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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Policy, Legislation, Tariff
Customs Legislation

Brussels,
TAXUD/A2/AF Ares D(2016) 2106900

TAXUD/A2/SPE/2016/003-EN

CUSTOMS CODE COMMITTEE

Special Procedures Section

Minutes/summary record of the 48th meeting

Brussels, 22 February 2016

I. Adoption of the draft agenda

In line with a request from some Member States' , COM proposed to add items VI. 1, 2, 3 and 4 under 'Other business'.
The Committee adopted the agenda.

ITEMS REGARDING THE IMPLEMENTATION OF THE CURRENT CUSTOMS CODE

Issues put to the Committee on the Chair's initiative for which an opinion may be requested in accordance with the examination procedures provided for in Article 249 of the Community Customs Code:

II. Processing under Customs Control of solar glass into solar panels

Examination of the economic conditions in accordance with Article 552(2) CCIP
(Document TAXUD/A2/SPE/2015/014 (available in EN))

COM pointed out that the document had been subject to discussions in the past four CCC SPE meetings and emphasised that the examination of the economic conditions was related to an authorisation and not an application.
At the last meeting held on 29 January 2016, it was agreed to give the two holders of the PCC authorisations an opportunity to explain their positions. One company was of the opinion that the Committee should not be provided with detailed information. The other company did not submit any information because it did not intend to use its PCC authorisation. Consequently the Committee did not receive any documents from the holders of the authorisation. However, the Member State concerned said that one company had argued that:

- ADD should be paid if the dumped solar glass was imported and sold without further processing but in case of processing such duties should not be due;
- According to the information about the value of the solar glass in the final product, this was about 30 % and not about 7 % as indicated in the document TAXUD/A2/SPE/2015/014;
- It did not make a net profit and jobs are at risk without PCC;
- The three main producers of solar glass in the EU were able to supply only 50 % of the quantity needed. Additional quantities could have been supplied but would not have complied with the technical requirements.

The Committee noted that the company's arguments were not substantiated by any statistics or relevant documents.

COM suggested proceeding with a tour de table to establish the Committee's position. COM and the Committee were of the opinion that the economic conditions had not been met for the reasons mentioned in document TAXUD/A2/SPE/2015/014:

- Solar glass had been subject to anti-dumping and anti-subsidy duties imposed on Chinese-made solar glass since April 2014. It seemed likely that the only purpose behind the use of PCC would be to avoid paying the duties which would allow dumped and subsidised solar glass to be imported.
- The use of PCC would cause serious injury to the EU solar glass industry in terms of reduced production levels, low capacity utilisation rates, low sales volumes, and

reduced EU market share, lower employment rates, financial losses and impaired investments.

- The use of PCC would allow EU solar module assemblers to increase their own profit margins through increased prices and lower costs.

- There was no evidence that the use of PCC was necessary for maintaining any existing assembling activities or levels of employment in the EU because the additional costs of production of 2-3 % (in the case of payment of ADD and countervailing duties) should be able to be passed on to the final consumer.

- The employment situation had improved for those EU solar glass producers that had survived the attack of the dumped and subsidised Chinese imports. However these improvements could be easily undermined by the PCC of Chinese solar glass by the EU module assemblers. The remaining EU production sites are located in many economically disadvantaged regions where the future loss of jobs caused by the use of PCC would have a disproportionate and larger adverse economic effect.

In accordance with the administrative arrangement, COM proposed to give the company the 'right to be heard' so that a final conclusion could be drawn in April 2016.

III. Processing under Customs Control of high-quality Grain-Oriented Electrical Steel (GOES) and Grain-Oriented Electrical Steel (CN code 7225 11 00 or 7226 11 00) into high-quality GOES coils (CN code 7225 11 00 or 7226 11 00)
Examination of the economic conditions in accordance with Article 552(2) CCIP
(Document TAXUD/A2/SPE/2015/019 (available in EN))

At the request of the MS concerned, it was agreed that the examination of the economic conditions concerning the application for processing under customs control of high-quality Grain Oriented Electrical Steel (GOES) and Grain Oriented Electrical Steel would be postponed until the next Customs Code Committee scheduled for 27 April 2016, so that more information could be obtained on the business case.

Issues put to the Committee, for information or a single exchange of views, on the Chair's initiative or in accordance with Article 249 of the Community Customs Code:

IV. Guidance concerning the UCC and its related Commission acts
(Document TAXUD/A2/SPE/2016/001-EN Rev1 (available in EN))

COM informed the Committee that the guidance document reflected the outcome of the discussions of the Project Group meetings held on 26 – 28 January and 9 – 11 February 2016. The purpose of drafting guidance on special procedures other than transit was to help customs administrations to correctly and uniformly apply the UCC and its related COM acts as from 1 May 2016.
COM pointed out that the first wave of guidance was to be published on TAXUD's website around mid-March 2016. COM stated that the original English version of the finalised guidance would be translated into French and German and published on the TAXUD website once it was available. The document would not be published in the Official Journal of the Union.
A second wave of more comprehensive guidance should be drafted and made available to stakeholders by the end of 2016.

COM stated that the Secretariat-General in charge of some horizontal rules needed to provide instructions in order to decide whether the initial name 'guidelines' should be

replaced by ‘guidance’. The new title would make it clearer that the document was produced by the Member States and not by the Commission.
COM presented the document for the Member States to approve the content. COM stated that it would have to launch a written procedure if it was not possible to take a decision that day, because no more Committee meetings were planned before the date for finalising the guidance, which was expected to be around mid-March 2016.

COM explained that the text in green was a ‘stable text’ while the text in yellow needed to be agreed. COM invited the MSs to comment on the ‘green text’ and on what had been suggested by the Project Group.
At the request of some Member States, COM agreed to launch a written procedure after the meeting and fixed a deadline for submitting comments. The MSs were invited to check if the text was acceptable or come up with proposals to re-formulate the text, if needed. In the event of disagreement on parts of the text, these parts would be removed. COM stressed that it was important to respect the given deadlines to finalise and publish the text before Easter.
It was agreed that:
- The first consultation of MSs would be launched on Wednesday 2 March 2016;
- COM would produce a revised version of the document by Friday 4 March 2016;
- MSs should provide additional comments by Thursday 10 March 2016;
- COM would finalise the text by Friday 11 March 2016.

COM invited the MSs to start looking at the document. Comments included the following:

In Article 210 UCC (Scope), bullet point 3 should be deleted and bullet point 2 (specific use) should include end-use.

Two MSs proposed modifying a sentence in paragraph (1) of Article 211 UCC (Authorisation), keeping only the period of validity of five years for an authorisation. This was agreed.

One MS asked for a revision of the first example on page 9 relating to end-use authorisation for airlines established outside the EU territory. As a result of the debate a large majority of Member States approved the example and it was agreed to keep the text in green because it was important to apply Article 161 DA uniformly.

One MS suggested adding, under point (c), that a guarantee is not required for free-zones and outward processing EX/IM. This was agreed.

Regarding paragraph (7) and Annex 71-05, it was agreed to insert a reference to Annex 13 of the Transitional Delegated Act (TDA) to provide all the data elements required.

It was agreed that ‘Final provisions’ should mention that a PCC authorisation could be used as inward processing authorisation in accordance with Annex 90 DA, with import duties being calculated in accordance with Article 85 UCC.

In reply to a question about the use of code 44, COM said that the Project Group had not considered the end-use procedure. COM felt that the codes to be used for end-use should be based on the TDA or on Annex B to the DA. The TDA should be applied in the transitional period until the UCC IT system was set up.

It was agreed that paragraph (3) of Article 218 UCC (Transfer of rights and obligations (TORO) should specify that TORO does not require any subsequent customs declaration ‘for the same procedure’.

In reply to one MS on what to do without T5 control copies when dealing with different countries, COM suggested referring to the information provided in Annex III to the document.

One MS asked for clarification of Annex I and the examples provided on the end-use procedure, and on how the TORO should take place in the transfer from one authorisation holder to another. COM highlighted that there was no consensus on the examples, the examination of which had to be postponed until the second wave of guidance discussion. However COM stated that, in accordance with the UCC, there was no need for a second end-use authorisation.

Referring to Annex III indications, COM pointed to the clear difference between the holder of the procedure and the holder of the authorisation and said that a TORO from one authorisation holder to another was no longer possible under the UCC rules. It was possible to use a second authorisation for a subsequent activity which had nothing to do with TORO.

COM specified that there was a clear distinction in the UCC between TORO and the movement of goods with two separate articles.

COM reported that it would have the document TAXUD/A2/SPE/2015/016-Rev1 about inward processing and the use of equivalent goods under the UCC inserted in Annex IV to the guidance. This had been discussed and agreed at the past Committee meeting on 29 January 2016.

V. Other business

1. Inward processing — IPR and calculation of import duties — Question raised by a Member State

(Non-paper available on CIRCABC)

One Member State presented a revised non-paper as a result of the discussion at the CCC SPE meeting held on 23 November 2015. The main purpose was to obtain the opinion of the Committee on two questions and reach a common interpretation of Articles 85(1) and 86(3) UCC about the calculation of import duties in relation to special procedures.
The first question referred to the calculation of import duty in cases of inward processing and whether it was possible to choose the relevant article to be applied for the main and secondary products under the same authorisation.
The second question was about the release of processed products into free circulation and whether the declarant could ask for the import duty to be calculated on a different basis to the one specified in the authorisation.

With respect to the second question, one MS wanted to know the legal basis for granting retroactive authorisation. COM stated that, in accordance with Article 211(2)(e) UCC, it was possible to apply a different method of calculating the import duty to the one specified in the authorisation, granting an amended authorisation with retroactive effect which covers the relevant dates on which goods have been declared for a special procedure. Such authorisation could be granted once in a three-year period.

As regards the first question, COM explained that the authorisation should be issued to allow inward processing and should contain information on the main processed products. The information on the application of Article 86(3) UCC mentioned in the application should be mandatory. COM highlighted that an authorisation was not needed to obtain

secondary processed products. For secondary products including waste it was possible to ask for any calculation method, in accordance with Article 86(3) or 85 UCC.

In reply to a question about the total TORO to another person who would declare goods for free circulation, COM stressed that in the case of TORO there was no need for a second authorisation. COM stated that it would be possible to transfer the rights to another person if the authorisation specified that Article 86(3) UCC should apply. In the context of TORO it was not possible to have a new calculation method.
COM stressed that in case of a customs debt based on Article 86(3) UCC, it would be necessary to go back to the first original Customs declaration for inward processing for the payment of the import duties.

2. Temporary admission — Use of equivalent goods in case of temporary admission of means of rail transport — Question raised by a Member State
(Non-paper available on CIRCABC)

The Member State asked to withdraw the point from the Agenda because it had not yet received any information from the European rail transport group.

3. Imports of aircraft — Application of the end-use procedure — Question raised by a Member State
(Non-paper available on CIRCABC)

a) One Member State presented a case relating to a national trader that had asked to be allowed to definitely import aircraft from a third country duty-free because of their end-use. The trader wanted to use the end-use procedure, maintaining the aircraft registration in the third country register in accordance with an existing Air Transport agreement.
The MS wanted to clarify whether the additional condition of the registration of the aircraft in public registers could be deemed to have been fulfilled, allowing the trader to benefit from the customs exemption under the end-use procedure.

COM stated that in its view the agreement was not relevant and the question was of a general nature. The main point was whether the aircraft should be registered in the MS register or not. COM said that there was no requirement in the Combined Nomenclature as to the location of the public register, meaning that it could be in a MS or in a third country. However the aircraft should be registered as civil aircraft and the customs declaration should contain that reference.
Customs should check the validity of the end-use authorisation on the day it was lodged. The declarant should provide information that the aircraft has been registered in a third country for civil use if this was the case. The goods could be released for end-use. The procedure was discharged after ‘one logical second’ because the aircraft was already registered for civil use. An end-use authorisation was needed because the end-use duty rate could be applied only if the aircraft was covered by such an authorisation.

b) One MS presented a non-paper on the same issue, providing its interpretation on import under the end-use procedure. The aim was to clarify the legal situation on the basis of Member States’ common view on the procedure. The MS proposed three main points.

The MS stated that an end-use authorisation, whether issued as an authorisation or as a single authorisation via customs declarations, should require the person in whose name the aircraft was declared to be established in the Union.
It was the MS’s view that, before issuing an authorisation for end-use, the customs authorities needed to ensure that the applicant had a factual or legal right to dispose of the aircraft.

The MS said that companies established in the EU should be able to import using the end-use procedure for second-hand aircraft or using the end-use procedure for leased aircraft already registered in a public register.

COM agreed with the content of the non-paper and had no remarks on the document. The Committee agreed with the interpretation provided in the document by the MS.

4. Customs warehousing and free zone — Usual forms of handling in a customs warehousing and in a free zone — Question raised by a Member State
(Non-paper available on CIRCABC)

One Member State asked for advice on whether it was possible to grant an authorisation for usual forms of handling carried out in a free zone or in a customs warehouse leading to a reduced or zero amount of import or anti-dumping duty (ADD). The MS presented a non-paper including an example of a request made in accordance with Annex 72(12) CCIP to mix goods subject to ADD in order to ensure compliance with the technical standards, where there were no changes in the nature of the original goods but a different eight-digit CN code for the added goods.
It was the Member State view that, in accordance with the current legislation, it was possible to allow a relatively limited addition of goods when it was clear that the activity was not about an attempt of fraud to circumvent the payment of ADD.

One MS shared the interpretation given by the MS concerned.

Another MS referred to the change of the CN code and wondered whether the handling was in line with Annex 72 CCIP because mixing should not lead to a CN code change.

In the view of one MS the aim of the operator was to avoid paying ADD, thus the authorisation should be refused in the spirit of the Pometon Case C-158/08.

COM said that the activity of addition/replacement did not include the mixing in the example given.

COM asked MSs to check whether the intended activities would be covered by the relevant Annex 71.03 (12) DA of the UCC. COM advised them that the relevant DA provisions could be amended if they were not clear. In addition COM said that the issue should have been subject to discussion if the majority of the MSs were in favour of restricting the scope of the usual form of handling.
COM said that some deliberation was necessary to make an assessment of the current CC and the UCC rules to be applied as from 1 May 2016, and proposed continuing the debate at the next CCC SPE meeting. The purpose was to identify potential problems and propose solutions, and also to achieve a common understanding about mixing activities covered by Annex 72(12) and whether import and antidumping duties should be levied.

List of participants

Representatives of competent Member State authorities
Representatives of the European Commission

Member States' delegations:

AUSTRIA
Ministry of Finances

BELGIUM
SPF Finances — Douanes

BULGARIA
Customs Administration

CROATIA
Customs Administration

CYPRUS
Absent

CZECH REPUBLIC
Czech Customs — General Directorate of Customs

DENMARK
SKAT — Danish Customs and Tax Administration

ESTONIA
Tax and Customs board

FINLAND
Finnish Customs

FRANCE
DGDDI/Bureau E3

GERMANY
Ministry of Finance
Central Customs Autority

GREECE
Ministry of Finance

HUNGARY
National Tax and Customs Administration

IRELAND
Permanent Representation

ITALY
Customs Administration – Agenzia delle Dogane

LATVIA
Customs Board

LITHUANIA
Customs Department

LUXEMBOURG
Douanes et Accises

MALTA
Ministry of Finance

NETHERLANDS
Ministry of Finance - Douane Nederland
Netherlands Enterprise Agency

POLAND
Ministry of Finance

PORTUGAL
AT — MF — Customs Administration

ROMANIA
Romanian Customs Authority

SLOVAKIA
Ministry of Finance of the Slovak Republic

SLOVENIA
Financial Administration of RS

SPAIN
Ministry of Economy
Customs Department

SWEDEN
Swedish Customs

UNITED KINGDOM
H.M. Revenue and Customs

Other delegations:

TURKEY
Absent

European Commission:
Directorate-General for Taxation and Customs Union