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Draft Non-paper

FLEGT Licensing Scheme with Indonesia – handling of cases with mismatching information

Since the start of the FLEGT licensing system with Indonesia on 15 November 2016, the Commission has been informed by some of the Member States FLEGT Competent Authorities about several difficulties, notably cases of mismatch between the Harmonised System code (HS code from the Harmonised System Convention)¹ included in the FLEGT Licence and the HS code contained in the customs declaration for release for free circulation of the goods in the Union.

The European Commission is discussing the matter with the Indonesian authorities with a view to ensure that Indonesian licensing authorities consistently use the most appropriate and correct HS classification. It is expected that these technical discussions and experience gained over time will lead to a significant reduction of these cases. The issue remains under close monitoring.

This non-paper aims at presenting different scenarios and outline suggested ways to deal with some of the difficulties recently encountered in the context of the implementation of the FLEGT Regulation and of the Voluntary Partnership Agreement with Indonesia.

This non-paper does not replace the Customs and FLEGT Implementation Guidelines (COM (2014) 7893 final from 30.10.2014), which remain valid for the time being (and for which an update will be prepared in the course of 2017).

The following general principle should in any case apply.

- In case of doubt concerning a FLEGT licence, FLEGT Competent Authorities are advised to contact the Indonesian Licence Information Unit (LIU), which is responsible to monitor the work of the Indonesian Licensing Authorities, to confirm its authenticity and to seek additional information and clarifications. Member States are encouraged to maintain the European Commission in copy of relevant correspondence so that it is always aware of all issues regarding FLEGT Licences. In case of doubts concerning the description of the goods in the licence, FLEGT Competent Authorities are also advised to liaise with the customs authorities, before validating the Licence, to check if the HS code mentioned in the Licence is valid.

► 1. Case of divergent HS classification.

A. Who is responsible for HS classification?

¹ International Convention on the Harmonised Commodity Description and Coding System

HS code classification is handled by the customs authorities in the exporting and importing country in accordance with the applicable provision of the HS Convention and related rules, the General Rules for the Interpretation (GIR) of the Harmonised System. This classification has implications in terms of tariff rates, as well as in terms of other requirements such as the need for the product(s) to be covered or not by a FLEGT Licence.

The business practice is that the importers and exporters communicate with each other prior to the export/import with a view to identify the most appropriate and correct HS classification. However they are encouraged to obtain from Customs information relating to the classification of their goods. Pre-entry classification information may be binding or non-binding. Binding information means that customs authorities are bound by the information so issued until the time of actual importation of the goods. Given the novelty of the FLEGT licensing scheme, EU importers should be strongly encouraged to liaise with the Indonesian exporters in order to make sure that the HS classification reflected in the FLEGT licence matches the expected HS classification in the custom declaration.

B. How to deal with FLEGT licences in cases of mismatching information?

The HS classification is an important element of the FLEGT licensing scheme as it determines whether a product will need to be accompanied by a FLEGT licence in order to be allowed to be released for free circulation. The classification may not be straightforward for composite or mixed goods, which may be considered as falling under more than one HS code. The decision on the HS code may have different implications in terms of coverage under the FLEGT scheme.

In general a divergence of opinions between EU and Indonesian customs authorities on the HS code is not necessarily an indication of an invalid FLEGT licence or a reason for rejection, as long as the FLEGT Competent Authority in the Member States concerned has ascertained that the licence is valid and authentic and that it corresponds to the shipment in question in line with the relevant provisions of the Voluntary Partnership Agreement with Indonesia (Annex III and IV) and the FLEGT Regulation (Regulation (EC) 2173/2005) and its implementing provisions in Regulation (EC) 1024/2008.

The most appropriate way to deal with the FLEGT Licence in cases of HS mismatch will depend on the specificities of each case.

Some illustrative scenarios are presented below as possible examples:

Scenario 1:

For products originally not covered by a FLEGT licence, but which are reclassified by EU customs authorities under an HS code which implies the obligation to present a FLEGT licence, a FLEGT licence will have to be presented to the Competent Authority to allow the release for free circulation.

However, it should be noted that – at this stage – the current Indonesian legislation does not provide for the possibility to issue FLEGT licences for shipments that have already left Indonesia. Therefore such a reclassification will effectively imply that the goods cannot be released for free circulation on the EU market and FLEGT competent authorities should act in accordance with the relevant provisions of the FLEGT Regulation (art. 6 of Regulation (EC) 2173/2005) and national legislation.

Scenario 2: *Products covered by a valid and authentic FLEGT licence are reclassified by EU MS customs authorities under a new HS code, also implying the need for a FLEGT licence.*

To avoid the multiplication of such situation the Competent Authorities should, whenever in doubt about the HS classification and particularly in cases where the description of the goods lacks the necessary clarity, refrain from validating FLEGT licence without having first consulted customs authorities about the validity of the HS code mentioned in it.

On exceptional cases, the reclassification operated by EU customs authorities may not affect the validity or authenticity of the FLEGT licence, nor the requirement for the importer to submit it. In such cases the FLEGT licence could be duly processed and the goods released for free circulation. The Indonesian LIU should however be notified by the FLEGT Competent Authority about the change in the HS classification of the goods at the point of import.

Scenario 3: *A valid FLEGT licence is submitted for a given shipment, but the related products (**all of them**) are reclassified by the concerned MS custom authorities under a different HS code which correspond to goods not subject to the FLEGT licence scheme.*

The reclassification operated by customs authorities should not affect the validity of the FLEGT licence *per se*, however since under the new classification the goods are no longer subject to the requirements of the FLEGT regulation, the licence becomes irrelevant. The FLEGT Competent Authority should ignore the FLEGT licence and the goods should be released for free circulation as non-FLEGT goods. The FLEGT Competent Authority should also immediately notify the Indonesian LIU of the HS code reclassification (explaining the reasons for reclassification).

Examples:

a) A valid and authentic FLEGT Licence has been issued for mirrors with a wooden framework, declared as wooden product under HS code 4414.00 "Wooden frames for paintings, photographs, mirrors or similar objects" instead of the correct HS code 700992 "Glass mirrors, whether or not framed, including rear-view mirrors".

If customs authorities conclude that the goods should be classified under an HS code not covered by the FLEGT Licensing Scheme, the FLEGT competent authority should ignore the FLEGT licence and the goods should be released for free circulation (as goods not requiring any FLEGT Licence). The FLEGT competent authority should notify the Indonesian LIU about the reclassification.

b) A valid and authentic FLEGT Licence has been issued for **composite** products on the basis of a wrong classification. For instance, tables or shelves made both from wood and metal parts are classified as 9403.60 "other wooden furniture" by Indonesian customs, classification which is reflected in the FLEGT licence, but MS customs authorities concerned consider that these products should be classified under HS code 9403.20 "other metal furniture" and hence not subject to the FLEGT licensing scheme (Rule 3 under the GENERAL RULES FOR THE INTERPRETATION (GIR) OF THE HARMONIZED SYSTEM apply – see Annex).

The FLEGT Competent authority, after having notified the Indonesian LIU about the new classification, should ignore the FLEGT licence and the goods should be released for free circulation (taking into account that the product at stake does not require any FLEGT Licence).

Scenario 4: *A valid FLEGT licence is submitted for a given shipment, but **part of the related products** are reclassified by the concerned MS custom authorities under a different HS code which correspond to goods not subject to the FLEGT licence scheme.*

The reclassification operated by customs authorities should not affect the validity of the FLEGT licence *per se*, however under the new classification part of the goods are no longer subject to the requirements of the FLEGT regulation. The FLEGT Competent Authority should immediately notify the Indonesian LIU of the HS code reclassification and proceed with the approval of the FLEGT licence for the products covered by the FLEGT Licence while the rest of goods should be released for free circulation as non-FLEGT ones.

Example:

a) A FLEGT Licence has been issued for products under HS code 9403.60 (covered by the FLEGT Licensing Scheme) and for products as HS code 4414.00 "Wooden frames for paintings, photographs, mirrors or similar objects". However, EU customs conclude that the products originally classified as 4414.00 should have been correctly classified as HS code 700992 "Glass mirrors, whether or not framed, including rear-view mirrors". The FLEGT competent authorities should approve the FLEGT licence insofar as the products subject to the FLEGT licensing scheme is concerned and release the other goods as non-FLEGT. LIU should be informed about the identified mistake and that this part of the FLEGT licence was not taken into account during the check and validation of the FLEGT Licence.

Scenario 5: *A valid FLEGT licence is submitted for a given shipment, but **part of the related products** is under a different HS code which corresponds to goods not subject to the FLEGT licence scheme.*

A valid FLEGT Licence has been issued erroneously for a shipment including both products covered by the FLEGT licensing scheme and for product that fall outside the scope of the FLEGT licensing scheme. The FLEGT competent authorities should approve the FLEGT licence insofar as the products subject to the FLEGT licensing scheme is concerned and release the other goods as non-FLEGT. LIU should be informed about the identified mistake and that this part of the FLEGT licence was not taken into account during the check and validation of the FLEGT Licence.

Example:

a) A FLEGT Licence has been issued for products under HS code 9403.60 (covered by the FLEGT Licensing Scheme) and for products under HS code 4420.10 (not covered by the FLEGT Licensing Scheme).

The FLEGT Licence should be approved for the products under the HS code 9403.60, after checking its validity and authenticity. A note to notify Indonesian LIU could be made for the products falling under HS code 4420.10, explaining that as they do not require FLEGT Licence, this part of the FLEGT licence was not taken into account during the check and validation of the FLEGT Licence.

► **2. Incomplete/incorrect species Classification**

There can also be cases where there is an inconsistency between the species or the number of species declared in the licence and the one indicated in other relevant custom documentation (e.g. invoice). For instance, an exporter has stated in the invoice that the products are made of two tree species, while the FLEGT Licence only lists one tree species. Should the FLEGT Competent Authority accept and approve the FLEGT Licence?

In such case MS Customs Authorities could decide to perform a physical control on the product and to check the actual number of species (and whether there is a need for a HS code reclassification). If MS Customs authorities confirm the existence of a mismatch, the FLEGT Competent Authority should immediately contact the LIU for further clarification and, if necessary, the Licensing Authority should withdraw the licence and issue a corrected version, to be authenticated by the stamped endorsement "Duplicate" and forwarded to the FLEGT Competent Authority within the Union.

► **3. Mismatch between weight/volume**

There can be cases where there is a deviation in weight or volume between the information contained in the FLEGT Licence and in the customs declaration.

According to the FLEGT Regulation, a shipment conforms to the licence whenever the deviation is within 10%. If the deviation is higher than 10%, the FLEGT Competent Authorities could consider proceeding as follows:

a) In case the weight or volume in the FLEGT Licence is higher than the one(s) stated in the customs documentation, the FLEGT Competent Authority should consider additional verification, including checking the weight and volume of the actual shipment and contacting the Indonesian LIU to obtain further clarification. Provided that LIU confirms the validity and authenticity of the licence and a valid justification is provided for the inconsistency and, there should be no doubt about the fact that the licence applies to the shipment at stake, the FLEGT Competent Authority may either request the importer to submit a duplicate licence (in line with article 9 of the FLEGT implementing Regulation 1024/2008) or accept the FLEGT Licence.

b) In case the weight or volume in the FLEGT Licence is lower than the one(s) stated in the customs documentation, the FLEGT Competent Authority should consider additional verification, including checking the weight and volume of the actual shipment and contacting the Indonesian LIU to obtain further clarification. If necessary, the Licensing Authority shall withdraw the licence and issue a corrected version which must be authenticated by the stamped endorsement "Duplicate" and forwarded to the FLEGT Competent Authority.

c) In case the total weight in the FLEGT Licence is the same as that of the actual shipment, but there is a mismatch between the individual weights for HS codes on the FLEGT Licence and the actual ones, the FLEGT Competent Authority should consider contacting the Indonesian LIU to obtain further clarification. Provided that LIU confirms the validity and authenticity of the licence and a valid justification is provided for the inconsistency, the FLEGT Competent Authority may either request the importer to submit a duplicate licence (in line with article 9 of the FLEGT implementing Regulation 1024/2008) or accept the FLEGT Licence.

Example:

The weight in box 15 of the FLEGT Licence is 2000kg (0% deviation with the actual total weight of shipment). However there is mismatch between the weight for each HS code on the FLEGT Licence and the actual shipment (deviation of more than 10%):

For HS code 9403XX, the weight on FLEGT Licence is 1000 kg and 1500 kg in shipment

For HS code 4419XX, the weight on FLEGT Licence is 1000 kg and 500 in shipment.

The FLEGT Competent Authority should contact the LIU to request confirmation and - if deemed appropriate - to request the importer to submit a corrected FLEGT Licence, to be authenticated by the stamped endorsement "Duplicate".

► 4. Mismatch between number of units

There can be cases where there is a mismatch in the number of units between the information contained in the FLEGT Licence and in the customs declaration. While filling the box number 16 of the FLEGT licence is not mandatory under the FLEGT licensing scheme and this information may be omitted, this piece of information is complementary to weight and volume and can be extremely relevant to deal with manufactured products (e.g. furniture) that are best identified by number of units rather than weight and volume.

The FLEGT Regulation does not foresee any explicit tolerance margins concerning the number of units. If a discrepancy is observed between the number of units indicated in the FLEGT licence and the number of units in the custom declaration, the FLEGT Competent Authorities should consider how relevant is the number of units in the context of the specific shipment and could consider proceeding as follows:

a) In case the number of units in the FLEGT Licence is higher than the one(s) stated in the customs documentation, the FLEGT Competent Authority should consider additional verification, including checking the number of units in the actual shipment and contacting the Indonesian LIU to obtain further clarification. Provided that LIU confirms the validity and authenticity of the licence and a valid justification is provided for the inconsistency and, there should be no doubt about the fact that the licence applies to the shipment at stake, the FLEGT Competent Authority may either request a duplicate licence or accept the FLEGT Licence.

b) In case the number of units in the FLEGT Licence is lower than the one(s) stated in the customs documentation, the FLEGT Competent Authority should consider additional verification, including checking the number of units of the actual shipment and contacting the Indonesian LIU to obtain further clarification. If necessary, the Licensing Authority shall withdraw the licence and issue a corrected version which must be authenticated by the stamped endorsement "Duplicate" and forwarded to the FLEGT Competent Authority.

Annex - Composite product Article III of the General Interpretation Rules (GRI)

For the composites goods GIR 3 is the basis for this classification. This GIR must be applied by all HS Contracting Parties (Indonesia). The RULE 3 of GIR reads as follows:

When by application of Rule 2 (b) or for any other reason, goods are *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale,

those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a),

shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable

- (c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.