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**COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE EUROPEAN
ECONOMIC AND SOCIAL COMMITTEE**

a simple and paperless environment for Customs and Trade

**COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL, EUROPEAN PARLIAMENT AND THE EUROPEAN
ECONOMIC AND SOCIAL COMMITTEE**

on the role of customs in the integrated management of external borders

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Council Regulation (EEC) No 2913/92 establishing the Community Customs
Code**

(presented by the Commission)

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BACKGROUND

This Communication follows on from the Council Resolution on the simplification of customs procedures¹, as well as the earlier Commission Communication on a strategy for the Customs union² and the related Council Resolution³. It responds to the Council's request to draw up an action plan for the simplification and rationalisation of customs regulations and procedures and the use of efficient working methods such as information technology, risk analysis and advanced auditing systems. It aims also at implementing in the customs area the objectives of the e-Europe⁴ and the better regulation⁵ initiatives. Finally, it takes account of the changing roles of border and inland customs offices after the forthcoming enlargement. Alongside, a Commission Communication on the role of customs with regard to the security at the external border⁶ is submitted.

¹ OJ C 332 1996, p. 1.

² COM(2001)51 final, 08.02.2001

³ OJ C 171 2001, p.1.

⁴ COM(2002) 263.

⁵ COM(2001)726 final (Communication from the Commission on simplifying and improving the regulatory environment, Brussels 05.12.2001)

⁶ COM(2003) 452 final, 24.07.2003.

INTRODUCTION

Globalisation and liberalisation of trade, the increased volume of trade and just-in-time delivery, the sophisticated nature of products and transport services, as well as the growth of electronic commerce have continuously thrown down new challenges to Customs administrations.⁷

Moreover, the need of our society to be protected against dangerous or harmful products and the necessity after the events of September 11th, 2001, to better integrate security aspects into customs procedures demonstrate the urgency to find solutions that can marry security concerns and trade facilitation. Although these seem to be two contradictory goals, the use of information technology (IT) tools combined with modern risk-management techniques is the adequate response to such developments. However, to be efficient, these techniques require the availability of certain import/export data at an early moment (wherever possible before the arrival of the goods at the border) and their transmission or availability to customs and other agencies responsible at the border through electronic means using a single channel of communication.

In addition, the level of customs intervention must be equivalent throughout the European customs union, and risk analysis and risk assessment must, therefore, be organised in a way that takes into account the dimension of the Internal Market. This aspect is of particular importance in the light of the forthcoming enlargement with a displacement of a major part of the land border of the European Union. Creating a paperless environment for the movement of goods, supplemented by limiting border controls mainly to security aspects and shifting other controls to the customs authorities responsible for the trader's premises, thus minimising the risk of fraud and non-compliance will constitute a first part of an answer to that challenge.

In the broad European context, *e-Europe*⁸ has now become a political priority and governments have agreed to go on-line by the year 2005, in order to better serve citizens and ensure better governance.

It is only logical and in the spirit of the customs union, that customs seizes this opportunity to ensure a simplified and paperless environment for trade and thus give an example of *e-government* at the level of the customs union.

Sharing the same legitimate concerns, Member States have developed their own individual strategies for creating an electronic environment for customs, taking into account national practices and requirements. However, by definition this has resulted in different IT solutions and perhaps different approaches to the implementation of customs rules and procedures, while maintaining old barriers and potentially introducing new ones (e.g. digital barriers) to the Single Market and undermining an equal treatment of economic operators.

Traders operating in more than one Member State have to comply with different conditions for electronic access to customs, generating unnecessary costs and jeopardising the functioning of the Internal Market. Even traders established in only one

⁷ See Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee concerning a strategy for a Customs Union, COM(2001) 51 final, 08.02.2001.

⁸ COM (2002) 263 final, p.10.

Member State but importing or exporting goods through the territory of another Member State face difficulties because of the lack of common data requirements and common interfaces. Electronic communication between customs administrations is equally hampered by the lack of common standards (apart from the new computerised transit system - NCTS). The forthcoming enlargement will further accentuate this situation and create additional burdens.

In addition, current customs procedures have become old fashioned, as they are too complicated and based on the use of paper documents. It is not cost effective to maintain the many variants of customs procedures reflecting a paper-based environment and relatively high duty rates and to develop IT solutions for procedures that can no longer be economically justified. Furthermore, movements of goods across several Member States cannot be effectively monitored by customs without common interfaces and data elements.

As Member States alone cannot create the necessary legal and IT environment, they need the Commission to act as a “catalyst” to ensure that the legal and operational framework is appropriate to the creation of a simplified and paperless environment for customs and traders and that interoperability between existing IT systems is achieved. Compliant traders should be able to operate in a “business friendly “ environment in which controls ensuring the protection of citizens and businesses are performed in the most effective and least burdensome manner.

The European Commission invites the Council and the European Parliament to endorse the following strategic goals:

- Customs procedures are fully revised and radically simplified, integrating modern techniques, including the extensive use of IT⁹ and of risk analysis;
- Customs work is organised in such a way that traders can benefit from the dimension of the Internal Market, i.e. irrespective of the place where a customs procedure begins and where it ends.
- Customs intervention must ensure that the Internal Market functions properly and that no barriers, including those of a digital nature, are introduced or maintained.
- Customs controls are of equivalent intensity and reliability at the EU’s external borders, especially where the protection of our society and its security is at stake; such controls are normally based on pre-arrival and pre-departure information; other controls are normally performed on the basis of periodic declarations and audits at the trader’s premises. This requires common risk management.
- Customs IT systems operated by Member States offer everywhere the same facilities to traders and are fully inter-operational, taking into account the role of the European customs union as being at the heart of the Internal Market.¹⁰

⁹ This corresponds to a request made by the Council already in 1996 (OJ 1996 n° C 332, p. 1), and which, so far, has been partially implemented with the reform of the customs procedures with economic impact.

¹⁰ This corresponds to a request made by the Council in the Resolution on a strategy for the Customs Union (OJ C 171 2001, p. 1).

This communication aims at seeking the political backing from both the Council and the European Parliament to implement these objectives; at the same time it explains the framework and the milestones for common action between the Commission, Member States (current and future), and traders in order to achieve the new simplified paperless environment for customs and traders.

1. PUTTING IN CONTEXT

Both at European level, as well as at international and national level, efforts are being made and initiatives taken to facilitate legitimate trade by using IT and by improving and simplifying legislation.

The Sevilla summit in June 2002 has endorsed two important political initiatives: “**e-Europe**” and “**better regulation**”.

The **e-Europe 2005** initiative¹¹ aims at providing a favourable environment to boost productivity, modernise public services, create jobs, in order to make Europe the most competitive and dynamic knowledge based economy. Some of the key targets of this initiative are:

- interactive public services (e-government), accessible for all and offered on multiple platforms. This requires an agreed interoperability framework to support the delivery of pan-European e-government services to citizens and enterprises;
- a review of legislation affecting e-business.

The “**better regulation**” initiative, which is one of the commitments of the White Paper on European Governance,¹² aims at simplifying European legislation in order to reduce the cost of doing business in Europe and increase legal certainty for citizens.

Customs is a key area in this context: privileging electronic transmission of harmonised data through common interfaces will allow traders to avoid numerous declarations to different agencies at the borders with often similar or even the same data. At the same time, all requirements in relation to importation and/or exportation (e.g. phyto-sanitary, health, environment etc.) could be channelled through one single entry point/gateway.

At international level, trade facilitation and the use of IT for customs procedures are part of the political agenda, both in the WTO and in the WCO, as well as in the context of bilateral agreements the Community has concluded or is currently negotiating.

Following the **WTO** Doha Ministerial Declaration, trade facilitation is an integral part of the current WTO work programme. Simplification of customs rules, use of modern technology, and transparency are main components of trade facilitation. If the Community wants to remain a key player in pushing for trade facilitation worldwide, it must itself be at the forefront of state of the art customs handling.

In addition, the **WCO Customs Data Model** provides a common understanding on customs information requirements. In line with the revised **Kyoto Convention**,¹³ a global

¹¹ COM(2002) 263 final, 28.5.2002

¹² COM (2001) 428 final, 25.7.2001

¹³ OJ L86, 2.4.2003, p. 3.

standard exists for the implementation of customs provisions dealing with initial reduced electronic data requirements and subsequent submission of periodic declarations and supporting documents.

It is therefore essential that any initiative at Community level aiming at simplifying and harmonising customs procedures and thus facilitating trade takes full account of developments at international level.

The current context, both at European and international level, provides a unique opportunity for simplification and automation in the customs field. It is therefore important to seize this opportunity to set the objectives and to identify the means to achieve a simpler and paperless environment for customs in which economic operators do not have to suffer from the fact that currently 15 and soon 25 different national administrations implement Community legislation.

2. THE CHALLENGES

Customs administrations nowadays have to face additional challenges in carrying out their tasks, due to apparently conflicting new requirements by traders and society. They have to effectively manage a greater volume of goods crossing borders, at a faster rate, and with increasing pressure to reduce costs and delays. All this whilst dealing with an ever larger number of serious controls issues, involving environmental, health protection and security issues, etc.¹⁴

Traditionally, the most important role of customs has been collecting customs and agricultural duties and thus contributing to the Community budget; its involvement in the collection of value added tax and excise duties for Member States' budgets still remains a major task. Today customs is also a central part of the globalisation process and a catalyst to the competitiveness of countries and companies, as it plays a key role in the monitoring and management of international trade.

Customs services are the first line of defence for screening of both passengers and freight of third country origin, as well as for the detection of illegal importations of animals and animal products and infringements of the veterinary rules.

An equally important role of customs is enforcement. They are the gatekeepers tasked with the responsibility of guarding against any dangerous or even illegal activity that might damage the well being of our society, and that of our trading partners. The enforcement actions of customs services goes well beyond the border inspection posts and cover the whole territory of the Community.

Both business and society have important expectations with regard to customs administrations.

¹⁴ Commission Communication "towards an integrated management of the external borders of the member states of the European union", COM(2003) 233 final, 7.5.02, and Commission Communication concerning the security of the external frontiers, COM(2003) 452 final, 24.07.2003.

2.1. What does society expect from customs?

Notwithstanding their traditional revenue role, customs administrations play a major role in protecting the society.

Customs fosters the *EU economy* where it needs protection, for example, against dumped, subsidised or counterfeit goods.

Customs services are acting not only for the *protection of the public health* from substances dangerous to health (e.g. dioxin, drugs, hormones) but also to ensure the protection of the environment (radioactivity, waste) and of endangered species (CITES Convention).

Moreover, customs acts against *criminal activities*, such as child pornography, illegal trade in arms or dual-use items, money laundering and the circumvention of *international sanctions* (embargoes).

Customs is also protecting society's economic interests by *fighting fraud* (in the field of own resources, VAT and excise duties) and by ensuring the correct application of agricultural or commercial policy instruments (export refunds, antidumping duties, export and import licences). The customs declaration is the key element for statistics which allow traders to elaborate their market strategy and Member States and the Commission to prepare negotiations with their trading partners.

Finally, customs contributes to *regional integration* through the promotion of preferential trade links between countries and regions, thus enhancing their prosperity.

2.2. What does business expect from customs?

Supply chain management and collaboration has reduced delivery times enormously with the support of IT applications linking all actors involved. If the customs process stays out of this circuit, it is a stumbling block to just-in-time delivery.

Against this new frame of reference, it is natural for the business sector to also expect benefits, including better efficiency, better services and higher productivity from customs.

Transport costs, the regulatory environment, easy access to information, the predictability of the total transaction, including border controls involving different agencies, all play their part in creating a competitive advantage and new opportunities for business.

Strategic partnership

Customs administrations, being a critical link (or obstacle) in the supply chain, are expected to facilitate trade transactions. The business sector has a vital interest in forming a strategic partnership with customs.

Short and predictable release times

The demand for, and ability to supply, rapid deliveries has been greatly increased by multimodal transport and electronic commerce, and is reflected in globally integrated just-in-time supply production and distribution systems. Under these circumstances

simple, predictable and uniform customs controls and procedures involving different agencies are an imperative.

EU wide level playing field

Traders need a predictable and transparent regulatory and operational framework in which the *law is interpreted in a uniform way* throughout the Community and customs practices are similar, thus putting the economic operators on an *equal footing*.

Moreover, business wants to avoid unexpected loss of time when launching its products on the Single Market. A *single entry point* for customs declarations and other formalities (instead of multiple communication channels to different authorities/agencies) for all requirements related to import/export would help to achieve this objective.

Reduction of bureaucracy; further simplification for compliant traders

The business community expects that necessary controls (legitimate and well-founded) do not result in cumbersome and complicated procedures, thus increasing costs. Compliance should be accompanied by further simplification. The use of risk analysis techniques, applied in the same manner throughout the Community, reduces the burden of controls.

Coherent legislation

Importers and exporters do not only have to comply with customs legislation but also with tax, agricultural, commercial policy, environmental and health requirements. The application of such requirements needs to be made more coherent, in order to facilitate trade, reduce errors, and increase compliance.

2.3. Conclusion

Customs authorities are more than ever facing the potentially contradictory role of ensuring facilitation and enforcement. In addition, they need to adjust to new patterns of trade and technology.

3. THE OBJECTIVES

The only response on how to deal with the divergent expectations and of applying a growing number of controls to protect the Community's financial, social, security and business interests whilst at the same time facilitating legitimate is twofold:

3.1. Radically simplify and modernise legislation and procedures

A re-engineering of procedures allows the use of modern tools and technology which will promote a uniform application of the law, thus reducing costs for business and the risk of error.

Therefore a framework needs to be created in which:

- the large variety of the current customs regimes and special rules is reduced to some basic procedures, such as importation, exportation and suspensive arrangements, with

a maximum of common rules and data requirements, and special rules only for cases where a strong economic justification for an exception from the general rules exists;

- a quick release of goods is the rule where a trader has provided before the arrival or the departure of the goods the information necessary for risk-based controls on the admissibility of the goods; fiscal and trade policy controls being primarily performed by the customs office responsible for the traders premises, where the customs and fiscal debt is normally incurred;
- all transactions between the trader and the administration can and are normally handled electronically;
- Community customs administrations act as if they were a single administration; this involves the possibility of exchanging information between traders and customs authorities in any Member State in the same way, as well as between these authorities, the granting of authorisations valid throughout the Community within strict deadlines, and the use of common procedural rules, interfaces, data requirements and risk criteria;
- customs administrations are able to share data electronically with other public authorities for the correct application of fiscal, agricultural, commercial, health, phyto sanitary and other measures applied at importation or exportation, so that eventually a single window solution can be achieved.

Current customs rules, formalities and systems do not yet take full account of these requirements. Under the new rules, and in respect of the principles of a customs union, it should not make a difference whether a customs transaction affects only the territory of one Member State or that of several Member States. After enlargement most imports and exports may fall under the latter category anyway.

3.2. Ensure interoperability through a convergent IT framework

Information and documentation are key elements in the control of international cross-border trade. In an interconnected electronic environment these controls will normally include trader-to-customs information exchange prior to the arrival or departure of the goods in order to provide the necessary data for security checks as well as acceptable release times.

Member States have already invested significantly in the development of IT systems. However, because of the different existing systems (comparable to the situation before harmonisation the national customs legislation) the different sets of rules and data offset the advantages of the harmonisation achieved so far, notably because of a lack of interoperability.

It is therefore essential to introduce interfaces between existing and planned national systems and to create a common and single interface towards trade. This implies the introduction of a convergence framework and common standards and, where appropriate, common structures.

4. HOW TO ACHIEVE THE OBJECTIVES ? - ACTIONS TO BE TAKEN

This section sets out the major steps of an action plan taking into account that both a coherent and appropriate legislative as well as an operational framework is essential to achieve a simple and paperless environment for customs and trade. Provision must be made for the transitional period in which electronic and paper-based procedures exist alongside each other.

4.1. Simplify customs legislation, integrating security aspects

The bulk of the Community Customs Code and its implementing provisions were conceived in the 80s and adopted in 1992 and 1993 respectively, with the exception of the rules on transit and the customs procedures with economic impact. Consequently, these provisions do not reflect today's trends and the realities of the international supply chain, nor the reduction of duty rates.

Moreover, the recently increased focus on security aspects in the movement of goods requires that risk-related data¹⁵ are shared in real time between customs administrations of Member States on the one hand and customs administrations and other agencies (e. g. police, veterinary authority) on the other hand. This will enable customs authorities to decide on which consignments they will carry out thorough physical checks at the border. This can mainly be done through the use of IT and the adoption of the relevant legislation at Community level, which will stipulate the use of IT and will overcome difficulties linked to divergent national legislation (e.g. on data protection).

It will be easier to streamline customs treatments, veterinary and other procedures if common procedural rules and interfaces are created.

A review of customs legislation must therefore aim at achieving the following objectives:

- electronic declarations (including accompanying documents), and electronic exchange of data become the rule;
- the existing customs procedures and other regimes are simplified and reduced;
- simplified procedures are aligned, adjusted to the needs of electronic treatment, and their scope and use is extended;
- the roles of inland and frontier customs offices are redefined;
- the rights and responsibilities of traders and freight forwarders are redefined;
- new tools and methods are introduced in the customs legislation.

Such modernisation and simplification of customs legislation would reduce the cost for business, increase legal certainty for citizens (better regulation), and allow businesses and citizens to fully benefit from the possibilities offered by IT procedures and the Single Market.

¹⁵ Including sensitive goods (e.g. dangerous chemicals) or high risk goods (e.g. goods subject to high duties or taxes).

4.1.1. Setting the rules: electronic declaration and electronic exchange of data¹⁶

Both the Community Customs Code and its implementing provisions treat the electronic declaration and electronic exchange of data as the exception and paper-based declarations and the submission of paper documents as the rule. Customs legislation should be adapted to make electronic communication the basis of importation and exportation transactions, both between traders and customs and between customs administrations. This should produce an environment where both trade and customs operate a seamless flow of information comprising common data requirements and common interfaces. Paper declarations may be used under specific conditions only. Simplifications, such as oral declarations for travellers, will of course remain.

Accompanying documents (invoice, certificate of origin) should, wherever possible, be provided in electronic form, through the single window approach or to be held in a database accessible to customs (e.g. import authorisations). Where this is not feasible, specific conditions will have to be defined to ensure authenticity.

4.1.2. Reduce significantly the number of existing customs treatments¹⁷

In order to achieve a simpler and more coherent legislation and therefore establish a common core of data whilst reducing compliance costs, it is suggested to merge the thirteen existing customs treatments¹⁸ and other special regimes (such as temporary storage, returned goods and products of sea-fishing). Less variations mean also less procedural differences between Member States.

The current provisions scattered over the Community Customs Code could be grouped under the following three types of customs procedures, with different variations where necessary and sufficiently justified:

- importation (covering current presentation of goods to customs, summary declaration, temporary storage, release for free circulation including end-use, inward processing [drawback system], internal transit [entry of goods], returned goods, products of sea-fishing, destruction, abandonment),
- exportation (covering current exportation, re-exportation, outward processing, internal transit [exit of goods]),
- suspensive arrangements (covering current external transit, customs warehousing, inward processing [suspension system], processing under customs control, temporary importation, free zones, free warehouses).

VAT and excise duties could be suspended under suspensive customs arrangements in order to facilitate the application of the destination principle (i.e. the tax is paid in the Member State where the importer or consumer is established).

¹⁶ This action is a necessary condition for the creation of a paperless environment for customs.

¹⁷ This action, although not a necessary condition for the creation of a paperless environment for customs, would facilitate electronic treatment of customs transactions.

¹⁸ Art. 4 n° 15,16 CC.

4.1.3. *A single guarantee*¹⁹

The merger of all suspensive arrangements will allow the use of a single guarantee for all - currently separated - procedures, provided the use of the different variants has been authorised. This guarantee would, as currently in the case of transit, also cover VAT and excise duties, and could be managed electronically.

4.1.4. *Single European Authorisations*²⁰

Under the current customs legislation simplified procedures, the end-use arrangements and customs procedures with economic impact are de facto restricted to the territory of the authorising Member State. Though Single European Authorisations (SEA) valid in several Member States are legally possible, they are hardly used in practice, because each Member State has a veto right for transactions on its territory. As long as this veto right exists, a widespread use of SEA will not be possible. In this context it should be noted that binding tariff and origin information issued in one Member State is already today valid in all the others.

Community wide decisions should be favoured by Community legislation. Consequently, the authorisation for central, simplified clearance should be granted by the customs office responsible for the place where the trader is established, holds his main accounts or performs his main economic activities (the exact criteria for determining the responsible authorities in cases where these conditions may be met in more than one Member State are to be determined). This ensures efficient controls and the granting of authorisations within reasonable deadlines.

Such an authorisation would be valid throughout the Community and the lead customs administration is obliged to consult the partner administrations in order to ensure the feasibility and effectiveness of the envisaged control mechanisms. Joint audit teams would carry out an audit so that the appropriate control mechanisms can be established. Model authorisations would simplify this task and contribute to overcoming linguistic problems.

The principle that a decision can cover cases where a company established in one Member State has legally independent subsidiaries in other Member States could be extended to other areas, such as binding tariff and origin information.

4.1.5. *Review of the customs debt provisions and the roles of frontier and inland customs offices*²¹

The implementation of the Single Market on 1st of January 1993 saw a significant increase in the volumes of consignments requiring a declaration at the external frontier as well as an increased need of communication between border and inland customs offices.

¹⁹ This action is not a necessary condition for the creation of a paperless environment for customs. However, a common guarantee for all customs regimes will be easier to handle electronically.

²⁰ This action is not a necessary condition for the creation of a paperless environment for customs but aims at simplifying the customs environment.

²¹ This action is not a necessary condition for the creation of a paperless environment for customs, but aims at improving security and creating a more predictable environment for traders. It is a prerequisite for centralised customs clearance.

The increased volume of trade, the speed required for the release of goods, as well as the fact that commercial import and export data are normally available in electronic form before the actual customs transaction make it necessary to review the roles of the frontier and the inland customs offices.

- Though complete customs clearance will still be possible at the entry point, most traders may prefer not to use it, given the advantages linked to centralised, global clearance at the place where the trader is established (deferment of the date of the submission of a complete declaration with the required documents, periodic declaration, deferred payment). On exportation, clearance at the place where the trader is established is already a reality.
- The promotion of the centralised clearance concept frees frontier customs offices to focus on admissibility and security checks. Inland customs offices carry out all other controls (and notably customs duty, fiscal and commercial policy controls, except where a control at the border is required) at the trader's premises through audits and on spot checks based on commonly developed and applied risk criteria.
- Under this system, the customs (and related fiscal) debt is normally incurred at the place where the trader is established.
- The customs environment could be made more predictable for the trader if non fraudulent lack of compliance with a customs rule does not lead to a customs debt where it is established that the failure had no significant effect on correct operation of the procedure.²² For such cases administrative sanctions based on a schedule established at Community level could ensure better compliance for the future. Such a solution would seek to maintain a level playing field for traders throughout the Community, without compromising its financial interests.

4.1.6. *Redefinition of the roles of traders and freight forwarders*²³.

According to the current principles of the Community Customs Code the role of the importer and exporter is to provide the necessary information to customs at the time the goods are physically presented to the customs authorities in order to allow these authorities a selection of certain goods for further examination. The large increase in volumes of trade and the need to speed up the clearance process have rendered this approach impossible in practice, so that simplified procedures (such as local clearance) are largely used in order to reduce burdens both on traders and administrations. However, according to the Community Customs Code, such procedures are defined as an "exception" to the normal rule. The time has now come to take account of recent developments and to introduce the general concepts of an "authorised trader" and an "authorised freight forwarder"

The authorised trader:

- can declare electronically goods for import into the Community, wherever possible before their arrival, with a set of core data (one element being whether the goods are

²² Such a rule is already stipulated in Art. 204 of the Community Customs Code and Art. 859 of its implementing provisions and could be extended to other cases.

²³ Although this issue is not directly linked to e-customs, the use of IT will allow to better target the profile of the authorised trader.

entered for import or for a suspensive arrangement); such goods may be destined for different Member States;

- can declare electronically goods for export, normally before their departure, with a set of core data; such goods may exit the Community from another Member State from that where he is established;
- is, in principle, subject to border controls only for antismuggling and security controls;
- makes complete electronic declarations, assesses duties within regular periods, ensures that quantitative limits are respected, and is regularly audited by customs. Certain simplifications (e.g. waiver of notification requirements) can be granted where customs has access to the relevant data where this has been agreed between the operator and customs, taking into account the need of data security;
- is granted different levels of simplification according to the types of goods traded, the volume of trade, the reliability and transparency of his accounting system and his compliance; the criteria for granting different levels of simplified treatment are the same throughout the Community.

The authorised freight forwarder or transporter can:

- take over some of the obligations which would normally be those of an authorised trader (e.g. he could lodge a customs declaration or notification for him);
- produce certain evidence (e.g. on the arrival of the goods or on the exit of the goods from the Community), and
- handle consolidated consignments that are destined to a multitude of importing or exporting companies (possibly in different Member States) as holder of a suspensive arrangement on entry into the Community and by providing the necessary data at exit.

Importers and exporters who do not wish to use the authorised trader/freight forwarder, transporter concept or do not fulfil the conditions, will not be entitled to use simplified procedures and would have to choose, following a pre-arrival declaration, at importation between release for:

- free circulation, or
- a suspensive arrangement (requiring a guarantee).

At exportation, the required data would have to be provided before the goods are loaded, in order to allow security checks.

In either case, traders could also use a customs agent (who may be an authorised freight forwarder, transporter, so that the above-mentioned concept would be more attractive).

4.1.7. *Providing a legal basis for new tools and working methods*²⁴

The re-engineering of rules and processes should be accompanied by the introduction of modern, efficient tools and methods in the Community customs law, in order to ensure efficiency and a similar level of control at all customs points. This includes :

- self-assessment and subsequent audits as the normal form of customs declaration for authorised traders;
- a common methodology and common criteria for risk management;
- common audit and pre-audit²⁵ standards;
- common accreditation standards for the granting of facilitations, based on volumes of trade, types of procedures, risk parameters, compliance, and the results of a pre-audit (in line with the Stairway concept);
- Memoranda of Understanding (MOUs)²⁶ allowing a certain flexibility in the relationship between customs and the economic operator with regard to facilitations and control arrangements; model MOU's could be developed;
- the “single window” approach for co-operation between customs authorities and other departments or agencies on the one hand and traders on the other;
- the use of guidelines and explanatory notes wherever no legal provisions are required but a harmonisation of practices is necessary, in order to guarantee transparency and an equal treatment of economic operators.

4.1.8. *Electronic signature, electronic documents, electronic archiving*²⁷

The use of information technology poses the crucial problem of the authenticity and soundness of the data exchanged or electronically stored, such as invoices²⁸, bills of lading, certificates of origin or authenticity, and licences.

By using electronic signatures it is possible to authenticate the person signing an electronic document. Community legislation is already in place to guarantee the legal recognition of electronic signatures.

The electronic signature Directive has been implemented in almost all Member States. Consequently electronic signatures are ensured legal effectiveness and admissibility as evidence for legal proceedings to the same extent as hand-written signatures in the Member States.

Consequently:

²⁴ This action is directly linked to the creation of a paperless environment for customs.

²⁵ Pre-audits are performed, where necessary, before an authorisation is granted.

²⁶ Used mainly in the context of SEA and simplified procedures.

²⁷ This action is a necessary condition for the creation of a paperless environment for customs.

²⁸ See Directive 2001/115/EC with regard to VAT.

- i) Member States who have not yet implemented Directive 1999/93/EC on electronic signature should proceed with the implementation;
- ii) there should be a specific provision in the Community Customs Code explicitly recognising the legal value of an electronic signature and document for customs purposes, independently from the state of implementation in the different Member States;
- iii) Member States should ensure interoperability where a trader uses an electronic signature recognised under the rules of the Member State where he is established.

4.1.9. *Standardise and harmonise information requirements* ²⁹

Standardised and harmonised information requirements and procedures are essential to establish the common understanding which allows for an effective and efficient exchange of information between all parties involved in the international cross-border movement of goods.

Standardisation and harmonisation of information requirements should be consistent with the work undertaken by the G7. Initiatives to harmonise the SAD³⁰ and the SAM³¹ with regard to the optional boxes should lead to operational results. Data to be transmitted to another Member State must necessarily be the same throughout the Community.

It is important to ensure a seamless flow of information: traders should provide data only once (or twice where the system of an initial incomplete and a supplementary declaration is used), one Member State's data become another Member State's data where necessary.

Solutions must also be found with regard to differences caused by national legal requirements, such as fiscal regimes (e.g. reduced VAT rates, excise duties). Whilst the Community Customs Code cannot resolve such divergences, the SAD and the SAM provide for a framework under which a standardisation is possible.

4.2. **Rationalise business processes through the use of modern technology**³²

Once the information requirements have been harmonised or standardised, the customs interface should be presented to the trader in each Member State in the same form. This is not only a symbol for the Community but helps also to overcome linguistic problems.

4.2.1. *Ensure customs/customs and trader/customs interfaces*

In order to be able to act as if they were a single customs authority, customs offices all over the EU territory should be inter-linked. Therefore it is necessary to ensure the appropriate interfaces between divergent electronic customs systems.

Traders should be able to lodge their declaration or notification directly from their own IT system (if they wish via a clearing house or customs agent) and give all necessary data electronically to customs according to a standard interface. Certain notification requirements could be waived where customs administrations are granted, on a voluntary

²⁹ This action is a necessary condition for the creation of a paperless environment for customs.

³⁰ Single Administrative Document.

³¹ Single Administrative Message.

³² This action is directly linked to the creation of a paperless environment for customs.

basis, electronic access to the relevant trader's records. Also for such cases, appropriate common interfaces should be developed. A customs internet declaration/notification should be available for small and medium sized traders.

4.2.2. Ensure secure internet payment systems

On technical security, the Commission's **e-Europe initiative**³³ promotes several solutions, including a smart card action plan and plans further work on identification and authentication techniques.

These developments have to be closely followed and appropriate solutions should be sought.

4.2.3. Single automated access point for trade

It is important for traders to have a single automated access point to the Community. This means that from this entry point they can access the relevant customs clearance and information systems. They will have to provide data only once, independently from the number of destination countries.

4.2.4. Transparency

Information on customs procedures, simplifications, accreditation criteria, guidelines, etc. should be available on the internet in a language widely understood in international trade.

³³ COM(2002) 263 final, 28.5.2002

CONCLUSION

The Communication from the Commission concerning a strategy for the Customs Union³⁴ has highlighted the need to simplify and rationalise customs legislation to take into account changes in business trends and to tackle fraud. Emphasis is given in particular to promoting modern techniques and a greater spread of information to help customs and economic operators apply the legislation in a consistent manner.

The Council, in its Resolution of 30 May 2001 on a strategy for the Customs Union³⁵ has invited the Commission “to develop a broad-based programme for computerisation of customs procedures and exchange of customs information, as well as a credible strategy for the development and use of information networks in customs activities”.

The objective of a simplified and paperless environment for customs and traders, in which legitimate trade can operate the seamless movement of goods with minimum interference by customs, has been established and endorsed by the business community in the Forum on electronic customs (Toledo, May 2002).

This is the only way to avoid further diversion from the internal market and an increase of bilateral arrangements (as it happens with SEA). Only standardisation and simplification of customs procedures will prevent business from authorisation “shopping”, resulting in substantial economic consequences for certain Member States, leading ultimately to distortion of competition. Only uniform integrated customs processes can avoid high administrative costs and a serious competitive disadvantages for European companies.

Moreover, the proposed approach ensures that security, public health and environmental protection will not be compromised. This way less “secure” entry points and territories within the European Union and the abandonment of certain regions and ports can be avoided.

There is no other alternative than ensuring optimal conditions for the tasks that have to be carried out by customs authorities and traders.

Existing legislation, systems and processes will have to be reviewed and simplified and a paperless environment be created. Where technical and legal gaps exist, they will have to be filled in order to obtain an integrated legal and technical framework. Improvements will ensure that Community’s regulatory infrastructure keeps pace with the latest developments in commercial logistic practices, the reduction of customs duties and the forthcoming enlargement.

Customs controls will lose their cumbersome nature for trade and will become a part of the trade transaction, with optimised efficiency.

Key players and their respective roles have been identified. An action plan has been proposed. Public authorities (Commission and customs and other administrations) and the private sector (traders) will have to discuss and this action plan and carry out their specific tasks in partnership and continuous transparency and consultation.

³⁴ COM(2001)51 final, 8.2.2001

³⁵ OJ C 171,p. 1

The success of the strategy for a simplified and paperless environment for customs and trade will highly depend on key players' commitment to its implementation.

Annex 1 sets out a first action plan and Annex 2 gives an overview of costs and benefits for traders and administrations.

ANNEX 1

PROPOSAL FOR ACTIONS UNDER E-CUSTOMS

1

<p>1. What type of action is proposed?</p> <p><i>Legal</i></p> <p>Propose amendment of the Community Customs Code (modification of Council Regulation N° 2913/92)</p>
<p>2. Subject/Content_(main issues:)</p> <p>Adjust the Customs Code to the principle that electronic declarations and messages are the rule and paper-based declarations the exception.</p> <p>Define the conditions of a digital environment for customs</p> <p>Rationalise customs (normal and simplified) procedures and treatments (from 13 to 3) reducing divergences to a minimum and defining a common core of data</p> <p>Redefine the roles and responsibilities of inland and border customs offices</p> <p>Use of a single guarantee for all customs treatments</p> <p>Favour extensive use of central clearance</p> <p>Provide legal basis for new tools and methods (e.g. risk analysis model and data base)</p>
<p>3. Importance of the action: High</p>
<p>4. Expected results of the proposed action:</p> <p>Proposal of new Council and Parliament regulation amending the CC</p>
<p>5. Measurement of the results achieved:</p> <p>Adoption of the proposal</p> <p>Implementation by Member States</p>
<p>6. Cost and benefits³⁶ for the main stakeholders:</p> <p><u>6.1. Commission</u></p> <p><i>Costs:</i> A slight increase of the budget for missions (analysing the situation in MS for the feasibility study) and meetings. Temporary need of at least two A officials (one is currently working on the file) and 1 man/year technical consultants.</p>

³⁶

A preliminary feasibility study is currently under preparation including the cost/benefit analysis. Until the final results of the study only assumptions on the basis of contacts with MS and traders can be made.

Benefits: Simpler legislation, easier implementation by MS and improved enforcement of customs law via significant improvements in detection of fraud. Improved collection of revenues (own resources) as direct result of the preceding (fraud detection) as well as via likely improved compliance rates in declarations

6.2. Member States (MS)

Costs: Preparatory legal work should not involve extra costs (apart from participation in some additional meetings and seminars) at least for current MS because it is part of anticipating change and progress. Concerning new MS, these costs are already planned and budgeted for the implementation of the “acquis”.

Benefits: Same as for Commission. More efficient allocation of human and other resources deriving from the re-engineering of customs processes and procedures and removal of activities and controls duplicated between MS. More efficient use of NCTS investment/infrastructure, even though external borders have moved and there are less transit movements. Maintain customs offices in the current MS with no external border. Improved security and compliance.

6.3. Traders

Costs: Investments necessary to access the services (including client software and training, network/telecommunications costs and possible security measures. Costs of providing and maintaining common interface to customs (only one for all MS).

Benefits: Numerous and recurring. Improvement in customs clearance and release time. Simplification and streamlining of compliance obligations and procedures (e.g. SEA, single guarantee for all customs treatments). Increased transparency, co-operation and uniformity in interactions with customs. Reduction of costs via the automation of customs procedures. Availability of a single automated entry point to the EU. Increased flexibility in co-operation structure with customs administrations.

7. When is the action planned to take place?

After preparatory technical discussions within the Customs Code Committee (started in 2002, until end 2003) the formal proposal is expected to be transmitted to the Council and the E.P in 2004 (provided resources are available).

8. Duration of action:

+/-1,5 year until submission of a proposal (depending on resources).

9. Resource implications (for Commission)

At least 2 A officials (full time) and 1 external consultants 1 year.

PROPOSAL FOR ACTIONS UNDER E-CUSTOMS

2

1. What type of action is proposed?

Legal

Propose amendment of the Community Customs Code implementing provisions (Commission regulation)

2. Subject/Content_(main issues:)

The same as for table 1, but at more “technical” level (= a guide to the application of the CC)

Adjust the provisions to the principle that electronic declarations and messages are the rule and paper-based declarations the exception.

Define the conditions of a digital environment for customs

Rationalise customs (normal and simplified) procedures and treatments (from 13 to 3) reducing divergences to a minimum and defining a common core of data

Redefine the roles and responsibilities of inland and border customs offices

Use of a single guarantee for all customs treatments

Favour extensive use of central clearance

Provide legal basis for new tools and methods (e.g. risk analysis model and data base)

3. Importance of the action: High

4. Expected results of the proposed action:

Proposal of new Commission regulation amending the CCIP

5. Measurement of the results achieved:

Adoption of the proposal

Implementation by MS

6. Cost and benefits³⁷ for the main stakeholders: (same as for fiche 1 namely)

6.1. Commission

Costs: A slight increase of the budget for missions (analysing the situation in MS for the

³⁷

A preliminary feasibility study is currently under preparation, including the cost/benefit analysis. Until the final results of the study only assumptions on the basis of contacts with MS and traders can be made.

feasibility study) and meetings. Temporary need of at least two A officials (one is currently working on the file) and a 1 man/year technical consultants.

Benefits: Simpler legislation, easier implementation by MS and improved enforcement of customs law via significant improvements in detection of fraud. Improved collection of revenues (own resources) as direct result of the preceding (fraud detection) as well as via likely improved compliance rates in declarations

6.2. Member States (MS)

Costs: Preparatory legal work should not involve extra costs (apart from participation in some additional meetings and seminars) at least for current MS because it is part of anticipating change and progress. Concerning new MS, these costs are already planned and budgeted for the implementation of the “acquis”.

Benefits: Same as for Commission. More efficient allocation of human and other resources deriving from the re-engineering of customs processes and procedures and removal of activities and controls duplicated between MS. More efficient use of NCTS investment/infrastructure, even though external borders have moved and there are less transit movements. Maintain customs offices in the current MS with no external border. Improved security and compliance.

6.3. Traders

Costs: Investments necessary to access the services (including client software and training, network/telecommunications costs and possible security measures. Costs of providing and maintaining common interface to customs (only one for all MS).

Benefits: Numerous and recurring. Improvement in customs and release clearance time. Simplification and streamlining of compliance obligations and procedures (e.g. SEA, single guarantee for all customs treatments). Increased transparency, co-operation and uniformity in interactions with Customs. Reduction of costs via the automation of customs procedures. Availability of a single automated entry point to the EU. Increased flexibility in co-operation structure with customs administrations.

7. When is the action planned to take place?

Prior to and following adoption of the new Council and E.P Regulation modifying the Customs Code, preparatory technical discussions within the Customs Code Committee are expected to start once the proposal for the amendment in the Customs Code has been submitted and to end one year after its adoption.

8. Duration of action:

1-2 years (depending on resources and progress in the Council and the Parliament).

9. Resource implications (for Commission)

same as for table 1.

PROPOSAL FOR ACTIONS UNDER E-CUSTOMS

3

<p>1. What type of action is proposed? <i>Operational (co-operation between some MS)</i> Pilot project on automated exportation</p>
<p>2. Subject/Content (main issues:)</p> <p>The pilot project would cover indirect exportation towards a third country involving at least 2 MS (in the first is situated the office of exportation and in the second the office of exit).</p> <p>During the Finland seminar in December 2002, three MS volunteered to participate to the pilot project (PP), namely DE, IT and BE. Traders expressed interest to participate through selected companies.</p>
<p>3. Importance of the action: High</p>
<p>4. Expected results of the proposed action:</p> <p>Ensure (in a computerised customs environment) that goods declared for export, outward processing or re-exportation have left the customs territory towards a third country, after a control of the admissibility of the export has taken place.</p> <p>Integrate third countries data requirements relating to security aspects (and define common data elements required for exportation to third countries) in the flow of data between the customs office of departure and the customs office of exit.</p> <p>Ensure optimal co-operation between customs offices of the MS involved</p> <p>Identify bottlenecks and problems to solve</p> <p>Share the experience and results with other current and future MS and traders, and serve as a model for the automated export procedure to be applied throughout the Community, and as a first tangible result of the electronic customs initiative after the implementation of the new computerised transit system (NCTS). Organisation of a seminar with all interested parties.</p>
<p>5. Measurement of the results achieved:</p> <p>Evaluation of the results by MS and Commission (report), implementation by the Member States concerned.</p>
<p>6. Cost and benefits for the main stakeholders:</p> <p><u>6.1. Commission</u></p> <p><i>Costs:</i> Costs will be covered by Customs 2007 under “electronic customs” and by the Internal Market budget (seminar).</p> <p><i>Benefits:</i> Identify problems (legal and technical), including security aspects before changing the legislation (as exportation is already a two step procedure no major changes to the Customs Code are needed, but mainly to the implementing provisions) and before</p>

defining interfaces.

Having a concrete view on other countries requirements (such as CSI³⁸), serve as a model for export automation in MS.

6.2. Member States

Costs: Some technical adaptation of NCTS infrastructure may be needed.

Benefits: Same as for Commission.

Use of NCTS investment/infrastructure, even though external borders have moved and transit movements have been reduced. Maintain customs offices in the old MS with no external border. Improved security and compliance.

6.3. Traders

Costs: Possible technical adaptations to electronic interface with customs

Benefits: Improvement in customs clearance and release time. Better proof of export for tax purposes. Simplification and streamlining of compliance obligations (including foreign countries requirements in the CSI context) and procedures

7. When is the action planned to take place?

During 2003 and throughout 2004. Preparatory meetings have already taken place.

8. Duration of action:

+/-1 to 2 years (depending on resources).

9. Resource implications (for Commission)

same as for table 1.

³⁸

CSI: Container Security Initiative.

PROPOSAL FOR ACTIONS UNDER E-CUSTOMS

4

1. What type of action is proposed?

Technical

Evaluate current IT environment for the creation of a convergence framework between MS

2. Subject/Content (main issues:)

Achieve a convergence framework among MS (who currently run different electronic systems for customs and related purposes) in view of ensuring interoperability, a technical evaluation is needed.

3. Importance of the action: High

4. Expected results of the proposed action:

Identify problems and propose solutions in order to ensure interoperability between the MS IT systems

Define technical specifications for convergence

Produce and publish a report based on the information given by MS

5. Measurement of the results achieved:

Evaluation of the results by MS and Commission, endorsement of a convergence roadmap.

6. Cost and benefits for the main stakeholders:

6.1. Commission

Costs: The work will be carried out by MS (with the assistance of the Commission) in the Customs 2007 framework. Costs for meetings will be covered by C2007 under “electronic customs”.

Benefits: If a convergence framework between different systems allows interoperability, the financial and human resources required for a centrally run Commission system can be avoided.

6.2. Member States

Costs: Travel costs will be covered by C 2007. Human resources : 1 per MS

Benefits: Member States invested already significant money and resources in their IT systems. Making use of them (instead of introducing a new system) through technical adaptations, will allow them to save public money and human resources (no new training needed)

6.3. Traders

Costs: Some technical adaptations, insofar as current interfaces change.

Benefits: Traders who already do customs transactions electronically, are accustomed to the IT system of the MS in which they are established. No further training and technical investment is needed, if MS system can be maintained.

7. When is the action planned to take place?

Throughout 2003 and 2004.

8. Duration of action:

+/- 2 years

9. Resource implications (for Comission)

same as for table 1 +1 informatics specialist

1. What type of action is proposed?

Technical

Define appropriate interfaces in order to ensure interoperability

2. Subject/Content (main issues:)

In order to ensure interoperability among MS (who currently run different electronic systems for customs purposes) it is important to define appropriate technical interfaces:

Customs to Customs

Customs to other administrations (one stop shop)

Customs to traders/traders to customs

3. Importance of the action: High

4. Expected results of the proposed action:

Identify problems and solutions in order to ensure interoperability between the MS systems

Define technical specifications for convergence

Produce and publish a report based on the information given by MS

5. Measurement of the results achieved:

Evaluation of the results by MS and Commission. Produce and endorse interface specifications.

6. Cost and benefits for the main stakeholders:

6.1. Commission

Costs: The work will be carried out by MS (with the assistance of the Commission) in the Customs 2007 framework. Costs for meetings will be covered by C2007 under "electronic customs"

Benefits: If a convergence framework between different systems allows interoperability, financial and human resources required for a centrally run Commission system can be avoided.

6.2. Member States

Costs: Additional software updating costs, but these costs are similar to those that would normally be incurred during the maintenance and evolution cycle of their software.

Benefits: MS invested already a lot of money and resources in their IT system. Making use of them (instead of using a new system) through appropriate interfaces, will allow them to save public money.

6.3. Traders

Costs: Investment necessary to access the services, including client software and training.

Benefits: General reduction in the costs of doing business in the EU by having one single interface to all EU customs administrations (currently 15 and soon 25 different interfaces).

7. When is the action planned to take place?

Throughout 2004 and 2005.

8. Duration of action:

+/- 2 years

9. Resource implications (for Commission)

same as for table1 + 1 informatics specialist

PROPOSAL FOR ACTIONS UNDER E-CUSTOMS

6

1. What type of action is proposed?

Technical

Define common standards for common data requirements

2. Subject/Content (main issues:)

In order to ensure interoperability among MS (who currently run different electronic systems for customs purposes) it is important to define common standards for the exchange of data from:

Customs to customs

Customs to other administrations (one stop shop)

Customs to traders/traders to customs

Moreover, it is important to agree on a minimum common core of data (as under NCTS) which will be exchanged between them and will allow electronic handling of the goods flow.

3. Importance of the action: High

4. Expected results of the proposed action:

Identify a common core set of data and standards

5. Measurement of the results achieved:

Produce and endorse list of core data and standards.

6. Cost and benefits for the main stakeholders:

6.1. Commission

Costs: The work will be carried out by MS (and the Commission) in the Customs Code Committee and in the Customs 2007 framework. Costs for meetings will, in the second case, be covered by C2007 under “electronic customs”.

Benefits: A common standardised set of data will facilitate exchange of information between stakeholders.

6.2. Member States

Costs: Travel costs + 1 person per MS.

Benefits: Same as for Commission.

6.3. Traders

Costs: Cost of adaptation of existing data structure and codes.

Benefits: General reduction in the costs of doing business in the EU by having standardised and common data at Community level.

7. When is the action planned to take place?

Throughout 2003 and 2004.

8. Duration of action:

+/-2 years.

9. Resource implications (for Commission)

same as for table 1 + 1 Informatics specialist.

ANNEX 2

Main costs and benefits for traders and administrations

	<i>Benefits</i>	<i>Costs</i>
<i>Traders</i>	<ul style="list-style-type: none"> • Increased responsiveness of the customs administrations, particularly regarding reductions in the overall elapse time required to obtain customs clearance • Simplification and streamlining of compliance obligations and procedures to be followed, deriving specifically from the simplification and reduction of customs procedures, the Single European Authorization, and the possibility to use global guarantees • Increased transparency, predictability, co-operation and uniformity in interactions with customs administrations and systems • General reduction in the costs of doing business in the European Union via the automation of procedures and consequent replacement of paper-based procedures • Availability of a single automated entry point to the EU administrations, including the single window/one-stop-shop for customs and other agencies • Availability of lower cost customs software via the creation of an EU-wide market for a customs software following a unique set of specifications instead of 15 (or 25) markets of country-specific software • New business opportunities for customs agents and clearing houses in the area of bridging EU interfaces to private companies' systems interfaces, and for representing traders established outside the Community regarding declaration and payment obligations • Increased flexibility in co-operation structures with customs administrations via expanded use of MOUs (Memoranda of Understanding) 	<ul style="list-style-type: none"> • Investments necessary to access the services, including client software and training, network/telecommunications costs, and any possible imposed security measures/obligations • Increased responsibility for traders who are granted facilitations on a EU-wide level

<i>Administrations</i>	<p>The national customs administrations and the European Commission (EC) will be better able to fulfill their tasks as follows:</p> <ul style="list-style-type: none"> • Improved enforcement of existing laws and improved security via significant improvements in detection of fraud, especially when several Member States are involved in an import or export transaction, and also via the significant improvements in the application of other controls because of an integrated approach (environment, health, security, etc.) • Improved collection of revenues as a direct result of the preceding (better control of goods' movements) as well as via likely improved compliance rates in declarations • Improved (i.e., more efficient) allocation of human and other resources deriving from the systematic re-engineering and simplification of customs processes and procedures • Reduction in costs for each process automated in the quest for the paperless environment in which all customs transactions are done electronically 	<ul style="list-style-type: none"> • Legal adaptations including both harmonization as well as some specifically all needed modifications (MS + EC) • Adoption of/convergence towards common/uniform risk analysis models, but which are of course customizable/adaptable to local conditions (MS + EC) • Adoption of common interoperability model (MS + EC) • Implementation of permanent co-ordination efforts to create and maintain common functional specifications, data models, etc. for EU-wide customs systems (MS+EC) • Investments in infrastructure (but based on extensions of existing facilities such as CCN, those used by NCTS, etc, including PKI/digital signatures, etc. (MS +EC) • Attaining and maintaining coherence with other (non-customs) agencies and administrative bodies (MS+EC) • Planning and conducting prototyping and pilot phases for new automated systems (MS + EC) • Conduction of feasibility study and creation of implementation and migration plans (EC) • Human resource adjustments, including hiring additional staff and training programs (MS mostly + some by EC) • Necessary re-organization of administrative bodies and agencies associated with the business process, re-engineering of customs processes and procedures (MS+EC) • Additional software updating costs associated with convergence of IT strategy (MS+EC) • Main phasing-in costs associated with the execution of all the plans (MS+EC) • Development and other implementation costs associated with new software systems and infrastructure (MS+EC) • Miscellaneous phasing-in costs which are immeasurable, intangible, exist in small units, are widespread, but which are significant in total (costs largely born by MS, e-Europe already allows a share of these costs)
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**COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL, EUROPEAN PARLIAMENT AND THE EUROPEAN
ECONOMIC AND SOCIAL COMMITTEE**

on the role of customs in the integrated management of external borders

This Communication is a sequel to that presented by the Commission in May 2002 on the integrated management of the external borders of the Member States of the European Union.³⁹

It also takes account of the Commission Communication of February 2001 on a strategy for the Customs Union⁴⁰ and the related Council Resolution of June 2001.⁴¹ The strategy for the Customs Union must be adapted and extended to take account of growing security concerns. Although customs is primarily responsible for the control of goods, it will have an important role to play in combating the new threats linked to goods crossing Community borders. The Community must have the resources to guarantee its citizens' safety and security against the risks from trafficking, health or environmental hazards or terrorism.

This Communication proposes to rationalise the management of customs controls via a common strategy for goods-linked risks to be defined in close cooperation with all the authorities involved in a common framework. Its aim is to give customs and the other authorities responsible for managing goods at the external border the resources they need to combat any risk to the Community's safety and security in a coordinated manner. To attain this objective it proposes priority-setting for customs controls, the introduction of a Community risk management system and identification of the resources and equipment which will be needed.

It concludes that the border guards, who bear primary responsibility for checks on persons, and the customs authorities, responsible for controls on goods, have the common objective of ensuring a high level of protection for citizens within an area offering freedom, security and justice. The complementary and closely intertwined nature of their tasks makes it desirable to enhance the synergies between them, exploiting their different strengths and providing mechanisms guaranteeing greater effective cooperation.

³⁹ COM (2002) 233 final, 7.5.2002.

⁴⁰ COM (2001) 51 final, 8.2.2001.

⁴¹ OJ C 171, 15.6.2001, p.1.

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1. INTRODUCTION

- 1.1. In December 2001, the Laeken European Council asked “the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created”.⁴² In response to this request, the Commission drew up an integrated European strategy for the management of external borders reflecting the multidimensional nature of the task. The principal aim of this strategy is to improve security and other controls carried out at the external border and to facilitate bona fide movements of travellers and legitimate trade.
- 1.2. In May 2002, the Commission presented a Communication on integrated management of the external borders of the Member States of the European Union.⁴³ This dealt primarily with checks on persons and stressed that effective common management of the European Union’s external borders would enhance security and the feeling among its citizens of belonging **to a common area and sharing a common destiny. The Communication announced that there would be a second contribution dealing with goods.** This takes the form of this Communication which suggests ways of improving the integrated management of controls of goods and their means of transport (luggage included) and makes other proposals in areas where customs can provide support for checks of persons carried out by other authorities. **Both Communications are complementary and constitute the first stages in the overall strategy that the Commission is proposing for integrated and effective management of external borders, the aim being to achieve a coherent framework for joint action at EU level.**
- 1.3. To comply with the European Council’s request it is essential to consider not only how to improve controls through increased cooperation between authorities responsible for external border controls, but also whether current controls sufficiently guarantee the security of the Community and its citizens. The term security is used in the widest sense here. It covers not only threats to public security in the movement of goods (criminal, terrorist or other trafficking or illegal trade in firearms, biological products or explosives, for example), but also the threats to society’s security from trade in goods which pose a risk to public health, the environment and consumers. Irrespective of whether they come under the first or third pillar, these measures are complementary and have the same objectives. They must all help create the area of freedom, safety and justice established by the Treaty of Amsterdam.
- 1.4. The current methods used by customs for controls of goods do not adequately address increasing security concerns. This is why this Communication recommends fundamental changes in the way threats to security are combated without creating obstacles to legitimate trade. The strategy proposed combines rationalisation of customs controls with a common definition, worked out in cooperation with the other authorities concerned, of the methods and means used to more effectively check goods. The aim of the recommendations is to maximise the combined impact of controls carried out by different authorities and make more resources and equipment

⁴² Conclusion No 42 of the Laeken European Council of 14 and 15 December 2001, p. 12.

⁴³ COM(2002) 233 final, 7.5.2002.

available. Once these proposals are implemented, they will improve public security and have a positive impact on trade, investment, growth, and consequently, on employment within the Community.

- 1.5. The Communication also proposes all the improvements needed in Community frontier controls to improve security, while embracing the new Member States, who will be required from accession to ensure that no dangerous or illegal goods compromise the security of the other Member States or of the Community. In this connection it should be borne in mind that the majority of security controls, unlike some of the financial controls, have to be carried out at the Community border.
- 1.6. This Communication forms part of the guidelines laid down in the Commission Communication of February 2001 concerning a strategy for the Customs Union⁴⁴ and of the related Council Resolution of June 2001.⁴⁵ It takes these proposals further to take greater account of security aspects.
- 1.7. It is not the purpose of this Communication to call in question the guidelines or priority measures laid down as part of the overall strategic approach for protecting the Community's financial interests or fighting fraud, as set out in Commission Communication COM(2000) 358 final of 28 June 2000, nor customs mutual assistance operations under either Regulation (EC) No 515/97⁴⁶ or the mutual assistance protocols or agreements with third countries.

The Commission calls on the Council, Parliament and the European Economic and Social Committee to discuss these proposals and to endorse the measures described in Section 6 of this Communication so that concrete proposals can be presented for their implementation.

2. CUSTOMS AND SECURITY: AN INITIAL CONCLUSION

Customs work in the Community has typically evolved in the context of financial and commercial controls. Broadly speaking, the fight against fraud has traditionally been seen as part of the task of supervising the flow of goods. More recently, the focus has been on the threat to public security from dangerous or hazardous goods. Work has been organised on this basis and Community instruments such as the customs modernisation programmes have been used to identify best practice for financial and commercial controls.

In the light of the growing threats from dangerous goods, organised crime or terrorist organisations, it has to be asked whether this approach provides adequate protection for the Community and its citizens at all points along the external border.

The Commission considers that it does not.

Present controls do ensure the financial interests of the Community and its Member States are protected, particularly as any problems arising once goods have entered the Community can

⁴⁴ COM(2001) 51 final, 8.2.2001.

⁴⁵ OJ No C 171, 15.6.2001, p. 1.

⁴⁶ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

be rectified through post-clearance audits. But they do not adequately counter or prevent terrorist action and they are no longer able to guarantee a high level of protection for citizens against the risks from dangerous or defective goods.

All the Member States are active in these areas, but measures and priorities and investment in equipment and resources differ from one Member State to another. At Community level, there is no uniformity or harmonisation of security controls which are sometimes slow to respond to new threats. This results in varying levels of performance in these areas at different points in the customs territory. In some places computerised risk management systems have been introduced with the requisite human resources and equipment, whereas in others controls are less effective owing to a lack of investment and modern systems.

In security terms, this means that the chances of seizing explosive devices, biological weapons or dangerous goods in time depend upon where at the Community's external border these goods enter. The risk of diversified treatment will only increase after enlargement. There is consequently a real need to coordinate these individual approaches so that best national practice becomes the Community standard.

This Communication applies to all the Community's external frontiers, land borders, ports and airports, and takes into account the importance of the fifth enlargement.

To ensure the efficient integrated management of the EU's external frontiers, we need pragmatic solutions, underpinned by a firm financial and political commitment, otherwise the Community will run the risk of becoming an easy target for fraud and terrorists.

Current security checks on goods must be improved to ensure a high and identical level of protection at all points along the Community's external border.

This Communication discusses ways of improving the safety of goods. It lists the principal threats to be countered, the weaknesses in current systems and highlights the specific areas which require close attention. It indicates what customs should do to improve the situation and how to strengthen cooperation with the other authorities responsible for the safety of goods.

3. THE PRINCIPAL THREATS TO SECURITY

There are many different threats to the Community's safety and security. They can be classified in a number of categories:

- **Criminal or terrorist threats:**
 - direct threats: a deliberate intention to introduce prohibited goods such as explosives, or nuclear, biological or chemical weapons;
 - indirect threats: smuggling or trafficking in illegal goods (drugs, cigarettes, alcohol, counterfeit goods) to supply or finance terrorist or organised criminal organisations (money laundering).
 - **Health and safety risks to consumers:**

Health risks: these are concerns linked to bio-safety threats, e.g., as a result of non-authorized imports of contaminated products (the spread of some cases of mad cow disease has been attributed to the import of contaminated meat) or products arising from new scientific developments such as GMOs. In terms of consumption, narcotics, anabolic substances or other doping agents can also be classed in this category.

Risks linked to dangerous products: these cover certain counterfeit goods or goods which do not meet Community safety standards, e.g., medicines, food products or utensils (lighters, spare parts, etc.).
 - **Environmental and health risks:** these include the illegal introduction of fauna and flora species in danger of extinction, radioactive material or sick animals.
- Risks to public security:** trafficking in illegal arms or drugs.

To combat the increasing threat of deliberate attacks or risks to the safety and security of Community society there must be a greater focus on controls of goods.

To counter threats to security, improvements have already been proposed for the checks of persons which are mainly carried out by border guards, often in close co-operation with customs. However other aspects must also be addressed to combat crime, terrorism or any other security threat effectively. The risks linked to the introduction into the Community of weapons, radioactive substances or explosives or contaminated meat or sub-standard medicines usually concern movements of goods at Community borders. The 100 000 or so customs officers in the European Union⁴⁷ have a vital role to play by strengthening coordination at European level and working in closer cooperation with other border control authorities, and the police in particular.

4. IMPROVING THE SAFETY OF GOODS

4.1 The traditional role of customs in the control of goods

Customs sometimes assist the authorities which are primarily responsible for checking persons at borders. The information they gather in routine checks of travellers and vehicles, or simply through a physical presence at borders, can often be used to detect international crime, sometimes in close cooperation with the other security authorities.

However, only customs has sufficiently broad and detailed expertise to carry appropriate safety controls on goods.

⁴⁷ This may seem to be a very significant figure but it covers all customs work which varies from one Member State to another (tax, customs management and specific national duties).

Customs has long experience in the control of legitimate trade and has been able to establish close contact networks with traders and acquire a detailed knowledge of goods. Through its expertise and networks, customs has access to information which it can use to better target and combat illegal or high-risk trafficking. In addition to its special contacts it has customs offices at all border posts including international ports and airports, and sometimes even on traders' premises. It is therefore the only organisation which is able to track movements of goods into or out of, or even within, the Community. Customs monitors movements of goods by land, sea or air at border crossing and customs clearance points. These advantages should be exploited to improve the safety of goods.

Customs plays a central role in the control of legal goods and hence the detection of illegal goods. Its presence on the borders mean it is well placed to detect illicit traffic not presented for clearance by the normal channels. It must therefore have the necessary resources to ensure close and effective cooperation and coordination with the other border security authorities. Customs administrations have certain types of information and have developed assistance and co-operation machinery;⁴⁸ the police and other authorities also have their own systems and sources of information (e.g., intelligence systems to detect suspect persons or criminals). Greater sharing of all this information will play a key role in improving the detection of crime of whatever origin, while ensuring that each authority retains its own powers. It will also increase synergies between authorities.

If customs is to undertake this role, customs work will have to be reorganised in order to rationalise external border controls. This is crucial, particularly after enlargement, as the new Member States will be required to apply Community customs legislation immediately. The Schengen rules will also apply from accession but a Council decision will be needed to remove controls at internal frontiers with the new Member States.

4.2 Rationalise customs controls at external borders

As a rule, Member States apply customs controls in accordance with Community legislation, but it is often national interests that dictate the selection of control priorities. This inevitably leads to different levels and degrees of protection from one point to another in the customs territory, in particular in relation to security controls that are not yet necessarily designed at Community level. This encourages illicit trafficking at border points where controls are weak. This gap has to be plugged. The level of protection at external borders must be made as uniform as possible by identifying security controls common to all Member States, particularly as, in future, many controls will have to be carried out by the new Member States and they too have their own national priorities.

The Member States responsible for management of the external border are also responsible for the security of the Community as a whole and not only for that of their own country. It is therefore in the Community interest to ensure that the principal security risks are addressed in a timely and harmonised manner at each point on the external border.

⁴⁸ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (see footnote 8); Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (OJ C 24 , 23.1.1998).

That will mean that customs operations will have to be reorganised to make the controls as effective as possible through a process of rationalisation involving priority setting and combining effective security and optimum management of resources.

Customs will play two distinct roles:

- a tax and commercial role to protect Community and national economic and financial interests;
- a safety and security role to protect European society.

The risks involved in these two roles will have to be weighed in order to identify the main risks necessitating controls to be undertaken at external borders. For other, equally important, risks, controls could be undertaken elsewhere, provided that this does not lead to any increase in fraud. The objective will be to focus at border posts controls of the greatest risks, i.e., controls which could have irreparable consequences if they are not carried out when goods cross borders.

Controls undertaken under customs' tax and commercial policy role could, in many cases, easily be carried out in places other than border posts. By simplifying and modernising customs procedures as envisaged in the Communication on electronic customs, control data could increasingly be transmitted electronically in a way that ensures a high level of protection for Community and national interests and does not increase the risk of fraud. In the process we could define more clearly which tax and commercial policy controls still have to be carried out at border posts. Such rationalisation could reduce the long queues at border posts.

On the other hand, many of the controls necessary for the Community's safety and security can only be undertaken at border posts: it is essential to ensure that explosives, contaminated food or radioactive substances do not cross Community borders without being checked or seized. Controls which would not provide sufficient guarantees if they were carried out at customs offices inside the Community must be identified and confined to border posts.

Prioritising of risks and, hence, of controls to be carried out at border posts requires the unequivocal endorsement of the political authorities. Customs must also be given the legislative, regulatory and financial resources to implement this strategy.

4.3 Provide customs with the legislative and financial framework it requires

Before an overall strategy to improve the effectiveness of integrated external border management can be introduced we must look at controls as a whole, whether they be Community or national. The arbitrary distinction drawn at Community level between those that come under the first pillar and those that come under the third pillar is incompatible with the objectives of ensuring high-level protection at all points on the external border without creating obstacles to legitimate trade. In the longer term such a distinction might well be abolished. Work on the European Convention already seems to be moving in this direction. However, without prejudging the outcome of the Convention discussions, we must use existing instruments to enhance customs' security role.

Customs uses two strategies to track movements of goods: a **control strategy** based on customs procedures and an **investigative strategy** designed to prevent or combat fraud which can also serve as input either into the control selection process or for detecting risks not identified in controls. Each of these strategies needs to be improved.

Community rules, including restrictions and prohibitions laid down by Community law, must be uniformly applied. Controls based on national measures must be harmonised, as differences in implementation from one Member State to another may have a deleterious impact on the Community's security. A common Community strategy for controls and their treatment will enhance security performance throughout the Community. Such a strategy does not mean that national risk priorities cannot be maintained provided that basic security controls by all Member States are weighted and applied in the same way at all points on external borders.

Customs' investigative powers vary widely from one Member State to another. Such powers are a logical adjunct to customs controls and essential to the effective combating of fraud from its investigation to detection. A common strategy on Member States' customs powers, duties and roles is needed here. There must also be greater synergy with the police. Customs' role in "policing" goods must be more clearly defined. Customs must play an active role in police investigations to identify or find perpetrators of fraud as their objectives are the same. Fraud will be more effectively investigated, identified and detected by comparing police and customs data, which is often complementary, and pooling their expertise and resources.

The Community must also encourage increasingly closer cooperation between the authorities concerned, harmonisation of working methods, pooling of relevant information and the setting of interdisciplinary networks. This will also require the development, introduction or greater use of secure (existing or future) systems for the storage, processing or exchange of information.

The existing **legal framework** will have to be extended and adapted to make these improvements. The scope of legislation must be extended to cover customs powers and duties. Existing customs law must also be amended to take account of security criteria. The Customs Code is an example. It is primarily based on the tax and commercial policy aspects of customs' role and pays much less attention to "security" aspects. It will have to be amended so that instruments such as risk management and trade facilitation measures take greater account of security aspects.

Finally, it has to be said that there is still no real Community policy on the provision of the material resources needed for such controls. This problem is likely to become more acute in an enlarged Community. We must therefore consider **appropriate financial solutions**⁴⁹ and explore the possibilities offered by Community (structural or other) funds, while taking care to avoid duplication of effort.

This safety and security dimension must form an integral part of all legal, budgetary and customs instruments and working methods. The Commission can play an important role here. It will not act in the place of the Member States, but will, in accordance with the principle of subsidiarity and through increased coordination, encourage them to work together to achieve common goals.

⁴⁹ Including the possibility of using the 25% withheld by Member States as the cost of collecting traditional own resources to finance the fight against fraud and the protection of the Communities' financial interests, applicable since the entry into force of Council Decision No 2000/597 of 29 September 2000.

5. NECESSARY IMPROVEMENTS

5.1. A common risk strategy

Rationalisation of the risk management strategy and methods is an essential starting point. This will involve, initially, identifying those controls which can be moved without encouraging a proliferation of the risks that they address and those which have to be carried out at border posts. The objective is to ensure that priority is given to what is strictly necessary for the Community's security and that controls are carried out where they are most effective.

On this basis, a **common risk strategy** at the external border must be:

- **common;**
- **rationalised;**
- **computerised;**
- **complete;**

Common

The controls which must be maintained at border posts for reasons of safety and security have to be weighed in order of priority. All the authorities concerned (customs, police, consumer; health, environmental and other authorities) must work together to establish these priorities and to define the relevant common risk profiles. The profiles established must then be used to select from the data made available by all the agencies concerned that which will be the most useful for risk analysis. Although some progress has already been made in the Community there is a lack of coordination. There is an increasing need for a single organisational framework for all these authorities to coordinate efforts and to identify any improvements or innovations which may be necessary.

The Commission Communication of May 2002 proposed the setting up of a common external border practitioners unit comprising the heads of all the authorities responsible for safety at external borders to oversee and plan operations.⁵⁰

Within this authority (assuming it turns out to be multi-disciplinary) or some other form of organisation to be defined, customs would be responsible for all matters relating to the control of legally and illegally traded goods, in cooperation with the other authorities. Customs guidelines could then be discussed in the light of the policies adopted at Community level by the Customs Policy Group and in synergy with the work of other groups. The unit's activities could then if necessary be extended beyond those under Article 66, as proposed in the previous Communication, and not confined to aspects connected with the free movement of persons.

⁵⁰ This unit would act as a "head" of the common policy of management of the external borders to carry out common and integrated risk analysis; act as a "leader" coordinating and controlling operational projects on the ground, in particular in crisis situations; act as manager and strategist to ensure greater convergence between the national policies in the field of personnel and equipment; exercise a form power of inspection, in particular in the event of crisis or if risk evaluation demands it". COM(2002) 233, p. 14.

Rationalised

All goods-related data should be sent by traders to customs for an initial risk selection to be carried out on the basis of common profiles. Certain information would be required before goods actually arrived. This would enable customs to centralise the requisite data and reduce the number of channels currently used. Customs' expertise in goods and trade could thus be made available to other authorities without encroaching on their respective areas of responsibility. Customs would immediately forward to the relevant authorities the risk information they collect which was of relevance to them, so that they could follow it up.

This will mean establishing a single channel for transmission and subsequent processing of information on the basis of profiles established by all the authorities concerned. This approach will have the dual advantage of clarifying the organisational framework required to guarantee the safety of the Union's future border and of simplifying the administrative formalities which have to be fulfilled by traders, e.g. obviating the need to send two or three copies of data common to several authorities or introducing a standard format for information transmission.

Effective and rapid systems for information transmission between customs and the other relevant authorities will have to be set up. COM(2002) 233 proposed the introduction by the external frontier practitioners unit of a security procedure (PROSECUR) for the rapid transfer of information between the authorities responsible for the security of the external border. Customs and other authorities responsible for implementing customs regulations represented within this unit would be responsible for overseeing these procedures for the exchange of information on goods, based on suitably adapted versions of the existing information systems (Taric, the anti-fraud information system AFIS, or the customs information system CIS).⁵¹ This work would form an integral part of an overall approach deploying all resources, according to the nature of information and the risks identified, to establish direct links and exchanges between the relevant authorities.

Computerised

Availability of data is not the only important aspect; data must also be delivered in an appropriate form at the right time and at the right place. Data must be accessible in electronic format for a rapid evaluation of the risks involved in highly significant movements of goods. At present, data is not always sent to the customs in this form. In some Member States, information on customs declarations exists in electronic form, but it is not always possible to transfer it quickly to where it would be most useful; in other Member States, information (in particular export data) is only transmitted manually. Other sources of data such as bills of lading, which are essential for early risk evaluation, are even less often accessible in electronic form.

Transmission of data by electronic means should become standard practice to ensure that it is rapidly and effectively processed. That will mean traders will have to use the electronic format but there must be a margin of flexibility for SMEs and private individuals. The requisite customs databases will also have to be introduced at Community and/or national level.

⁵¹ Council Regulation (EC) No 515/97 of 13 March 1997, OJ L 82, 22.3.1997; Convention on the use of information technology for customs purposes, OJ C 316, 27.11.1995.

Complete

A common approach to risk management will be useful only if it is accompanied by a common approach to the controls needed to detect hazardous goods. That will mean the nature and type of control required must be defined and control standards must be set to determine where and by whom controls should be carried out and with what type of specialised equipment.

A common rationalised, computerised and complete risk-based approach will help make the Community a safer place as it will enable basic risks to be prioritised and treated in the same way along its external border. But there will always be some risk and means will have to be taken to correct what customs fails to detect. Customs' experience in identifying and tracking flows of goods must be exploited everywhere (at border and internal customs posts) in all areas or sectors where it can benefit the Community's security. Customs' role in "policing" goods must be clarified here. Customs must be able to take part in investigations undertaken to detect or identify perpetrators of fraud. Greater synergy between customs and the police will also help to more effectively identify and prevent fraud.

5.2. Guarantee an adequate level of human resources and equipment

It is essential to ensure there is an adequate level of human resources and equipment to carry out the controls which are required. It is in the Community's interests to ensure a sufficient level of resources and equipment at external borders. The external borders do not only concern the country geographically involved, they concern all the Community's Member States. It is therefore essential that national and Community parameters be used to identify practical needs. There are two immediate concerns:

- **Availability of the minimum level of equipment required** (e.g. scanners, radiation detectors, etc.) at each control point must be ensured. An inventory of necessary/existing equipment could be used to determine the equipment level to be attained. To avoid disproportionate costs, some border posts should specialise in controlling certain types of goods where this involves special and expensive equipment. This would make it possible to spread equipment costs more equitably and to concentrate the specific expertise required at these points. Care must be taken, however, to see that this does not result in additional non-tariff barriers being placed in the way of legitimate trade, e.g. the extra cost of presenting goods at designated specialist customs posts remote from their destination.
- **The possibility of setting up rapid response teams to deal with unexpected risks should be explored.** To ensure a high level of safety and security at every point along the external border quickly it must be possible to provide a rapid response to unforeseen dangers or risks wherever they occur. The constitution of a "European reserve unit", which could be mobilised at any given time and anywhere would be a way of doing so. The possibility of mobilising highly specialised expertise units would make it possible to harmonise the levels and types of controls carried out at any point on the external border.

It should be noted that the Member States are responsible for the use and financing of resources but the Commission can encourage coordination between Member States and identification of the most appropriate means and Community solutions where desirable and possible.

5.3. Facilitate trade without compromising safety and security

The aim of this Communication is to rethink and strengthen customs' security role. That does not, however, mean its other functions should be considered to be less important.

Customs in particular plays a vital economic role: it contributes to the smooth flow of legitimate trade. If administrative formalities and customs procedures are slow, if every consignment of goods which crosses borders has to be physically checked, customs would become an obstacle to trade with the Community. This is neither its aim, nor its function. Customs must have a positive economic impact. It is for this reason that numerous measures have been taken to facilitate trade by speeding up and simplifying customs procedures and controls concerning legitimate trade. Instruments such as the February 2001 Communication on a strategy for the Customs Union, the 2002 Customs programme and customs cooperation projects with non-Community countries have made a strong contribution. This Communication underlines the importance of these measures and the need to continue them while ensuring **an appropriate trade-off between protection of the Community and its citizens and facilitation of legitimate trade.**

By way of example, trade facilitation measures include the simplification of customs formalities. But up to now facilities have been granted mainly in the light of tax and commercial risks.

Consequently we also need to consider the question of security in the transport sector. Facilities are generally granted to traders, importers or exporters who are sufficiently known to customs or who have provided the necessary guarantees. But, except in the case of transit, there is not yet any guarantee in respect of intermediaries (carriers, etc.). Authorising producers will not enhance security unless carriers are also equally reliable.

The whole of the current "facilitation" strategy must therefore be reviewed as the granting of facilities must also be conditional on safety and security criteria. This will of course mean that the entire supply logistics chain must be made more secure. The World Customs Organisation is also looking at these issues, so we need to keep track of each other's work with a view to coordinated implementation.

5.4. Study the possibility of responsibility-sharing

A number of initiatives have introduced the concept of sharing responsibility for controls between trading partners. The latest, an American initiative on container safety, proposes the sharing of data on goods which move from one country to another so that high-risk traffic can be more effectively identified. This approach is interesting from the viewpoint of greater international security, but at European level, it will not produce the anticipated effects unless it is introduced at Community level and is based on close cooperation between Member States and any third countries concerned.

At European level, the principal component of this approach would have to be retained: it is usually easier to carry out checks in the exporting country than at entry points. If this approach is put into practice it will enable information to be transferred from the point where it can be most easily located and is most complete to speed up customs procedures for legitimate trade without compromising safety. This will save time and increase efficiency.

The Community should promote this principle of shared responsibility, in particular with the countries with which it shares an external frontier and with its main airborne or seaborne trading partners.

Of course, the principle of shared responsibility also applies to the Community which must, for example, assume its own responsibilities for controlling exports. To date Community controls have focused on imports and export controls are comparatively weak. The Community is an important trading area and must therefore protect not only itself but also the rest of the world, in particular the most vulnerable developing countries, against fraudulent and criminal intentions (e.g. illegal exports of banned or dangerous chemicals). Export controls are an important security aspect that must not be neglected. If certain export control duties were assigned to internal customs posts, the Community would be better able to discharge its responsibility without overloading controls at external borders. Computerised transmission of the necessary data would make it possible to check instantaneously at border posts whether the necessary controls had actually been carried out. However, individual controls requiring special or expensive equipment have to be carried out at specialised border posts.

5.5. Strengthen cooperation with non-Community countries

Effective integrated management of the external border will require an overall cooperation policy with non-Community countries.

Close co-operation with neighbouring countries is essential to ensure effective surveillance of common borders. We need to continue and build on regional initiatives.⁵² The recent Commission Communication "Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours"⁵³ likewise emphasises that frontier offices are primarily crossing points and that to preserve that function while providing the necessary security, greater cross-border cooperation is crucial.

Cooperation with non-Community countries must also be strengthened through agreements tailored to the mutual needs of each country or geographical area and the Community. We have already been made considerable efforts in this direction. These will have to be continued and adapted to any new needs which arise.

5.6. Support measures for enlargement

The accession of the new Member States at a time when new countries are joining the WTO will lead to an increase in trade but also create greater opportunities for criminals. .

Additional special measures could be envisaged to support the new Member States in the run-up to accession, giving them the benefit of the best existing customs practice for example by setting up joint teams of customs officers from the Member States and the applicant countries to deal with specific technical questions, at the latter's own request. The Customs 2007 modernisation programme could be used here.

⁵² Such as the Imatra process launched in 1999 and measures taken by the Baltic Customs Conference, within the framework of the Baltic Council.

⁵³ COM(2003) 104 final, 11.03.2003

6. CONCLUSIONS AND RECOMMENDATIONS

As enlargement approaches and in view of increasing security concerns it is essential that the Community place the resources at its external borders to guarantee **the safety and security** of its citizens. **Customs bear prime responsibility for controls of goods to safeguard the Community's security and economic development. Customs controls and working methods must be redesigned to protect the Community and its citizens against criminals or terrorists. This will have to be undertaken within a general and integrated framework for the management of external borders and will require not only new organisational structures but also mechanisms for close cooperation and coordination between the authorities involved.**

For such a strategy to be successful, the Commission must act as a catalyst for change and as a dynamic coordinating force. Any action undertaken will only be useful if it is implemented throughout the Community. This will require financial commitments at Community level.

The Commission calls on the Council, European Parliament and the European Economic and Social Committee to discuss the guidelines proposed and to support the measures described above so that proposals for their implementation can be presented without delay.

To this end, the following guidelines are recommended:

I. RATIONALISE THE NUMBER OF CUSTOMS CONTROLS AT CUSTOMS BORDER POSTS

- 1.1. Spread customs workload between border and internal posts:
 - by identifying and selecting the priority risks to be addressed;
 - by developing appropriate control methods (e.g., based on a coordinated post-clearance audit strategy);
 - by adapting trade fluctuations to take account of safety and security criteria.
- 1.2. Make the goods supply logistics chain secure by developing and improving techniques to track goods and their means of transport:

II. INTRODUCE A COMMON APPROACH TO GOODS-LINKED RISKS AND IMPLEMENT IT USING A COMMON COLLABORATION AND COOPERATION MECHANISM

- 2.1 The customs authorities, in cooperation with other relevant authorities, must guide, monitor and adapt the handling of risks linked to goods at external borders. This will involve:
 - defining, identifying and weighing at Community level common priority risks;
 - setting up a future organisational structure for common risk profiles which can be regularly adapted in the light of results;

- defining at Community level what controls are carried out when risks have been defined and developing control standards.
- 2.2 All risk information relating to goods required for common risk profiles must be provided by traders to Community customs authorities through a single transmission channel.
- data must be sent electronically;
 - certain selected data must be sent before the arrival of goods by a time limit to be agreed.
- 2.3 A data base and systems must be set up (and/or existing systems suitably meshed to allow cross-referencing) for the storage, processing and exchange of the requisite data:
- the data base, whether centralised at Commission level or decentralised in the Member States, must be accessible to all national customs authorities;
 - Member States must undertake to introduce computerised risk selection systems into which risk profiles identified at Community level can be fed to supplement national profiles;
 - information on goods gathered by customs must be sent quickly and efficiently to other authorities and systems must be introduced (or existing systems cross-linked) to exchange targeted information between all these authorities.

<p>III. GUARANTEE AN ADEQUATE LEVEL OF HUMAN RESOURCES AND EQUIPMENT AT EXTERNAL BORDERS</p>

- 3.1 Ensure that the resources required to guarantee a high level of security at external borders are made available. For this purpose:
- Member States must provide and train the customs officers needed (the Customs 2007 programme could be used if necessary);
 - the minimum equipment needed must be defined (at Community level) and made available (at national level);
 - consideration must be given to possible ways of using Community budgetary resources to finance equipment costs, insofar as the Treaties allow;
 - we should identify the scope for greater synergy with other border authorities or concentration of expensive customs equipment at specialised border posts to produce economies of scale.
- 3.2 Consider specific measures in the run-up to accession to give acceding countries the benefit of the best existing customs practice, for example by setting up joint teams of customs officers from present and future Member States to deal with specific questions, at the latter's own request.

- 3.3 Consider setting up rapid-reaction teams to deal with unexpected risks. This could take the form of a list of contact points for each Member State and specialised reservists who could be quickly mobilised at the request of one or other State. This should not involve any disproportionate budgetary or legislative costs. At a later date, the formation of interdisciplinary and specialised teams to deal with particular risks could be put on a more formal footing as part of the discussions on the formation of a European border guard unit.
- 3.4 Identify best working practices for security at external borders and develop and apply these at Community level on the basis of national and Community experience.
- 3.5 Devise common training measures and an organisational framework for training in the management of external borders for goods controls.

IV. A LEGAL AND REGULATORY FRAMEWORK INTEGRATING THE SECURITY DIMENSION OF CUSTOMS WORK SHOULD BE SET UP

- 4.1 Extend the scope of legislation to cover customs powers and duties.
- 4.2 Amend legislation and regulations, in particular the Customs Code and its Implementing Provisions, to incorporate developments in risk management, take account of safety and security criteria in authorising trade facilitation, and ensure better surveillance of the logistics chain, while ensuring that the new measures comply with relevant international norms, do not restrict trade and are not disproportionate to their ends.
- 4.3 Promote responsibility-sharing agreements based on mutual interests with neighbouring countries and the Community's main seaborne and airborne trade partners. This will also involve identifying high-risk trade flows at source in non-Community countries or territories, enabling us to plan controls which should save time, money and infrastructure and also promote cross-border cooperation.
- 4.4 Continue or step up cooperation with non-Community countries.

V. CLOSER COOPERATION WITH THE POLICE, BORDER GUARDS AND OTHER AUTHORITIES AT EXTERNAL BORDERS

- 5.1 Strengthen operational cooperation and exchange of information at Community and national level between external frontier surveillance authorities (border guards, health, veterinary and environmental authorities and others) where their duties and responsibilities overlap.
- 5.2 Establish cooperation/coordination structures between these authorities at the most important border posts.
- 5.3 The information in the possession of customs and police is interlinked and complementary. Their synergies should be enhanced by allowing customs to play an active part in police investigations to detect, identify and prosecute criminals involved in trafficking (and vice versa), introducing common data exchange and comparison systems to help identify emerging frauds and perpetrators of fraud, and ensuring systematic cooperation between customs and the police.

2003/0167 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Council Regulation (EEC) No 2913/92 establishing the Community Customs
Code

(presented by the Commission)

EXPLANATORY MEMORANDUM

Point 1 (Article 4 No 14)

The purpose of this amendment is to specify

- on the one hand, that customs controls must not only ensure the correct application of customs legislation, but also of other legislation relating to the import and export of goods, and
- on the other hand, that also other authorities may be involved in such controls (e.g. veterinary, police), so that a co-ordination between these agencies is required and a "single window" or "one stop shop" can ultimately be achieved, thus relieving importers and exporters from the requirement to have to contact different agencies for the same import or export transaction.

Point 2 (Article 4 Nos 25 - 27)

The Community Customs Code currently contains no reference to "risk", "risk management" or "authorised operator". The term 'operator' covers all parties involved in the logistical chain in international trade, including importers, exporters, transporters, and customs agents. These concepts are currently applied by all Member States, albeit using national criteria, thus creating distortions in the internal market and security loopholes. The purpose of these new provisions is to allow for the introduction of common, EU-wide criteria. These definitions complement the amended Article 13 (see point 3).

Point 3 (Article 13)

This amendment introduces an obligation of Member States to use risk analysis techniques. As long as no Community or international criteria exist, national criteria will be applied (as it is the case today). The amendment charges the Commission to establish a common risk management framework under the Committee procedure. This includes the setting up of co-ordinated and inter-linked automated support systems. The prosecution of criminal activities falling under the third pillar is not covered, as other rules apply. National risk analysis systems will continue to exist which may also use national and local criteria. Authorised operators are normally considered to be a lower risk and are therefore subjected to less controls. The possibility of performing customs controls in a third country has been introduced in case an international agreement provides for this. This would only cover exceptional situations given that, in principle, customs and other administrations should control goods on the territory for which they are competent, and exchange, where necessary and as stipulated in an international agreement, information with authorities in other countries (see point 4).

Point 4 (Article 15)

The cases in which the exchange of confidential data which the customs authorities of a Member State or the Commission have received in performing their duties under the customs legislation are currently not spelled out in Article 15, apart from the case of legal proceedings following such actions. The purpose of this amendment is to clarify that confidential data pertaining to import or export operations (including suspensive arrangements, such as transit and free zones) may be exchanged between

- the customs administrations of the Member States,
- these customs administrations and the Commission,
- the customs and the fiscal administrations of the same and different Member States (e.g. for the purposes of a VAT or excise duty refund on exportation),
- the customs and other authorities (e.g. veterinary, police) of the same or different Member States (e.g. for the purposes of advising of potentially dangerous goods),
- the customs and other administrations (e.g. security agencies) in third countries, insofar as an international agreement provides for such an exchange of information.

The provisions on data protection in force at Community and national level will, of course, apply.

Point 5 (Articles 36a and 36b)

This is the main innovation of the proposal: whereas currently the summary declaration or the customs declaration must be lodged only when the goods are presented to customs, it is proposed that a declaration must be presented before the goods arrive. This will allow for the pre-screening of cargo and an early initiation of the required level of response should the need arise. Pre-arrival declarations are already required by some Member States and some of the Community's main trading partners. Evidence from the operation of such systems indicates that the necessary shift in processes can be made by the industry and the agents involved. The main problems to be overcome are:

- the organisation of the data flows,
- the setting up of compatible IT systems,
- just-in-time deliveries without sufficient advance notice.

The Community Customs Code can therefore only provide for a general framework and must leave the practical application of pre-arrival declarations to the implementing provisions and the competent customs authorities in order to strike the right balance between increased security and trade facilitation.

It is therefore suggested that, as a basic rule, the pre-arrival declaration must be lodged 24 hours before the goods are presented to customs. Where an international agreement stipulates a different time frame, this would have to be laid down in the implementing provisions. In the implementing provisions it will be clarified that such a declaration must have a standard of detail and accuracy in the same manner as a customs declaration. Special rules would cover, *inter alia*,

- goods carried by travellers (exempted),
- small consignments (exempted), as long as no electronic trace and track systems and trader/customs interfaces have been introduced,
- land and air transport, as well as sea transports where the journey is shorter than 24 hours (shorter periods),
- just-in-time deliveries by authorised operators (shorter periods).

During the transitional period in which no common interface exists on a EU-wide level, or even in individual Member States, less stringent rules will have to be applied. As long as no operator/customs interface for pre-arrival information exists, Member States may waive the requirement, as long as an international agreement does not require otherwise, or request paper documents. Flexible arrangements will also be necessary for cases in which the pre-arrival declaration has been lodged at one customs office of entry, but the goods have arrived at another customs office and an interface between the two offices is still missing.

Furthermore, it should be borne in mind that the lodging of a summary declaration (e.g. ship's manifest) or an incomplete, simplified or complete customs declaration only at the time of presenting the goods to customs following their entry into the customs territory will not lead to a rejection of the declaration. The main consequence will be that the processing of such declarations will take more time and that the goods are released later than if the deadline had been respected. An operator who systematically disrespects the deadlines or gives wrong information may also be subjected to administrative sanctions or be downgraded in his status as authorised operator (see points 2 and 3). If an operator does not know at the arrival of the goods for which purpose they have been imported (this should be an exceptional case), he can place them under temporary storage or the customs warehousing procedure on the basis of the transport data. According to the proposals to be put forward under the Communication "a simple and paperless environment for customs and trade" these two arrangements will be merged (together with the other suspensive arrangements).

Points 6 - 8 (Title III of Chapter 3, Article 40, Articles 43 - 45)

The provisions on the summary declaration (currently Articles 43 to 45) have been displaced to Articles 36a and 36b in order to allow for pre-arrival declarations. Consequently, Title III of Chapter 3 needs to be amended and Articles 43 to 45 need to be deleted.

The current wording of Article 40 privileges free zones in that in certain cases no presentation of the goods to customs and no summary declaration is required. The purpose of the amendment is to close this security loophole. Authorised operators may, however, be relieved from the requirement to present the goods to customs, provided they have lodged the declaration stipulated under Articles 36a and 36b.

Points 9 and 10 (Articles 170 (2) and 176 (2))

The addition of letter d to Article 170 (2) aligns the free zone rules on the new wording of Article 40. The amendment of Art. 176 (2) introduces an obligation for a pre-arrival and pre-departure declaration also with regard to goods directly brought into or out of a free zone, as stipulated under Articles 40, 182 a and 182 b (see points 8 and 13).

Point 11 (Article 81)

In Article 181 a reference to Title V has been added in order to cover the new Articles 182a and 182b.

Point 12 (Article 182 (3))

Given that in all cases of re-exportation a pre-departure declaration will be required (apart from the cases where this requirement has been waived), the notification currently stipulated under Article 182 (3) is no longer necessary and can, therefore, be deleted.

Point 13 (Articles 182a and 182b)

Articles 182a and 182b correspond with Articles 36a and 36b.

The main difference is the following:

- On importation, the first customs office confronted with the goods is the office of entry (i.e. the first office passed after the goods have crossed the Community frontier); this office must therefore receive the pre-arrival declaration in order to be able to decide whether security checks are necessary.
- On exportation, the first customs office confronted with the goods is the office of export (i.e. the office responsible for the place where the exporter is established or where the goods are packed or loaded for export, Art. 161 (5)). This office must therefore receive the pre-departure declaration (which is normally the incomplete, simplified or complete customs declaration) in order to be able to decide whether security checks are necessary.

Article 2 (entry into force)

This Article foresees that the amendments enter into force on the seventh day after publication in the Official Journal. This poses no problem with regard to the definitions (Art. 4), risk management as such (Art. 13), the exchange of information (Art. 15), and the extension of the normal rules to free zones (Articles 170, 176, 181). The implementation of pre-arrival and pre-departure processing systems and the setting up of automated co-ordinated and inter-linked support systems for risk management may need some time in Member States who do not operate such systems yet. It is therefore proposed that Articles 13, 36a, 36b, 182a and 182b, insofar as they require electronic systems, must be in place two years after the entry into force of this Regulation.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 26, 95, 133 and 135 thereof,

Having regard to the proposal from the Commission⁵⁴,

Having regard to the opinion of the European Economic and Social Committee⁵⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁵⁶, as last amended by Regulation (EC) No 2700/2000⁵⁷ lays down the rules for the customs treatment of goods that are imported or to be exported.
- (2) It should be specified under which conditions information provided by economic operators to customs may be disclosed to other authorities in the same Member State, other Member States, to the Commission, or to authorities in third countries.
- (3) It is necessary to establish an equal level of customs controls in the Community and to ensure a harmonised application of customs controls by the Member States. It should be reminded that Member States are mainly responsible for these controls. Such controls should be based on commonly agreed standards and risk criteria for the selection of goods and economic operators in order to minimise the occurrence of risks to the Community and its citizens. Member States and the Commission should therefore introduce an EU risk management framework to support a common approach so that priorities are set effectively and resources are allocated efficiently with the aim of maintaining a proper balance between customs controls and the facilitation of legitimate trade. Such a framework should also provide for common criteria and harmonised requirements for authorised operators and ensure a harmonised application of such criteria and requirements. The establishment of a risk management framework

⁵⁴ OJ C [...] [...], p. [...]

⁵⁵ OJ C [...] [...], p. [...]

⁵⁶ OJ L 302, 19.10.1992, p. 1.

⁵⁷ OJ L 311, 12.12.2000, p. 1.

common to all Member States should not prevent them from controlling goods by spot-checks.

- (4) Risk-related information on import and export goods should be shared between the competent administrations of the Member States and the Commission. The information to be exchanged will be general control information related to goods rather than operator or consignment specific information. To this end, a common, secure system should be set up, enabling the competent authorities to access, transfer and exchange this information in a timely and effective manner. Such information may also be shared with third countries where an international agreement provides for this.
- (5) In order to allow for appropriate risk-based controls, it is necessary to establish the requirement of pre-arrival or pre-departure information for all goods entering into or leaving the Community customs territory, except for goods passing through by air or ship without a stop within this territory. Such information should be available before the goods enter into or leave the Community customs territory. Different timeframes and rules can be set according to types of goods, types of transport and types of economic operator. This requirement must also be introduced with regard to goods brought into or out of a free zone in order to avoid security loopholes.
- (6) Regulation (EEC) No 2913/92 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION

Article 1

Regulation (EEC) No. 2913/92 shall be amended as follows:

1. Article 4 No 14 is replaced by the following:

"(14) 'Customs controls' mean specific acts performed by the customs authorities or co-ordinated with them, in order to ensure the correct application of customs legislation and other legislation relating to the import or export of goods, such as examining goods, verifying the existence and authenticity of documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed."
2. In Article 4 the following subparagraphs shall be added:

“(25) ‘Risk’ means: the likelihood of an event that may occur in the international movement and trade of goods threatening the Community’s security and safety, posing a risk to public health, environment and consumers, including prevention of the correct application of Community or national measures concerning the goods entering into or exiting from the Community.

(26) ‘Risk management’ means: the systematic identification and implementation of all measures necessary for limiting exposure of risks. This includes activities such as collecting data and information, analysing and assessing risk,

prescribing and taking action and regular monitoring and review of the process and its outcomes, based on international, Community and national sources and strategies.

(27) 'Authorised economic operator means an actor in the trade supply chain authorised by the customs authorities who meets the criteria specified by the procedure of the Committee, including having an appropriate record of compliance with customs requirements, a satisfactory system of managing his commercial records and appropriate physical security measures. In this way, the authorised operator offers every guarantee necessary for the proper and secure conduct of operations and can thus benefit from certain simplifications, provided specific conditions are met. The status of the authorised economic operator will be granted for a certain period and will be periodically reviewed.'

3. In Article 13 the following subparagraph shall be added:

“Customs controls should be based on risk analysis, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national and, where available, Community or international level. A common risk management framework shall be determined according to the Committee procedure, laying down the organisational framework and the procedure for establishing common criteria and priority control areas. Member States and the Commission shall set up co-ordinated and inter-linked automated support systems for the implementation of risk management. Customs controls for the purpose of the correct application of Community legislation may be carried out in a third country where an international agreement provides for this.”

4. Article 15 shall be replaced by the following:

“Article 15

1. All information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged or authorised to do so pursuant to the provisions in force, particularly in respect of data protection, or in connection with legal proceedings.

2. Customs, fiscal and other competent authorities may communicate data received in the context of importation or exportation of goods between themselves, between Member States, and the Commission where this is required for the purposes of the procedure concerned, in order to protect the security of citizens and businesses, or to detect or prevent irregularities. Communication of confidential data to administrations of third countries is only admitted in the framework of an international agreement.”

5. Under Chapter I (Entry of goods into the customs territory) the following Articles shall be inserted:

“Article 36a

1. Before goods are brought into the customs territory of the Community, a summary declaration must be lodged at the customs office of entry. The lodging of a notification and access to the summary declaration data in the operator's electronic system may replace the lodging of a summary declaration, notwithstanding the legal obligation of the declarant to lodge a customs declaration. Where another customs office than the customs office of entry receives such a declaration, it communicates it without delay and electronically to the customs office of entry.
2. Where a customs declaration is required following the entry of the goods into the customs territory of the Community, the electronic customs declaration replaces the summary declaration, provided it is lodged within the timeframe stipulated for the summary declaration. Where an incomplete or simplified declaration is used, it must contain the necessary data.
3. The normal deadline for lodging a summary declaration is 24 hours before the goods are presented to customs, except where transport time is shorter or where an international agreement provides for a different timeframe. The procedure of the Committee shall be used to determine
 - a common data set and format of the summary declaration, using wherever possible international standards,
 - special deadlines for certain types of traffic and economic operators, and
 - the conditions under which such requirement may be waived, notably with regard to authorised economic operators.
4. The goods cannot be released before the summary declaration or the customs declaration has been presented.

Article 36b

1. The summary declaration shall be made in electronic form according to the specification determined under the procedure of the Committee. Commercial, port or transport information may be used, provided it contains the required data. Customs authorities may accept paper-based summary declarations in exceptional circumstances and only within a period of two years after the entry into force of the present regulation.
2. The summary declaration shall be lodged by
 - (a) the person who brings the goods into the customs territory of the Community or by any person who assumes responsibility for carriage of the goods following such entry; or
 - (b) the person in whose name the persons referred to in subparagraph (a) act; or
 - (c) a representative within the meaning of Article 5 of one of the persons referred to in subparagraphs (a) and (b)."

6. Title III of Chapter 3 shall be changed to “Unloading of goods presented to customs”.

7. Article 40 shall be replaced by the following:

“Article 40

Goods entering into the customs territory of the Community shall be presented to customs by the person who brought them into that territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry, with the exception of means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory. Authorised economic operators can be relieved from the requirement to present goods to customs, provided they have lodged a summary declaration or a customs declaration in accordance with Articles 36a and 36b.”

8. Articles 43 to 45 shall be deleted

9. Article 170 (2) shall be replaced by the following:

“2 Goods shall be presented to the customs authorities and undergo the prescribed customs formalities where:

- (a) they have been placed under a customs procedure which is discharged when they enter a free zone or free warehouse; however, where the customs procedure in question permits exemption from the obligation to present goods, such presentation shall not be required;
- (b) they have been placed in a free zone or free warehouse on the basis of a decision to grant repayment or remission of import duties;
- (c) they qualify for the measures referred to in Article 166 (b);
- (d) they enter into a free zone or free warehouse directly from outside the Community customs territory, except where an operator has been authorised not to present the goods and has lodged a summary declaration or a customs declaration in accordance with Articles 36a and 36b.”

10. Article 176 (2) shall be replaced by the following:

“2. Where goods are transhipped within a free zone, the documents relating to the operation shall be kept at the disposal of the customs authorities. The short-term storage of goods in connection with such transhipment shall be considered to be an integral part of the operation.

For goods brought into a free zone directly from outside the Community customs territory or out of a free zone directly leaving the Community customs territory, a summary declaration must be lodged in accordance with Articles 36a and 36b or 182a and 182b.”

11. Article 181 shall be replaced by the following:

“Article 181

The customs authorities shall satisfy themselves that the rules governing exportation or re-exportation as well as the provisions of Title V are respected where goods are exported or re-exported from a free zone or free warehouse.”

12. In Article 182 (3) first sentence the words "re-exportation or" are deleted.
13. Under Title V (Goods leaving the customs territory of the Community) the following Articles shall be inserted:

“Article 182a

1. Before goods are brought out of the customs territory of the Community, a summary declaration must be lodged at the customs office of export 24 hours before the goods are presented at the customs office of export, except where an international agreement provides for a different timeframe. The lodging of a notification and access to the summary declaration data on the economic operator’s electronic system may replace the lodging of a summary declaration, notwithstanding the legal obligation of the declarant to lodge a customs declaration.
2. Where a customs declaration is required for the export or re-export of goods, the electronic customs declaration replaces the summary declaration, provided it is lodged within the timeframe stipulated for the summary declaration. Where an incomplete or simplified declaration is used, it must contain the necessary data.
3. The procedure of the Committee shall be used to determine
 - a common data set and format of the summary declaration, using wherever possible international standards,
 - special deadlines for certain types of traffic and authorised economic operators, and
 - the conditions under which it must be lodged, and the conditions under which such requirement may be waived, notably with regard to authorised economic operators.

Article 182b

1. The summary declaration shall be made in electronic form according to the specifications determined under the procedure of the Committee. Customs authorities may accept paper based summary declarations in exceptional circumstances and only within a period of two years after the entry into force of the present regulation. Commercial port or transport data including access to the operator’s electronic system may be used provided it contains the required data.

2. Where no customs declaration is made, a summary declaration shall be lodged by:
 - (a) the person who brings the goods out of the customs territory of the Community or by any person who assumes responsibility for carriage of the goods; or
 - (b) the person in whose name the persons referred to in subparagraph (a) act; or
 - (c) a representative of one of the persons referred to in subparagraphs (a) and (b).”

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*. Electronic declaration and automated support systems for the implementation of risk management, as stipulated in Articles 13, 36a, 36b, 182a and 182b, as well as implementing provisions to the present regulation must be in place two years after the entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

FINANCIAL STATEMENT			
			DATE:
1. BUDGET HEADING: B 5307		APPROPRIATIONS:	
2. TITLE: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (presented by the Commission)			
3. LEGAL BASIS: Articles 26, 95, 133, 135 EC Treaty			
4. AIMS: Take into account security requirements			
5. FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR [n] (EUR million)	FOLLOWING FINANCIAL YEAR [n+1] (EUR million)
5.0 EXPENDITURE - CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	0,3	1,47	2,04
5.1 REVENUE - OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES) - NATIONAL			
	[n+2]	[n+3]	[n+4]
5.0.1 ESTIMATED EXPENDITURE	2,34	1,99	
5.1.1 ESTIMATED REVENUE			
5.2 METHOD OF CALCULATION: IT project cost estimate			
6.0 CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?			YES
6.1 CAN TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET FINANCE THE PROJECT?			NO
6.2 WILL A SUPPLEMENTARY BUDGET BE NECESSARY?			NO
6.3 WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?			NO
OBSERVATIONS: Financial implications are linked to the setting up of an automated system for risk management			

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs)

TITLE OF PROPOSAL

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (presented by the Commission)

DOCUMENT REFERENCE NUMBER

THE PROPOSAL

1. The Commission has exclusive competence for the proper functioning of the customs Union. Given the current political situation and the threat of terrorism accompanied by enhanced security requirements as far as world trade is concerned, as well as the opportunity to negotiate a satisfactory agreement with the US on the CSI dossier, it is necessary to introduce new legal obligations for traders in the Customs Code. This will also have the side effect of providing a credible basis for the negotiations with the US, in the context of the Container Security initiative.

Although the Commission envisages a complete review of the Customs Code following the communication on the electronic customs initiative, there is a need to urgently take several types of measures to address security requirements, given the current world political situation (and risk of terrorist attacks). This will also enable the Commission to have a legal basis for elaborating a risk management system at Community level in order to ensure an equal level of controls in the Member States.

Taking such measures, already necessary today, is even more crucial in view of enlargement, as the security controls in big ports like Antwerp and Rotterdam depend also on the quality and efficiency of the customs controls in the Member States where the export formalities are completed. If we do not act, security in trade might be compromised with negative effects for traders and citizens inside and outside the Community.

THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?
Companies who import and export goods from and to third countries;
 - which sectors of business? importers, exporters, freight forwarders, customs agents.
 - which sizes of business (what is the concentration of small and medium-sized firms)? it is estimated that more than 30% of SMEs have international business transactions.

- are there particular geographical areas of the Community where these businesses are found? in every Member State.

3. What will business have to do to comply with the proposal?

Give pre-arrival (pre-departure) information to customs before importation or exportation of goods within a certain deadline.

4. What economic effects is the proposal likely to have?

- on employment : none
- on investment and the creation of new businesses: none
- on the competitiveness of businesses

It will ensure faster release of goods for authorised traders and thus reduce time taken up by customs formalities. On the other hand, it would require more accurate data from the trader before importation/exportation and this may notably create an extra burden. Therefore, a transitional phase is foreseen.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

Facilitations will depend on the level of compliance, SME can use service providers.

CONSULTATION

6. List the organisations, which have been consulted about the proposal and outline their main views.

Through the Trade Contact Group set up for consultation purposes, the following associations have been consulted:

- FTA (Foreign Trade Association)
- UNICE
- EUROCOMMERCE
- EUROCHAMBERS
- EUROPEAN SMALL BUSINESS ALLIANCE
- CLECAT
- OCEAN (organisation des Communautés Européenne des Avitailleurs de Navires)
- US Chamber of Commerce
- Airlines representatives.

Although they were not absolutely negative to the principle, they are worried about the pre-arrival and pre-departure deadlines and asked for waivers for certain types of transport and certain types of traders. Discussion is ongoing and exceptions will be foreseen at the level of the Customs Code implementing provision.