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## Working Document

SUBJECT: Customs 2007 Seminar on Single European Authorisation

Vienna – 26 - 27 January 2006

Results from the working groups

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# CUSTOMS 2007 SEMINAR – Vienna – 26 - 27 January 2006

**Subject: Single European Authorisation**

## 1. Objectives of the Seminar

The European Commission, together with the Austrian customs administration, hosted a conference on the Single European Authorisation (single authorisation for simplified procedures), the purpose of which was to present and discuss with customs administrations and traders the report containing the conclusions of the Customs 2007 Project Group on SEA/SA. That report proposes:

- a number of amendments to the Customs Code Implementing Provisions creating a legal framework for single authorisations for simplified procedures;
- the adoption of guidelines on: a standard joint understanding on co-operation, a harmonised control plan, VAT, statistics, prohibitions and restrictions, disputes and appeals and the distribution of the national share of own resources.

The second purpose of the seminar was to:

- clarify the concept of Single European Authorisation (single authorisation for simplified procedures) taking into consideration the new definition proposed, clearly showing the benefits associated with its implementation;
- find ways and means of broadening the use of the single European authorisation system and making it more efficient.

## 2. Main results

Traders and customs administrations are very interested in a legal framework for Single European Authorisation (single authorisation for simplified procedures) in order to encourage and facilitate its use under the current Customs Code, to facilitate trade and increase competitiveness, thereby opening the way to the implementation of centralised customs clearance when the modernised Customs Code enters into force.

A harmonized application of customs procedures throughout the EU is considered essential in order to make the Internal Market a reality and to avoid distortion of competition between companies in different Member States. Traders, in particular, have expressed the desire for genuine simplifications and the hope that the likely benefits of the work in progress will not be wasted as a result of differences between the national positions.

## 3. Summary conclusions of the Working Groups

Four working groups composed of representatives of customs administrations, candidate countries and trade examined and debated the issues described in document TAXUD/1409/2006.

### *3.1. Should SEAs be used for the local clearance procedure as well as for the simplified declaration procedure?*

*3.1.1 Is there an economic need for the simplified declaration procedure (also with regard to the modernised Customs Code)?*

*3.1.2 Should existing and new SEAs for the simplified declaration procedure between participating Member States be used under pilot projects until the modernised CC is in force?*

*3.1.3 Should the existing/draft legislation be kept as it is or are amendments needed?*

The evaluation of these questions is not conclusive.

Business insists that there is an economic need to grant single authorisations for simplified procedures, under both the simplified declaration and the local clearance procedures.

Most customs administrations believe that, under the current code, SEA should only be granted under the local clearance procedure unless the legislation is amended and a solution is found to the situation where, under the simplified declaration procedure, the customs debt is incurred in one Member State and is collected in another Member State. However, some customs administrations take the view that, if participating Member States agree between themselves when granting a SEA, the MS where the simplified declaration is presented and, thus, where the customs debt is incurred can authorise the MS in which the supplementary declaration is lodged to collect the customs debt.

The main conclusion, therefore, is that it is preferable to grant single authorisations for simplified procedures under the local clearance procedure, but that it should also be possible to grant such authorisations under the simplified declaration procedure. In the latter case, the continuation of existing pilot projects will depend on the wording of the new definition of single authorisation which is to be adopted for simplified procedures, i.e. whether it will include only the local clearance procedure, or both the local clearance and the simplified declaration procedures.

If the new definition to be adopted allows single authorisations to be granted for simplified procedures under the simplified declaration and the local clearance procedures, further legal amendments to the law might be necessary.

### *3.2* Definition of SEA/single authorisation for customs procedures:

*3.2.1 Should there be an amendment of Commission Regulation (EEC) No 2454/93 (CCIP) as proposed by the Project Group (see doc. TAXUD/1262/2005)?*

*This solution provides a simple and clear definition of Single Authorisation for all procedures, although it requires the deletion of the existing definitions of "single authorisation" for customs procedures with economic impact (Article 496 (c) CCIP) and end-use (Article 291(2)(a) CCIP), as well as the amending of all Articles of the CCIP which refer to these Articles.*

*3.2.2 Should the existing legislation be kept as it is? Or should a definition of single authorisation to use simplified procedures be added?*

*In this case a definition for single authorisation for customs procedures has to be added in the Regulation.*

All participants agreed that one definition of single authorisation for simplified procedures is required.

With regard to the solutions for amending Commission Regulation (EEC) No 2454/93, the overwhelming majority of participants were in favour of a sole definition of single authorisation as proposed by the Project Group; single authorisation means an authorisation involving more than one customs administration for the use of simplified procedures, customs procedures with economic impact, end use or any combination of these procedures.

Some participants could accept either solution, i.e. to insert a sole definition of single authorisation for all customs procedures or to maintain the two existing definitions of single authorisation in Articles 291(2)(a) and 496(c) CCIP and introduce a new definition of single authorisation for simplified procedures.

### *3.3 What requirements must be met before a trader can use SEA?*

*3.3.1 What are the conditions and criteria that have to be fulfilled?*

*3.3.2 Are the existing legal provisions sufficient?*

The participants agreed with the proposal of the Project Group that the existing criteria, mentioned in the Part I, Title IX CCIP, for national authorisation for simplified procedures are those to be fulfilled by the applicant for a single authorisation for simplified procedures. However, these criteria should be clarified and need explaining, either in an Annex to CCIP or in guidelines, in order to ensure a harmonised approach throughout the EU.

### *3.4 Application/Authorisation procedure:*

***Application procedure***

*An application can be made by any person, as defined in Article 4(1) CC, who meets the legal requirements and who is established in the EU, in accordance with Article 4 (2-) CC.*

*3.4.1 With regard to drafting the regulations on AEO, should SEA be granted in future only for AEO? Or should a Non-AEO be able to apply for SEA?*

Under the current law, the granting of a single authorisation for simplified procedures cannot be contingent on the fact that the applicant has previously been grantedAEO status.

With regard to future regulations, there was no unanimity on this issue and there were divergences of opinion between:

- those who think that SEA should be open to all companies that meet the criteria and standards for SEA; an AEO would be able to use a fast-track procedure for being granted the SEA, and would be subject to fewer controls;

- those who argue that applicants for single authorisations should be Authorised Economic Operators; an operator without AEO status would only be allowed to apply in certain circumstances and subject to furnishing additional guarantees.

The link between SEA and AEO was regarded as an advantage for monitoring by customs administrations.

*Pre-audits and audit-based controls by the customs authorities, both in the granting and the supervision of the authorisation, should be facilitated as far as possible. It is also necessary to check the applicant's main (commercial) accounts.*

*3.4.2 Should the application for an authorisation be submitted to the customs authorities designated for the place where the applicant's main accounts are held, including all documentation and records, or is access to the main accounts sufficient?*

In a paper environment, the application for an authorisation should be lodged where the applicant's main accounts are held and where the paper documentation is kept, to make pre-audits and audit-based controls easier.

In a paperless environment, the application for an authorisation can be lodged in any MS from which the data are accessible. Data must be stored, in principle, in a Member State or, where an international agreement guarantees unlimited access, in a third country.

The main goals are dovetailed accessibility and controllability.Business and some customs administrations defend flexibility of choice on the issue of the MS where a SEA application should be lodged: in a single market, if all the stipulated criteria are met, the applicant should be free to choose the customs authority with which to lodge the application for an authorisation. However, some customs administrations contend that the application for an authorisation should be lodged at the place where the main accounts, including records and documentation, are kept.

It was proposed that there should be closer scrutiny and further discussion of how to define "the place where main accounts are held" and "access to main accounts".

*3.4.3 Is there any need to make it obligatory for customs activities to be carried out in the Member State where the main accounts are held/accessible?*

Most participants felt that customs activities do not need to be performed in the MS where the main accounts are held, as checks can be performed in any event; one customs administration had reservations and would defend the existence of a physical flow of goods in the MS of application to allow more effective control.

***Issuing procedure***

*The Project Group proposes the implementation of a consultation procedure for issuing an SEA. Within 30 days the participant Member State must notify any objections to the issuing customs administration, and must be able to ask for more time if necessary. An SEA can only be granted if all competent authorities concerned have given their explicit written approval.*

*The Commission services consider that an authorisation can also be granted if the competent customs authorities of the participating Member States, after having been consulted in the framework of the consultation procedure, fail to reply or to submit any remarks regarding the draft authorisation within 30 days.*

*3.4.4 Should the issuing customs administration grant an SEA when one or more participating Member Statedo not submit an objection or consent? What might be the consequences of issuing an authorisation in such circumstances?*

The following conclusions were reached:

Customs administrations must reply within 30 days or ask for more time to analyse the process, avoiding thus a decision to issue an authorisation based on absence of answer.

If a MS does not answer, it does not necessarily mean that the MS agrees that the authorisation is granted; the trade requires a reply from the participating MS as a guarantee for the operations.

For the case where a MS does not reply under a consultation process to grant a single authorisation, a potential solution was suggested: namely to allow more time for reaction (e.g. a further period of 30 days). If the MS in question does not answer by then, it should be possible to issue the authorisation.

One possible way of helping Member States to reply could be a network of national coordinators, similar to the transit network.

### *3.5 Control procedure*

*Who is responsible for the control and supervision of the operation of SEA if there is more than one Member State involved:*

- *the participating MS(s) where the goods are placed physically, and/or*
- *the supervising MS where the supplementary declaration is to be lodged and the import duties are to be collected ?*

#### *3.5.1 Is it preferable that the responsibility for control remains with one customs authority or should it be divided among the customs authorities involved?*

Overwhelmingly the view was taken that responsibility for controls should remain with the issuing customs authority because reliable monitoring can take place only in the authorising Member State.

Exceptional controls may be required in participating MS, mainly where national requirements have to be fulfilled, and their results should be reported to the supervising customs authority in order to allow a review of the control plan, if necessary.

#### *3.5.2 How should the responsibility for control be shared between Member States involved?*

Physical and audit controls can be shared on the basis of a control plan, drawn up before the authorisation is issued, which takes national rules into consideration.

The control plan must specify, in detail, how joint audits are to be carried out, goods inspected, documents scrutinised and information exchanged between customs administrations.

#### *3.5.3 Should joint audits be conducted?*

Divergent opinions were expressed:

- some participants felt that joint audits should be carried out and be built into the control plan, but on condition that the power of decision lies with a national auditor, who will be assisted by auditors from participating MS;
- some participants felt that joint audits can be performed at the request of the participating MS; final responsibility lies with the MS which has granted the single authorisation, although physical checks and audits can be shared;

- some participants believe there is no need for joint audits and prefer an electronic exchange of information.

*3.5.4 How should the control of the goods and documents be organised?*

Both the customs administrations and business see the need for a control plan which makes it possible to plan over the long term.

A control plan should be agreed for every single authorisation for simplified procedures on the basis of a standard model; it was suggested that the control plan should be discussed in an appropriate forum, in order to improve the guidelines proposed by the Project Group.

*3.5.5 How should the exchange of information between the relevant customs administrations work?*

The exchange of information between customs administrations should work in an automated and efficient way.

The control of documents can take place at various places if the necessary means for an electronic exchange of information are available.

### *3.6 Representation*

*The following considerations need to be taken into account:*

- *under the current law any person may appoint a representative in his dealings with customs authorities to perform the acts and formalities laid down in customs rules (Article 5(1) CC);*
- *the holder of a single authorisation for simplified procedures must fulfil the conditions and criteria defined in the law;*
- *the person making the declaration is responsible for the accuracy of their declaration (Article 199 CCIP).*

*3.6.1 In the case of direct representation (Article 5(2), first indent CC) to whom can authorisation be granted: to the representative or to the economic operator whom he represents? Can the holder of the authorisation also act as a direct representative for lodging a customs declaration?*

There was no consensus on this issue; business thinks that it should be possible to grant the authorisation both to the economic operator and to the representative, in the case of direct or indirect representation.

MS have different national legal situations with regard to representation. Some customs administrations already grant authorisations to the representative in the case of direct representation if he provides a guarantee for the debts of his clients, whereas other customs administrations cite difficulties with the law as it stands and are not sure whether the payment of customs and tax debts could be guaranteed if the holder of the authorisation is the direct representative of the economic operator.

Normally an authorisation is issued to the economic operator; however, it can be issued to a representative if the economic operator and his representative are jointly and severally liable for customs and tax debts.

*3.6.2 Can a SEA be granted in the case of the indirect representative (Article 5(2) second indent CC)? Can the holder of the authorisation be the representative and lodge customs declarations under SEA, acting as the indirect representative of another person?*

Once again there was no consensus on to this subject; some participants believe that an authorisation can be granted to the representative in the case of indirect representation, provided that appropriate audits can be carried out.

However, most participants think that authorisations can be granted both to the economic operator and to the representative, provided that payment of the customs debt and taxes is secured by financial guarantees and that it is possible to supervise the procedure.

*3.6.3 Should a group of companies (different legal persons) in accordance with Article 4(1) third indent CC, be able to be covered by one SEA? If so, who will take responsibility (for making declarations, providing a guarantee, keeping records)? Who will take responsibility in the case of serious irregularities?*

It is desirable for a group of companies to be granted single authorisations for simplified procedures, provided that one of the firms of the group assumes responsibility for the accomplishment of obligations inherent to the procedure; liability for any duties and taxes, and accessibility to the records of the group is assured.

The holder of the authorisation will be the responsible entity and will be representing the companies of the group.

***Other legal administrative issues arising from SEA (VAT, excise duties, statistics)***

### *3.7 Value Added Tax*

*In accordance with the 6th VAT Directive, VAT is due at the time the goods are released for free circulation and in the Member State where the goods are physically located at that time.*

*The holder of the SEA will therefore have to satisfy additional conditions for VAT.*

*3.7.1 What are these special conditions for VAT?*

*3.7.2 How should these conditions be dealt with?*

*3.7.3 Should additional provisions be added in the authorisation for SEA or should a separate authorisation be issued by the participating member state?*

*3.7.4 How to proceed to ensure that both the customs duties and the VAT have been paid?*

*3.7.5 Are there alternative solutions?*

VAT is due in accordance with the Sixth VAT Directive and therefore the payment of this tax is subject to the national provisions implementing that Directive. The holder of a SEA

needs to comply with VAT for each country where the goods are released and, consequently, the timetable for payment and the data to be provided may be different.

For traders, the differences between Member States' rules on VAT mean administrative burdens that should, in their opinion, be resolved.

The Automated Import System could be used to ensure that both the customs duties and the VAT are paid.

It has been recognised that the success of SEA is directly linked to the possibility for the economic operator to provide information to a sole authority (Single Window). The Commission is urged to present a proposal on the simplification of the VAT rules.

For customs administrations, VAT obligations should be carried out according to each MS's national rules unless the Sixth Directive is amended. Traders would like a discussion on grouping together customs and VAT formalities and controls, as well as on the reverse charging of VAT in the MS where the goods are released for free movement, if the goods are supplied to that MS.

It has been suggested that a working group be set up to examine the possibilities for standardisation and simplification of VAT, excise and statistics rules.

### *3.8 Excise goods*

*Excise goods are subject to national provisions, which must be respected.*

*3.8.1 Should the solution for payment of VAT also be considered for excise duties, and should SEA possibly be granted for the customs warehousing procedure, so that each MS involved will apply excise duties when goods are cleared for home use?*

Customs administrations and business generally welcome the possibility of looking for solutions that suit both the excise and VAT systems. The possible integration of the two systems should be discussed and set out in a working paper.

*3.8.2 Should these high-risk goods be excluded from SEA for release for free movement?*

Two differing opinions were expressed:

- Single authorisation for simplified procedures should not be issued for excise goods, given the high risks involved and, consequently, the complexity of the preliminary negotiations could lead to major delay in granting these authorisations.
- Excise goods should not be excluded and it should be possible to issue single authorisations for simplified procedures for such goods in spite of existing justified concerns. In support of this point of view, it was proposed that excise goods be the subject of intensive discussion, with a view to their integration in the future system.

It was suggested that this issue be debated in the appropriate forum.

### *3.9 Statistics*

*The legal basis for collecting EXTRASTAT data is Council Regulation 1172/95, implemented by Commission Regulation 1917/2000.*

*The trader using an SEA must also consider the provisions for statistics.*

*Each Member State has to provide EUROSTAT with the relevant statistical data, but centralisation of this activity is impossible because of the different requirements and systems in use. The customs administration has to collect the statistical data with the declaration data and forward these to the appropriate statistical office.*

*In the case of SEAs the declaration data are submitted to the supervising customs administration but the statistical data have to be collected by the Member State in which the goods are physically released for free movement.*

*3.9.1 What to do about statistics?*

Under the current legislation, the holder of a SEA needs to supply statistics for each MS where the goods are released (the timing and data elements may be different).

It should be possible to combine statistics obligations with customs formalities at the supervising customs office.

Business thinks that the "single window" concept will be helpful and will enable current problems to be overcome.

*3.9.2 To which authority are the statistical data to be provided?*

Statistical data should be recorded where they are generated; the relevant national authority should forward these data to Eurostat.

*3.9.3 Is a separate authorisation necessary? If so, who should issue it (Customs or Statistics)?*

Both business and customs believe that a separate authorisation should not be necessary.

*3.9.4 Is an IT solution feasible?*

An IT solution in connection with AIS and AES is conceivable.

### *3.10 Disputes and appeals*

*3.10.1 Who should handle the appeal where an authorisation is not granted because a Member State, other than the one where the application was made, withholds its consent?*

Disputes should be settled by mediation or arbitration. Firstly, MS should try to mediate; if they cannot find a solution, a mediator should be appointed between the trader and the customs authority or between the customs authorities involved.

The criteria should be standardised.

### *3.11 Sanctions*

*3.11.1 Who should be responsible for the application of administrative and penal sanctions (the supervising customs office or the customs office responsible for the place where the infringement took place)?*

Administrative and penal sanctions should be applied by the MS where the infringement took place. The Guidelines on this issue proposed by the Project Group - document TAXUD/1284/2005 - require closer scrutiny.

### *3.12 SEA and the redistribution of the national share of own resources (25% of import duties collected)*

*Council Decision (EC, EURATOM) No 597/2000 provides that Member States shall retain, by way of collection costs, 25% of the customs duties they collect. It will ensure that all Member States are adequately compensated for the work they are required to perform.*

*Under SEA more than one Member State is involved in the import procedure:*

- *the supervising MS where the supplementary declaration is to be lodged and where the duties are calculated and collected;*
- *the participating MS(s), where the goods can physically be checked according to an agreed control plan.*

*Both must accomplish their tasks.*

*At present, two solutions are used when issuing single authorisations for simplified procedures; however, a single solution needs to be found quickly, as prolonged negotiations may delay the issuing of the authorisation or even result in a refusal to participate:*

*3.12.1 Should collection costs be redistributed on a 50-50 basis or according to another ratio?*

*3.12.2 Should the collection costs be entirely attributed to the MS where the goods are physically released for free movement?*

*3.12.3 If a political decision to change the system of the Communities' own resources is possible, which criteria should be considered?*

All the participants agreed that a simple, common solution that satisfies all stakeholders should be found quickly, as prolonged negotiations might delay the issuing of the authorisation or even culminate in refusal to participate in single authorisation for simplified procedures. However, for the time being, there was no consensus on which solution should be adopted.

Currently, two solutions are used when issuing single authorisation for simplified procedures: the "status quo" solution (the MS of final destination retains the national share, as if there were no SEA) and the "50/50" solution. As the Member States are split between these two methods of sharing collection costs and some MS can accept a different ratio if several MS are involved in an authorisation, perhaps consensus could be reached through adopting a similar solution to the "50/50" but under another ratio to be agreed, e.g. "25/75". Indeed, with the adoption of a legal framework and as experience is gained, both the burden and risk involved for the supervising customs office will be reduced; moreover, the adoption of this intermediate solution will reduce budgetary losses for the participating MS.

This issue needs to be discussed in the appropriate forum, between all stakeholders involved. If an agreement on a single approach is to be achieved, the solution adopted should acknowledge not only the part played by the supervising and participating Member

States but also the budgetary consequences, particularly for the smaller MS. A common framework could be laid down in the form of an administrative arrangement between MS.

The Project Group thinks that this would provide the opportunity for a review which would allow a reassessment to be made, once experience has been gained and once the budgetary consequences have been more accurately ascertained. Such a review should coincide with the implementation of the modernised Customs Code, as it introduces centralised clearance as a standard procedure for reliable economic operators.