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*****I**

REPORT

on the proposal for a European Parliament and Council Regulation laying down the Community Customs Code (Modernised Customs Code) (COM(2005)0608 – C6-0419/2005 – 2005/0246(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Janelly Fourtou

Draftsman (*): Jean-Pierre Audy, Committee on International Trade

(*): Enhanced cooperation between committees - Rule 47 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Enhanced cooperation between committees - Rule 47 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council Regulation laying down the Community Customs Code (Modernised Customs Code) (COM(2005)0608 – C6-0419/2005 – 2005/0246(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0608)¹,
 - having regard to Article 251(2) and Articles 95 and 135 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0419/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on International Trade (A6-0429/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 1

(1) The Community is based upon a customs union. It is advisable, in the interests both of economic operators and the customs authorities in the Community, to assemble current customs legislation in a Community Customs Code (hereinafter called ‘the Code’). Based on the concept of an internal market, the Code should contain the general rules and procedures which ensure the implementation of the tariff and other common policy measures introduced

(1) The Community is based upon a customs union. It is advisable, in the interests both of economic operators and the customs authorities in the Community, to assemble current customs legislation in a Community Customs Code (hereinafter called ‘the Code’). Based on the concept of an internal market, the Code should contain the general rules and procedures which ensure the implementation of the tariff and other common policy measures introduced

¹ Not yet published in OJ.

at Community level in connection with trade in goods between the Community and countries or territories outside the customs territory of the Community, taking into account the requirements of those common policies. This should be without prejudice to specific provisions laid down in other fields as may exist or be introduced in the context, *inter alia*, of legislation relating to agriculture, the environment, the common commercial policy, statistics or own resources. Customs legislation should be better aligned on the provisions relating to the collection, ***suspension or reimbursement of Value Added Tax (VAT) and excise duties***, without change to the scope of the tax provisions in force.

at Community level in connection with trade in goods between the Community and countries or territories outside the customs territory of the Community, taking into account the requirements of those common policies. This should be without prejudice to specific provisions laid down in other fields as may exist or be introduced in the context, *inter alia*, of legislation relating to agriculture, the environment, the common commercial policy, statistics or own resources. Customs legislation should be better aligned on the provisions relating to the collection of ***import charges***, without change to the scope of the tax provisions in force.

Justification

The text incorporates the tax provisions laid down in the amended Directives 77/388/EEC (concerning VAT) and 92/12/EEC (concerning excise duty), but this regulatory framework has not been incorporated into the customs regulations. The principle must, however, continue to exist in the form of a general wording on account of international convention requirements.

Amendment 2 Recital 6 a (new)

(6a) Such use of information and communication technologies must be accompanied by harmonisation of customs checks, which must be effective throughout the Community and must not give rise to anti-competitive behaviour at the various Community entry and exit points.

Justification

The checks carried out must be identical at all Community entry and exit points and a level playing field must exist in order to prevent anti-competitive attitudes from arising and the diversion of goods traffic from occurring.

Amendment 3
Recital 8

(8) In the interests of facilitating business, economic operators should have the right to appoint a representative in their dealings with the customs authorities.

(8) In the interests of facilitating ***certain types of*** business, economic operators should ***continue to*** have the right to appoint a representative in their dealings with the customs authorities. ***However, it should no longer be possible for this right of representation to be circumscribed under a law laid down by one of the Member States.***

Furthermore, the customs representative should be able to be granted the status of economic operator.

Justification

Customs representatives should no longer have a 'monopoly' over their activities - although they should continue to exist as an occupational category, since the services which they provide are useful to a great many businesses.

Amendment 4
Recital 9

(9) Compliant and trustworthy economic operators should, as 'Authorized Economic Operators', be able to take maximum advantage of widespread use of simplification and, taking account of security and safety aspects, benefit from reduced levels of customs control.

(9) Compliant and trustworthy economic operators should, as 'Authorized Economic Operators', be able to take maximum advantage of widespread use of simplification and, taking account of security and safety aspects, benefit from reduced levels of customs control. ***They may thus enjoy the status of 'customs simplification' authorised economic operator or the status of 'security and safety' authorised economic operator. They may be granted one or other status, or both together.***

Justification

The purpose of this amendment is merely to ensure that both statuses of authorised economic operator are specifically mentioned.

Amendment 5
Recital 36

(36) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 January 1999 laying down the procedure for the exercise of implementing powers conferred on the Commission.

(36) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 January 1999 laying down the procedure for the exercise of implementing powers conferred on the Commission¹.

¹ *OJ L 184 of 17.7.1999, p. 23. Decision last modified by Council Decision 2006/512/EC of 17 July 2006 (OJ L 200 of 22.7.2006, p. 11).*

Amendment 6
Recital 38

(38) In order to simplify and rationalize customs legislation, a number of provisions presently contained in autonomous Community acts have, for the sake of transparency been incorporated into the Code.

(38) In order to simplify and rationalize customs legislation, a number of provisions presently contained in autonomous Community acts have, for the sake of transparency been incorporated into the Code.

The following Regulations, together with Regulation (EEC) No 2913/92, should therefore be repealed:

The following Regulations, together with Regulation (EEC) No 2913/92, should therefore be repealed:

– ***Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duties¹,***

– Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing,

– Council Regulation (EC) No 82/2001 of 5 December 2000 concerning the definition of the concept of "originating products" and methods of administrative co-operation in trade between the customs territory of the Community and Ceuta and Melilla,

– Council Regulation (EC) No 1207/2001 of 11 June 2001 on procedures to facilitate the issue of movement certificates EUR.1,

– Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing,

– Council Regulation (EC) No 82/2001 of 5 December 2000 concerning the definition of the concept of "originating products" and methods of administrative co-operation in trade between the customs territory of the Community and Ceuta and Melilla,

– Council Regulation (EC) No 1207/2001 of 11 June 2001 on procedures to facilitate the issue of movement certificates EUR.1,

the making-out of invoice declarations and forms EUR.2 and the issue of certain approved exporter authorizations under the provisions governing preferential trade between the European Community and certain countries.

the making-out of invoice declarations and forms EUR.2 and the issue of certain approved exporter authorizations under the provisions governing preferential trade between the European Community and certain countries.

¹ OJ L 105 of 23.04.1983, p. 1. Regulation last modified by the act of accession of 2003.

Justification

This reference is deleted on account of the fact that Regulation (EEC) No 918/83 setting up a Community system of reliefs from customs duties is to remain in force.

Amendment 7 Article 2

Customs authorities shall be responsible for **administering international trade at the Community's external borders**, thereby contributing to open trade, to the implementation of the external aspects of the internal market and of common Community policies with a bearing on trade, as well as to overall supply chain security. These tasks shall include the following:

- (a) protecting the financial interests of the Community and its Member States;
- (b) protecting the Community from unfair and illegal trade while supporting legitimate business activity;
- (c) ensuring the security and safety of citizens, and the environment, where appropriate in close co-operation with other authorities;
- (d) **facilitating international trade.**

Customs authorities shall be responsible for **the supervision of the Community's international trade**, thereby contributing to open trade, to the implementation of the external aspects of the internal market, **of the common trade policy** and of **the other** common Community policies with a bearing on trade, as well as to overall supply chain security. These tasks shall include the following:

- (a) protecting the financial interests of the Community and its Member States;
- (b) protecting the Community from unfair and illegal trade while supporting legitimate business activity;
- (c) ensuring the security and safety of citizens, and the environment, where appropriate in close co-operation with other authorities;
- (d) **maintaining a proper balance between customs controls and facilitation of legitimate trade.**

Justification

The wording of this definition should be more precise: Customs authorities are responsible for the supervision but not for the administering of international trade, this trade should be supervised not only at the Community's external borders, the list of the tasks performed by the Customs authorities shouldn't be exhaustive, points a and b in fact are duplicating each other and the provisions of point d are hardly compatible with the mission of Customs authorities (facilitation of international trade isn't a specific task assigned to Customs authorities because those authorities should only perform their functions without creating obstacles for the trade).

Amendment 8
Article 4, point 4

(4) 'Economic operator' means a person ***who is professionally involved in the import or export of goods to or from the customs territory of the Community.***

(4) 'Economic operator' means a person ***who, in the course of his business, is involved in activities covered by customs legislation;***

Justification

This definition is fully in line with that contained in the implementing measures for Regulation 648/2005.

Amendment 9
Article 4, paragraph 4 a (new)

(4a) 'customs representative' means any person established on EU territory who provides customs services to third parties.

Justification

All the terms used in the body of the text must be defined, and this definition was missing.

Amendment 10
Article 4, point 8 a (new)

(8)(a). 'Declarant' means the person making a summary declaration or a customs declaration in his own name or the person in whose name a customs declaration is made;

Justification

The summary declaration should be included in the definition.

Amendment 11

Article 5, paragraph 1, sub-paragraph 2

The Commission may, in accordance with the procedure referred to in Article 196(2), adopt measures laying down exceptions to the first subparagraph of this paragraph.

The Commission may, in accordance with the procedure referred to in Article 196(2), ***second subparagraph***, adopt measures ***amending non-essential elements of the act in question by means of measures*** laying down exceptions to the first subparagraph of this paragraph.

(Comitology amendment: if adopted , Articles 11(2), 59(c), 61, 68, 77, 81, 83, 93(3a), 93(3c), 95, 107, 115, 116, 117, 128, 137, 138, 141, 143(2), 144(2), 145, 150, 172, 174, 186, 191, 192, 193 will also be adopted.)

Amendment 12

Article 9, paragraph 2

2. Without prejudice to the possible application of ***administrative or criminal*** penalties, the lodging of a summary declaration or customs declaration, including a simplified declaration, or notification, or the submission of an application for an authorization or any other decision, shall render the person concerned responsible for the following:

2. Without prejudice to the possible application of penalties, the lodging of a summary declaration or customs declaration, including a simplified declaration, or notification, or the submission of an application for an authorization or any other decision, shall render the person concerned responsible for the following:

Justification

A common framework for the application of penalties in respect of any infringement of the Community customs regulations will be proposed to the Council and the European Parliament at a later stage.

Amendment 13

Article 10, paragraph 3

The Commission shall, in accordance with

The Commission shall, in accordance with

the procedure referred to in **Article 196(2)**, adopt measures laying down the standard form and content of the data to be registered and the rules for access to that data.

the procedure referred to in Article 196(2), **second subparagraph**, adopt measures **amending non-essential elements of the action in question by supplementing them with measures** laying down the standard form and content of the data to be registered and the rules for access to that data.

(Comitology amendment: if adopted , Articles 11(2), 59(c), 61, 68, 77, 81, 83, 93(3a), 93(3c), 95, 107, 115, 116, 117, 128, 137, 138, 141, 143(2), 144(2), 145, 150, 172, 174, 186, 191, 192, 193 will also be adopted.)

Amendment 14
Article 11, paragraph 2 a (new)

2a. The status of customs representative shall be subject to the following criteria:

- **It shall be open to all persons making application for the status,**
- **It shall be managed by a government body in the Member State ,**
- **It shall be recognized in all Member States when it has been registered in the Member State of application.**
- **It shall be subject to practical standards of competent or professional qualifications directly linked to the activity carried out. There shall be no numeric limit on the number of customs representatives in the EU.**

A person with the status of customs representative and with the status of Authorised Economic Operator shall be able to benefit from all simplifications.

2b. Without prejudice to the provision of paragraph 2a, any person shall be authorized to pursue a commercial activity by addressing the customs authorities, without being obliged to be represented by a customs representative.

Justification

Customs representatives should no longer have a 'monopoly' over their activities in interacting with customs.

Amendment 15
Article 13, Title

Article 13

Representation in special cases

Article 13

Customs representation and 'authorised economic operator' status

Amendment 16
Article 14, paragraph 2

2. ***An*** authorized economic operator ***may*** benefit ***from*** facilitations ***with regard to customs controls*** relating to security and safety ***or from simplifications provided for in accordance with this Code or its implementing provisions.***

2. ***The status of*** authorized economic operator ***covers two types of authorisation: that of 'customs simplification' authorised economic operator and that of 'security and safety' authorised economic operator.***

The first authorisation enables economic operators to benefit from certain simplifications pursuant to this Code or to the implementing provisions thereof. Under the second authorisation the holder thereof is entitled to facilitations relating to security and safety.

Both authorisations may be held at the same time.

Justification

A reading of Regulation 648/2005 (from which these provisions are drawn) reveals that there are two statuses of authorised economic operator. In the interests of clarity, this should be stated in the actual body of the Modernised Customs Code.

Amendment 17
Article 14, paragraph 3

3. The status of authorized economic

3. The status of authorized economic

operator shall, subject to Articles 15 and 16, be recognized by the customs authorities in all Member States, without prejudice to customs controls. **However, subject to the conditions laid down pursuant to point (g) of Article 16, the applicant may request that the status referred to in paragraph 1 of this Article may be limited to one or more specified Member States.**

operator shall, subject to Articles 15 and 16, be recognized by the customs authorities in all Member States, without prejudice to customs controls.

Justification

Derogation allowing to limit the validity of the status of authorized economic operator to one or more specified Member States should be withdrawn because this derogation would be inconvenient for the practical application and could create difficulties for the recognition of the status of authorized economic operator by third countries (in particular, by the USA).

Amendment 18 Article 15

Article 15

Granting of status

The criteria for the granting of the status of authorized economic operator shall be at least the following:

- (a) an appropriate record of compliance with customs requirements;
- (b) a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
- (c) where appropriate, proven financial solvency;
- (d) **where appropriate**, practical standards of competence or professional qualifications directly related to the activity carried out;
- (e) **where applicable**, appropriate security

Article 15

Granting of status

The criteria for the granting of the status of authorized economic operator shall be at least the following:

- (a) an appropriate record of compliance with customs **and fiscal** requirements;
- (b) a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
- (c) where appropriate, proven financial solvency;
- (d) **pursuant to Article 14(2), in cases where an authorised economic operator wishes to take advantage of the simplifications provided for in accordance with this Code or the implementing provisions thereof**, practical standards of competence or professional qualifications directly related to the activity carried out;
- (e) **pursuant to Article 14(2), in cases**

and safety standards.

where an authorised economic operator wishes to take advantage of facilitations with regard to customs checks relating to security and safety, appropriate security and safety standards.

Justification

This wording makes it possible to identify the criteria for granting the status of ‘customs simplification’ authorised economic operator and those for granting the status of ‘security and safety’ authorised economic operator.

Amendment 19
Article 15, point (d)

(d) where appropriate, practical standards of competence or professional qualifications directly related to the activity carried out; ***deleted***

Justification

Point (d) should be taken out completely as it appears to support the perpetuation of the role of Licensed Broker. Indeed, point (d) is in contradiction to point (a), as an appropriate record of compliance with customs requirements proves that a person has the necessary qualifications. Moreover, it is entirely inappropriate that business and EU consumers should be forced to use someone from a monopolistic trade such as a licensed broker if they wish to clear goods through customs.

Amendment 20
Article 16, point (e)

(e) the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety, taking into account the rules adopted pursuant to Article 27(3);

(e) the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety;

Justification

The final part of the text is superfluous, since it relates to comitology.

Amendment 21
Article 22, paragraph 1

1. Each Member State shall provide for **administrative and criminal** penalties for failure to comply with Community customs legislation. Such penalties shall be effective, proportionate and dissuasive.

1. Each Member State shall provide for penalties for failure to comply with Community customs legislation. Such penalties shall be effective, proportionate and dissuasive.

Justification

A common framework for the application of penalties in respect of infringements of Community customs regulations will be proposed to the Council and the European Parliament at a later stage.

Amendment 22
Article 27, paragraph 2, subparagraph 1

2. Customs controls, **other than random checks**, shall be based on risk analysis using electronic data processing techniques, with the purpose of identifying and evaluating the risks and developing the necessary measures to counter the risks, on the basis of criteria developed at national, Community and, where available, international level.

2. Customs controls, **including random checks**, shall be based on risk analysis using electronic data processing techniques, with the purpose of identifying and evaluating the risks and developing the necessary measures to counter the risks, on the basis of criteria developed at national, Community and, where available, international level.

Justification

Risk analysis should determine which checks are to be carried out, and there should be no room for additional risk analyses by Member States using their own methods. In addition, random checks are part and parcel of risk analysis. Accordingly there does need to be a specific reference to them in the Customs Code.

Amendment 23
Article 32, paragraph 1

1. No fees shall be charged by customs authorities for the performance of customs controls **or any other application of the customs legislation during the normal opening hours of their competent customs offices**.

1. No fees shall be charged by customs authorities for the performance of customs controls.

However, the customs authorities may charge fees or recover costs where specific services are rendered.

However, the customs authorities may charge fees or recover costs where specific services are rendered **or in respect of any other act required for the purpose of applying customs law.**

Justification

Fees must apply only to 'extraordinary' acts. Furthermore, customs-office opening hours are a matter for the Member States and this is covered in Article 111.

Amendment 24

Article 32, paragraph 2, introductory part

2. The Commission shall, in accordance with the procedure referred to in Article 196(2), adopt measures for the implementation of the second subparagraph of paragraph 1 and, **in particular**, the following:

2. The Commission shall, in accordance with the procedure referred to in Article 196(2), adopt measures for the implementation of the second subparagraph of paragraph 1 and, **specifically**, the following:

Justification

Business in the EU operates 24 hours a day seven days a week, and as such customs should be operating in the same way. In the immediate future it is intended to introduce such systems as the Export Control System and the Import Control System. These will require 24 by 7 support if there is to be no interruption in the supply chain to and from the EU.

Amendment 25

Article 32, paragraph 2, point (a)

(a) attendance, where requested, by customs staff **outside normal office hours or** at premises other than customs premises;

(a) attendance, where requested, by customs staff at premises other than customs premises;

Justification

Customs-office opening hours are a matter for the Member States and this is covered in Article 111.

Amendment 26
Article 35

The Commission may, in accordance with the procedure referred to in Article 196(2), adopt measures laying down in which cases, and under which conditions, the application of this Code may be simplified.

1. The Commission may, in accordance with the procedure referred to in Article 196(2), adopt measures laying down in which cases, and under which conditions, the application of this Code may be simplified.

2. Simplified procedures to be defined in accordance with the procedure referred to in Article 196 shall be applied to Community goods moving between a third territory belonging to the Community and referred to in Council Directive 77/388/EEC, and another part of the Community customs territory.

3. Subject to approval by the Commission (acting in accordance with the procedure referred to in Article 196), a Member State may apply simplified procedures to Community goods as referred to in paragraph 2 and moving exclusively within its territory, and correspondingly two or more Member States may mutually agree upon simplified procedures to be applied to such goods moving between them.

Justification

The Åland Islands (Finland), the Channel Islands (UK), the Canary Islands (Spain), Agio Oros (Greece) and the overseas departments of France belong to the Community customs territory, but not to the Community value added tax territory. The value added taxation system of the Community trade is not applied to Community goods sold and moving between these areas and the Community tax territory, but, according to Article 33 a of the Sixth Council Directive 77/388/EEC on the harmonisation of the turnover tax, the formalities laid down in the customs provisions are applied to the import of Community goods from such an area and to the export of Community goods from the Community tax territory into such an area.

The provision would not impair the harmonization of regular customs action or the formalities and procedures applied therein, but would only enable the consideration of the special features of indirect taxation within the application of formalities relating to the Community goods crossing a fiscal border within the Community customs territory.

Amendment 27
Article 38, introductory paragraph

Articles 39, 40 and 41 lay down rules for the determination of the non-preferential origin of goods for the purposes of applying the following:

(Does not affect English version.)

Justification

(Does not affect English version.)

Amendment 28
Article 42, paragraph 5 a (new)

5a. When negotiating on behalf of the Community the agreements referred to in paragraph 2 of this article, or when submitting a proposal with a view to laying down, by a regulation adopted under the codecision procedure or under Article 187 of the Treaty, the rules referred to in paragraphs 3, 4 and 5 of this article, the Commission shall take account in particular of the following:

(a) the commitments and obligations accepted in relation to international agreements;

(b) the need to define criteria relating to the origin status of products which are tailored to the features of each product, ensuring that the economic benefit of the preferential measures is indeed reserved for countries, territories or groups of countries or territories in respect of which these measures were agreed or adopted;

(c) the level of development and degree of industrialisation of the countries, territories or groups of countries or territories in respect of which the preferential measures were agreed or adopted;

(d) the regional integration objectives underlying some of the preferential systems in question, by the laying down of

appropriate cumulation rules;

(e) the need to lay down rules which are simple to understand and to apply, so that the operators of the countries, territories or groups of countries or territories in respect of which the preferential measures were agreed or adopted may effectively use those preferential measures, and which must be compatible with the aim of facilitating trade.

The Commission shall make provision for appropriate monitoring measures, to prevent or punish any abuse or circumvention of the preferential measures.

Justification

It is important for the rules on preferential origin to be laid down in accordance with certain key principles, so as to ensure that they are consistent with the aims of the commercial policy. This provision seeks to provide a framework for the subject.

Amendment 29

Article 56, paragraph 1 a (new)

1a. However, priority in the first instance shall be given to the recovery of the customs debt from the importer or exporter of record.

Justification

The article in its current state is not sufficiently precise and will lead to customs pursuing the easier target.

Amendment 30

Article 64, paragraph 1, point c

(c) by another form of guarantee which provides equivalent assurance that the customs debt will be paid.

(c) by another form of guarantee which provides equivalent assurance that the customs debt will be paid, *such as a declaration of compliance with an existing industry wide agreement, a notorial declaration, a special agreement between operators and customs authorities, etc.*

Justification

Existing and widely recognised tools are already available to provide other forms of guarantees (like the international rail agreement “AIM” (Agreement concerning the Relationships between Carriers in respect of International Freight Traffic by Rail or a notarial declaration). Specific agreements between operators and customs authorities may also be concluded, providing the necessary proofs to the customs authorities.

Amendment 31

Article 67, paragraph 2, introductory paragraph

2. Where a comprehensive guarantee is to be provided for customs debts which may be incurred, an **authorized** economic operator may use a comprehensive guarantee with a reduced amount or have a guarantee waiver, in accordance with Article 61(7), provided that at least the following criteria are fulfilled:

2. Where a comprehensive guarantee is to be provided for customs debts which may be incurred, an economic operator may use a comprehensive guarantee with a reduced amount or have a guarantee waiver, in accordance with Article 61(7), provided that at least the following criteria are fulfilled:

Justification

In the current Customs Code the comprehensive guarantee applies to all economic operators, hence there is no reason for this to be restricted to authorised economic operators in the new Customs Code.

Amendment 32

Article 94, paragraph 4 a (new)

4a. Where the import summary declaration is lodged by a person other than the operator of the means of transport upon which the goods are brought on to Community customs territory, that operator shall lodge with the appropriate customs office a notification of arrival in the form of a manifest, a dispatch note or a load sheet containing the information required in order to enable all the goods transported which are to be covered by an import summary declaration to be identified.

Pursuant to the procedure referred to in

Article 196(2) the Commission shall lay down the measures stipulating the information which must appear on the notification of arrival.

Paragraph 1 of this Article shall apply, mutatis mutandis, to the first subparagraph of this paragraph.

Justification

For practical reasons the person responsible for making the declaration must be clearly identified in each case.

Amendment 33
Article 101, paragraph 4 c)

c) letters, postcards and printed matter.

c) letters, postcards and printed matter **and their electronic equivalents held on other media.**

Justification

The Modernised Customs Code will have to operate in a 'paperless customs' environment. The proposal must therefore take into account reality and the fact that, these days, letters may be sent by e-mail and also on a CD. New electronic applications must be taken into account.

Amendment 34
Article 107

1. Declarations which comply with the conditions laid down in Article 113 shall be accepted by the customs authorities immediately, provided that the goods to which they refer **are** available for control by the customs authorities.

1. Declarations which comply with the conditions laid down in Article 113 shall be accepted by the customs authorities immediately, provided that the goods to which they refer **will be made** available for control by the customs authorities.

Justification

There is a consistent requirement by business for advice to be given of the release of shipments before their actual arrival in the EU. This would allow carriers such as the Express Integrators to prepare their operational systems in advance of shipments arriving at the first point of arrival in the EU. This will considerably reduce any delays in the sortation and

distribution of shipments, thus speeding up the supply chain, and, will allow more accurate identification of those shipments which customs requires for inspection, thus reducing the number of shipments which have to be scanned at the first point of arrival in the EU.

Amendment 35
Article 114, paragraph 1

1. Declarations which comply with the conditions laid down in Article 113 shall be accepted by the customs authorities immediately, provided that the goods to which they refer **are** available for control by the customs authorities.

1. Declarations which comply with the conditions laid down in Article 113 shall be accepted by the customs authorities immediately, provided that the goods to which they refer **will be made** available for control by the customs authorities.

Justification

There is a consistent requirement by business for advice to be given of the release of shipments before their actual arrival in the EU. This would allow carriers such as the Express Integrators to prepare their operational systems in advance of shipments arriving at the first point of arrival in the EU. This will considerably reduce any delays in the sortation and distribution of shipments, thus speeding up the supply chain, and, will allow more accurate identification of those shipments which customs requires for inspection, thus reducing the number of shipments which have to be scanned at the first point of arrival in the EU.

Amendment 36
Article 115, paragraph 2

2. The declarant must be established in the customs territory of the Community.

2. The declarant must be established in the customs territory of the Community.

However, persons who:
- lodge a transit or a temporary-admission declaration
- declare goods occasionally (provided that the customs authorities deemed this justified)
shall not be required to be established within the Community.

The Commission may, in accordance with the procedure referred to in Article

196(2), adopt measures laying down the conditions under which the requirement referred to in the first subparagraph of this paragraph may be waived.

Justification

An exception must be made in the case of transit. There is no need to mention comitology, since such a waiver is already allowed for under other provisions laid down in the Modernised Customs Code.

Amendment 37
Article 125, paragraph 1

The customs authorities shall permit an **authorized** economic operator to have goods released on the basis of a simplified declaration.

The customs authorities shall permit an economic operator to have goods released on the basis of a simplified declaration.

Justification

The use of simplified declarations procedure should remain possible for all economic operators who satisfy the conditions to use these simplifications, and not just for AEOs.

Amendment 38
Article 141

Section 3

deleted

Special circumstances

Article 141

Relief from import duties on account of special circumstances

The Commission shall, in accordance with the procedure referred to in Article 196(2), adopt measures laying down the cases in which, and the conditions under which, relief from import duties is to be granted on account of special circumstances where goods are released for free circulation.

In adopting these measures, account shall be taken of international agreements, the status of the person concerned, the nature of the goods and the end-use of the goods.

Justification

This reference is deleted on account of the fact that Regulation (EEC) No 918/33 setting up a Community system of reliefs from customs duties is to remain in force.

Amendment 39
Article 152, paragraph 1, point b)

b) ***VAT on importation and excise duties***
as provided for under ***VAT and excise***
provisions in force;

b) ***other import charges*** as provided for
under ***the*** provisions in force;

Justification

The text incorporates the tax provisions laid down in the amended Directives 77/388/EEC (concerning VAT) and 92/12/EEC (concerning excise duty), but this regulatory framework has not been incorporated into the customs regulations. The principle must, however, continue to exist in the form of a general wording on account of international convention requirements.

Amendment 40
Article 153, paragraph 2, point f a (new)

(fa) under cover of CIM¹ consignment note or TR used as a transit document.

¹ ***Uniform rules concerning the Contract for International Carriage of Goods By Rail, Appendix B of the consolidated text of the convention concerning International Carriage by Rail (COTIF) of 9 May 1980, Article 12.***

Justification

This article provides exclusions of transit procedures for road, waterways and air transport and postal services but not for rail. This form of transport should therefore be included.

Amendment 41
Article 152, paragraph 3, point f (a) (new)

(fa) under cover of CIM¹ consignment note or TR used as a transit document.

¹ *Uniform rules concerning the Contract for International Carriage of Goods By Rail, Appendix B of the consolidated text of the convention concerning International Carriage by Rail (COTIF) of 9 May 1980, Article 12.*

Justification

This article provides for procedures for external transit by road, waterways, air transport and postal services but not for rail. This form of transport should therefore be included.

Amendment 42
Article 155, paragraph 1, point c)

c) unless otherwise provided for in the customs legislation, provision of a guarantee in order to ensure payment of any customs debt or other charges, ***in particular VAT and excise duty*** as provided for under ***VAT and excise*** provisions in force, which may be incurred in respect of the goods.

c) unless otherwise provided for in the customs legislation, provision of a guarantee in order to ensure payment of any customs debt or other charges, as provided for under ***the*** provisions in force, which may be incurred in respect of the goods

Justification

The text incorporates the tax provisions laid down in the amended Directives 77/388/EEC (concerning VAT) and 92/12/EEC (concerning excise duty), but this regulatory framework has not been incorporated into the customs regulations. The principle must, however, continue to exist in the form of a general wording on account of international convention requirements.

Amendment 43
Article 157, paragraph 2, point b)

b) VAT on importation and excise duties as provided for under ***VAT and excise*** provisions in force;

b) other import charges as provided for under ***the*** provisions in force;

Justification

The text incorporates the tax provisions laid down in the amended Directives 77/388/EEC (concerning VAT) and 92/12/EEC (concerning excise duty), but this regulatory framework has not been incorporated into the customs regulations. The principle must, however, continue to exist in the form of a general wording on account of international convention requirements.

Amendment 44 Article 158, paragraph 2

2. By way of derogation from paragraph 1, where the authorization concerns a public customs warehouse, it may provide that the responsibilities referred to in points (a) or (b) of paragraph 1 devolve exclusively upon the holder of the procedure. In this case the customs authorities may require the holder of the procedure to provide a guarantee with a view to ensuring payment of any customs debt and other charges, **in particular VAT and excise duty** as provided for under **VAT and excise** provisions in force, which may be incurred.

2. By way of derogation from paragraph 1, where the authorization concerns a public customs warehouse, it may provide that the responsibilities referred to in points (a) or (b) of paragraph 1 devolve exclusively upon the holder of the procedure. In this case the customs authorities may require the holder of the procedure to provide a guarantee with a view to ensuring payment of any customs debt and other charges, as provided for under **the** provisions in force, which may be incurred.

Justification

The text incorporates the tax provisions laid down in the amended Directives 77/388/EEC (concerning VAT) and 92/12/EEC (concerning excise duty), but this regulatory framework has not been incorporated into the customs regulations. The principle must, however, continue to exist in the form of a general wording on account of international convention requirements.

Amendment 45 Article 160, paragraph 3

3. The customs authorities may require the holder of the goods to provide a guarantee with a view to ensuring payment of any customs debt or other charges, **in particular VAT and excise duty** as provided for under **VAT and excise** provisions in force, which may be incurred.

3. The customs authorities may require the holder of the goods to provide a guarantee with a view to ensuring payment of any customs debt or other charges, as provided for under **the** provisions in force, which may be incurred.

Justification

The text incorporates the tax provisions laid down in the amended Directives 77/388/EEC (concerning VAT) and 92/12/EEC (concerning excise duty), but this regulatory framework has not been incorporated into the customs regulations. The principle must, however, continue to exist in the form of a general wording on account of international convention requirements.

Amendment 46

Article 172, paragraph 1, second subparagraph

Where the goods benefit from total relief from import duties, they shall, in accordance with the **VAT** provisions in force, also benefit from relief from **VAT on importation**.

Where the goods benefit from total relief from import duties, they shall, in accordance with the provisions in force, also benefit from relief from **other import charges**.

Justification

The text incorporates the tax provisions laid down in the amended Directives 77/388/EEC (concerning VAT) and 92/12/EEC (concerning excise duty), but this regulatory framework has not been incorporated into the customs regulations. The principle must, however, continue to exist in the form of a general wording on account of international convention requirements.

Amendment 47

Article 178, paragraph 1, point b)

b) VAT on importation and excise duties as provided for under **VAT and excise** provisions in force;

b) other import charges as provided for under **the** provisions in force;

Justification

The text incorporates the tax provisions laid down in the amended Directives 77/388/EEC (concerning VAT) and 92/12/EEC (concerning excise duty), but this regulatory framework has not been incorporated into the customs regulations. The principle must, however, continue to exist in the form of a general wording on account of international convention requirements.

Amendment 48

Article 187, paragraph 2, subparagraph 2

Where appropriate, the customs authorities may determine the route to be used when

Where appropriate, the customs authorities may determine the route to be used when

goods are to leave the customs territory of the Community.

goods are to leave the customs territory of the Community, **and the time limit for their removal from that territory.**

Justification

This paragraph should provide a possibility for Customs authorities to determine not only the route to be used when goods are to leave the Customs territory of the Community but also the time limit for their removal from that territory. This would prevent the long-term storage of goods at the border when their exit formalities have already been carried out.

Amendment 49
Article 190, paragraph 4

1. Where non-Community goods are destined to leave the customs territory of the Community and a re-export notification is not required, an exit summary declaration shall be lodged at the competent customs office, in accordance with Article 185.

1. Where **Community or** non-Community goods are destined to leave the customs territory of the Community and a re-export notification is not required, an exit summary declaration shall be lodged at the competent customs office, in accordance with Article 185.

The Commission shall, in accordance with the procedure referred to in Article 196(2), adopt measures laying down a common data set and format for the exit summary declaration, containing the particulars necessary for risk analysis and the proper application of customs controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices.

Justification

Recourse to comitology is pointless, since the data to be provided for the import summary declaration have already been stipulated. The same must apply reciprocally to the export summary declaration.

Amendment 50
Article 190, paragraph 2, subparagraph 2

In exceptional circumstances, customs authorities may accept paper-based exit

2a. In exceptional circumstances, customs authorities may accept paper-based exit

summary declarations, provided that they apply the same level of risk management as that applied to exit summary declarations made using an electronic data processing technique and that the requirements for the exchange of such data with other customs offices can be met.

summary declarations, provided that they apply the same level of risk management as that applied to exit summary declarations made using an electronic data processing technique and that the requirements for the exchange of such data with other customs offices can be met.

The customs authorities may allow the lodging of an export summary declaration to be replaced by the lodging of a notification accompanied by access to the summary-declaration data held in the economic operator's computer system.

Justification

Adjustment to the numbering of the text.

Amendment 51
Article 190, paragraph 3a (new)

3 a. Where the export summary declaration is lodged by a person other than the operator of the means of transport upon which the goods leave Community customs territory, that operator shall - within the time limits referred to in Article 186(c) - lodge with the appropriate customs office a notification of departure in the form of a manifest, a dispatch note or a load sheet containing the information required in order to enable all the goods transported which are to be covered by an export summary declaration to be identified.

Paragraph 2 shall apply, mutatis mutandis, to the first subparagraph of this paragraph.

Pursuant to the procedure referred to in Article 196(2) the Commission shall adopt measures specifying:

(a) the information to be shown on the notification of departure,

(b) the terms and conditions under which the requirement to lodge a notification of departure may be waived or adjusted,

(c) the rules governing the authorised exceptions and adjustments to the time-limit mentioned in the first subparagraph of this paragraph,

(d) the competent customs office where the notification of departure must be lodged or made available.

The following shall be taken into account in connection with the adoption of the above measures:

(a) the particular circumstances,

(b) the application of the measures to certain types of goods flow, modes of transport and economic operators,

(c) international agreements laying down specific provisions relating to security.

Justification

These are the same provisions as those relating to the import summary declaration.

Amendment 52 Article 193

Relief from export duties on account of special circumstances

Deleted

The Commission shall, in accordance with the procedure referred to in Article 196(2), adopt measures laying down the cases in which, and the conditions under which, relief from export duties is to be granted on account of special circumstances where goods are exported. In adopting these measures, account shall be taken of international agreements, the status of the person concerned and the nature of the goods.

Justification

This deletion stems from the fact that Regulation (EC) No 918/83 setting up a Community system of reliefs from customs duties is to remain in force.

Amendment 53
Article 194, point (a)

(a) rules and standards for the interoperability of Member States' customs systems to bring about improved co-operation based upon electronic data exchange between customs authorities and between customs authorities and economic operators;

(a) rules and standards for the interoperability of Member States' customs systems to bring about improved co-operation based upon electronic data exchange between customs authorities, ***between customs authorities and other competent authorities*** and between customs authorities and economic operators;

Justification

Electronic data exchange between the Customs authorities and other competent authorities should be mentioned in point (a) of this Article because this is important for the introduction of single window principle.

Amendment 54
Article 195, paragraph 1 a (new)

1a. Such explanatory notes and guidelines shall be included as annexes in the implementing provisions for this Regulation.

Justification

Article 195 is the legal basis for the Commission to adopt explanatory notes and guidelines. The advisory procedure provided for the adoption of explanatory notes and guidelines must ensure Member States' full and consistent implementation.

Amendment 55
Article 196, paragraph 2 a (new)

2a. Where reference is made to this paragraph, Article 5a, paragraphs 1 to 4, and Article 7 of Decision 1999/468/EC shall apply with due regard to the provisions of Article 8 thereof.

Amendment 56
Article 198, subparagraph 1

Regulations ***(EEC) No 918/83***, (EEC) No 3925/91, (EEC) No 2913/92, (EC) No 82/2001 and (EC) No 1207/2001 are hereby repealed.

Regulations (EEC) No 3925/91, (EEC) No 2913/92, (EC) No 82/2001 and (EC) No 1207/2001 are hereby repealed.

Justification

This reference is deleted on account of the fact that Regulation (EC) No 918/83 setting up a Community system of reliefs from customs duties is to remain in force.

EXPLANATORY STATEMENT

The Customs Code¹, which dates from 1992, provides a common legal framework for the common application of the rules governing the Customs Union and it consolidates all common customs legislation in a single text. On account of the radical changes which have occurred in the field of international trade (increasing use of information technologies and exchange of electronic data) and since the Code has not kept pace with developments in the tasks which customs authorities are required to perform, it is time that the Code was modernised.

It is against this background and in the context of the Lisbon Strategy that the proposal for a regulation (which was submitted by the Commission on 30 November 2005²) needs to be considered. It is an entirely prescriptive text which constitutes a complete reworking of the existing Code and which is intended to simplify customs legislation and procedures both for economic operators and for the customs administration, with a view to reducing the cost of customs clearance and meeting the challenges which trading activities entail and which relate to safety and security, action to combat counterfeiting, money-laundering, the protection of health and of the environment, and so on.

The new Community Customs Code does not merely simplify certain procedures – it makes fundamental changes to certain aspects of customs law. In this connection the proposal for a regulation cannot be disassociated from the proposal relating to paperless customs (known as '*e-customs*'). If that system functions well it will be possible for the new procedures laid down in the Modernised Customs Code to be applied.

Amongst the 200 articles of the Modernised Customs Code the innovations have prompted strong reactions in the Member States – both in government circles and amongst those who work in the sector.

These particularly delicate points are the ones which we have been asked to consider with a view to seeking a consensus which will take into account the interests of all the parties, whilst not losing sight of the ultimate objective: to simplify customs regulations and to structure them more effectively, in order to make the Community customs administration more effective and to protect the safe flow of international trade.

The main issues over which there is disagreement are customs representation, 'authorised operator' status, centralised customs clearance and systematic recourse to comitology.

(1) Authorised economic operators

This provision was introduced by means of Regulation 648/2005 – known as the 'security amendment'³ – which serves to establish a system of electronic pre-departure and pre-arrival declarations and institutes a Community risk-analysis profile with a view to making the

¹ Council Regulation (EEC) No 2913/92 establishing the Community Customs Code and Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of the Council Regulation

² COM (2005) 608 final

³ Parliament and Council Regulation (EC) No 648/2005 (OJ L117, 4 May 2005, p.13)

territory more secure. It was drawn up in reply to the requests issued by the USA to the international community following the 11 September 2001 terrorist attacks and it constitutes the European Community's specific response, alongside the establishment of a prescriptive framework by the World Customs Organisation. This particular provision was introduced in order to increase facilitations for operators by way of compensation for the new burdens imposed as a result of the need to take security issues into consideration.

Regulation 648/2005 is currently under discussion for the purpose of drawing up rules governing the implementation thereof (rules which should come into force during the summer of 2006). This has the effect of skewing the debates, since the parties concerned fail to distinguish between the new proposal for a regulation and the discussions concerning the implementing rules. Furthermore, no-one yet knows what genuine benefits may be derived from the status of 'authorised economic operator'.

Article 5a of the Regulation contains a reference to two statuses for authorised economic operators – both of which may be held at the same time.

In the interests of clarity your rapporteur has tabled amendments with a view to ensuring that the two statuses are specifically identified within the actual body of the new Customs Code.

Since economic operators are not aware of the genuine benefits inherent in the two statuses, the Commission proposal made a few distinctions concerning in particular the comprehensive guarantee (Article 67). However, since such authorisation was available to all economic operators, your rapporteur prefers to reinstate the existing rule.

(2) Entitlement to customs representation - Article 11

In the current version of the Community Customs Code, the Member States are allowed under Article 5 to reserve one of the two forms of representation (direct or indirect) for the customs commission agents who are established on their territory. This occupation exists in most of the Member States with the exception of Germany and the United Kingdom. This possibility has been abolished in the Modernised Customs Code.

Your rapporteur agrees with the Commission, which maintains that in an electronic environment this is not compatible with the principles of the Single Market, pursuant to which service providers in any Member State must be able to pursue their activities throughout the Community.

The entitlement to customs representation must therefore be opened up and a definition of 'customs representative' is included in Article 4.

In many countries, however, using a customs agent is traditional and is of great benefit to small businesses. Hence your rapporteur considers that customs representatives must be accredited, for which purpose they must demonstrate a sound financial situation, professional integrity and competence.

Customs representatives will also have the option of seeking 'authorised economic operator' status.

(3) Centralised customs clearance

This proposal introduces new concepts, the long-term benefits of which are at the moment unclear. There is reference to centralised customs clearance (mentioned in recital 27) involving a single 'window' and a single interface (mentioned in recital 7).

Centralised customs clearance means that the place at which the customs declaration is submitted may be different from the place at which the goods are physically located. This is possible because operators have access to a single interface (whereby economic operators are able to discharge at one go their obligations as regards the declarations to be made to the customs authorities and other government agencies - veterinary, plant-health, etc. - by using permanently accessible electronic means on their own premises) and the goods will be checked by the authorities concerned at the same time and the same place. This is what is meant by a single 'window'.

There are a number of question marks hanging over this idea of centralised customs clearance:

- Centralised customs clearance will have an effect on the amounts levied by each Member state and hence on the share (25%) of the customs duties which the Member States receive by way of collection charges. This is linked to the issue of making electronic customs-clearance operations free of charge (Article 32), since in order to repay operators' investment costs, free customs-clearance operations will become the rule and only certain highly specific services will be chargeable.
- Centralised customs clearance will enable competition to be created between the Member States' administrations, but it will also deprive those administrations of revenue which does not contravene the rules governing the internal market. Furthermore, such income provides funding for computerisation within administrations and the loss of such a resource might delay the introduction of computer facilities.
- If customs-control activities in particular are not harmonised, centralised customs clearance may lead to a concentration of commercial activity in highly attractive countries with plenty of capacity and cause goods to be diverted on a major scale.

Since she is aware of the financial loss which would occur if customs clearance were made totally free of charge, your rapporteur currently prefers that customs checks should as a general rule be free of charge but she leaves open the possibility that other services may have to be paid for.

However, the Commission will have to ensure that customs-clearance control activities are harmonised, so as not to encourage the concentration of commercial activity in large-capacity countries and so as not to divert trade.

(4) Extent of the provisions relating to comitology

In the body of the text the articles frequently refer to Article 196(2), which is concerned with recourse to the committee responsible for the implementing measures. Currently, all the provisions concerned with the application of the Code are without exception adopted once the Commission proposals have been considered by a committee operating in accordance with the 'regulation' procedure. Pursuant to Article 196 of the proposal for a Modernised Code, a more flexible procedure will be used in the future with a view (according to the Commission) to speeding up the work of the various sectors within the Customs Code Committee and making that work more effective. Hence it is proposed that the Customs Code implementing measures should be adopted in accordance with the management procedure; when there seems to be some point in drawing up guidelines or explanatory notes, these will be adopted in accordance with the consultation procedure (Article 7).

In your rapporteur's view the very size of the above committees and their lack of a framework mean that the Community legislator no longer has any role to play.

This is a highly technical subject and your rapporteur appreciates the value of such a procedure - although there is a clear lack of visibility where Parliament is concerned.

However, recent discussion on comitology (Parliament's adoption of the Corbett report in June 2006 and the decision to amend Council decision 1999/168/EC of 28 January 1999) will enable this point to be returned to at a later stage.

(5) Other points addressed

The other amendments tabled by your rapporteur relate in particular to fiscal matters and to a point which had not been settled when Regulation 648/2005 was adopted (concerning the person responsible for the import summary declaration).

Conclusion

On certain points it is very difficult to take up a stance, since certain provisions will apply only in the future and in connection with paperless customs administration. Throughout her report, your rapporteur has endeavoured to reconcile the interests of the various parties involved.

17.10.2006

OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

for the Committee on the Internal Market and Consumer Protection

on the proposal for a European Parliament and Council regulation laying down the Community Customs Code (Modernized Customs Code)
(COM(2005)0608 – C6-0419/2006 – 2005/0246(COD))

Draftsman:(*) Jean-Pierre Audy

(*) Enhanced cooperation between committees - Rule 47 of the Rules of Procedure

SHORT JUSTIFICATION

Customs rules play a key role in the implementation of the common commercial policy.

The rules concerning, *inter alia*, the 'factors on the basis of which import or export duties and other measures prescribed in respect of trade in goods are applied' (tariff classification, preferential and non-preferential origin, customs value), dealt with in Chapter 2 of the proposal, are such as to have a considerable impact on the scope of the regulation and, therefore, on the practical consequences of the measures adopted under this policy. Any incorrect definition or application of these rules is likely to mean that the measures will either be circumvented or (if they are preferential measures) unutilised or under-utilised. Therefore the Committee on International Trade cannot but take an interest in such matters.

Furthermore, one of the major objectives of the common commercial policy over the past few years has been to ensure that the formalities and controls necessary to ensure compliance with the rules remain compatible with the need to facilitate trade. The innovations set out in the proposal essentially reflect this concern, which the European Union is striving to uphold at the multilateral level in the World Trade Organisation (WTO) negotiations and which prompted some of the amendments tabled by the rapporteur in the Committee on the Internal Market and Consumer Protection.

Nevertheless, your draftsman is proposing to remedy, by means of the appropriate amendments, the improper use of the comitology procedure in cases in which such a procedure is not warranted and ultimately deprives Parliament of its role as co-legislator.

This is the case in two situations:

- where this procedure would allow some of the provisions of the Customs Code itself to be amended (Articles 35 and 194);
- where an entire subject – in this case the rules on preferential origin – is given over to such a procedure (Article 42).

Essentially, your draftsman takes the view that the European Parliament should have its say, under the codecision procedure, on any adaptation of the Customs Code which should become necessary when the Community takes on commitments and obligations under international agreements (in particular in the WTO), and on the definition of the key principles of the rules on preferential origin (in particular those applicable to the generalized system of preferences (GSP)).

The amendments proposed in this draft opinion concern provisions that are not covered by the draft submitted by the rapporteur of the Committee on the Internal Market and Consumer Protection and are a useful supplement to it.

AMENDMENTS

The Committee on International Trade calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 16

(16) As regards the rules on preferential origin, it is appropriate, in order to expedite the decision-making process within the Community, to confer on the Commission powers for the adoption of these rules in the case of goods benefiting from preferential measures applicable to trade between the customs territory of the Community and Ceuta and Melilla.

deleted

¹ OJ C xx, xxx, p. xx.

Justification

See justification for Amendments 5 and 6.

Amendment 2

Recital 37

(37) It is appropriate to provide empowerment for the adoption of implementing provisions, ***notably where the Community accepts commitments and obligations in relation to international agreements which*** require the adaptation of provisions of the Code.

(37) It is appropriate to provide empowerment for the adoption of implementing provisions, ***where such provisions do not*** require the adaptation of provisions of the Code ***or, owing to their nature and importance, do not require the adoption of a regulation under the codecision procedure.***

Justification

See justification for Amendment 8.

Amendment 3

Article 2, introductory paragraph

Customs authorities shall be responsible for administering international trade at the Community's external borders, thereby contributing to open trade, to the implementation of the external aspects of the internal market and of common Community policies with a bearing on trade, as well as to overall supply chain security. These tasks shall include the following:

Customs authorities shall be responsible for administering international trade at the Community's external borders, thereby contributing to open trade, to the implementation of the external aspects of the internal market, ***of the common commercial policy*** and of ***other*** common Community policies with a bearing on trade, as well as to overall supply chain security. These tasks shall include the following:

Justification

Customs authorities play a key role in implementing the commercial policy (at least as far as the 'goods' aspect is concerned). We would therefore like this fact to be highlighted by refraining from putting the commercial policy on the same level as the 'other common Community policies with a bearing on trade'.

Amendment 4

Article 38, introductory paragraph

Articles 39, 40 and 41 lay down rules for the determination of the non-preferential origin of goods for the purposes of applying the following:

(Does not affect English version.)

Justification

(Does not affect English version.)

Amendment 5

Article 42, paragraph 3

3. In the case of goods benefiting from preferential measures adopted unilaterally by the Community in respect of certain countries or territories outside the customs territory of the Community or groups of such countries or territories, other than those referred to in paragraph 5, ***the Commission shall, in accordance with the procedure referred to in Article 196(2), adopt measures laying down*** the rules on preferential origin.

In the case of goods benefiting from preferential measures adopted unilaterally by the Community in respect of certain countries or territories outside the customs territory of the Community or groups of such countries or territories, other than those referred to in paragraph 5, the rules on preferential origin ***shall be laid down by a regulation adopted under the codecision procedure.***

Justification

The very definition of the rules on preferential origin is a fundamental aspect of the scope of trade preferences and should henceforth be governed by basic rules rather than by comitology rules, which has the effect of depriving Parliament of its role as co-legislator.

We note that there is an imbalance in the proposal between preferential origin on the one hand and non-preferential origin and customs value on the other, the key principles of which are laid down in the Code itself (albeit in a simplified manner compared to the current Code, as far as non-preferential origin is concerned).

Moreover, the regulation establishing the GSP rules of origin, to which this paragraph (3) refers, is traditionally used as a basis for negotiating the conventional rules on preferential origin referred to in paragraph 2. It is therefore all the more important that Parliament be involved in decisions having a bearing on all of our preferential systems.

Amendment 6
Article 42, paragraph 4

4. In the case of goods benefiting from preferential measures applicable in trade between the customs territory of the Community and Ceuta and Melilla, contained in Protocol 2 to the Act of Accession of Spain and Portugal, ***the Commission shall, in accordance with the procedure referred to in Article 196(2), adopt measures laying down*** the rules on preferential origin.

4. In the case of goods benefiting from preferential measures applicable in trade between the customs territory of the Community and Ceuta and Melilla, contained in Protocol 2 to the Act of Accession of Spain and Portugal, ***the rules on preferential origin shall be laid down by a regulation adopted under the codecision procedure.***

Justification

See justification for Amendment 5. These considerations also apply to the rules on preferential origin applicable to Ceuta and Melilla.

Amendment 7
Article 42, paragraph 5 a (new)

5a. When negotiating on behalf of the Community the agreements referred to in paragraph 2 of this article, or when submitting a proposal with a view to laying down, by a regulation adopted under the codecision procedure or under Article 187 of the Treaty, the rules referred to in paragraphs 3, 4 and 5 of this article, the Commission shall take account in particular of the following:

(a) the commitments and obligations accepted in relation to international agreements;

(b) the need to define criteria relating to the origin status of products which are tailored to the features of each product, ensuring that the economic benefit of the preferential measures is indeed reserved for countries, territories or groups of countries or territories in respect of which these measures were agreed or adopted;

(c) the level of development and degree of industrialisation of the countries, territories

or groups of countries or territories in respect of which the preferential measures were agreed or adopted;

(d) the regional integration objectives underlying some of the preferential systems in question, by the laying down of appropriate cumulation rules;

(e) the need to lay down rules which are simple to understand and to apply, so that the operators of the countries, territories or groups of countries or territories in respect of which the preferential measures were agreed or adopted may effectively use those preferential measures, and which must be compatible with the aim of facilitating trade.

The Commission shall make provision for appropriate monitoring measures, to prevent or punish any abuse or circumvention of the preferential measures.

Justification

It is important for the rules on preferential origin to be laid down in accordance with certain key principles, so as to ensure that they are consistent with the aims of the commercial policy. This provision seeks to provide a framework for the subject.

Amendment 8 Article 194, point (c)

(c) any other implementing measures, where necessary, ***including*** where ***the Community accepts commitments and obligations in relation to international agreements which*** require the adaptation of provisions of the Code.

(c) any other implementing measures, where necessary, where ***such arrangements do not*** require the adaptation of provisions of the Code ***or, owing to their nature and importance, do not require the adoption of a regulation under the codecision procedure.***

Justification

According to established case-law, the use of the comitology procedure may only concern

implementing measures necessary for the implementation of the basic rules. It is not acceptable to use that procedure here in order to adapt the provisions of the Code itself, which falls under the codecision procedure.

If the Community 'accepts commitments and obligations in relation to international agreements which require the adaptation of provisions of the Code' (in particular in the WTO), Parliament intends to play its role as co-legislator with regard to the implementation of those commitments and obligations.

PROCEDURE

Title	Proposal for a European Parliament and Council regulation laying down the Community Customs Code (Modernized Customs Code)
References	COM(2005)0608) – C6-0419/2006 – 2005/0246(COD
Committee responsible	IMCO
Opinion by Date announced in plenary	INTA 17.1.2006
Enhanced cooperation – date announced in plenary	28.9.2006
Draftsman Date appointed	Jean-Pierre Audy 25.1.2006
Previous draftsman	
Discussed in committee	3.10.2006 17.10.2006
Date adopted	17.10.2006
Result of final vote	+:19 –:0 0:0
Members present for the final vote	Jean-Pierre Audy, Enrique Barón Crespo, Jean-Louis Bourlanges, Daniel Caspary, Christofer Fjellner, Béla Glattfelder, Syed Kamall, Sajjad Karim, Erika Mann, Javier Moreno Sánchez, Georgios Papastamkos, Godelieve Quisthoudt-Rowohl, Robert Sturdy, Gianluca Susta, Zbigniew Zaleski
Substitute(s) present for the vote final	Bastiaan Belder, Harlem Désir, Jörg Leichtfried, Antolín Sánchez Presedo
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	...

PROCEDURE

Title	Proposal for a European Parliament and Council Regulation laying down the Community Customs Code (Modernised Customs Code)					
References	COM(2005)0608 – C6-0419/2005 – 2005/0246(COD)					
Date submitted to Parliament	30.11.2005					
Committee responsible Date announced in plenary	IMCO 17.1.2006					
Committee(s) asked for opinion(s) Date announced in plenary	BUDG 17.1.2006	CONT 17.1.2006	INTA 17.1.2006	ITRE 17.1.2006	LIBE 17.1.2006	
Not delivering opinion(s) Date of decision	BUDG 23.3.2006	CONT 25.1.2006	ITRE 26.1.2006	LIBE 23.1.2006		
Enhanced cooperation Date announced in plenary	INTA 28.9.2006					
Rapporteur(s) Date appointed	Janelly Fourtou 12.12.2005					
Previous rapporteur(s)						
Discussed in committee	20.2.2006	19.4.2006	30.5.2006	13.9.2006	21.11.2006	
Date adopted	22.11.2006					
Result of final vote	+: 34 -: 0 0: 0					
Members present for the final vote	Charlotte Cederschiöld, Mia De Vits, Janelly Fourtou, Małgorzata Handzlik, Malcolm Harbour, Christopher Heaton-Harris, Anna Hedh, Edit Herczog, Anneli Jäätteenmäki, Pierre Jonckheer, Alexander Lambsdorff, Kurt Lechner, Arlene McCarthy, Manuel Medina Ortega, Zita Pleštinská, Guido Podestà, Giovanni Rivera, Luisa Fernanda Rudi Ubeda, Heide Rühle, Leopold Józef Rutowicz, Christel Schaldemose, Andreas Schwab, Eva-Britt Svensson, József Szájer, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud					
Substitute(s) present for the final vote	André Brie, Jean-Claude Fruteau, Benoît Hamon, Konstantinos Hatzidakis, Maria Matsouka, Olle Schmidt, Anja Weisgerber					
Substitute(s) under Rule 178(2) present for the final vote	Marie-Line Reynaud					
Date tabled	29.11.2006					
Comments (available in one language only)	...					