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Working paper

CUSTOMS CODE COMMITTEE

Section for Special Procedures

Temporary Importation

Commercial and private use of means of transport

(request for clarification by IBAC)

I. Background

The International Business Aviation Council (IBAC) requested clarification on the interpretation of the term ‘private use’ and ‘commercial use’ in the context of temporary importation of aircrafts. As explained, the terms are allegedly interpreted not in a harmonised manner by Customs Authorities, which causes confusion among non-European Union operators flying into the EU.

IBAC has highlighted that the terms ‘commercial use’ and ‘private use’ of means of transport (MOT) as defined in the Istanbul Convention have a meaningful difference compared to the definitions of the global air transport safety and economic regulatory regimes.

As a short-term solution, the Commission proposes to produce EU guidelines with case-specific examples taking into account the IBAC document below and the outcome of the discussion on the Customs Code Committee-Special Procedures Section meetings. The table of examples is updated with the conclusions drawn on the meeting of the CCC-SPE held on 2 June and 9 July 2014.

In addition, a technical discussion should start at WCO level with the view of adopting a WCO recommendation regarding the matter.

II. Document provided by IBAC

Seeking Clarification Regarding Temporary Admission of Means of Transport

Prepared by the International Business Aviation Council (IBAC)¹

Issue: A number of business aircraft operators have expressed concern over varying interpretations by some Customs Authorities of the terms “private use” and “commercial use” as applied to aircraft in connection with the granting of temporary admission for a means of transport into a state or a customs union comprised of multiple states. We respectfully seek from the World Customs Organization (WCO) Administrative Committee for the Convention on Temporary Admission guidelines for states and operators of means of transport to avoid varying interpretations and to establish a predictable operating environment.

¹ IBAC represents the interests of business aviation worldwide. IBAC is a non-profit, international trade association with permanent observer status at the International Civil Aviation Organization, the UN Specialized Agency for aviation matters, in Montreal, Canada. IBAC membership is comprised of the national and regional business aviation associations around the world and operators of the full spectrum of aircraft from light propeller aircraft to large, wide-body turbojet aircraft.

Discussion

The Istanbul Convention on Temporary Admission (the Convention) is intended to harmonize and uniformly codify the regulations of Customs Authorities for temporary admission of, *inter alia*, means of transport. However, despite this objective, varying interpretations of temporary admission of means of transport—business aircraft, in this case—have caused confusion, in particular, among non-European Union operators flying into the EU. Similar situations could arise in other countries signatory to the Convention.

The objective of non-EU operators of business aircraft when operating to the EU—indeed the objective of any operator flying in any country—is to respect and abide by State regulations, including those of the respective Customs Authorities. The objective is not to knowingly evade duties and consumption taxes. While such operators normally well understand the distinction between commercial and non-commercial operations in the context of aviation regulations, such is not always the case regarding customs regulations as they relate to temporary importation of aircraft.

The business aviation community² therefore sees a need for clear, uniformly applied guidance for the temporary admission of aircraft. Such guidance, supported by case-specific examples, would materially assist operators in meeting their obligations. Thus, IBAC respectfully requests the Administrative Committee develop such recommendations, including examples, and encourage Customs Authorities themselves to uniformly apply such guidance.

Istanbul Convention

A number of provisions in the Convention appear to be particularly relevant to this matter.

Under Chapter 1, the Convention defines the term “Person” as: “both natural and legal persons, unless the context otherwise requires.”

According to the Convention, Contracting Parties agree that means of transport for commercial use or for private use “shall be granted temporary admission”. In order to be granted temporary admission:

- “means of transport for commercial use must be registered in a territory other than that of temporary admission, in the name of a person established or resident in a territory other than that of temporary admission, and be imported and used by persons operating from such a territory,”³ and
- “means of transport for private use must be registered in a territory other than that of temporary admission, in the name of a person established or resident in a territory other than that of temporary admission, and be imported and used by persons resident in such a territory.”⁴

² Business aviation is comprised generally of four types of operators: (1) owner operators using aircraft for business purposes, (2) corporate flight departments, (3) on-demand charters, and (4) fractional ownership. In some instances, a business aircraft owned by an individual or corporation may be “managed” by a company that provides maintenance and flight crew for the owner.

³ Annex C Article 5(a)

⁴ Annex C Article 5(b)

Article 8 of Annex C to the Convention provides each Contracting Party “the right to deny the benefit of temporary admission to, or to withdraw that benefit from (a) means of transport for commercial use which are used in internal traffic; or (b) means of transport for private use which are used for commercial use in internal traffic.”

Annex C to the Convention, concerning means of transport, defines “commercial use” as “the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration.”⁵

Annex C defines “private use” as “the transport exclusively for personal use by the person concerned excluding commercial use.”⁶

In Annex C (d), the term "internal traffic" is defined as “the carriage of persons or goods picked up or loaded in the territory of temporary admission for setting down or unloading at a place within the same territory.”

Need for Clear Guidance

The terms “commercial use” and “private use” of means of transport in the sense of the customs regime established by the Convention have slight yet meaningful differences compared to those in the context of the global air transport safety and economic regulatory regimes. Generally, the Convention on International Civil Aviation, bilateral air services agreements around the world, and national safety and economic regulatory regimes make the distinction between commercial and private operations mainly on the basis of whether the carriage by aircraft of passengers, baggage, cargo and/or mail is held out to the public for remuneration or hire.

While it is critical not to conflate the definitions of the respective regimes, a lack of guidance to or uniform understanding among Customs Authorities regarding the WCO context has caused confusion among certain aircraft operators regarding temporary importation when flying to other states or customs territories, particularly, at the moment, the EU.

⁵ Annex C Article 7 (a)

⁶ Annex C Article 1 (c)

Illustrative Examples

We offer the following means-of-transport scenarios in an effort to elicit the Committee’s guidance on the matter.

<p>1.A.) A Canada-based corporation flies its Canadian-registered corporate aircraft from Montreal to Paris and Nice for business-related meetings with local offices, customers and suppliers. All on board are Canadian citizens. A Paris-based employee of the corporation flies from Paris to Nice for the meeting there. The aircraft departs Nice for Montreal.</p> <p><i>We believe this means of transport, as a not-for-remuneration operation, meets the conditions under temporary admission. If not, what is the basis within the customs context for the refusal?</i></p> <p>If the means of transport carried company materials/brochures for promotion, would this be deemed “industrial or commercial transport of goods”? Would this have a bearing on whether the means of transport would be granted temporary importation?</p>	<p>1.B.) A Switzerland-based corporation sends a team of two Swiss-citizen employees in a corporation-owned automobile from Zurich to meetings with local offices, customers and suppliers in Lyon and Marseille. In Lyon, they pick up a French colleague for the meeting in Marseille. The automobile and Swiss employees return directly to Zurich from Marseille.</p> <p><i>We believe this means of transport, as a not-for-remuneration operation, meets the conditions under temporary admission. If not, what is the basis within the customs context for refusal?</i></p> <p>If the means of transport carried company materials/brochures for promotion, would this be deemed “industrial or commercial transport of goods”? Would this have a bearing on whether the means of transport would be granted temporary importation?</p>
<p>Position of the EU Customs Code Committee:</p> <p>‘Private use’ as defined in Article 555(1)(b) CCIP (Regulation 2454/1993).</p> <p>As the use of means of transport in this case does not involve remuneration, it does not fall under the definition of commercial use but remain in the scope of private use.</p> <p>The transportation of company materials/ brochures is not the main purpose for the usage of the means of transport and it is not a direct commercial activity but `transport of goods in commercial context`, therefore it is private us.</p>	<p>Position of the EU Customs Code Committee:</p> <p>Private use.</p> <p>The case correlates with Example 1.A), therefore the operation carried out is regarded as private use.</p>
<p>2.A.) A Canada-based corporation flies its Canadian-registered corporate aircraft from Montreal to Paris and Frankfurt for business-related meetings with local offices, customers and suppliers. All on board are Canadian citizens. A Paris-based employee of the corporation flies from Paris to Frankfurt for the meeting there. The aircraft</p>	<p>2.B.) A Switzerland-based corporation sends a team of two Swiss-citizen employees in a corporation-owned automobile from Zurich to meetings with local offices, customers and suppliers in Munich and Innsbruck. In Munich, they pick up a German colleague for the meeting in Innsbruck. The automobile and Swiss</p>

<p>departs Frankfurt for Montreal.</p> <p><i>We believe this means of transport, as a not-for-remuneration operation, meets the conditions under temporary admission. If not, what is the basis within the customs context for the refusal?</i></p> <p>If the means of transport carried company materials/brochures for promotion, would this be deemed “industrial or commercial transport of goods”? Would this have a bearing on whether the means of transport would be granted temporary importation?</p>	<p>employees return directly to Zurich from Innsbruck.</p> <p><i>We believe this means of transport, as a not-for-remuneration operation, meets the conditions under temporary admission. If not, what is the basis within the customs context for the refusal?</i></p> <p>If the means of transport carried company materials/brochures for promotion, would this be deemed “industrial or commercial transport of goods”? Would this have a bearing on whether the means of transport would be granted temporary importation?</p>
<p>Position of the EU Customs Code Committee:</p> <p>Private use.</p> <p>There is no direct remuneration involved for the transportation of company employees as it is carried out by the corporate aircraft. Direct payment means that a person using the service pays for the service. The case fulfils the conditions of private use.</p>	<p>Position of the EU Customs Code Committee:</p> <p>Private use.</p> <p>The case correlates with Example 2.A), therefore the operation carried out is considered as private use.</p>

<p>3.A.) A UAE-based company charters a UAE-registered jet to take employees, all non-European citizens, from Dubai to Amsterdam, Paris, and Rome. The aircraft carries only the same passengers throughout the journey. The operator obtains the appropriate traffic right permissions from the individual states. The flight returns from Rome to Dubai.</p> <p><i>We believe this means of transport, as a for-remuneration operation, meets the conditions under temporary admission where the operator obtains the necessary traffic rights. If not, what is the basis within the customs context for the refusal?</i></p>	<p>3.B.) A Switzerland-based company leases a luxury automobile and driver to transport a team of Swiss citizen employees from Zurich to Munich, Innsbruck, and Milan for meetings. The automobile carries only the same passengers for the entire trip. The automobile returns to Zurich at the end of the trip.</p> <p>Would this means of transport be considered eligible for temporary importation? If not, what is the basis within the customs context for the refusal?</p>
<p>Position of the EU Customs Code Committee:</p> <p>Private use.</p> <p>The payment made by the company is not direct payment for the transportation of employees but for the lease of the jet. Therefore, it remains private use.</p>	<p>Position of the EU Customs Code Committee:</p> <p>Private use.</p> <p>The case correlates with Example 3.A), therefore it is regarded as private use.</p>

<p>4.A.) A U.S. citizen, resident of the U.S., owns his aircraft but pays a management company on a monthly basis to provide crew and support. He chooses to use his aircraft to fly from the U.S. to various destinations in the EU to watch a football tournament and invites some U.S. citizen friends to join him at no cost to them. The aircraft owner pays all transportation expenses.</p> <p><i>We believe this means of transport, as a not-for-remuneration operation, meets the conditions under temporary admission. If not, what is the basis within the customs context for the refusal?</i></p>	<p>4.B.) A Swiss citizen, resident of Switzerland, owns his own luxury automobile but pays a driver to shuttle him. He chooses to use the automobile to travel to a football tournament in Austria and Germany and invited a couple Swiss-citizen friends to join him at no cost to them. The owner pays all transportation expenses.</p> <p><i>We believe this means of transport, as a not-for-remuneration operation, meets the conditions under temporary admission. If not, what is the basis within the customs context for the refusal?</i></p>
<p>Position of the EU Customs Code Committee:</p> <p>Private use.</p> <p>The payment involved in this case is not remuneration for the transport of persons as stated in the definition of commercial use but is regarded as indirect payment by the owner of the means of transport.</p>	<p>Position of the EU Customs Code Committee:</p> <p>Private use.</p> <p>The case correlates with Example 4.A), therefore the operation carried out is regarded as private use.</p>

Additional Matters for Clarification

- Flights between countries in a customs territory: If an aircraft flies between points in two different countries—two sovereign states—within a customs territory, does the Administrative Committee consider that an international flight or a domestic flight within the world customs regime? With regard to the Convention on International Civil Aviation, a flight between Paris and London, for example, would be considered international, while a flight between Paris and Lyon would be considered domestic.

Position of the EU Customs Code Committee: The question whether the flight is domestic or international is not relevant. It is ‘internal traffic’ as defined in Article 555(1)(c) CCIP. In case of commercial use ‘internal traffic’ is allowed only if the provisions in force in the field of transport so provide (see Article 558(1) (c) CCIP). As the EU Customs Code Committee has concluded that all cases mentioned above are private use, the question whether ‘internal traffic’ is allowed or not is not relevant.

- Citizenship or residence of crew aboard: Does the citizenship or residence of the crew members, e.g., pilots, cabin crew, have a bearing on the decision as to whether a business aircraft is eligible for temporary admission? If so, please provide the policy basis.

Position of the EU Customs Code Committee: Only the residence of the pilot/ co-pilot matters (Article 558(1) (b) CCIP). See table of illustrative examples.

- Definition and use of “person”: According to the Convention, a “person” means “both natural and legal persons, unless the context otherwise requires.” In considering private vs. commercial use, some Customs Authorities see private use of an aircraft as only personal use by an individual. If a corporation or company, a “person” according to the Convention, operates its aircraft for its own purposes, without holding out to the public for remuneration or hire, under what contexts is the operation of that aircraft considered commercial and under what contexts is it considered private?

Position of the EU Customs Code Committee: See table of illustrative examples.

Conclusion

As stated above, IBAC, on behalf of the global business aviation community, respectfully requests clear, uniformly applied guidance for the temporary admission of business aircraft. We are willing to assist the WCO Istanbul Convention Administrative Committee in progressing this matter.

February 2014

III. Clarifications provided by IBAC

- Regarding the definition of "commercial use" of means of transport, in this case business aviation, transport "for remuneration" means whether passengers paid for air transport service (i.e., a ticket) or whether the whole aircraft was chartered to provide transport service.

Position of the EU Customs Code Committee: Commercial use as defined in Article 555(1)(a) CCIP means that passengers have paid for air transport service (i.e., a ticket).

- Transport of brochures or materials for promotional purposes would not cross the threshold of "commercial use", but transport of items for sale, whether or not for remuneration, would qualify a flight as "commercial".

Position of the EU Customs Code Committee: As mentioned above if the transportation of company materials/ brochures is not the main purpose for the usage of the means of transport and it is not a direct commercial activity but `transport of goods in commercial context`, then it is private use even if the company brochures or materials for promotional purposes are sold (which is usually not the case).

- For purposes of customs regulations, an "internal" flight is between any two points within the EU. "Private use" flights may operate between any two points under temporary admission. "Commercial use" flights may also operate between any two points under temporary admission, provided such flights have received the necessary authorizations from the Member States concerned.

Position of the EU Customs Code Committee: It agrees with above statements.

- EU citizenship or residence of crew on a non-EU-registered aircraft in "internal use" does not qualify such a flight as commercial. (We recognize that "internal use" will be removed from the applicable EU regulations in 2016. However, this will be a useful point to clarify in a guidance document in the intervening time.)

Position of the EU Customs Code Committee:

As mentioned above 'internal traffic' is defined in Article 555(1)(c) CCIP. In case of commercial use 'internal traffic' is allowed only if the provisions in force in the field of transport so provide (see Article 558(1)(c) CCIP). As the crew does not pay for the transport service, "internal use" does not qualify such a flight as commercial. The citizenship or the place of residence of the cabin crew is not relevant in the case described.

Regarding the removal of "internal use" it should be noted that also under the modernized customs rules 'internal traffic' is allowed only if the provisions in force in the field of transport so provide. However, the customs rules don't refer explicitly to the provisions in force in the field of transport. Nevertheless, such provisions must be respected in connection with temporary admission also in future.