

SECTION 2 – IMPLEMENTATION OF THE WCO STANDARDS

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THE ENTRY SUMMARY DECLARATION IN THE CONTEXT OF RISK MANAGEMENT ¹

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Abstract

The article is devoted to the Entry Summary Declaration as a means of customs controls and its role in risk analysis in the framework of European defense policy. The Entry Summary Declaration enables customs authorities to obtain all the necessary data concerning goods transported on the customs territory before their actual arrival and therefore gives them possibility to take effective measures for providing safe transportation and trade. Impact of new regulations on Customs authorities and traders was analyzed in the article.

Keywords: Entry Summary Declaration, the European Union, defense policy, risk analysis, Community Customs Code, Implementing Provisions, Customs authorities, Authorized Economic Operator, Movement Reference Number.

Introduction

On 11 September 2001, at 8:46 o'clock, the world stopped breathing, when American Airlines Flight 11 crashed into the North Tower of the World Trade Center. At this point, people still thought about the probably biggest disaster in the history of aviation. At 9.03 o'clock, with the crash of the second aircraft into the South Tower of the World Trade Center, there was however bitter certainty that it was an act of terror. America was attacked for the first time since the Second World War

More attacks in London and Madrid have shown how vulnerable our modern society in Europe really is. The result of the attacks was a rethinking of policy. In response to the new threats of terrorist attacks the protection of the own people got a new significant importance than ever before. The policy found itself now in the conflict to create an efficient system to secure own trade and infrastructure, while preserving the advantages of the current system and to keep the inevitable negative impact, associated with the new system, as low as possible for the domestic economy

In the implementation of such a system customs became the focus of discussions. Having in mind the increasing needs for the security of the global and intra-European society the main activities of the customs administrations changed steadily from the collection of revenues to the protection of the local population. At present, the implementation of the created protection

¹ This text is based and further developed on an idea of Mr. M. Jennrich, ex-student at the Federal University of Administrative Sciences, Münster

mechanisms is therefore the most important task of the customs administration in addition to the collection of revenues. At the same time Customs has to ensure the smooth and lawful trading to facilitate trade and as far as possible.

By the creation of the Community's internal market in the context of a customs union and other community structures such as the Common Foreign and Security Policy and the European Security and Defense Policy, the line of a uniform system in Europe was pursued. Due to this fact, the customs authorities are obliged to form a uniform course of action within the political borders of the European Union. The first access to organized crime and terrorism can therefore be carried out by the customs authorities.

As part of the EU Customs Security Initiative, the development and implementation of measures for the satisfaction of the corresponding need for security has been driven forward. One specific goal was to ensure the safety of the public by a modernized and preventive type of the former customs controls. That means an improved form of customs controls.

For the implementation of such an improvement of customs controls amendments to the Customs Code were necessary. The traders were obliged from now on to inform the customs authorities of the Member State in advance of any intended imports into or exports from the European Union. The customs authorities are thus already informed of what has been imported or shall be exported before the goods arrive. In order to protect the interests of economy operators, numerous ways to facilitate the process for reliable traders have been created, such as the creation of the status as AEO.

With the introduction of a uniform system on electronic basis, it became possible to check in an easy way the risks of each consignment stored in the system by appropriate uniform risk parameters. The customs authorities are now able to have access to the goods in a very early stage of time. By this, risky consignments can already be recorded at an earlier time than in the past and appropriate measures can be taken earlier as well.

But what is the impact of the Entry Summary Declaration and the risk analysis on the flow of goods with Third Countries and on the economic operators? Which requirements for the security policy have been met?

1. Entry Summary Declaration

1.1. General remarks

As part of the Defense debate, the European Commission developed a number of measures that should be used to ensure the security interests in the international cross-border trade. A catalog of these measures was published in the document of the Commission COM (2003) 452 from 24.07.03 as an amendment of the Customs Code of the European. In particular, the existing system of the container security initiative of the United States of America served as a model for a European implementation of automated customs clearance, which ultimately served as well to minimize the costs of developing an own system. However, the implementation of the proposed measures depended on an amendment to the Community Customs Code and the Customs Code Implementing Provisions. With the implementation of the measures from the catalog of the Commission, it was necessary that the economic operators had to send in advance to the importation into the customs territory of the EU a message to the relevant customs authority.

The conceptual design of a risk management that refers to import, export and transit of goods, requires that the competent authorities are in the possession of information on the intended

flow of goods as early as possible. This message is called the Entry Summary Declaration or advance notification and is regarded to a mean for ensuring an effective risk management of the customs authority.

1.2. Concept, objectives, entry into force

As already mentioned, by the creation of the new system an effective risk management of the customs authorities shall be made possible even before arrival of the goods. Article 13 CC provides for customs controls to be carried out by the customs authorities, based on a risk analysis using information technology tools.

For this purpose framework conditions for implementation have been created by a Council-Regulation. Different time periods for the submission of the notification shall be applied, depending by which operator what kind of goods in what way shall be brought into the customs territory of the EU. Also international conventions providing safety precautions have to be observed. As part of the amendments to the CC and CCIP, the Art.36a - 36c CC were included as new legal provisions. With the introduction of these provisions in accordance with Art. 36 a and 36 b CC the submission of an Entry Summary Declaration was basically mandatory, when goods are to be delivered from a third country to the customs territory of the Community. The term of the Entry Summary Declaration is defined in Art.1Nr.1 CCIP.

In view of the need for security it is intended to bring into practice a risk analysis in the context of risk management according to Art.4 No.26 CC.

As part of the implementation of this system, some problems became evident. Thus the problem came up that not all Member States could agree upon such a complex computerized system with any other Member State in a timely manner. So an exchange of information required could thus consequently not or not sufficiently been effected. To counteract this phenomenon, a transitional period was granted to the Member States until 01.07.2009. Within this period, the submission of the Entry Summary Declaration was indeed possible in case the individual Member State could accept this. But it was not mandatory. Since the new features are a highly complex process, even after this period not all operators were in a position to submit the essential information to the customs authorities by means of their in-house data processing technology. To counter this problem, a further transitional period of 18 months was granted.

With the entry into force of the mandatory submission of the Entry Summary Declaration on 01.01.2011, the previously existing provisions for the summary declaration have been replaced. However, the concept of the summary declaration was not totally abandoned, but rather has been extended significantly. Basically, the Entry Summary Declaration has to be submitted at the point of entry as defined in Art.4Nr.4a CC. This means an early access to the goods in advance of their entry. The most significantly advantage is that necessary measures can now be taken before the arrival of the goods. Until now, the customs authorities had access to the goods only at the time of the introduction of the goods into the EU in the meaning of Art. 37 (1) CC. Detailed information, which could be used for risk analysis purposes were regularly not available before the time of presentation of the goods within the meaning of Art.40 CC. Taking appropriate measures promptly and effectively was not possible in many cases. By the amendments customs controls are now possible beyond the old scope of Article 13 of the CC by an extension of its scope. The idea of Art.13 CC is no longer the correct application of customs legislation, but rather the “proper application of customs law and other regulations on the entry, exit, and shipping ... goods ...”.

1.3. Content of the Entry Summary Declaration in general

The submission of the Entry Summary Declaration shall be done in accordance with Art.36b CC and Art.183 CCIP by electronic means as from 01.01.2011. Pursuant Art.36a (2) CC the Entry Summary Declaration has to be lodged at the customs office of entry, that means in the country where the product first have crossed the borders of the Community customs territory. This office carries out consequently the risk analysis and any import controls once the goods have been transported in accordance with Art.38 (1) a) CC to her. Accordingly, the Entry Summary Declaration is a means of customs supervision in the sense of Art.4Nr.13 CC too. The content of the message was agreed upon in the Committee-procedure. Annex 30 A of the CCIP contains an exhaustive catalogue of the necessary data concerning consignments coming from Third Countries. Each consignment receives a specific "Movement Reference Number", which will be notified to the operator by electric means. Art 36 b (3), (4) CC contains an exhaustive list of persons who are responsible for the submission of an Entry Summary Declaration. This is in general the person who brings the goods into the customs territory of the Community or who is responsible for the carriage of the goods (carrier).

1.4. Processing of the Entry Summary Declaration

In the specific case the settlement of the Entry Summary Declaration depends on three parameters:

- I. deadlines
- II. contents of the entry declaration
- III. simplifications for AEO
- IV. exceptions and special features

1.4.1. Deadlines

From the term of "prior notification" it becomes clear that the Entry Summary Declaration must be submitted prior to the arrival of the goods.

Art.184a CCIP contains a catalog of deadlines for the submission of Entry Summary Declarations depending on the different modes of transport.

1.4.2. Contents of the Entry Summary Declaration

As stated before the purpose of the Entry Summary Declaration is to get more data than in the previously valid provisions for the summary declaration. For the purpose of an early detection of risks data are needed which were not recorded in the "old system" of the summary declarations. According to Art.36b CC, details of the dataset to be collected are concluded in the committee procedure. Annex 30A CCIP contains a detailed catalogue of data-sets which have to be collected depending on the means of traffic and the type of the customs declaration.

In addition to the data which were already collected in the past before the introduction of the Entry Summary Declaration, in the context of risk analysis five points are of great importance. First of all the information on the first destination of the goods in the community is needed in the form of a specific code. But a diversion request can be made, which is the second significant innovation. Furthermore, next to all countries, through which the goods are to be transported, the Unique Consignment Reference number, under which the consignment is recorded in the economic operators system, has to be indicated. Last significant amendment is the mandatory

indication of the UN codes for the identification of different types of hazardous materials. The amendments concerning the coding of the place of arrival and the diversion request are in direct connection to each other.

According to Art.184d CCIP the customs office of entry shall perform prior to the arrival of the goods a risk analysis based on the data contained in the Entry Summary Declaration. Since the risk analysis to be carried out is based on a uniform system within the Community, the risk analysis carried out by the customs office of entry can also be recognized by other customs offices. This is to minimize the workload of the other customs offices and also to ensure a smooth movement of goods by not carrying out again a customs inspection at each customs office.

From time to time, however, it is necessary from an economic perspective of the operator to change the destination of the goods still in the course of transportation. Consequently not the first customs office of entry coded in the Entry Summary Declaration is reached or will be the true destination. To allow these changes of destination the responsible carrier was given the opportunity to provide a diversion request. In this diversion request also all data contained in the Entry Summary Declaration in accordance with Annex 30A CCIP are included. In this case, a risk profile will be created and evaluated on the bases of the diversion request. The actual first customs office in the Community, which is approached, receives the result of this analysis in accordance with Art.36c) (1) Subp.1 CC in conjunction with Art.183 (1), (3) CCIP. The specification of the transit countries enables a comprehensible flow of goods. Because of this, also risk profiles can be created, if it is clear that certain routes for risk-loaded shipments are very often used. By using a standardized automated computer-based system a continuous exchange of information between customs authorities of each Member State is possible. Due to this fact, all movements of goods can be reconstructed with reference to the Movement Reference Number. Through this system, a transparency of the movements of goods for customs authorities has been created, meaning that the Entry Summary Declaration can be last but not least considered as a means of customs supervision.

The Unique Consignment Reference number enables and facilitates the access to certain consignment by the customs authorities, for example, if these are transported together with other goods within an air freight container or sea container. Should it be found necessary in the context of risk management, to conduct an examination, the corresponding consignment can be identified clearly and with little effort. The specification of the UN-code for hazardous materials is relevant insofar as by means of the code it can be identified which substances in which composition and physical state are carried. Last but not least the conclusion can be drawn from the data, how risky the product really is and what kind of protective measures has to be taken, e.g. after a visual examination. But not all data shall be collected by specifying an encoding. This should be done only for certain sets of data and only in case such an encoding is available. Other data shall be created automatically by a computer system. Furthermore, for certain information certain conditions have to be fulfilled. For example, specifying the Customs seal number is only absolutely necessary (and possible), if such a closure in the form of a seal or alike is attached to the goods or means of transport.

1.5. Simplifications for Authorized Economic Operators (AEO)

Authorized Economic Operators (AEO) can avail various simplifications in accordance with Art.14b) CCIP, like

- to submit a reduced data set
- to have less controls
- to get a prior information on control measures, if the purpose of the control is not jeopardized

But also a preferred customs clearance of the shipment is possible if control measures are to be taken.

However for holders of an AEO certificate C not all simplifications are applicable.

1.6. Exceptions and specific features

Basically, for shipments, which only pass through the customs territory of the Community, no Entry Summary Declaration is required. The data are not needed in these cases because the goods are not intended to remain in the customs territory. Consequently, the goods will not get any customs treatment within the meaning of Art.4Nr.15 CC. Consequently the possibility to perform a risk analysis or customs inspection is missing. Other exemptions from the requirement to submit an Entry Summary Declaration are settled in Art.184c CCIP. In particular, goods transported through wires such as the electric current and energy products, which are transported by pipeline, are covered by the exemption. Furthermore, letters, postcards and other postal printed materials are exempted from the requirement to submit an Entry Summary Declaration. However, the other requirements for the carriage of postal consignments remain unaffected. Likewise, the personal luggage of travelers and goods, which are imported duty-free due to diplomatic conventions are exempted from the requirement. The purpose of these exceptions is a facilitation of the flow of goods. The exceptions listed in Art.183c CCIP cover regularly goods for which no special risk exists or for which the submission of an Entry Summary Declaration is not effective. So in the example of the electric current transported through pipes it is permanently the same commodity. Even with the energy products, which are transported by pipelines, the submission of an Entry Summary Declaration would be problematic. On the one hand a deadline should be set; on the other hand the Entry Summary Declaration would have no significant purpose. It is very unlikely that the goods are brought illegally through pipelines. Thus, the obligation to submit an Entry Summary Declaration in view of the risk analysis would not be conducive to the purpose.

Last but not least the obligation to submit an Entry Summary Declaration does not exist in trade of goods with Norway, Switzerland and territories that belong to the customs territory of the Community, but in which the Directive (EC) 2006/112 or Directive (EC) 2008/118 do not apply (e.g. the Canary Islands) and Helgoland, Vatican City and San Marino.

1.7. Application

The impact in practice has been and will continue to be relevant to the business processes of operators and on the part of the customs administration. In particular, by the introduction of deadlines for maritime container traffic, the flow of data was influenced decisively. Due to the requirement to submit the Entry Summary Declaration prior to loading a non-negligible overhead was created. On part of the economic operators, as well as on part of customs administration a change in the general and operational processes was necessary in consequence.

As already explained, the meaning and purpose of an early notification is to conduct a risk analysis in advance. Since the customs authorities have partially first access on the goods already before loading them, load or transport bans can be decided at the time of the risk analysis based on

the Entry Summary Declaration when it comes to high-risk goods.

This process has been and will be carried out *mutatis mutandis* already by U.S. Customs officials and therefore served as a model for the European system. The deadline for container transport by sea was set broadly in contrast to the other modes of transport because the risk, which has to be feared with dangerous materials, (for example a leakage of the container), is very much greater for seagoing ships than for the other modes of transport.

In maritime transport, this would have potentially serious consequences for the environment, whereas any possible damage in road traffic can often be prevented by simple means of dangerous defense.

The introduction of the Entry Summary Declaration finally raised the level of control of the customs administrations of the Member States in that way that prior to the import of goods into the customs territory of the Community data must be submitted, which were partly not necessary before.

2. Risk analysis

2.1. Risk analysis in general

Basically three indispensable core points are necessary for carrying out a qualified risk analysis based on an electronic process. First, the necessary data must be collected in advance. By introducing the Entry Summary Declaration the customs authorities now have a data wreath available due to which the risk analysis can be performed. Based on the data compacted by the Entry Summary Declaration risks can be analyzed and evaluated. Following the data analysis, the decision is to be made, which measures may have to be taken and whether a customs inspection is to be performed. Last but not least an assessment is made for the purposes of quality assurance in order to verify and improve the effectiveness. By the reform of the Customs Code in 2005 a common framework was created, which allows the identification and control of risky trade flows based on uniform risk criteria. This ensured that the level of customs controls in each Member State is the same and that a minimum standard is achieved.

2.2. Legal framework

Bases for the risk management of the customs authorities is Article 13 (2) CC, which was revised by Article 1 Nr. 3 of the amending Regulation. The wording now shows that customs controls shall be carried out outside of random checks using automated IT processes. The term of risk management is defined by Art. 4 No. 26 CCC as the “systematic identification of risks and the implementation of all measures necessary for limiting exposure to risk.”. This shows the relationship between risk analysis and risk management.

Risk analysis is part of a comprehensive process which can be described as risk management. The customs authorities are basing their customs controls on the risk analysis. Detailed rules concerning the function and implementation of risk management are included in Art.4f - Art.4j CCIP. The risk analysis is performed prior to the arrival of the goods in the customs territory of the Community and has to be completed even before the actual arrival of the goods, in case the deadlines of Art.184a CCIP have been complied with. (Exception Art.184d CCIP).

2.3. Implementation of the risk analysis

In accordance with Art.4f CCIP, the customs authorities shall apply the risk management

process to determine the level of risk associated with products subject to customs supervision. Based on this finding, the decision is made whether, where and how the goods are subject to customs control. In order to assess the possible risks in a qualified and equivalent way on Community level, a common catalog of risk indicators was created as a guideline. In the analysis all collected and available data are taken into account.

Sometimes it is not possible to identify risky goods by clear indicators such as the UN-code for dangerous goods. Rather, initially inconspicuous details may be relevant for risk assessment. Risks can thus result in different forms.

For dangerous goods of Class 7 or X, at least there is a risk for environmental reasons.

A risk may also result from an unassuming and commonplace description of the goods. In particular, brand protection and CITES issues can play a role here. Furthermore, foreign trade law consequences of the intended use can result. Thus, a component of the avionics may be completely safe when it is installed in civil aircraft. However it could also look for military use and so be subject to risk. This example shows how important the already demonstrated analysis of all data is.

Summary and concluding remarks

The aim of the introduction of the Entry Summary Declaration was the increased need for security around the world, which had arisen because of terrorist activities. The Entry Summary Declaration forms an important role, if not even a major. The Entry Summary Declaration as a means of customs supervision is thereby exploited as a means of risk management. Without the recorded data obtained by the Entry Summary Declaration, a risk analysis of the present form would be difficult to achieve if this could even be done at all. To aim to recognize the dangers early, is met in particular by the Entry Summary Declaration. The customs authorities shall get through the Entry Summary Declaration already in the preliminary phase all information data which are necessary to protect the intra- European internal market sustainably and unerringly against organized crime, fraud and against all terrorist activities.

The additional workload resulting from the introduction of the Entry Summary Declaration was limited to the minimum possible by a number of measures on the part of customs administration, as well as on the part of economic operators.

By introducing the simplifications for the AEO in particular reliable traders are given the opportunity to limit the effort to a minimum. Last but not least it has to be mentioned that not all operators meet the challenges. In particular, small businesses were encountered with the problem to get the authorization as an AEO. One can therefore speak of a balancing act between the free movement of goods, trade facilitation and security interests. Since in accordance with the entry into free circulation the customs supervision ends and customs authorities have thus no longer access to the goods, to carry out customs controls, the Entry Summary Declaration is the most effective means to implement a risk management at Community level. It makes a significant contribution to intra-European security, as well as a significant contribution to the safety of the world's international trade in goods. Furthermore, by the need for cooperation between the various customs authorities of Member States, their communication with each other was revolutionized and improved.