

## ***Disclaimer***

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## **IBAC Briefing Note on State Customs Restrictions on International Business Aviation Operations.**

Since the introduction of the Single European Market a number of “Third Country” aircraft operators and owners were found to be in breach of Temporary Admission (TA) conditions with the varying treatment of aircraft by Customs officials in the European Union (France in particular). This resulted in a number of operators finding themselves liable for Customs duty and tax debts.

During the fall of 2002, the International Business Aviation Council’s Planning and Operations Committee (IBAC-POC) commissioned a project to investigate the varying treatment of business aircraft by Customs authorities on a global scale. The resulting information obtained from varying sources, including customs officials and Aeronautical Information Publications are hereby presented for information purposes.

The results show there are two clear issues at hand, each having its own challenges in respect of the carriage of passengers within a country or territory. Operator’s travelling internationally need to be aware there are variations in territorial areas for customs, immigration and sovereign/economic purposes that may have varying impacts on operations.

### **Traffic Rights**

Traffic rights are covered by the Convention on International Civil Aviation (Chicago Convention 1944).

ICAO Chicago Convention – **Article 5** covers the right of non-scheduled flight into or in transit non-stop across its territory and to make stops for non-traffic purposes. It makes no mention of rights within a contracting States territory.

**Article 7** covers Cabotage and the rights of contracting States to “*refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for **remuneration or hire** and destined for another point in its territory.*” Thus, the implication is that cabotage pertains solely to the transport of persons, mail and cargo for remuneration or hire. There appears to be no guidance within the Convention for non-remunerated

intra territory carriage of persons applicable to a typical corporate / business aircraft operation.

**Article 24** aircraft on a flight to, from and across the territory of another contracting State *“shall be admitted temporarily free of duty, subject to customs regulations of the State.”*

**Annex 9 Chapter 2.44** – in accordance with Article 24 *“aircraft shall be allowed to remain within that State for a period to be established by that State, without security for customs duty on the aircraft being required.”*

It can therefore be ascertained that nothing within the ICAO convention appears to preclude cabotage operations within a contracting State. The Convention implies Cabotage rights may be conveyed by each contracting State and the length of stay and duty status of the aircraft remains subject to customs regulations of the contracting State.

In the case of the European Union, it is not at this time an ICAO contracting State, the individual member countries are contracting States. Flights between member States of the EU are therefore regarded as International flights. Cabotage rights, remain an intra country issue even within the EU.

Conversely, the United Kingdom and it's Overseas Territories as an example are a sole contracting State to the Convention and as such under the Chicago Convention 1944 the route Anguilla-British Virgin Islands would be a Cabotage route as both points served are within a territory of a single Contracting State....A flight from London to Cayman is not an International flight on the same basis above, it is a Cabotage flight.

### Customs Rights

The World Customs Organisation (WCO) and its Revised Kyoto International Convention on the simplification and harmonisation of Customs procedures (revised June 1999) entered into force February 03<sup>rd</sup> 2006

The Revised Kyoto International Convention provides a number of standards and recommended practices for Customs authorities World-wide. In the instance of 'aircraft' and 'means of transport' specific Annex J1 and J3 apply to 'travellers' and 'means of transport' for commercial use respectively. For Annex J1 – standard 23 states:

#### Standard 23

*“Non-residents shall be granted temporary admission in respect of their means of transport for private use.*

Generally temporary admission for the means of transport for private use is given under the following conditions:

- when the means of transport is registered in a territory other than that of temporary admission;
- it is registered in a name of the person established (legal persons) or resident (natural person) in a territory other than that of temporary admission; and
- it is imported and used by the persons resident in a territory other than that of temporary admission.

These conditions help to guarantee re-exportation and may enable simplification of Customs formalities. They also serve to distinguish foreign means of transport (which receive temporary admission) from national ones (which are in free circulation). These conditions also prevent national residents from avoiding the payment of import duties and taxes by registering abroad the means of transport they purchase..... “

Other Customs conventions, governed also by the WCO, notably the Istanbul Convention on Temporary Admission, dated 26<sup>th</sup> June 1990 and its Annex C, concerning means of transport, do expand in Article 7 (b) to allow the use by *‘third persons who are duly authorised by the person granted temporary admission’*. It allows *‘Each contracting party may permit the use by a person resident in its territory, in particular, where the means of transport is used on behalf of and on the instructions of the person granted temporary admission’*.

In terms of customs regulations, the EU is governed by a single legislation, which covers all member States. The length of stay and duty status of an aircraft is therefore uniformly treated throughout the territory of the EU in line with the governing legislation. If you fail to meet any of the conditions for temporary admission then the conditional relief from duties and taxes is removed and a customs debt comes into force.

A Customs ‘State’ (Territory) may include a number of countries (as in the case of the European Union).

This applies to many types of business aviation activities including private, commercial and fractional. Additional restrictions relating to the carriage of local “traffic” within country borders mainly (but not limited) for commercial purposes (Cabotage) require permits from such countries relevant authorities and such flights may in many cases be denied.

Do not confuse Customs Issues, which relate to the entry of the aircraft, with Cabotage issues which relate to the carriage of passengers and/or cargo between points within the territory – they are separate matters. A breach of Customs regulations may incur a heavy financial penalty based on the hull value of the aircraft.

## **Compliance with Customs regulations does not confer rights of Cabotage!**

Cabotage – involves the [air] transport of passengers and goods within the same National territory.

Notes:

1. Cabotage rules typically apply to commercial operations. There are however a number of States that apply cabotage to non-commercial operations. Such States do not necessarily follow uniform rules. Thus the non –commercial operator needs to be eternally vigilant in this respect and to ascertain *a priori* what, if any, cabotage rules apply.
2. A not uncommon cabotage rule for non-commercial operations prohibits the uplift of a passenger who is normally resident in the customs territory concerned. In some instances the restriction depends on whether the conduct of the flight is incidental to the carriage of such a passenger or otherwise.

*This Briefing Note was reviewed and accepted by the IBAC Planning and Operations Committee meeting in Brussels on 15-16 March 2007.*

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