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Working document

SINGLE EUROPEAN AUTHORISATION (SEA)

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WORKING GROUP SESSIONS

This document has been drafted by the

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Working Group Sessions

The four Working Groups will deal with the same issues.

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I Single European Authorisation (SEA)

The purpose of dealing with this issue is to analyse the general aspects of Single European Authorisation under the current Customs Code (CC).

1. SCOPE

1. Should SEAs be used for the Local Clearance Procedure as well as for the Simplified Declaration Procedure?

Most Member States grant SEAs only for local clearance procedures; Article 215 CC gives the main reason. According to Article 215 (1), first indent CC, the customs debt shall be incurred at the place where the events from which it arises occur. In the case of the local clearance procedure the entry in the records takes place centrally in the Member State that has granted the SEA. In accordance with article 215 (1),first indent CC, the customs duties arise in the Member State in which the central entry in the records takes place even if the goods are physically located in another Member State. The supplementary declaration will be lodged and the customs duties will be paid in the Member State that has granted the SEA.

This is different in the case of a simplified declaration procedure. A simplified customs declaration will be lodged at the customs office where the goods are presented. Consequently the customs duties arise in the Member State where the simplified declaration is lodged (Article 215 (1) first indent CC). But the supplementary declaration would be lodged and the customs duties paid in the Member State that has granted the SEA. Because of the difference in the place where the customs duties arise and the place where the duties would be paid, problems arise for SEA under the simplified declaration procedure.

Questions

- Is there an economic need for the simplified declaration procedure (also with regard to the modernised customs code)?

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

- Should the existing/draft legislation be kept as it is or are amendments necessary ?

2. DEFINITION OF SEA/SINGLE AUTHORISATION FOR CUSTOMS PROCEDURES:

In the current law there is already a definition of Single Authorisation to use customs procedures with economic impact and for end use.

Questions

- Should there be an amendment of the 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.

- Should the existing legislation be kept as it is? Or should a definition for 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.

3. WHAT REQUIREMENTS MUST BE MET BEFORE A TRADER CAN USE SEA?

Questions

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

- Are the existing legal provisions sufficient?

4. APPLICATION/AUTHORISATION PROCEDURE:

Who can apply for SEA?

An application can be made by any person, as defined in Article 4 No 1 CC, who meets the legal requirements and who is established in the EU, in accordance with Article 4 No 2 CC.

Question

- 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?

Where to apply for SEA?

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

Questions

- 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?
- Is there any necessity that customs activities have to be carried out in that Member State where the main accounts are held/accessible?

Issuing procedure

The Project Group proposes the implementation of a consultation procedure for issuing a SEA. Within 30 days the participant MS(s) must notify any objections to the issuing customs administration, and 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 under the scope of the consultation procedure, do not answer or make any remarks regarding the draft authorisation within the 30 days.

Question

- Should the issuing customs administration grant an SEA when one or several participating Member State(s) do(es) not submit any objection or consent? What could be the consequences of issuing an authorisation in such circumstances?

5. CONTROL PROCEDURE:

For the control and supervision of the operation of SEA there is more than one Member State involved:

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

Questions

- Is it preferable that the responsibility for control remains with one customs authority or should it be divided between the customs authorities involved?
- How should the responsibility for control be shared between Member States involved?
- Should joint audits be carried out?
- How should the control of the goods and documents be organized?
- How should the exchange of information between the relevant customs administrations work?

6. REPRESENTATION

Having taken into consideration the following:

- 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 declarant is responsible for the accuracy of declarations (Article 199 CCIP).
- According to Article 4(18) CC, "declarant" means the person making the customs declaration in his own name or the person in whose name a customs declaration is made.

Questions:

- In the case of direct representation (Article 5(2) 1st indent CC) to whom can an authorisation be granted: To the representative or to the economic operator that he represents? Can the holder of the authorisation also act as a direct representative for lodging a customs declaration?
- Can an SEA be granted in the case of the indirect representative (Article 5(2) 2nd indent CC)? Can the holder of the authorisation be the representative and lodge customs declaration under SEA, acting as indirect representative of another person?
- Should a group of companies (different legal persons) in accordance with Article 4(1) 3rd indent CC, be able to benefit from one SEA? If yes, who will take the responsibility (making declarations, providing a guarantee, keeping records)? Who will take responsibility in the case of serious irregularities?

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

This subject is related to the legal rules linked to VAT and excise duties, statistics, etc.

1. 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 respect additional conditions for VAT.

   Questions

   - What are these special conditions for VAT?
   - How should these conditions be dealt with?
   - Should additional provisions be added in the authorisation for SEA or should a separate authorisation be issued by the participating member state?
   - How to proceed to ensure that both the customs duties and the VAT have been paid?
   - Are there alternative solutions?

2. Excise goods

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

Questions

- Should the solution for payment of VAT also be considered for excise duties and possibly SEA be granted for the customs warehousing procedure, so that each MS involved will apply excise duties when goods are cleared for home use?
- Should these high risk goods be excluded from SEA for release for free circulation?

3. Statistics

The legal background 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 a 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 is submitted to the supervising customs administration but the statistical data has to be collected by the Member State in which the goods are physically released for free circulation.

Questions

- How to proceed with statistics?
- To which authority is the statistical data to be provided?
- Is a separate authorisation necessary? Issued by whom (Customs or Statistics)?
- Is an IT solution feasible?

4. Disputes and appeals

Question

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

5. Sanctions

Question

- 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)?

III 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 the duties are calculated and collected;

- the participating MS(s), where the goods can physically be checked according to an agreed control plan. Both have to accomplish their tasks.

At present, two solutions are in practice when issuing single authorisations to use simplified procedures but a single solution should be found quickly, as prolonged negotiations may delay the issuing of the authorisation or even result in a refusal to participate:

Questions

- Should the redistribution of collection costs be done on a 50-50 basis or another ratio basis?
- Should the collection costs be entirely attributed to the MS where the goods are physically released for free circulation?
- If a political decision to modify the system of the Communities' own resources is possible, which criteria should be considered?