

**UNICE COMMENTS ON THE PROPOSAL FOR A REGULATION AMENDING
THE COMMUNITY CUSTOMS CODE TO IMPROVE CUSTOMS CONTROLS**

INTERINSTITUTIONAL FILE 2003/0167 (COD)

I. Introduction

In the framework of its e-customs initiative for a simple and paperless environment for customs and trade, the Commission has proposed¹ to make the Community Customs Code easier to apply. As set out in its 17 July preliminary comments, UNICE fully endorses the objective of radically simplifying and modernising customs legislation and procedures.

This proposal responds to a priority objective, that of ensuring security on Community territory. European business wholeheartedly supports efforts to increase security and is ready to participate in initiatives taken with that aim. UNICE believes that security and trade facilitation should be mutually supportive and recommends that the “facilitation” aspect is incorporated in the Community Customs Code and its implementing provisions, to maintain a satisfactory balance between the increase in controls created by the security measures and facilitation of legitimate trade.

In any event, facilitation must be incorporated in the code in a “horizontal” manner and not only through the notion of authorised economic operator.

II. General considerations

The central point of the new arrangements is creation of a summary declaration prior to any import into and export from Community customs territory. This proposal could have considerable consequences, not only for the organisation of customs clearance but also for organisation of the entire logistics chain of European companies.

In the first instance, it appears to be difficult to evaluate the practical feasibility of the Commission’s initiative. As things currently stand, the proposed regime is too general and essentially limited to the scope of the Customs Code. Companies need to know in specific terms the practical implications of the envisaged regime. Consequently, it is necessary to rework the articles of the code and its implementing provisions simultaneously, in order to clarify what information has to be included in the prior declaration, who is supposed to provide it, when, to whom, and where must this information be submitted.

II.1 General coherence of the envisaged regime

The Commission’s proposal envisages creation of a common framework for risk management throughout the Community customs territory. This common framework can only function if management of summary declarations by Member States is computerised under a genuine electronic environment. Yet, for exports, the summary declaration or customs declaration will not be computerised before 2006 (ECS/AES project) and it seems that there

¹ COM (2003) 452 final, (COD) 2003/0167, 24 July 2003

are no plans to computerise the summary declaration or customs declaration for imports at Community level (except for NSTI/NCTS). Given this situation, it seems to UNICE premature to put in place a regime which will be costly for companies without having the means to manage it.

II.2 Need to consider security and traditional customs controls aspects in parallel but to distinguish between them

These two areas correspond to completely different issues and refer to levels of operator responsibility which are also different:

- The summary declaration for security purposes is based on information linked principally to transport and not to customs clearance operations. This applies for imports but can also relate to exports (e.g. companies benefiting from simplified customs clearance procedures at an internal office when transporting goods to a port prior to being placed in a container for export).
- It emerges clearly that the Commission's objective is to have the security controls carried out at the Community's frontier offices whereas traditional customs controls would be carried out at internal offices. These two levels of controls must not place a question mark over the organisation of customs clearance in companies or over the advantages accruing from simplified customs clearance procedures.
- Furthermore, the envisaged regime must not have the consequence on requiring the same operator to complete the summary declaration and the customs declaration. Operators who so wish should also be given discretion to complete two declarations (or a single declaration valid as a summary declaration).
- The envisaged regime should not result in parallel controls. The different definitions given in articles 4a to 4d (customs offices designated by the customs authorities) must be clarified.

II.3 Content of the summary declaration

UNICE's recommendations on this point are as follows:

- The content of the common declaration must be common to all Member States. This condition is a *sine qua non* to prevent any distortion of competition between operators. It must apply whatever the support used (paper support or electronic declaration).
- The information in the summary declaration must correspond to the information in commercial and transport documents. The summary declaration for imports should also be the transport document (manifest, air waybill, etc.).
- The information requirements must be harmonised in the framework of international agreements.

II.4 Deadline for submission of prior declaration

The Commission's proposal (non-paper dated 21 January 2004) is not totally satisfactory:

- The question of deadlines cannot be addressed separately from questions linked to the content of the prior declaration and responsibility for submission of this declaration.

- The deadlines proposed by the Commission are not coherent with American deadlines. The Commission's proposal therefore manages to create two types of deadline: the deadline applicable to trade with countries practising prior notification (e.g. United States) and deadline with countries which have not put prior notification in place. This is an additional constraint for companies.
- Many companies, in particular SMEs, will not be able to meet these deadlines. It is therefore important to envisage a less rigid framework.
- Postal dispatches must be excluded from the regime.
- Trade with territories within the EU (Switzerland, Andorra) and with the EFTA countries should be excluded from the new regime through the negotiation of specific arrangements.
- Deadlines for land and air transport must be shortened.

II.5 Status of authorised economic operator

The status of authorised operators must be recognised in all EU Member States in order to benefit from facilitations irrespective of the state in which the customs office of entry or exit is situated.

The simplifications granted to authorised operators as currently proposed are insufficient. These simplifications must not be limited to shorter deadlines for submission of the prior declaration or provision of more limited information. Authorised operators must be eligible for all simplifications in customs procedures. They should not have to bear the costs inherent in the new regime: costs of downtime for means of transport prior to dispatch of the summary declaration, miscellaneous administrative costs (preparing the prior declaration, additional insurance, etc.).

III. Entry into force of the new regime

The Commission and the EU Member States cannot organise a uniform level of control within the Community and create harmonised risk analysis criteria without having put a computerised system in place.

Given this situation, UNICE calls for plans for computerisation of export declarations (ECS project) and then import declarations to be accelerated.

IV. Proposals and recommendations

UNICE's main recommendations are as follows:

- The **facilitation aspect** as described in the Commission's 24 July 2003 Communication must be included in the revision of the Community Customs Code.
- An **economic impact study** must be carried out on the security aspect of the project.
- The **prior declaration for export** must be established only for exports to countries which have themselves established import controls.

- The **implementing provisions of the code** must be drafted in tandem with the articles of the code.
- **Customs clearance procedures** must be maintained but harmonised at European level.
- The **status of authorised economic operator** must confer genuine advantages.
- The Commission must **accelerate work on customs computerisation**. The prior declaration can only be managed with an electronic support.

UNICE draws the Commission's attention to the risk posed by the proposed measures, notably with regard to export operations. If the facilitation aspect is not implemented at the same time as the security measures, UNICE fears that these measures will reduce the competitiveness of European companies to the benefit of their competitors in other regions of the world.

These comments might be supplemented as the debate develops.

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