The EC Tax Journal

CUSTOMS 2000: TAKING EUROPEAN CUSTOMS TOWARDS THE 21ST CENTURY

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Introduction

The years since 1985 have seen far-reaching changes in the customs landscape of the European Community[2]. The most recent and most outstanding change was the successful completion of the internal market on 1st January 1993, which replaced customs procedures for the movement of goods inside the 12 Member States by new fiscal and statistical obligations that require neither customs documents nor customs controls. The internal Community transit procedure for movements of goods with Community status between Member States has practically ceased to exist, and there are special measures for the intra-Community movement of shipments by air and sea. Even goods subject to excise duties, arrangements for the movement of which perhaps come closest to the old transit regime, are not controlled at the borders between Member States.

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2 One may now refer to the Twelve as the European Union, and this is sometimes appropriate in a customs context, although customs and fiscal matters in the Union, together with their related agricultural and commercial policy measures, are dealt with on the basis of the European Community Treaty, as the EEC Treaty was renamed by the Treaty on European Union (the Maastricht Treaty).

So far as trading relations with non-Member States are concerned, the Community Customs Code[3] has, for the first time, consolidated virtually all the Community customs provisions into a single coherent and consistent text. Some of its provisions, introducing a new procedure for export from the EC to third countries, had to be introduced on 1st January 1993 to coincide with the inception of the single market, and the full Code took effect on 1st January 1994.

The Code does not innovate enormously, since it is based squarely on the measures of customs harmonisation adopted over a period that began in 1968, but it replaces by a directly applicable regulation some measures that were previously harmonised by directives which left national authorities some discretion with regard to the framing of national implementing measures. More importantly, the codification gives the European Community a body of customs law that puts an end to certain previous ambiguities and discrepancies.

The sheer scale of this exercise in codification - undoubtedly the greatest ever undertaken in the history of the Community - is a useful reminder of the importance of a clear, precise and coherent body of customs rules for the implementation of a wide range of Community (and national) policies.

Codification, facilitation and simplification

The completion of the internal market and the codification of customs law that it required represent the convergence of two major themes that have dominated the work of those responsible for the management and co-ordination of the European customs union over the last decade and a half, for at about the time that codification began in the early 1980s, work also started on simplifying procedures in trade inside the Community and facilitating controls and formalities at internal frontiers, a process that culminated in the introduction of the single administrative document (SAD) in 1988.

By the time that the SAD came into use, however, the objective of facilitating trade inside the Community had effectively been replaced by the more ambitious goal adopted by the new Commission under the Presidency of Jacques Delors and entrusted to Lord Cockfield: that of abolishing internal frontiers. This goal was first put forward as a comprehensive policy in the Commission's White Paper *Completing the internal market* in June 1985 and was endorsed by the Member

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3 Council Regulation (EEC) N-2913/92 of 12th October 1992 establishing the Community Customs Code (Official Journal L 302, 19th October 1992, p1). This Regulation is completed by Commission Regulation (EEC) N-2454/93 of 2nd July 1993 laying down provisions for the implementation of the above Council Regulation (Official Journal L 253, 11th October 1993) as amended by Regulation (EC) N-3665/93 of 21st December 1993 (Official Journal L 335, 31st December 1993).

States the following year when they agreed to amend the EEC Treaty by the Single European Act. The measures of fiscal harmonisation approved by the Council of Ministers that came into effect on 1st January 1993, retaining liability for VAT at destination rather than at origin, fall short of what the Commission initially proposed in 1987, as they have introduced a transitional scheme which it was intended, in principle at least, to replace by the definitive system in 1997. However, the principal objective has been attained: the intervention of customs at the EC's internal frontiers to collect taxes ended on 31st December 1992.

A changing framework

As well as the completion of the internal market and the entry into force of the Customs Code, the framework for customs action at European Union level has changed recently in other ways. The Treaty on European Union (the Maastricht Treaty) provides in its so-called third pillar (Title VI) for closer co-operation between governments in justice and home affairs, which explicitly includes customs co-operation. The full implications of this provision are still being explored.

The catalogue of change should also include the GATT agreement reached last year and signed at Marrakech in April 1994, which is of course expected to stimulate growth in world trade. This agreement, the culmination of the Uruguay Round, will have a particular effect on customs rules. The previous GATT negotiation (the Tokyo Round) led to international agreement on the so-called GATT valuation code, putting an end to years of squabbling between the major trading countries and blocs about the determination of value for customs purposes: the EEC gave up its highly abstract system, based on the "Brussels definition of value" (so named because it was devised by the Customs Co-operation Council, which is coincidentally based in Brussels, and not because of its use by the Community), the USA abandoned the "American selling price", and so on. Negotiations are now underway for the establishment of internationally agreed rules of origin, which are to be worked out under the auspices of the Customs Co-operation Council but as part of the GATT package under the control of the new World Trade Organization. Thus the European Union's non-preferential origin rules, an essential factor in the application of commercial policy measures, will no longer be autonomously defined, although the EU will, as a major economic player, have a significant part in the elaboration of the international agreement.

Among other continuing changes in the customs sector, one should also mention the enlargement of the European Union to take in three new Member States. In fact, all three, plus Iceland and recalcitrant Norway, were, on 1st January 1994, linked to the 12 in the European Economic Area, which extends many benefits of the single market to these EFTA countries. The EU is also committed by an agreement with Turkey according to which, at some time in 1995, the two partners will establish complete customs union. All these developments entail changes in the work of the national customs administrations. It should be noted, however, that a

free trade agreement, unlike an accession, does not remove the need for customs controls: indeed, to the extent that some traders will always be tempted to seek benefits to which they are not entitled, any measures that exempt certain imports from customs duty require closer vigilance, and in any case all preferential trading regimes rely on special procedures and documentation for their implementation.

Reassessing the mission of customs

Not surprisingly, customs policy-makers in the EC have been obliged to take stock of their activities in the face of all these changes. In May 1993, the heads of the customs administrations of the European Community examined a discussion paper prepared by the Customs Policy Unit of the Commission's Directorate-General for Customs and Indirect Taxation (DG XXI) entitled *Customs 2000*, which identified several significant tendencies in the customs sector, attempted to predict and project the likely direction of development and suggested a review of customs activities in order to determine a new strategy for customs in the Community. Given the interest that this debate aroused, the Director-General of Irish Customs invited senior customs managers from the Member States, the Commission and the four candidate countries to a seminar, held in Dublin in October 1993 under his chairmanship, in order to examine the questions raised in the Commission's paper and subsequent discussions and to try to reach some operational conclusions. As a result, the heads of the 12 national customs administrations adopted, on 1st December 1993, a Statement based on the conclusions of the seminar. This high-level declaration gives a good indication of the current thinking of senior customs policy-makers in the EU about the work of their departments.

The Dublin Statement describes the mission of customs and the strategies that must be developed against the background of the great changes already referred to, which have led to doubts about the future role of customs, not least inside certain customs administrations, where the run-up to the completion of the internal market brought some demoralisation and loss of sense of purpose, even if it now appears that much of the anxiety about the future of customs was misplaced. It is therefore important to demonstrate that customs services still have a crucial role to play, although that role is changing. The freeing of movement inside a single market, without controls or formalities at internal frontiers, has in fact coincided with a growing diversification in the activities of the customs service, which has acquired an increasing number of non-traditional tasks to perform. At the same time, the fact of free movement inside the Community has made it even more imperative for the controls carried out at the single external border to be effective and to produce equivalent results throughout the Community. The codification of customs legislation is a partial, but insufficient response to this need.

The essential task of customs remains, now as before, to control the passage of goods across borders - but external borders only. The predominantly fiscal reasons for such controls have become less important, as on one the hand the level and

applicability of customs duties have diminished (with further reductions planned under the GATT agreement already referred to) and on the other hand the range of non-revenue functions attributed to customs has increased. The *Customs 2000* Statement recognises a range of tasks that governments, businesses and citizens expect customs to perform:

- regulating trade by applying EC rules and policing common policies
- collecting taxes and duties and enforcing fiscal and statistical provisions
- protecting economic, commercial and business interests
- facilitating trade with third countries
- combating illicit traffic, e.g., drugs at import, strategic material at export
- combating economic and commercial fraud, counterfeit and pirate goods
- protecting the environment and consumers
- protecting the cultural heritage.

These tasks are devolved to 12 national administrations, with different structures, responsibilities, cultures and traditions. The principle of subsidiarity which received such prominence in the Maastricht Treaty, as well as practical considerations of efficiency, requires operational decisions to be taken as close as possible to those that they affect, and it remains up to national administrations to allocate their resources and find practical solutions, but adequate co-ordination is necessary. As the Statement observes:

> "Customs work touches areas where national competences and Community competences co-exist or overlap. Our response is not to attempt to separate these areas, but rather to integrate them, in order to present the public and business operators with a unified service, while bringing the full weight of our organisations to bear on fraud and evasions. We recognise that the existing Customs Union and the arrangements now in place under Title VI of the Treaty on European Union provide a complete institutional framework for co-ordination of the varied interests of our Customs services."

The Statement thus avoids questions of demarcation which have often bedevilled action at European level in the past, and looks forward to developing the

partnership and co-operation that have increasingly characterised relations between national and Commission customs administrations, at least since the moment, which occurred in about 1989, when the national customs policy-makers of the Member States at last recognised that the Single European Act, and in particular the new article 8A of the EEC Treaty (now, since Maastricht, Article 7A of the EC Treaty) actually meant what it said:

> "The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."

The *Customs 2000* Statement recognises that customs responsibilities require high quality controls which ensure equal protection at all points of the external border and provide equivalent results in terms of both treatment of traders and enforcement. In order to review these results, it is proposed that joint teams of national and Commission officials should examine the effective operation of controls and procedures at the external border and provide expert advice. This operation, which has since been baptised "monitoring", could be thought to represent a kind of inspection or audit that has traditionally been resisted by the Member States, but the sensation of all being in the same boat that the completion of the internal market has fostered seems to have overcome any residual reluctance that national customs authorities felt about outsiders "checking up" on their activities. In a sense, until 1st January 1993, national customs services did indeed "check up" on their fellow Member States inasmuch as each of them could, and frequently did, repeat at internal borders control measures already carried out by other customs administrations elsewhere in the Community. The removal of internal frontiers ended this possibility.

The Commission has always had a limited opportunity to find out what went on inside the customs offices of the Member States, since teams composed of officials from the Budget and Financial Control Directorates-General, as well as from DG XXI, regularly take part in "own resources control missions" aimed at ensuring that the customs duties which compose about one third of the EC budget are correctly levied by national authorities. Such visits, even though they take place with considerable prior notice and in the company of national officials from the Member State concerned, have, it is true, sometimes led to the discovery that a particular customs procedure was incorrectly applied. Moreover, the regular reports of the European Court of Auditors into diverse aspects of the collection and spending of Community resources have frequently contained adverse criticism of the enforcement of customs rules in particular fields.

However, the monitoring operation, which began in May 1994, is different: the teams involved, composed of five or six officials, do not visit a customs office in order to try to find sums of uncollected duties, taxes and levies or to record deficiencies in the application of one or other customs regimes. The objective is much broader, and it has so far been agreed to undertake four series of visits, in

order to assess the overall customs operation of a number of seaports, free zones and airports, and to see how specific customs offices handle the multiple facets of trade in textiles (looking at such questions as origin, quotas, licensing, counterfeit goods, pirated designs, and so on). This means that the teams involved will be looking at the organization of controls, deployment of resources, selection criteria for the various levels of examination (cursory, documentary, physical), use of information technology, extent of recourse to simplified clearance procedures, degree to which customs controls are adapted to traders' commercial systems and other variables. It is hoped that in due course the reports of these visits will enable all Member States' customs administrations to learn new lessons from each other, to the obvious benefit of customs efficiency and effectiveness.

This monitoring exercise is one way of acknowledging the fact that we have largely completed our legislative tasks but that there remains the challenge of ensuring equal protection at every point on the external frontier and of treating importers and exporters equally, to avoid discrimination, deflection of trade or market distortions. Equal treatment does not mean identical treatment, but it means treating like cases alike. It is perhaps not fanciful to say that this new form of collaboration between the Member States and the Commission represents the transition from *quantitative* development of the customs union (possibilities for greater legislative harmonization being now effectively exhausted) to *qualitative* development, in which the focus is on how customs services work, not on what they do.

The Dublin Statement goes on to emphasize that customs objectives require generalization of new working methods, and if this has been a major consideration over the past three years, the monitoring operation can only contribute to its furtherance. There has been, since 1991, a campaign by DG XXI and a number of Member States committed to the technique to develop greater use of risk analysis to target customs controls on consignments and operators that require closer scrutiny, while taking the opportunity to relax controls on businesses whose operations are relatively risk-free. Work has also been in hand to increase reliance on post-clearance audit, preceded, where necessary, by systems-audit of traders' own internal control systems, which may frequently provide a sound basis for the construction of a customs control system that necessarily reduces the administrative costs of compliance for business.

It is interesting to note that these techniques have emerged most forcefully in those national administrations that are responsible both for customs and for a significant part of taxation. Tax authorities have long based controls on the principle of asking enterprises to report their taxable activities and then examining the reports received, using risk analysis and credibility checks to organise a system of audits. Although highly taxed goods liable to excise duties have often been subject to controls closer to the traditional customs variety, internal VAT has never involved declarations for the movement of individual shipments of goods, accompanied by a proportion of detailed checks on all the documents associated with a particular

transaction and a certain level of physical inspections. Not surprisingly, where customs and indirect taxation are under joint management, cross-fertilization of ideas occurs, and working methods reflect this.

These developments in working methods are inevitably accompanied by a growing interest in the role of information technology in managing customs procedures more efficiently, not only from the administration's point of view but also from that of business, and the *Customs 2000* Statement envisages the elaboration of a computerisation strategy at Community level which will plot a programme and a timetable for the introduction of common standards in a customs union where, at the moment, there are twelve separate territories where computerised customs clearance is concerned. DG XXI and the Member States are strongly committed to the UN's EDIFACT standard, but experience has shown that this agreement in principle is not sufficient to remove the computer frontier which still makes it impossible for a consignment of goods imported into one Member State to be tracked electronically once it passes into the territory of another Member State.

All these developments in working methods are undertaken from the perspective of simplifying procedures and making them more efficient, not only for the administration but also to make life easier for business. One of the principal themes of the Dublin seminar was the quest for the right balance between control and facilitation, and this will continue to preoccupy customs policy-makers as the *Customs 2000* operation unfolds. Simplified clearance procedures have a long but varied history in the EC. While operators in some Member States have long been able to clear goods without necessarily having to provide customs with complete information about individual consignments, or at least not in real time, other EC countries have traditionally required full data about each shipment, transaction by transaction.

When the EC first harmonised rules for the release of goods for free circulation in 1979, and rules for the export of goods from the Community two years later, it did so through directives. Directives offer national authorities some discretion in the way in which they attain the objectives of the act concerned, and in this case Member States could choose whether to grant simplified formalities or to insist on the full procedure. Typically, the provisions began: 'The competent authorities may', without laying down precise criteria for the decision. This enabled national authorities to maintain existing practices, with some Member States accepting a summary declaration for individual consignments, followed by a recapitulative entry covering all operations carried out during a given period, whereas others maintained the requirement for a full individual entry for every transaction. Practices have also differed as to whether shipments must be brought to a customs office or may be cleared at the operator's own premises. When the new Council regulation governing customs warehouses (now incorporated in the Customs Code) came into force in 1992, simplified procedures were an integral part of the legislation, and not tacked on as an afterthought, with the clear implication that

where warehouse-keepers and/or depositors meet the conditions, they should be able to benefit from the simplifications.

This state of affairs was reinforced by the entry into force of the Customs Code. The rules relating to simplified procedures in Article 76 of the Code now state that the customs authorities *shall* accept incomplete declarations, allow certain supporting documents to be omitted, admit commercial or simplified administrative documents in place of formal declarations and accept entry in the operator's records instead of formal presentation of the goods at a customs office and a declaration. Importers and exporters must then subsequently present a general, periodic or recapitulative entry and this may, of course, be done electronically. This does not guarantee that simplified procedures will be granted in identical conditions throughout the EU. Nonetheless, it is difficult for a Member State to justify the claim that it has no traders eligible for simplified clearance procedures, and one consequence of the monitoring visits to Member States, where the use of simplified procedures is among the points for scrutiny, will almost certainly be to strengthen the movement towards greater harmonisation in actual practice.

The author is particularly struck by the apparent growth in the flexibility and diversity of customs controls in certain Member States, although it is clear that in others customs clearance is still a fairly rigid and uniform affair. It has always been accepted, even by the advocates of a highly traditional approach to control, that the Community provisions in respect, for example, of entry of goods into the customs territory,[4] summary declaration[5] or transit[6] should contain special arrangements for postal consignments, because this was identified as a type of traffic that lent itself to a different kind of treatment. There is reason to believe that there will be increasing tailoring of customs procedures to particular types of traffic. If one looks at the provisions on customs warehousing,[7] it will be seen that Community law now recognises six different types of warehouse, corresponding to different kinds of commercial need, different levels of risk, different control possibilities and different kinds of goods. In Community transit, rail traffic[8] has long been subject to specific rules, and current provisions also establish simplified procedures for air, sea and pipeline traffic.[9] There are also special transit

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4 See Article 38(4) of the Community Customs Code.

5 See Article 45 of the Community Customs Code.

6 See Article 91(2)(f) of the Community Customs Code.

7 See Article 504 of Regulation (EEC) N-2454/93.

8 See Article 94(2)(d) of the Community Customs Code.

9 See Article 94(2)(a) and (c) of the Community Customs Code and Articles 443-450 of Regulation (EEC) N-2454/93.

guarantee arrangements applying to goods of particularly high value.[10] So the trend is towards greater flexibility, adapting customs requirements to particular situations.

Such specific arrangements may be laid down by law or they may be particular applications of general provisions, as in the case, for example, of the clearance procedures that certain Member States have introduced for the increasingly important express consignments carried by specialist courier companies, which are built up on the operator's ability to provide full information electronically as soon as a shipment is collected by the carrier and track the shipment thereafter, thus enabling customs to select goods for detailed examination before arrival. This should not, in the author's view, be seen as discrimination. It simply represents the best way of controlling particular kinds of operation. Predictions are always hazardous, but it would not be unreasonable to expect more and more adaptation of approaches to customs control to the specific characteristics of the traffic to be controlled.

The customs treatment of consignments that are highly time-sensitive is a good illustration of the pressure to devise procedures that provide reasonable guarantees that the correct balance between facilitation and control will be struck, in a way that does not confer undue advantage or disadvantage. The express industry argues that carriers who can provide information in a time frame and with an accuracy that make the task of customs easier should benefit from certain facilities, but in reality, express traffic is only the most outstanding example of a universal demand for more rapid transport of goods, typified by "just in time" delivery, and having obvious implications for customs clearance, since business will inevitably point the finger at the customs administration if customs clearance is the bottleneck that prevents expeditious handling of imports or exports.

Another question raised by the Dublin Statement, still very controversial at the moment, concerns the adequacy of customs powers, which vary from one Member State to another. This reflects the fact that there are twelve separate customs administrations, with their own history and traditions. Not only do the responsibilities of customs for taxation differ considerably, as does the extent of responsibility for the other tasks identified in the Statement as falling to the customs administration, but even the core functions of customs are in some cases shared with other agencies. It was concluded at Dublin that the powers available to customs should be kept under review and strengthened if necessary. The heads of customs also agreed to reinforce mutual assistance.

There is also agreement that the Member States' customs services, in co-operation with the Commission, should examine whether varying administrative sanctions

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[10] See Article 95(3) of the Community Customs Code and Article 376 of Regulation (EEC) N-2454/93.

applied by Member States for breaches of customs rules lead to distortions; in plain language, does the fact that the penalty for the same violation of Community customs law varies from one Member state to another affect business decisions about where to carry out customs operations - or even, in the longer term, decisions about investment and implantation of enterprises? This is a contentious area which the Commission has been trying to broach with the Member States for several years, with the encouragement of some of them but against considerable opposition from others.

DG XXI has now begun a modest exercise of trying to secure agreement at least on what infringements of Community customs law, as laid down in the Code and its implementing provisions, are possible. Once the inventory of potential infringements has been drawn up, it should be possible to move on to see how different administrations rank infringements on a scale of seriousness. Many business and professional organisations are plainly deeply concerned by this question, which they frequently raise in meetings with the Commission's services, and DG XXI has been trying to move as fast as possible, but of course the subject of penalties shades over into questions of criminal law and penal sanctions, which are outside Community competence and therefore run up against considerations of national sovereignty and subsidiarity.

The Dublin Statement concludes that the objectives of combating fraud and of minimising disruption to legitimate trade and travellers are not incompatible, but that their reconciliation depends greatly on modern working methods and technology which minimise the cost of compliance. The mutual interest of customs and legitimate trade in balancing enforcement against facilitation requires closer consultation and co-operation in the establishment of simplified procedures which meet importers' and exporters' needs while preserving the possibility of adequate control. Procedures must be continuously reviewed in the light of changing commercial practices and modern technology. The Statement gives three examples where fine-tuning may be needed: export procedures, authorisation of customs regimes covering several Member States, and simplified procedures common to several administrations. Among examples of working methods which enable certain traders to benefit from increased facilitation, the Statement specifically mentions risk-analysis and post-clearance audit, which have already been referred to, and also memoranda of understanding.

These goals require customs services to recruit and train skilled, intelligent and motivated personnel, and customs resources must be adequate. Both at national and Community level, priorities must be set and work programmed with effective co-ordination, and resources allocated accordingly. The MATTHAEUS training programme, which provides for exchanges of customs officials between Member States, joint training seminars and the development of common training

programmes for national customs training organisations,[11] must evolve to make training serve these objectives. Information technology is identified as a crucial element in a modern customs administration, and this gives added force to the arguments for the establishment of a computerisation strategy, taking account of the possibility of exploiting traders' own systems, of the need for links between national systems and of the facilitation of operations across several Member States using computer control mechanisms. As well as Community funding, innovations in relations between Member States such as shared or pooled equipment and joint operations are also envisaged. In order to ensure that all these demands on resources are justifiable, ways should be sought of measuring the quality and efficiency of results achieved by customs.

In conclusion, the Directors-General re-emphasise the important role of customs in supervising the external frontier and undertake to establish plans and priorities for co-ordinated action to achieve the *Customs 2000* strategy up to the end of the century, with periodic reviews of progress. This represents an ambitious work-programme which, even if it is not completely implemented, will inevitably make a difference to the way in which EU customs administrations serve the public.

Conclusion

The heads of the national customs administrations have set themselves a challenging goal. Even if the initial motive may have been simply to remind governments and publics that the customs administration still exists after 1992 and has important tasks to perform, the momentum generated at Dublin and thereafter has moved the *Customs 2000* operation into a higher gear and opened up a debate about the mission, organization, working methods, resources and powers of twelve national customs services, as well as about their relations with each other, with the public and with political authorities, and their relations with the Commission. These services are administratively totally independent of each other and answerable to national governments, but to the extent that they enforce Community provisions across a wide range of policy areas they actually make up a *system* in the full sense of the word, in that anything that happens, however minor, in any part of that system inevitably affects the whole of the Community.

It is too early to offer judgments about the prospects for success of the movement towards co-ordinated modernisation and qualitative harmonisation that *Customs 2000* represents, and there is at present no legally binding instrument that compels national customs administrations to commit themselves wholeheartedly to the programme. Nonetheless, there is evidence of considerable support among senior

[11] Council Decision N-91/341/EEC of 20th June 1991 on the adoption of a programme of Community action on the subject of the vocational training of Customs officials (MATTHAEUS Programme).

customs managers for the main principles of the Dublin Statement, and it would be surprising if it does not produce noticeable consequences for the trading Community in due course.