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**SUBJECT: Customs 2007 Seminar
Budapest 10th & 11th March 2005**

CUSTOMS 2007 SEMINAR – BUDAPEST 10TH & 11TH MARCH 2005

Subject: Draft Modernized Customs Code

The European Commission has, together with the Hungarian customs administration, hosted a conference on the modernisation of the EU Customs Code from 9 to 11 March in Budapest, Hungary, in the presence of EU Commissioner of Taxation and Customs Union.

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

The conference was the final stage of a purpose of consultation on a draft Commission proposal for a radical overhaul of the customs code so as to facilitate traders in their dealings with customs administrations. Stakeholders have already been given the opportunity to comment on the Commission's plans via the public consultations that the Commission held in 2004.

1. Main results of the Conference

The participants (MS as well as traders) welcome in principle the modernisation of Customs Code and the Commission's transparency in consulting all stakeholders..

The traders' expectations are very high on simplification and streamlining of customs procedures and would like to see customs administrations act as one.

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

2. Summary conclusions by Working Groups

Four working groups composed by representatives of customs administrations and trade, examined key issues of the Modernized Customs Code and reported to the Plenary the following results:

2.1. Working Group 1

Rights and obligations of the declarant under the new Customs Code

Introduction

By general consent, the group remained as one unit, rather than split into two. There was general approval of the direction of the modernized Code, but reservations surrounding key issues of customs representation and the AEO concept (Arts 9 & 10). The discussion centred on the questions posed in the Commission presentation, rather than on the documents supplied (the working group decides not to discuss the document 1216/2005)

Should representation be restricted

There was general consensus that representation should be open.

However, some participants requested that the definition of „Customs representative” should 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 consent on the importance of AEO status and the right of representatives to be granted this status

A proposal to delete article 9.6 was as strongly opposed as it was supported

No consensus for official accreditation

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

General consent for professional representatives to meet common criteria of quality, e.g. financial solvency, integrity and competence

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

Some participants indicate that market forces must apply

Some participants indicate that accreditation should be by administrations or by federations themselves

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

General consent that no geographic restriction should apply

Should there be any limit on the number of accreditations?

No

What benefits should be arise from this status ?

Under AEO same benefits shall be applied to operators and customs representatives (as far as conditions are fulfilled)

Conclusion

The meeting welcomed the Commission commitment to transparency and consider that further discussions with representatives are needed on this key issue

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 AEO operating in more than one Member State?

- All simplifications and facilitations under AEO concept
- Minimum requirements to be set to become an AEO
- Common EU criteria & obligations for customs & trade
- AEO can apply for each simplification, or several at the same time
- For one or more MS one application should be lodged at the Customs administration where the traders main office is located;
- Customs to consolidate “approval” from other MS within an agreed time frame
- Depending on simplification/facilitation needs, security etc. measures come into effect
- Encourages standardization of the sanctions systems

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

- YES
- Support a fully-centralized clearance
- Harmonization of national differences

- Closer cooperation and practical alignment between customs, VAT and statistics processes & procedures
- MS and Commission to find solutions to the 'own resources' issue

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

- YES

- Requirements & obligations are to be set

4. Should companies with different legal persons 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 & 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 the office of import

Group 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, and working as a group of experts, we have concluded as follows:

Above and Beyond our Discussion

Elements for consideration

Financial interests of the Community
Treaty obligations
EU Constitution
Fundamental rights
Community or national competence
Impact on national judicial process

CCC ARTICLE 19 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)

CCIP should include:

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

Definitions (should be defined)

- Monetary charge
- Withdrawal, suspension or revision of authorisations

Definition Issues

Formal Warnings

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

Confiscation

In some Member states this can be an administrative penalty, in others it is a criminal sanction.

SCOPE -Types of infringement

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

SCOPE (Issues)

Object 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

Elements to consider

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

Working Group 4

Customs debt: Changes under the Modernised Customs Code

- Overall, simplifications were welcome, while trade concern was expressed that the IPCC will have significant effect, and that a similar degree of consultation will be required when drafting the IPCC.
- Essence of changes remained uncontested apart from few technical areas that require further consideration.

Guarantee

- As regards **guarantees**, administrations supported the new provisions resulting in increased protection of Community financial interests while trade is concerned that the increase in costs may be exponential.
- 2 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 statute of limitation in 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 of obtaining the guarantee.

Incurrence of the customs debt

- The merger of Articles 202 to 204 in Article 46 was welcome by the trade and administrations. The trade asked for one comprehensive article in the IPCC. One customs administration insists on making sure that no debtors are lost in this new structure.
- The place of the incurrence of the debt should be stated more clearly in Article 54 paragraph 1 (reference to the simplified procedure needs to be clarified as regards the place of the establishment).

Recovery \ Repayment of duty

- The **right to be heard** was considered as redundant by several administrations because of the existing right of appeal at the national level achieving the same objective. They also expressed the fear that the debtor may use the insolvency

- procedure in order to escape its responsibility. This provision could dramatically increase the administrative work.
- It was stated that Regulation 1150\2000 would have to be amended in so far as it refers to the establishment of the debt as well as to the notification to the debtor.
 - Doubts were expressed as to the possible replacement of compensatory interest with interest in case of late entry in the accounts due to differences of time between incurrence and notification of the debt. Conversely, risk of abuse of inward processing and temporary admission was evoked.
 - Merger of non recovery and repayment \ remission procedure as well as alignment of deadlines were welcome.

Extinction of the debt

- The extension of the cases of extinction of the debt was welcome but administrations recommended that administrative penalties should actually be put in place before the extended extinction cases enter into force.
- A problem relating to a mis translation at Article 72 paragraph 1 a iii was raised.
- Administrations considered Article 72 paragraph 2 e as too extensive and as requiring some further limitations

3. Follow-up

The draft Modernized Customs Code will be amended to take into account at the greatest possible extents comments expressed during the Conference.

After second internal consultation (between the relevant services of the Commission) on the amended sections, translation will be done in all languages (total 20) and will be transmitted to the Commission for adoption and subsequently to the Council and European Parliament.

4. Provisional Timetable

(depending on translation deadlines): summer 2005

On key issues of the Modernized Customs Code, other seminars are foreseen:
13-15 April in Vilnius on data elements including for summary declaration
20-22 June in Finland on Centralised Clearance