EUROPEAN EXPRESS ASSOCIATION (EEA) INPUT ON THE FAILINGS OF THE EXISTING COMMUNITY CUSTOMS SYSTEM

February 2008

Overview

In response to the request of Jean-Pierre Audy MEP, and as a follow up to the International Trade (INTA) Committee mini-hearing on 19 December 2007, the EEA is delighted to send you an overview of the main concerns that are facing business at the current time.

It is easy to view customs as purely a technical topic, but there are a number of serious threats that are posed to the express industry, as well as business in general, by developments in the customs field. As such, this documents sets out to highlight these clearly and concisely.

The legislative threat

There are two main pieces of legislation which frame the changes to the Customs environment: 1) the Security amendments to the current Customs Code (and the implementing provisions which stem from this), 2) the modernization of the complete Community Customs Code.

1. Security amendments to the current Customs Code

The Regulation was adopted in 2005, in a response to the terrorist attacks of 9/11, and immediately took effect across the EU. The details of the law were finalized in December 2006, through a set of implementing provisions, which now have to be put in place. It is these requirements which are threatening the express industry today. Currently, the Security Amendments merely represent a cost for the express industry and do not offer any benefits/simplifications as a quid pro quo of having met higher security measures. Below are highlighted a number of areas that are of particular concern to us.

Simplified procedures for transit goods moved by air: Articles 444 & 445

Currently, express operators can operate a simplified procedure whereby transit goods can be moved by air under an electronic manifest. This is allowed through Articles 444 and 445 of Regulation 2454/93, which saves operators a great deal of time, effort and money. However, there have been calls from decision-makers to remove/amend this possibility under the aegis of creating a modernized customs environment.

We have met the Commission case-handlers with the Association of European Airlines (AEA) and have set up a coalition group to fight the removal of Articles 444

and 445. We have also written officially to the Commission stating the importance of this provision and the impracticality of using other procedures, such as NCTS.

Point of exit from the EU: Article 793

The existing EU legislation allows for the place where exports are registered to be classed as the exit point from the EU. This is allowed through Article 793 of Regulation 2454/93 and underpins a fundamental part of the EU single market. Through new requirements to further control goods leaving the EU, there are calls for this provision to be removed and for risk analysis to take place at the last physical point before goods leave the EU. This will force operators to change their existing procedures and carry out an extra set of controls. This will also slow down the movement of goods significantly and will in effect spell the end of a true EU single market.

Harmonized Tariff Code (HTC)

Currently operators do not supply a harmonized tariff code (HTC) to Customs for pre-arrival/pre-departure in order to identify goods, preferring to give a written description. The World Customs Organisation (WCO) has also underlined that a goods description or a code are acceptable. However, in recent times, certain EU Member States have been pushing to have a four or six digit tariff code mandated. Due to the extensive systems changes that would be required, this would cost the express industry €120 million for import (based on the express industry moving 28.8 million non-document shipments in 2006) and €114.5 million for export (based on the express industry moving 27.5 million non-document shipments in 2006.)

Import and export control systems (ICS and ECS)

Under EU law, EU member states are obliged to introduce import (ICS) and export (ECS) control systems for security purposes.

Import Control System (ICS)

ICS should be deployed across the EU by end-June 2009. This, however, presents a cost to the express industry and is currently being very poorly handled by the Commission and national customs authorities.

- *Timelines* – The timelines are already slipping and operators cannot business-plan against such a moving target. Furthermore, with operators needing 18-24 months to put in place their own systems, and with the technical specifications still not finalised, the end-June 2009 deadline will be missed.

- *National differences* – The current concern is that there will be 27 different ICS systems mandated across the EU due to national differences in specifications and functionalities – as was the case with NCTS. This will lead to fragmentation and cost the express industry huge amounts of money and restrict the seamless flow of data between systems across the EU.
- *Submission of data* – As things stand, air cargo data will have to be submitted to customs 4 hours prior to arrival in the EU for long-haul, wheels-up for short-haul and 1 hour prior to arrival at the EU border for trucks. This will squeeze express operators' time windows immensely and threaten the availability to offer an express service.
- *Summary declarations* – The carrier will be responsible for these, although in the majority of cases these will come from shippers and co-loaders. Delays may arise in situations where aircraft may not take off before summary declarations have been submitted for all freight onboard. I would suggest this be changed to ensure that this could only relate to the export of goods, in which case the goods for which no summary declaration has been produced will not be allowed to be loaded on the aircraft or vehicle. At import, we would be submitting shipment data at the time the aircraft is physically inbound to the EU. In that case, inspection would take place at the first point of arrival.

In short, the pre-arrival and pre-departure requirements and the potential re-engineering to achieve new schedules for commercial uplift will fundamentally change our existing practices and cut-off times, thus threatening EEA members' ability to offer an express service.

Despite the investments of the past, the predictability of the time definite services upon which this industry is based immediately becomes a victim of the EU proposals. As a result the members of the EEA face the unedifying spectre of incurring excessive increase in development and engineering cost for a vastly reduced service provision to the market place.

Export Control System (ECS)

The export control system is already being developed, and the work has been split up into stages, each with their own timeframes. As with ICS, the same problems apply: deadlines are being missed, timelines are slipping and development times for operators are too short.

In terms of priorities, ECS is being developed before the ICS. Logically this is nonsense, since it is generally accepted that the greatest risk to the EU and its citizens in the international trade environment lies in the import sector. It follows that imports – and therefore ICS - should have the highest priority. It would appear that the only reason that the European Commission and certain Member State customs authorities are pushing ahead with exports first is because it easier to do. As such, the rationale for this whole security initiative is ill-founded.

Deminimis shipments

Under the security amendments, entry and exit summary declarations will be required for shipments of negligible value, i.e. below 22 Euros. If such declarations are required at import and export, this will mean that 12 million extra declarations per

year will need to be submitted by the express industry alone. This will have an enormous impact on the ICS and ECS systems and we doubt whether these systems will be able to cope with such volumes in a reasonable time frame without slowing down international trade. In addition, the financial burden on business will rise for no reason and will disadvantage EU companies globally. Finally, all the more so as there is no evidence that shipments of negligible value represent a substantial threat and see no grounds for them being targeted in such a way.

Authorised Economic Operator (AEO)

For security purposes, the law calls for Member States to grant AEO status to operators who meet certain common criteria which establish them as being a trusted carrier. Phase I should have been deployed by January 2008, while Phase II should be deployed by end-June 2009. The main problems that the express operators have with this are the following:

- **No authorization for a group of companies** – each entity (e.g. DHL aviation, DHL Italy, DHL Germany) will need to be assessed individually. This will take a huge amount of time and hurt the express industry since the movement of goods will be slowed since operators without the AEO status will be subject to further checks and fewer simplifications. Moreover, there will be no global guarantee available for operators.
- **All partners will need to be AEO accredited to enjoy simplifications** – if an AEO carries a consignment which comes from a non-AEO then they will no longer be able to benefit from "green lane" treatment. Every single partner within the supply chain will need to be accredited. This will slow down movements and force express operators to sort goods according to whether or not they come from an AEO source, again costing the business money and time.
- **No benefits to being an AEO** – Companies are required to spend significant sums of money to change their processes to become accredited as an AEO. However, decision-makers have stated that there will be no benefits resulting from their extra investment to meet the new criteria.

2. The Modernisation of the Complete Community Customs Code

Customs representation: avoiding national monopolies
In its current wording, Article 11 leaves the door open for certain EU Member States to allow customs representation to remain a monopoly. This will force businesses to utilize a third-party in their dealings with customs authorities - a closed shop of brokers who often have a limited understanding of customs procedures – thus slowing down shipments and increasing the costs for business, many of which will be passed on to EU consumers.

Being authorized as a legitimate trader: Authorised Economic Operator (AEO) status

Article 14 refers to the granting of the AEO status - in effect the EU-wide trust mark that offers simplifications to legitimate, secure traders, as discussed above. Operators should be able to demonstrate practical standards of competence in order to become an AEO, but there should be no reference to a professional qualification. In many Member States, for example, these qualifications do not exist. Since Article 14 currently reads "practical standards of competence or professional qualifications", the Implementing Provisions will decide what this will mean in practice. If a professional qualification were required then express carriers would be limited as to who would be able to attain the AEO status. This would increase costs and administrative procedures, particularly if the services of a third party would need to be employed. As the express industry, we cannot understand the sudden urgent need to introduce such "practical standards of competence" whether for an AEO or a Customs Representative. In many countries in the EU, such companies have always operated on a free market principle without restriction by the setting of nebulous benchmarking, Such countries as the United Kingdom have followed such principles since the 12th century, and practice has shown that the ability of companies to deal with customs matters in a professional manner is as good, if not better, than in those countries where customs matters are handled in a restricted manner by a small number of "professional customs brokers".

Centralised clearance

This is a facilitation that allows an importer or exporter to lodge his customs declarations in electronic form from his premises to the customs office where he is established, irrespective of the place where the goods are entering into or leaving the customs territory of the Community. This is of great benefit for EU industry as a whole, and one of the main plus points of the MCC. Centralised Clearance is covered in Article 106a of the MCC text but its concept, scope and its modus operandi will be decided and defined in its entirety through the MCC Implementing Provisions. In this respect, it should be understood that in terms of the MCC, centralised clearance only relates to the release of goods from customs, and the payment of customs duties. This excludes the need to centralise payments for VAT[1], collection costs/own resources[2] and statistics.

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[1] National Legislation applies

[2] 25% of customs duties collected in a country, (collection costs), are retained in that country and are supposed to be used to ensure an efficient customs department. 75% of the customs duties collected are forwarded to the Commission as "Own Resources", and are used to fund the EU institutions. National legislation applies. In the event that someone applies for centralised clearance in a single country in the EU for all 27 countries, and makes all customs declarations in the authorising country, all collection costs should theoretically be retained in that Member State. An agreement needs to be made at an inter-governmental level to resolve an equitable split in collection costs.