

## **The Voice of Freight Forwarders and Customs Agents in Europe**

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Brussels, 31 January 2005

### CONSULTATION ON THE NEW CUSTOMS CODE

#### Revision 4

#### OBSERVATIONS OF CLECAT

##### **General comments**

The introduction of IT in the customs code is a good opportunity to streamline and harmonize procedures, processes and information systems, simplify the structure, terminology and rules, and adapt to modern developments. CLECAT supports the initiative to modernise the customs code along these lines, endorses the basic aims and appreciates the consultation process.

The provisions necessary for the implementation of the new customs code, as well as the explanatory notes and guidelines, will be adopted by the customs code committee in accordance with the management procedure. The implementing provisions and even explanatory notes and guidelines form an integral part of the reform. It is often not possible to give one's opinion on the outlines of the reform, if not read together with the proposed implementing rules. The effectiveness, practicability and impact on the economic operators, often fully depends on what will come out at the stage of the implementing rules. The implementing rules are to be developed by the Customs Code Committee. Given the importance of this work, we request that the European Commission and the Member States involved in the customs code committee set up a consultation mechanism allowing stakeholders to contribute to the debate. In this context we refer to a comparable initiative like the Stakeholders Advisory Group on Aviation Security, which has been created to advise the Regulatory Committee, charged with the implementation of Regulation 2320/2002 on Aviation Security.

We thank the editors of Revision 4 for taking into account some of our most important comments to the earlier versions of the draft. In our opinion, Revision 4 is the most balanced version of all.

## Specific observations

### 1. *Definition of security (Art. 4)*

- 1.1. For reasons clarified below, in our opinion, it would be useful to add a clear definition of security and safety for the purposes of the customs code.

### 2. *Responsibility for the provision of information to customs (Art. 8)*

- 2.1. With respect to article 8.1 and 8.3 we observe that in our opinion it is not realistic to oblige *any* person involved, to provide customs with the requested information and hold him responsible for the accuracy of the information provided, because he may not have or may not control the information.

For the same reason, in relation to article 8.3, we are of the opinion that the direct representative should not be held responsible for the accuracy of the information given and/or the authenticity of the documents, unless he knew or ought reasonably have known that the information was not accurate or the documents not authentic.

- 2.2. We also wonder if there is not a problem of consistency between Article 8 on the one hand, and Articles 44 and 46 on the other. In our opinion, there is too much room for misinterpretation.

### 3. *Customs representative (article 9, 9.6 and 10)*

- 3.1. We welcome the recognition of customs professionals, through the modification of Art. 9.6 – revision 3 and the insertion of an extra paragraph in Article 10.2.

- 3.2. In our opinion the accreditation of customs representatives and authorisation of AEO's can be separated because an Authorised Economic Operator may or may not be a provider of customs services (he may or may not act on a behalf of a third party).

Customs service providers, however, who meet the standards for customs representative accreditation, in our opinion, should automatically be granted the status of authorized economic operator, at least for customs purposes.

We suggest therefore to add an additional paragraph to article 9 setting out the criteria for the accreditation of customs agents.

- 3.3. Still in relation to Article 9.6, we would like to see clarified the condition of acting “on a regular and commercial basis”. We understand that the phrase is intended to ensure that individual persons or companies, who do not act on a regular and commercial basis as a customs representative, cannot qualify for AEO status, and we agree with this principle. However in order to avoid misinterpretation, we request the Commission to clarify that the condition does not relate to working on a regular and commercial basis for one particular client, but that it relates to activities of the customs representative in their entirety.

### 4. *Authorised economic operator (Art. 10)*

- 4.1. An authorised economic operator shall benefit from facilitations with regard to customs controls relating to security and safety *and/or* from simplifications provided for under the customs rules. This, in our opinion, can only mean that there will be different types of authorised economic operators, with distinctive criteria, and distinctive responsibilities.

We would not object if this were indeed the case, because there may be security related requirements which in some circumstances freight forwarders and customs agents might not be able to meet, while they would have no difficulty to meet the customs or tax related requirements.

Our worry is that current simplifications under the customs rules, which have nothing to do with security and safety, could not be obtained by the economic operator any longer, because he would not be able to comply with certain requirements attached to the status of "authorized economic operator". This would in particular be the case where these requirements applied to activities which he would not be able to control and for which, therefore, he could not assume responsibility.

This would finally result in the situation whereby current fiscal simplifications, which are broadly used by economic operators, may not be granted to economic operators any longer, who cannot comply with certain requirements which are not linked to the specific type of simplification they apply for.

4.2. The introduction of the AEO idea should not be at the expense of existing levels of facilitation for economic operators, but rather should rely on providing additional facilitation, over and above what is available at the moment, to those able to meet the relevant criteria.

5. *Article 19 (administrative penalties), article 18 (criminal law), article 15 (lodging of an appeal)*

5.1. The question can be raised if it is possible to regulate administrative penalties in the CCC because these penalties eventually resort under criminal law.

6. *Article 20.5 – a posteriori inspections*

6.1. This article gives customs the right to make a posteriori inspections of commercial documents and data relating to the operations in respect of goods that have been released or even to subsequent commercial operations involving those goods.  
We are of the opinion that a reasonable limitation period should be set.

6.2. Furthermore in this context, we regret the deletion of articles 78.1 and article 78.3 Regulation 2913/92. In our opinion, customs authorities should be entitled, on their own initiative or at the request of the declarant, to amend the declaration after release of the goods, and where this revision indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, should have the possibility to regularize the situation, taking account of the new information available to them.

7. *Article 22 paragraph 1 and paragraph 2 (fees en costs) and article 89 paragraph 1 (competent customs offices)*

7.1. Article 22 paragraph 1 provides that in principle no fees shall be charged by customs authorities for the performance of customs controls or any other application of the customs rules during the normal opening hours of their competent customs offices.

In this respect we refer to the proposed article 89 paragraph 1, stating that Member States shall ensure that reasonable days and hours are appointed for the opening of offices, taking into account the nature of the traffic and of the goods and the customs procedures under which they are to be placed, so that the flow of international traffic is neither hindered nor distorted.

We welcome the proposed article 89 and suggest making a reference in article 22.1 to paragraph 1 of this article.

7.2. In our opinion, the same applies to article 22 paragraph 2, because the right of trade and industry to have an appropriate service level is equally valid in the cases referred to in paragraph 2.

7.3. With regard to the attendance by customs staff at places other than customs premises (22.2 first indent) it is important to observe the needs of the economic operators next to those of the customs administrations, especially where, for reasons of efficiency from a customs perspective, the number of customs offices are geographically concentrated and reduced to a minimum.

7.4. Does this mean that costs can be charged in a situation where article 20 paragraph 5 last sentence (authorities may also examine the goods at the premises of the declarant where it is still possible for them to be presented) applies?

7.5. The decision to charge for information (article 22.2 second indent) should be seen as an exception to 7 paragraph 2 stating that information is in principle free of charge.

7.6. We are of the opinion that the cost involved in the examination of sampling of goods for verification purposes (Article 22.2, third indent) should be born by the authorities.

#### 8. *Article 38.2 – authorised operator; comprehensive guarantee*

8.1. In accordance with the (modified!) article 38.2 only authorised economic operators will be authorized to use a comprehensive guarantee for a reduced amount or to have a guarantee waiver.

We have here a clear illustration of how important it is to clarify the definition of the AEO and that it makes sense to distinguish between security and safety related requirements and corresponding facilitation on the one hand and customs related requirements and corresponding facilitation on the other. Will operators, who - depending on the definition of (standards) of security and safety - are not able to meet particular security and safety standards, and consequently to be granted the status of authorised economic operator, now lose their authorization to use a comprehensive guarantee?

8.2. We repeat that in our opinion, the introduction of the AEO idea should not be at the expense of existing levels of facilitation for economic operators, but rather should rely on providing additional facilitation, over and above what is available at the moment, to those able to meet the relevant criteria.

#### 9. *responsibility for customs debt in case of non-compliance (Art. 46)*

9.1. Revision 4 now clearly distinguishes between unwilling errors made in good faith on the one hand and conscious acts or clear negligence on the other. We welcome the changes made to article 46.

Article 8, however, which may have to be read in conjunction with article 46, has not been changed accordingly (see above).

#### 10. *Article 54 paragraph 3 (place of incurrance) and article 64 paragraph 1 under a (non-compliance)*

- 10.1. Article 54 paragraph 3 stipulates that a customs debt shall be deemed to have been incurred in the Member State where the finding was made, in case a customs debt has been incurred under Article 46 (1) (a)<sup>1</sup> in another Member State and the amount of that debt is lower than EUR 100,000.

In the current article 215 paragraph 4 of Regulation 2913/92 a similar regulation exists. The difference with article 215 paragraph 4 CCC is that the proposed article 54 paragraph 3 also applies to the movement, processing, storage, use or disposal within that territory. It is not clear however if the movement, processing, storage, use or disposal only relate to non-Community goods of which the obligations with regard to introduction have not been fulfilled.

#### 11. *Article 59 notification of the debt*

- 11.1. We welcome the changes made to article 59.3. The proposed 10 days deadline for the debtor to make his views known before the duties are recovered was really too short. In particular in the framework of cross border procedures, a deadline of one month appears to be a minimum.

- 11.2. Article 59 paragraph 6 extends the time limit for notification to the debtor to a period of ten years from the date the customs debt was incurred. We assume that this extension will only be applicable to a debtor who is involved in a criminal court proceeding, but this is not entirely clear. Therefore we invite the Commission to stipulate explicitly that this extension does not apply to a debtor who is not directly involved in a criminal court proceeding.

#### 12. *Article 71 - Equity*

- 12.1. Art. 71 (a) fifth paragraph, in our opinion in effect equates the ground for doubt concerning the proper application of preferential agreements by the beneficiary country with the actual suspension of the preferential agreement.

We would therefore propose the following alternative:

*“The debtor may not, however, plead good faith if the European Commission has published a notice in the Official Journal of the European Union, stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country, except if he can prove he has implemented all the reasonably necessary diligences to check the applicability of the certificate.”*

Furthermore in this context, we observe that the ‘special conditions’ to be laid down in accordance with the committee procedure, referred to in article 71.2 make or break the application.

#### 13. *possibility to correct summary declaration (articles 74 and 158)*

- 13.1. We welcome the possibility to correct summary declarations also after removal of the goods, “in cases to be determined in accordance with the committee procedure”.

#### 14. *Article 75 (Customs declaration replacing summary declaration)*

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<sup>1</sup> non-fulfilment of one of the obligations laid down in the customs rules for the introduction of non-Community goods into the customs territory of the Community, or for the movement, processing, storage, use or disposal within that territory

14.1. This article provides that the customs office of entry *may* waive the lodging of a summary declaration in respect of goods for which, prior to the entry a customs declaration is lodged.

We suggest to replace the word '*may*' by '*shall*', because in a single market we see no reason to make this optional. Moreover, how will the economic operator know in which office of entry he can or he cannot make use of this possibility?

*15. Declarant – requirement of being established in the Community (Art. 93.)*

15.1. We are of the opinion that in case the requirement of being established in the Community is waived on the basis of an international agreement, the criteria for being granted authorisations for simplified customs procedures and for AEO status should be equivalent to those applicable in accordance to EU legislation. This principle should be explicitly mentioned in the code.

*16. Article 104 (Simplified declaration)*

16.1. See our observations on article 10 and 38.

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