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CUSTOMS EXPERT GROUP (General Legislation Section)

Subject: Customs representation in the context of simplifications and of certain special procedures

In the context of authorizations for simplifications related to the placement of the goods under a customs procedure (Title V UCC), and of authorizations for certain special procedures other than transit (Title VII UCC), several Member States have raised questions concerning the use of a customs representative.

Further to the discussion on this issue at the 13th meeting of the CEG-GEN, held on 27 March 2017, the delegates are invited to take note of this information document which contains the opinion of the Commission services on the main questions raised.

This document also includes clarifications on issues raised at the 15th meeting of the CEG-GEN, held on 29-30 May 2017.

1. INDIRECT CUSTOMS REPRESENTATION IN COMBINATION WITH AN AUTHORIZATION FOR SIMPLIFICATIONS

As a preliminary remark, it should be pointed out that nothing prevents an indirect representative who is the holder of an authorisation for a simplification and is thus acting in his own name as declarant, to apply that customs simplification when he works on behalf of an importer/exporter.

The question is thus whether an importer/exporter can work and apply customs simplifications with an indirect representative, when the indirect representative is not the holder of the authorisation for simplifications but when the authorisation for simplifications is held by the importer/exporter, on behalf of whom the indirect representative is acting.

In this context, some Member States have argued that the current legal framework does not exclude the indirect representative from representing the authorisation holder of an authorisation for simplifications. This reasoning is in particular based upon the following provisions:

- Article 18 UCC provides for the possibility to appoint a custom representative, direct or indirect;
- Article 170 (1) 2nd subparagraph UCC allows a representative to lodge a custom declaration when such declaration imposes particular obligations on a specific person;
- Article 27 (1) UCC IA¹ on the implementation of Article 39 (d) UCC (criteria for granting the status of authorised economic operator) states that such criteria is to be fulfilled by “the applicant or the person in charge of the applicant’s customs matters” which, in the view of some Member States, could be a direct or indirect representative. In the latter situation, both the importer/exporter and the indirect representative would be jointly liable for the customs liabilities arising from the relevant transaction.

Considering that Article 77(3) UCC provides indeed that in the event of indirect representation the person on whose behalf the customs declaration is lodged (the importer) is also a debtor, there is at first sight no problem of liability for the customs debt arising from the fact that the importer/exporter would be the sole holder of the authorisation for simplification (the two economic operators would in any case be liable for the payment of the customs debt).

Nevertheless, the Commission's services are of the view that the approach set out above cannot be followed in view of the following elements:

- the notion of “declarant” is defined in the customs code (see Article 5(15) UCC) as the person lodging a customs declaration in his own name (indirect representation) or in whose name such a declaration is lodged (direct representation). When an indirect representative lodges a customs declaration on

¹ Commission Implementing Regulation (EU) No 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, p. 558).

behalf of someone else, he does so in its own name as declarant and not in the name of the importer/exporter;

- should a person logging a declaration wish to benefit from the possibility to use a simplified declaration, the logic of the system requires that he, as declarant, meets the required conditions himself and not the importer/exporter on behalf of whom he acts. Customs simplifications aim indeed at simplifying the way to lodge a declaration and simplifying the completion of formalities and procedures as far as possible. It is based on the trust the customs authorities have in the guarantee offered by the economic operators for the proper conduct of the procedure as it limits the checks carried by the customs authorities. The conditions for the regular use of a simplified declaration laid down in Article 145 UCC DA² should therefore be met by the declarant;
- this is also inferred from the conditions that need to be met in order to benefit from simplifications when the authorised economic operator status for custom simplifications is required. For example the waiver of the obligation for the goods to be presented when the declaration is lodged in the form of an entry in the declarant's records (Article 182(3) UCC), for centralised clearance (Article 179 UCC) or for self-assessment (Article 185 UCC). In those situations, the holder of the authorisation for simplifications should fulfil the conditions;
- in accordance with Article 38 UCC, the status of authorised economic operator for customs simplifications enables the holder of the authorisation to benefit from certain simplifications. Therefore these simplifications can only be used provided the declarant and the holder of the authorisation for simplifications is the same person.

² 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, p. 1).

Article 145 provides that:

“1. An authorisation to regularly place goods under a customs procedure on the basis of a simplified declaration in accordance with Article 166 (2) of the Code shall be granted if the following conditions are fulfilled:

(a) the applicant complies with the criterion laid down in Article 39(a) of the Code;

(b) where applicable, the applicant has satisfactory procedures in place for the handling of licences and authorisations granted in accordance with commercial policy measures or relating to trade in agricultural products;

(c) the applicant ensures that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;

(d) where applicable, the applicant has satisfactory procedures in place for the handling of import and export licences connected to prohibitions and restrictions, including measures to distinguish goods subject to the prohibitions or restrictions from other goods and to ensure compliance with those prohibitions and restrictions.

2. AEOCs shall be deemed to fulfil the conditions referred to in points (b), (c) and (d) of paragraph 1, in so far as their records are appropriate for the purposes of the placement of goods under a customs procedure on the basis of a simplified declaration.”

2. DIRECT CUSTOMS REPRESENTATION IN COMBINATION WITH AN AUTHORIZATION FOR SIMPLIFICATIONS

As a preliminary remark, it should be pointed out that in principle nothing prevents the holder of an authorization for a simplification from appointing a direct representative, that is to say a customs representative who is acting in the name and on behalf of the authorization holder.

2.1. Article 182(1) UCC (entry into the declarant's records)

The question in this context was whether a direct representative may be the holder of an authorization for entry into the declarant's records (EIDR) in accordance with Article 182 UCC and use it when acting in the name and on behalf of his or her clients.

The Commission services are of the view that Article 182(1) UCC does not limit the possibility to obtain an EIDR authorization to a person that is also the declarant within the meaning of Article 5(15) UCC.

This case is very particular. Direct customs representatives are not excluded *per se* from the scope of Article 182(1) UCC. However, the direct customs representative must have access to the declarant's electronic system for such authorisation to have any practical value. Following this, it would appear that there are a very limited number of situations where this would occur in practice.

The case where a direct representative uses his authorisation for EIDR to act in the name and on behalf of his clients is an exception to the general rule which provides for that the declarant is the one that must meet the conditions to obtain the authorization.

2.2. Article 182(3) UCC (waiver of the obligation for the goods to be presented)

As regards the application of Article 182(3) UCC (waiver of the obligations for the goods to be presented), representation is not an issue, since the legislation clearly requires that the condition to be an authorised economic operator for customs simplifications is to be fulfilled by the declarant. In addition, Article 182(3) UCC does not require or refer to any 'act' which means that Article 18(1) UCC is not applicable.

3. INDIRECT CUSTOMS REPRESENTATION IN COMBINATION WITH AN AUTHORISATION FOR THE USE OF INWARD OR OUTWARD PROCESSING, OF AN END-USE PROCEDURE, OF A TEMPORARY ADMISSION PROCEDURE, OR FOR THE OPERATION OF PRIVATE CUSTOMS WAREHOUSING

The Commission services confirm the interpretation of this question as explained in working paper Ares(2017)841088 of 15/02/2017 prepared for the CEG-GEN. In substance, it concludes that indirect representation is not possible regarding the declaration for the above mentioned special procedures as the holder of the special procedure has to be the holder of the authorisation under Article 211 UCC, which is not the case with indirect representation.

This interpretation is based upon the same reasons as explained under point 1 above.