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CUSTOMS EXPERT GROUP IMPORT AND EXPORT FORMALITIES SECTION (CEG/FOR)

Subject: Common understanding on the customs formalities for return-refill container systems and accessories in cross border trade

Further to several discussions at the CEG-FOR, the annex to this document contains the common understanding on the above-mentioned subject, as endorsed by the Customs Expert Group – Import and Export Formalities Section at its meeting held on 16 October 2020, jointly with the Trade Contact Group.

A link to the common understanding laid down in this document will be added in a next update of the following guidance documents:

- Guidance document on Customs Formalities on Entry and Import into the European Union;
- Export and Exit out of the European Union – Title VIII UCC "Guidance document for MSs and Trade".

Enclosure: Common understanding

Annex

Common understanding

Subject: Customs formalities for return-refill container systems and accessories in cross border trade

With regard to the above-mentioned subject, the Customs Expert Group – Section Import and Export Formalities endorses the following common understanding.

1. SCOPE

This document clarifies the customs formalities for placing under a customs procedure or for re-exporting so called return-refill containers that are originally exported from the customs territory of the Union as Union goods, are returned to that territory within a period of three years and declared for release for free circulation with relief from import duty.

It also briefly covers the customs formalities applicable to return-refill containers that have the status of non-Union goods, enter the customs territory of the Union temporarily, and are subsequently re-exported from that territory.

It does not cover the safety and security elements of the customs clearance process.

2. FORM OF THE CUSTOMS DECLARATION

To the extent that return-refill containers meet the definitions of packing or pallets, as laid down in Article 1(b) and (d) of Annex B.3 to the [Istanbul Convention](#), as well as in the footnote to General Rule 5(b) in Section I A to the [Combined Nomenclature](#), economic operators may declare them through an oral declaration for the following customs procedures:

- temporary export of Union goods, where those goods are intended to be re-imported (Article 137(2) DA¹);
- release for free circulation with relief from import duty as returned goods (Article 135(2) DA, in combination with Article 253(4) IA²);
- temporary admission and re-export of non-Union goods³ (Article 136(1)(a) and (j) DA).

¹ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code - OJ L 343, 29.12.2015

² Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code - OJ L 343, 29.12.2015

Where economic operators do not wish to use an oral declaration, the possibility to use a standard customs declaration (including the possible use of existing simplifications such as a simplified declaration or entry into the declarant's records) also exists for return-refill containers.

3. **INFORMATION ESTABLISHING THAT THE CONDITIONS FOR RELIEF FROM IMPORT DUTY AS RETURNED GOODS ARE FULFILLED**

In the specific case of goods declared for release for free circulation with relief from import duty as returned goods, and regardless of the form of the customs declaration), the declarant must provide information to customs establishing that the conditions for the relief are fulfilled (Article 203(6) UCC and Article 253(1) IA).

In case an economic operator chooses to use an oral declaration for declaring return-refill containers for release for free circulation with relief from import duty as returned goods, there is no obligation to provide this information through the export or re-export declaration on the basis of which the returned goods were originally taken out from the customs territory of the Union, or through an information sheet INF 3 (Article 253(4) IA). However, according to Article 253(1) IA, the declarant is nevertheless required to make the information establishing that the conditions for relief of import duty have been fulfilled available to the customs where the oral declaration is lodged.

Checking these conditions, in particular as regards the precise identification of the goods, is part of the operational responsibility of each Member State customs administration. They should use risk analysis for checking these conditions. Depending on the nature and the flow of the return-refill containers used, Member States may consider any of the following methods (or a combination thereof) for checking whether the conditions for returned goods are fulfilled (please note that this is not an exhaustive list):

- identification of the return-refill containers through a standardized marking system and/or through indelible, non-removable signs, identifying a person established within the customs territory of the Union;
- prior information supplied by the declarant, specifying for which return-refill containers duty relief as returned goods should be requested (characteristics, quantities, documents produced to prove their status as Union goods, etc.). Catalogues may also be added in order to identify and visualise the return-refill containers concerned;
- a separate document provided by the declarant, confirming that the conditions are met for the consignment at stake;
- periodic post-release controls or audits to check the conditions;
- on the spot checks at the moment the oral declaration is made.

³ Return-refill containers that meet the definition of pallets may also be declared for temporary admission or re-export by any other act (Article 139 DA).

4. VAT REQUIREMENTS

The VAT legislation (Article 143(e) of Council Directive 2006/112/EC⁴) provides for the exemption of import VAT upon the reimportation, by the person who exported them, of goods in the state in which they were exported, where those goods are exempt from customs duties.

Consequently, economic operators who want to benefit from this VAT exemption upon the release for free circulation with relief from import duty as returned goods, must ensure that the exporter and the importer are the same person.

Using the option of an oral customs declaration set out under point 2 above for declaring to customs return-refill containers, both upon temporary export and upon release for free circulation with relief from import duty as returned goods, might make it more complex to demonstrate that the requirement concerning the exemption of import VAT is effectively met. Economic operators might therefore wish to consult the competent authorities of the Member State concerned, in order to check how they can ensure and demonstrate, for their specific business case, the requirement concerning the exemption of import VAT.

⁴ [OJ L 347, 11.12.2006](#), p. 31.