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Ensuring a successful implementation of a modernised European customs environment

Over the past few months, it has become clear to business that there are several areas of concern with regard to the implementation of customs legislation, across the EU, aimed at imposing security measures on the movement of goods in the global supply chain. Whilst we wholeheartedly support measures such as this, we are mindful of the fact that it is business and the consumer who will be obliged to meet the costs of implementation. Accordingly, we would draw your attention to the following points:

1) Lack of benefits for Authorised Economic Operators

The security amendments to the Customs Code introduce the concept of an Authorised Economic Operator (AEO). This allows customs to concentrate their resources on those economic operators who pose a risk, whilst providing economic operators who invest in becoming an AEO with a reduction in the administrative burden foreseen in meeting the new security amendments, as well as the simplification of certain customs procedures. The reality seems to be that while cooperation between Member States and the European Commission is heavily emphasised, the reduction of administrative burden and facilitation of fast supply chain for economic operators has been largely overlooked.

For economic operators to become an AEO requires investment in automation, administrative organisation, the securing of premises and screening of personnel. Like all other investments economic operators make their decisions based on the return on investment. The present texts of Council Regulation 648/2005 and Working Document 1250/2005 provide little benefit to the economic operator for the high level of investments required. It seems that the benefits to be provided for AEOs are to be created by withdrawing existing facilities for non-AEO operators and traders.

With the increased investment needed to become an AEO, it is likely that many SMEs will not apply to become one. The overall effect of this will be that economic operators who do not apply, will face barriers that will make them less competitive. This scenario is not in the interest of the EU, and is at odd with the Lisbon strategy of making the EU the most competitive market in the world economy.

We consider that attention should be given to the position papers presented by European trade organisations, in which it is recommended that the AEO status should result in reduced levels of customs controls, global authorisations, reduced time frames for the submission of data and a reduced data set to be required at import and export. Only by implementing such benefits, will economic operators who are active within the global supply chain retain their competitive edge, whilst security is improved.

2) Timelines to prepare and implement electronic systems for business and customs authorities.

We are very concerned about the lack of understanding of the time it takes for business in the EU to implement new computer systems as required by customs. It is estimated that business currently requires a minimum of 12 months to program, test and implement each new computer system The timelines that are proposed by the Commission at present are for an Export Control System to be implemented by 1 January 2009, with an Import Control System to follow shortly afterwards. Both of these systems are supposed to ensure the security of the EU. However, Member States themselves have expressed reservations about meeting these timelines. Given the business need to provide 25, (potentially 27) different versions of each new system, it is clear that Member States will fail to meet deadlines, and the new computer systems will be rolled out on a country by country basis, as and when they are ready. This will not contribute to the security of the EU, as no system will work effectively until all countries in the EU are operational. In

parallel to this, costs will escalate for business and the consumer in the EU. We consider that the current Multi-Annual Strategic Plan (MASP) needs to be revised taking into account:

- the need for all Member States to have fully implemented the system before it goes live and
- the need for business to have ideally two years in which to prepare systems, on receipt of the final technical specifications from customs in their Member State.

Therefore we would suggest that industry and trade shall not be obliged to submit the Summary declarations for imports and exports before a full implementation of homogenous systems takes place

3) Separate implementation in 25 countries

The mention in the previous paragraph of the need to provide 25, (potentially 27), different systems in the EU, highlights the failure to harmonise computer systems throughout the EU. We understand that customs in each of the Member States has developed their own customs system, but until this is changed to reflect a commonsense approach to provide business with one common interface into a single European system, then business will not be competitive in the global marketplace. We consider that with the potential delays to the implementation of the basic systems mentioned in the previous paragraph, there is a need to evaluate whether it would not be preferable to implement fully automated systems such as the Automated Import System and Automated Export System linked through a Single European Access Point. This would prevent the Member States having to invest in basic systems that they will then have to upgrade in a major way shortly afterwards.

4) Law versus guidelines and explanatory notes

It appears that in the rush to agree Implementing Provisions for Council Regulation 648 of April 2005, many of the procedures that business thought would be contained within the Implementing Provisions will now be contained within guidelines. It seems that this is the easy solution as it removes contentious issues from the legislation, thus avoiding disagreement between the Member States and the Commission. As far as we are aware, guidelines and explanatory notes are not legally binding on Member States in the same way that procedures contained in the Regulation of Implementing Provisions are. It is apparent that this will lead to interpretation of the Implementing Regulations of C/R 648 at a national level, which will mean business and the consumer being obliged to work to different procedures in each of the Member States, with all the additional costs that this implies. We consider that the majority of the procedures to be followed in order to enable the full implementation of the regulation contained in C/R 648 should be listed in the Implementing Provisions to the regulation.

5) Lack of clarity regarding liability and responsibilities.

For an effective implementation of the Regulation, the various parties responsible for the carriage of goods must have clarity regarding who should submit what information at what time. Similarly, clarity is needed regarding the procedures for amending the

requisite declarations by the responsible parties. Currently, the Regulation and the draft implementing provisions fail to provide such clarity and predictability. Moreover, they do not ensure for all transport modes that the filing of data elements for cargo risk assessment obligations be done by the parties with direct knowledge of that information. Industry has pointed out this significant weakness which – if left unaddressed – would not only leave the various commercial parties unsure of their obligations and responsibilities, but may also seriously undermine the Community's ability to meet the security objectives embodied in the changes to the Community Customs Code.

Recommendation

It seems apparent to business representatives that the adoption of the Implementing Provisions for C/R 648 will not take place before the summer 2006. If this is delayed until the last quarter of 2006, with no change to the contemplated effective date of 1 January 2009, business will be faced with the very real possibility that the implementation of the basic systems such as the Import and Export Control systems will be delayed for so long, that the more automated versions such as the Automated Export and Import systems will not be available until 2011 at the earliest. Given that it is the automated systems that will provide business with some benefits, we would recommend that the work on the basic systems should be set aside to enable the full resources of the Commission and Member States to be directed at completing fully automated systems that will provide the basis of a secure supply chain for the EU, and offer genuine facilitations for business in the EU. The effective date of the implementing provisions should be appropriately aligned with, and reflect the development of such systems which should include:

- a Unique Trader Registration database
- a single risk management system
- the Automated Export System
- the Automated Import System
- The new Computerised Transit System
- Centralised Clearance

Focussing the resources on these systems will provide the Commission and the Member States with the time necessary to ensure that the Implementing Provisions for C/R 648 are not rushed through, and that the proposed Modernised Customs Code and its Implementing Provisions are in place to support harmonised systems and procedures.