs Group, the Electronic Customs Group itself, or another group, remained a matter for debate.

The *Programme Management Body* would include process-related, technical, and functional aspects. Some participants considered that the Electronic Customs Group would be best suited for this task – others felt that it should be the Customs 2007 Committee.

The Programme Management Body would be assisted by subgroups, *Project Management Bodies*, which would be responsible for the development of individual projects.

Other issues

The Decision should include a commitment by all those involved to report to the Steering Committee on the progress of the various projects.

One WG suggested implementing a MASP review mechanism. If the time schedule is subject to change, a mechanism for consulting all stakeholders has to be in place.

5.2.7. Candidate Countries (Title 10)

This issue was not controversial. The participants of one WG felt that candidate countries should take part in the preparation and development of the projects.

5.2.8. Trade consultation (Title 8)

This issue was not controversial. The participants of two WGs expressed the opinion that it was desirable to put in place a consultation mechanism bringing together the Commission, Member States and a representative cross section of economic stakeholders involved in the supply chain, on a regular basis. One WG concluded that Member States and the Commission should look at best practices in the Member States. Some trade representatives requested additional workshops and information about the scope of electronic customs systems and the dependencies between them.

One WG suggested that a subject of the consultation should be the impact on business processes and corresponding cost in order to allow the economic operators to plan for the necessary investments and have their applications ready in time.

5.2.9. Financial provisions (Title 11)

One WG expressed general concern about the costs of implementing electronic customs. Numerous participants called for a cost/benefit analysis, in conjunction with a process analysis, before the budgetary/resource (human and expertise) approval can be sought. For this purpose, the MASP ought to be reviewed and completed by July 2005.

One WG concluded that distribution of costs between Member States and the European Community must be further clarified.

One WG suggested integrating the section on cost in the section on division of responsibilities.

6. SEMINAR ON THE IMPLEMENTATION OF THE SAD REFORM AND ON THE HARMONISATION OF PRE-ARRIVAL/PRE-DEPARTURE, SUMMARY AND INITIAL DECLARATIONS IN VILNIUS (APRIL 2005)

The seminar addressed two sets of issues in the course of the two one-day sessions. These issues were the implementation of reform of the Single Administration Document (SAD) (session 1) and the harmonisation of pre-arrival/pre-departure, summary and initial declarations (session 2).

Participants particularly appreciated the opportunity to exchange ideas with all other stakeholders.

6.1. Implementation of SAD reform

General remarks

The groups, and the presentations by speakers from Member States that have already introduced the reform, highlighted the need for a sufficient level of preparation and resources to implement satisfactorily the transition to the new norms. It was stressed that the workload involved was considerable and should not be underestimated.

The possibility for Member States to implement the reform earlier than 1.1.2006 means that both old and new legislation is, and will be, applicable in the Community. This means that declarations established in any of the two versions of the legislation should be recognized by the other customs administrations. To this end, the following action will need to be taken:

– On the basis of the information provided by Member States, the Commission should regularly update the information posted on the TAXUD website in relation to the implementation plans and the situation in all Member States.

– A comparative table of the old and new provisions, including in relation to the codes used, should be prepared and made public.

Dissemination of information, promotion

More generally, participants felt that guidelines for the use of the SAD should be produced and made public so as to better ensure an equivalent level of implementation of the provisions concerned. A working group organized under the Customs 2007 programme could be set up for this purpose.

There was a general feeling that the reform should be better promoted. To this end, the Commission should improve the information available on its website and give it more visibility.

Likely delay in the implementation of the reform by some Member States

This point was closely examined and yielded the following conclusions.

– Transitional arrangements will need to be agreed for those countries that do not manage to implement the reform in time .

– These delays will have negative consequences in Member States that have observed the implementation deadline, as SADs will have to be handled manually and stamped, despite the fact that these Member States will already be using computerized customs clearance systems based on the new provisions and codes.

– The full implementation of other electronic customs systems, in particular ECS, might be compromised; indeed, ECS is based on the new SAD requirements and will not accept data presented in the way it was before the reform.

– The delays will have repercussions on traders, who will not be able to reap the full benefits of the reform, will have to cope with different data sets for longer and bear the consequences of an incomplete initial implementation of ECS.

- As a consequence of the above points, an appeal was made to Member States that have difficulties in meeting the 1.1.2006 deadline to shorten their implementation slippage.

Further changes related to the SAD

– In view of the implementation of the electronic customs project, full harmonization of the remaining optional SAD boxes will need to be sought, although special solutions (e.g. sets of national codes) will need to be arranged for data collected in areas where Community policies and procedures are not yet harmonized, e.g. excise duties.

– The provisions relating to the calculation of duties should be strengthened further, so that, as a general rule, these calculations are made by customs systems on behalf of the traders.

– As regards additional documents, it was felt that information on the value for customs purposes (DV1) should in future be included in declaration data. Furthermore, the inclusion of T5 information will need to be actively pursued.

– The inclusion in ECS of indirect exports made by tourists should be studied further.

– ECS will need to be capable of accepting data which are relevant for security purposes and are requested on behalf of other government agencies.

– Further harmonisation of codes used in SAD/TARIC/NCTS should be pursued in order to increase data coherence throughout the data collection chain.

Registration of economic operators

The principle of a single registration in the EU was firmly supported. This includes both AEOs and non-AEO traders. To achieve this, it was generally felt that a database maintained by Member States on the lines of the transit customs offices list would be suitable. However, the question of whether this database should be centralized or decentralized remained open to discussion. In this context, it was widely acknowledged that AEO status would need to be identified in the database.

The following conclusions were reached on specific issues:

– The structure of the code as it already exists in SAD provisions was deemed acceptable for the future development of the database.

– The list of data to be held and made available by national administrations should include a unique identification number (be it the VAT number or another number attributed by the national administrations), the name and address, contact point reference, indication of AEO status and the simplifications available to the trader concerned. These elements should be coded, wherever possible, in order to avoid possible linguistic problems. It was understood that Member States might hold additional information in their own databases; however, these elements would not be made available to other parties.

– Views differed on the issue of identification of third countries and occasional operators identification.. However, the risk of duplicating registration in different Member States, which already exists, was generally recognized.

– A discussion on possible access to the database by traders proved inconclusive. This matter requires further analysis, in particular in relation to data protection.

6.2. Harmonisation of pre-arrival/pre-departure, summary and initial declarations

The groups addressed the following questions.

Would it be appropriate to simply align EU requirements on US requirements without further discussion?

While participants generally recognized that common agreed standards would be beneficial for traders and administrations at large, and that there was a need to avoid competitive disadvantages for European traders, there was clear support for the approach adopted so far by the EU, i.e. to define the best possible solutions that would ensure the security of the supply chain on the basis of clearly defined needs. It is understood that this exercise should maintain the EU's trade facilitation objectives and adherence to multilateral instruments.

The participants regretted that the objective of recognizing at import the export controls carried out at the other end of the supply chain was not achievable at the moment. This is due to the inability of the main trading partners to agree that such export controls could be carried out on behalf of the importing country, which creates a problem in terms of reciprocity.

General questions concerning data

Subject to the clarification provided below, the groups gave a positive assessment of the data sets, as proposed in document TAXUD/3415/04 Revision 2.

There were requests to delete certain data elements, notably those concerning the value, freight costs and the currency code. Clarification was sought on other aspects, such as the commodity code and its format, but with no clear conclusion as to the appropriateness and feasibility of the requirement in all cases. It was suggested that the possibility of defining exceptions and aggregate codes should be explored. These issues will be pursued in the SAD section of the Customs Code Committee.

Particular attention was devoted to the quality of collected data, and to its ownership; this prompted discussions on the reliability of the data submitted by the operators, and the responsibilities involved if the data prove to be incorrect.

The need to avoid duplication of data collection was accepted as one of the main objectives.

Data flows

The need to include security pre-departure data in an updated version of ECS was clarified, but the desirability of avoiding a split between the fiscal and security components of the summary declarations was stressed.

Furthermore, the option of presenting separate summary and initial declarations was strongly supported.

The groups also established that the current version of NCTS does not cover security requirements and that a separate submission of data might be requested.

Finally, there was broad agreement that summary declaration requirements should also be valid for temporary storage.

AEOs

Unsurprisingly, traders supported the idea of a reduced data set for AEOs. However, it was noted that no reduction of data requirements was provided for in the US CT-PAT programme, which similarly involves traders who meet increased compliance requirements. In this particular case, the advantages for traders lie more in the reduced level of control than in reduced data requirements. This discussion provided the opportunity for traders to stress the importance of recognition of EU AEO status by trading partners, particularly the US.

In this context, it is necessary to clarify the situation in respect of DG TREN proposals for transport provisions and, in particular, to ascertain the exact content of those proposals in terms of data requirements. A reduced EU AEO data set would not be beneficial if, a larger data set would have to be provided for transport provision purposes,

Transhipments

Participants stressed that duplication of information (import + export information) should be avoided. Instead, it was generally agreed that pre-arrival data at import should be sufficient (apart from the addition of the means of transport on re-exportation).

Possible differentiation between modes of transport

In principle, there should be no distinction between modes of transport, but special rules might need to be considered in particular situations such as pipelines, electricity, express couriers and postal services. Rail and road traffic may also deserve special attention (this problem could be studied by a working group set up under Customs 2007).

Prohibitions and restrictions

The provisions relating to prohibitions and restrictions should be included in the considerations at a later stage, in order to cater for the Single Window and One-Stop Shop.

Next steps

Working groups on individual issues will need to be set up (e.g. on pre-arrival declarations for road transport) and for the drafting of SAD guidelines.

7. SEMINAR ON CENTRALISED CLEARANCE IN HELSINKI (JUNE 2005)

7.1. Objectives of the Seminar

The European Commission, together with the Finnish customs administration, hosted a conference on centralised customs clearance as a follow-up to the Budapest Seminar, to bring Member States, candidate countries, trade, industry, freight forwarding and transport circles together with the European Commission, with the purpose of discussing and clarifying the concept of centralised clearance.

The seminar dealt with the links between centralised customs clearance and the concepts of Authorised Economic Operator (AEO) and Single European Authorization (SEA). Legal and administrative issues arising from centralised clearance were also analysed in order to form a solid foundation for the drafting of the Customs Code Implementing Provisions (CCIP), both under the current Customs Code and under the modernised Customs Code. Information technology-related issues, essential for the application of centralised customs clearance, were also discussed to ensure that the findings and recommendations of the Automated Importation System Group are taken into account in the process of drafting the CCIP.

7.2 Main results

The participants welcomed the principle of centralised clearance. Nevertheless, there is an acknowledged need ed to find common solutions for the existing legal and administrative problems arising from the implementation of centralised clearance all over the European Union. For that, the European Commission, together with Member States and representatives of the different economic sectors, must develop a coordinated approach and be ready to compromise when there are divergent interests are involved which have to be reconciled.

7.3 Summary conclusions by Working Groups

Three working groups, made up of representatives of customs administrations, candidate countries and trade, respectively, examined and discussed specific topics.

7.3.1 AEO/centralised clearance/SEA

Working Group I was divided into two sub-groups, with the task of analysing the link between the status of Authorisation Economic Operator (AEO), Single European

Authorisation (SEA) and centralised clearance, under the current Customs Code (as amended by Reg. 648/2005) and under the modernised Customs Code.

Requirements for traders to use centralised clearance

Under the legislation in force

The participants are of the opinion that, under the current Customs Code, there are no restrictions with regard to the type of operator who can use the simplified declaration or local clearance procedure and that this should continue, at least until the modernised Customs Code (MCC) enters into force. Thus, any economic operator can apply for a SEA and there is no need to review the existing authorisations.

Common criteria for granting SEA's are needed; the Compact model could be used by all MS as a framework to grant SEA's.

Under the modernised Customs Code

With the implementation of the modernised Customs Code, centralised clearance will be a standard procedure, requiring co-operation between the customs authorities in the European Union. The simplified declaration and the local clearance procedure will be merged into a single simplified declaration procedure.

Under the centralised clearance one-step procedure, no authorisation will be needed if no deferred payment is requested. Under the centralised clearance two-step procedure (a simplified declaration followed by a periodic declaration) an authorisation will still be required because there will be deferment of payment of the customs debt and the submission of the complete data and documents at a later stage.

The conditions that the economic operators needs to fulfil were discussed. Some participants were of the opinion that centralised clearance (one-step and two-step procedures) should be granted to AEOs only; however, it was also argued that centralised clearance should be the standard procedure available for all traders within the MCC and that only the two-step procedure of centralised clearance, allowing deferment of customs debt, should be reserved for traders with AEO status. The definitive position depends on the criteria to be adopted for granting AEO status. It was considered that, in principle, traders currently meeting the criteria to be granted a SEA should also meet the criteria for centralised clearance and the AEO status.

Relationship between SEA and centralised clearance

There was general consensus that the basic ideas and the challenges are the same: the SEA is, in fact, the authorisation for centralised clearance.

Under the legislation in force

From the legal point of view and taking into consideration the place where the customs debt is incurred (Art. 215 CC), it is considered that a SEA should only be issued under the local clearance procedure, because there is no legal basis for entering the customs debt into the accounts of the supervising office of country B, if the supplementary declaration must be lodged in country A. Article 201 CCIP should be redrafted in order to clarify that the place where the declaration is lodged or where the goods are entered for the procedure by entry in the records can be dissociated from the place where the goods are presented to customs.

The Customs 2007 Project Group on SEA is working to formalise the consultation procedure and to standardise the use of simplified procedures when issuing SEAs.

Under the modernised Customs Code

An authorisation will be needed to allow the use of the simplified declaration procedure. Authorisation and information/consultation procedures are needed to validate the correctness of all information given, specifying time-frames for any consultations.

Different legal entities in the concept of centralised clearance

It should be possible to authorise a single entity on behalf of a group of companies. However, some Member States feel that a group of companies can be also authorised.

In either case, one legal entity must take the responsibility (making declarations, customs debt, records, minor irregularities) and be the single contact point for the authorising administration. All the entities of the group must take responsibility in the event of serious irregularities, and the rules for administrative and penal sanctions apply.

The internal responsibility within the group must be laid down in arrangements between the members of the group.

Centralised clearance and responsibility of control

Common risk assessment criteria and systems must be implemented; on importation, responsibility for control must be shared between participating Member States:

- the authorising Member State will have the main responsibility for fiscal controls, performing risk analysis and coordinating the actions,
- the Member State of entry will retain the right to intervene on any customs matter, performing security/safety controls and other controls requested by the authorising Member State.

There was a debate regarding the need for joint audits. It is thought that a detailed control plan defining both the actions to be carried out and the responsibility of each participating Member State will be sufficient. However, further discussion is needed regarding co-ordination and administrative co-operation carried out under joint reviews.

Centralised clearance and redistribution of own resources

Under the current law – SEA

Two solutions are used when issuing SEAs: redistribution of the national share of import duties collected on a 50/50 basis and the allocation of the whole national share of import duties collected to the Member State where the goods are entered into consumption (the so called "status quo" solution).

A single solution needs to be found quickly because negotiations may delay the issuing of the authorisation or even result in refusal to participate in SEAs.

Under the modernized Customs Code

When centralised customs clearance becomes a standard procedure, the attribution of the national share of own resources based on collected import duties will no longer be the best solution and another way of compensating Member States for the workload will have to be considered. In this context, a discussion should be launched on whether or not Council Decision 2000/597/EC on the system of the European Communities' own resources (OJ No L 253, p. 42 of 7 October 2000) needs to be amended.

7.3.2. Procedural issues, business process and requirements

Working Group II analysed, in the context of the modernised Customs Code, the concepts of centralised and decentralised clearance.

(a) centralised clearance: the declaration is always made at the place where the trader is established, with control responsibility being shared between the customs offices of entry and import (see Doc TAXUD/1235/2005);

(b) decentralised clearance: a single access point allows the transmission of (simplified or complete) customs declaration data to the customs office responsible for the place where the goods are released for free circulation, including the transfer of goods to this place without a transit procedure (Finnish proposal).

Centralised clearance versus decentralised clearance:

Decentralised clearance:

Basically, decentralised clearance is made possible by the use of a single access point; the customs declarations will be processed in the Member State where the goods arrive, instead of the Member State where the trader is established (including the monthly declaration).

The following advantages of decentralised clearance were highlighted:

- no problems with VAT, excise, sharing of collecting fee, statistics, national restrictions and prohibitions;
- it is a simple solution that can be introduced within a reasonable timeframe;
- it requires only limited resources from the Member States.

The following disadvantages of decentralised clearance were pointed out:

- many benefits for customs but few or none at all for trade;
- full data harmonisation is required;
- the trader will have to deal with the systems of 25 Member States;
- this concept does not contribute to creating a level playing field;
- different languages can be a problem.

It was considered that this concept can be an alternative, besides centralised clearance, for lodging complete and simplified customs declarations, including the supplementary declaration.

Centralised clearance

The main advantages of centralised clearance were enumerated:

- the trader has to deal with only one Member State, making it possible to concentrate the necessary customs expertise in that Member State;
- local clearance procedure is extended to the whole customs territory;
- substantial savings due to the use of a single interface and customs system;
- faster release of goods;
- fewer surprises to disrupt the logistical process.

Furthermore, the following points were discussed:

- the requirement to be an AEO in order to use centralised clearance and the need for authorisation were debated, producing diverging opinions;
- difficulties in issuing the pre-arrival/summary declaration were pointed out and some solutions suggested (distinctions should be considered according the means of transport and whether a consignment concerns only one or more traders); the use of UCR/URN on consignment level may solve the problem.
- automated systems must allow the matching of messages by a UCR/URN; a system should be established which can match the customs declaration and the summary declaration;
- the trader should be able to handle VAT formalities (perhaps on a monthly basis) with the Member State where he is established instead of having to apply the rules on intra-Community deliveries and all the other VAT formalities;
- a study on costs/benefits for trade arising from the use of centralised clearance should be carried out.

Flow chart

A flow chart of centralised clearance was presented. It will be presented to the Electronic Customs 2007 Group in September.

Single Electronic Access Point (SEAP):

The question of the extent to which a SEAP can serve economic diversity and facilitate interoperability between Member States' automated systems was debated. Concerns were raised regarding data requirements and alignment of data requirements by Member States. Some participants doubted whether the carrier will be able to deliver this information at all. It was furthermore highlighted that different languages can cause a problem when data are exchanged between MS.

Traders consider the SEAP concept to be very important.

7.3.3 Other legal/administrative issues

Working Group III dealt with VAT and excise issues, statistical provisions, national prohibitions and restrictions, remission, repayment and post-clearance recovery, etc, in the context of centralised clearance.

Value Added Tax issues

There was a discussion on whether the current rules on exemption from VAT on importation are sufficient, where importation is combined with an intra-Community supply and an intra-Community acquisition under Article 28c of the 6th Directive. The conditions that should be laid down with a view to ensuring that the exemptions are applied correctly, and the prevention of evasion, avoidance or abuse were discussed.

Another matter at issue was whether, under the modernised Customs Code, holders of a SEA should be enabled to submit VAT declarations which would be valid in the whole Community, as well as to provide a One-Stop-Shop where a trader could fulfil all his VAT obligations for the whole EU.

The main conclusions were the following:

- An amendment of Article 7(3) of the 6th VAT Directive could be considered so that VAT on importation is due in the MS where the goods are consumed:
  "In case of the centralized clearance and direct delivery to another MS, the goods are considered imported in the MS of destination."
- Intra-Community rules are suspended, provided that there is no change of the ownership (this would require further amendments to the 6th VAT Directive).
- Further amendments of the 6th VAT Directive might be necessary.
- The customs authorities of the MS of import will report to the customs authorities of the MS of destination on the basis of the AIS. Relevant VAT authorities are informed.
- An AEO may have a cash flow advantage if the payment of import VAT is deferred.
- A level playing field for all Member States with regard to import VAT should be maintained in the event of centralized clearance.
- The discrimination aspect between "ordinary" Community goods and goods imported under the system based on the contemplated amendment of Article 7(3) of the 6th VAT Directive was discussed.
- Need for modelling of different scenarios and alternatives (case studies).

Excise duties

Two alternatives were evaluated:

- To exclude excise goods from centralised clearance/SEA.

- To combine centralised clearance with customs warehouse type E - each MS involved will apply excise duties when goods are cleared for home use.

The main conclusions were the following:

- Excise goods should not be excluded from the centralised clearance by law.
- Two alternatives (regarding excise goods subject to Community supervision):
  - Traditional way: Switching from one system to another (from AIS to EMCS)
  - Centralised clearance (with AIS) applies during the whole chain of supply.
- One further option: Combination of centralised clearance with the customs warehouse type E.

Disputes and appeals

The question was discussed as to which Member State is to handle an appeal where a SEA authorisation is not granted because a Member State other than that where the application was made withholds agreement.

The following conclusions were reached:

- Before the decision is taken on the authorisation: mediation/arbitration in cases of disputes between the Member States.
- Right to be heard before a negative decision.
- After the decision has been taken: appeal system applies.
- Deadlines for the comments of other Member States, decision-making and appeals.

- Community-wide notification of the decisions on authorisations and rejections of applications.

Customs debt

The discussion focused on the following issues:

- Should the centralisation of the customs debt, under the modernised Customs Code, only apply to customs debts incurred by virtue of a customs declaration or also to customs debt incurred for other reasons (e.g. theft, unlawful use)?
- What would be the consequences as regards the authorisation if customs rules are infringed in a Member State other than that which issued the authorisation?

The main conclusions were the following:

- If there is a link with the customs declaration, the customs debt should be incurred at the place the where the AEO is established.
- If no link with the customs declaration can be found (theft, unlawful use), the customs debt is incurred at the place of the irregularity.
- If the place of the infringement cannot be determined, a residual rule should lay down whether the customs debt is incurred in the MS of import or of entry.

Sanctions

On the question of who shall be responsible for the application of administrative and penal sanctions (the supervising customs office or the customs office responsible for the place where the infringement took place), the main conclusions were the following:

- If there is a link with the declaration or the conditions of the authorisation: the supervising MS imposes the administrative penalty.
- If there is link with the declaration: the MS where the infringement took place or where the infringement was detected imposes the administrative penalty.
- Criminal penalties: the jurisdiction between different Member States cannot be settled by a provision of the CC.