

# Customs Communique Switzerland 1-10

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In this issue we will be informing you in particular about the planned changes to the simplified customs declaration of small consignments in the Authorised Consignee (AC) procedure and about the status quo of the AEO (Authorised Economic Operator) in Switzerland. In addition we will be discussing the VAT aspects of cross-border transport traffic and the introduction of the cassis-de-Dijon principle in Switzerland. In our guest column, in view of the good economic relationship between Switzerland and South Korea, we would like to point out the current customs challenges particularly faced by the AEO and the approved exporters in South Korea – the author of the guest column is Mr Nam-Gyo Oh, Director Customs in Seoul.

## Changes in the simplified customs declaration of small consignments in the AC procedure

The Federal Customs Administration (FCA) has foreseen a simplified customs declaration for small consignments in the AC procedure. Small consignments are consignments with a value not exceeding 1,000 CHF and a gross weight not exceeding 1,000 kg that are neither subject to an authorisation and control obligation nor do require a certificate of non-customs ordinances (NZE). It is anticipated that this simplified customs declaration for customs-free small consignments will be introduced on 1 January 2011. This procedure will not require a postal licence anymore. Therefore this process will be available both for providers of postal services and forwarding agents in the future. From 1 January 2011 it should be possible for AC to declare customs-free small consignments to the customs with a reduced electronic customs declaration (e-dec easy). In addition, as a further simplification, the electronic customs declaration can be waived for small consignments, if the customs and VAT amount payable is not more than five Swiss francs. The AC can in future declare such consignments in a simplified way with a sticker, stamp or as a multiple customs declaration. Therefore, for a large number of import consignments only a simplified (sticker/stamp) or a reduced customs declaration (e-dec easy) will be necessary. E-dec easy is built on the basic system e-dec Import. E-dec easy can be used by all who have a forwarding agent/TIN No. and the necessary components in order to communicate with the FCA using the e-dec Import system.

However, it is up to the market participants whether or not they would like to use the simplification. Based on estimates by the FCA, about 40% of all import consignments benefit from this innovation. This represents about 500,000 consignments a month. The new customs declaration process was presented to interested circles (including DETEC, the Price Supervisor, post, courier and forwarders' associations) in a hearing and welcomed by the majority of the participants.

In this connection National Counsellor Susanne Leutenegger Oberholzer has asked the Federal Council to adopt measures to remove trade obstacles in cross-border online business. The motion has two aims: 1. The private forwarders are to be required to use the simplified declaration for small goods, in the same way as the Swiss Post does. 2. The VAT exemption limit for imported goods is to be increased from five francs to ten francs. An increase in the exemption limit on customs duties is also to be reviewed (it would result in reduced annual receipts of about twelve million Swiss francs). The Federal Council has reviewed the motion and advised the Councils to accept the motion in both points.

As a result of these future simplifications and the possible increase in the VAT and customs exemption limit to ten Swiss francs many companies with cross-border business are faced by questions of optimisation and therefore alteration of their delivery structures or of their business.



### VAT and Customs aspects of cross-border transport traffic

The new VAT Law (MWSTG) and the EU VAT package have consequences for cross-border transport traffic that can result in double non-taxation. Pursuant to VAT law (MWSTG) section 8, para 1 (place of service), and in conjunction with section 23, para 2, sub-sections 5, 6 and 7 MWSTG (services exempt from tax) only transport services in Switzerland to a Swiss recipient are to be charged with Swiss VAT. In section 23, para 2 sub-section 7 the MWSTG has embedded VAT exemption for transport services on foreign routes. As both under EU law and in the Swiss MWSTG the location of the recipient principle applies for this service, transport services abroad for a Swiss recipient are taxed neither in the EU nor in Switzerland. There is double non-taxation. The Swiss legislator therefore forgoes taxation of this service. However, it is to be expected that most Swiss recipients of the service who draw on such transport services are entitled to full input tax deduction and the Swiss tax authorities will, as a result, not lose too much tax revenue.

### Cassis-de-Dijon principle

On 12 June 2009 the Federal Councils approved the draft of the Partial Revision of the Federal Law on Technical Trade Obstacles (THG). The core of the draft is the autonomous introduction by Switzerland of the so-called cassis-de-Dijon principle. This specifically means that, after the revision becomes effective, products that are lawfully in circulation in the EU or EEA can in principle also be sold in Switzerland without additional controls. However, exceptions and special rules exist for various areas, for example for regulated products and foodstuffs. Therefore, the revised law is ready to be implemented. It was originally planned that the change would become effective already from 1 January 2010. According to the latest information from the State Secretariat for Economic Affairs (SECO) the revised THG is now not expected to become effective before 1 July 2010. It is to be assumed that with the introduction of the cassis-de-Dijon principle only about 19% (instead of the present 52%) of Swiss imports will be hindered by technical trade obstacles. On this basis the Federal Council expects annual savings of about two billion Swiss francs. It remains to be seen whether the savings will in fact reach this amount and whether the reduction of consumer prices also looked for in this connection will be achieved.

In future, with the introduction of the cassis-de-Dijon principle export oriented Swiss companies will have the opportunity to bring to market also in Switzerland their products manufactured for export under EU or EEA product regulations. Additionally it will be possible for non-exporting Swiss companies to opt to manufacture their products destined for the Swiss market under the regulations of the EU or the EEA and therefore to produce under the same regulations as their competitors in the EU/EEA. The Swiss companies involved are therefore recommended to study these possibilities in depth and to review their production and supply structure for optimisation opportunities.

### Authorised Economic Operators (AEO) in Switzerland – status quo in the project phase

Since early February 2010 the Federal Customs Administration (FCA) has been running a pilot project with four selected Swiss companies. In this pilot phase the completed questionnaires are being reviewed by the FCA internally for any errors and mistakes. The evaluation is intended to provide information in particular on the procedural areas, in which there is still potential for optimisation or changes are needed. Under the FCA's current timetable the definitive questionnaire is expected to be uploaded in mid-summer to be able to offer the Swiss companies the opportunity for certification from then on. Additionally, in the near future guidelines to the AEO status, tailored to Swiss needs, will be published in draft (similar to the EU guidelines). A further challenge to the Swiss AEO status will be the possible changes in the EU: according to oral information from the FCA the EU is at present in the course of further developing the country specific AEO questionnaires. For economic reasons a standard form applicable to the whole EU area is to be drawn up. The question then arises whether Switzerland should go its own way or whether the questionnaire should be adapted to the EU's future standard questionnaire. Therefore, the possibility exists that, after completion of the pilot phase, the current questionnaire will already be subject to changes.



### Advance registration/"24 hour rule" update

The treaty on customs reductions and customs security negotiated with the EU has been applied for the time being since 1 July 2009. Approval of the treaty by the Swiss Parliament is foreseen for the first half of 2010. It is already known that an analogous treaty is to be concluded with Norway this year, which is to be in force from 1 January 2011.

### Court practice: export customs certificate, procedural law (BVG Judgement A-5612/2007 of 1 March 2010)

The Federal Administrative Court (BVG) had to answer the question whether the appellant was entitled to a legal right to admission of its appeal. The Customs Inspectorate and the Customs Directorate Basle did not admit the right because of late submission. The BVG came to the conclusion that the appellant had exceeded the period of 60 days (pursuant to section 109 para 2 of the old Customs Law (aZG)) for submission of the appeal and therefore the contested decision not to admit could not be objected to. Section 125 aZG could not be applied, either, because this provision only applies in the event of too high customs duty being paid – but not as in casu to the issue of an incorrect customs certificate based on an incorrect determination of the facts. The BVG also stated that in this case the submission by the appellant was not to be treated as an application for review or revision. This judgement makes clear that also in customs procedures the deadlines for submission of an appeal are to be observed and exactly complied with. Unlike procedures before the Federal Tax Administration, where the period for submitting an appeal is 30 days, the period for the first appeal to a Customs Directorate against the assessment is still 60 days from issue of the assessment notice also under the new law (Section 116 para 3 ZG).

### Guest column South Korea

#### Authorized Economic Operator ("AEO") in Korea

The Authorised Economic Operator ("AEO") is actively introduced and implemented in Korea starting from 2010 after its initial approvals for a few companies in April 2009. Under the AEO regulations, exporters, importers, customs brokers, operators and transporters of the bonded area, and those who work in freight-related industries may apply for and be granted AEO status for a three-year period which may be given extensions. The unique aspects of AEO in Korea are combined performance of audit, compliance with the law through enhanced operation control system and application of Authorized Supply Chain (ASC). The combined performance of general customs audit and audit on security management would allow the authorised operators avoid redundancy in receiving customs audits on two separate matters, and the application of Authorised Supply Chain (ASC) will grant exceptional benefits to authorised operators permitting connected network between exporters and importers.

The qualifications for obtaining authorisation are based on the applicant's compliance with the law, operation control system, financial stability and security management. In order to fulfil the basic requirements, the applicant must meet the criteria for financial stability, security management and obtain a score of at least 80 on its operation control system. Applicants will also be graded on its legal compliance with those that obtain a score of 85 or more granted A-grade, a score of 90 or more granted AA-grade and a score of 95 or more granted AAA-grade. Although the benefits granted to AEOs differ depending on the grade levels, all operators granted AEO status may be exempted from planned audits and a reduction in fines. Operators engaged in both import and export may take advantage of the self-assessment programme and grade AAA import/export operators may file its import/export declarations in the Enterprise Resource Planning ("ERP") systems of each organisation. The AEO status is expected to provide numerous benefits in the form of exemptions from various documentation and other administrative requirements that would increase the efficiency of various customs procedures to importers and exporters employing best practices.



### Customs Approved Exporter in Korea

Beginning April 2010, the Customs Approved Exporter is introduced in Korea to enable approved exporters to produce origin declaration to benefit from preferential tariff under Korea-EU Free Trade Agreement. The approved exporters are designated by the Commissioner of the Korea Customs Service or the head of customs office and exporters need to fulfil a number of requirements to be selected as an approved exporter. The qualifications for obtaining customs approved exporter differ for exporters designated in terms of industry and products. However, the common and primary requirements for obtaining the approval are based on the applicant's compliance with the law, record keeping requirements, cooperation in providing supporting documents upon customs authority's request and capability in determining origin of the exported goods. In addition, companies exporting more than 600 billion Euros per export item are required to be designated as approved exporter and a research indicates that there are more than 10,000 Korean companies exporting more than 600 billion Euros to Europe as of end of 2009. The approved exporters will be designated in terms of industry and products after a comprehensive evaluation on the requirements stated under law and regulations.



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