



Brussels, 8.5.2018
COM(2018) 259 final

2018/0123 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 952/2013 laying down the Union Customs Code

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Following the entry into force of the new substantial provisions of the Regulation (EU) No 952/2013 of the European Parliament and the Council of 9 October 2013 laying down Union Customs Code¹ (UCC) in May 2016, the process of regular consultation with Member States and business has resulted in the identification of errors and technical anomalies that need to be corrected in order to ensure legal certainty and consistency. The European Commission has therefore prepared this proposal to amend the UCC with a view to correcting these technical errors and omissions, including the alignment of the UCC with an international agreement that was not in force at the time of adoption of the UCC, namely, the Canada-EU Comprehensive Economic and Trade Agreement (CETA). The proposal also aims at addressing a request from Italy to include the municipality of Campione d'Italia and the Italian waters of Lake Lugano in the EU customs territory.

- **Consistency with existing policy provisions in the policy area**

The proposal aims at ensuring the proper application of Regulation (EU) No 952/2013, which is fully in line with existing policies and objectives relevant to the trade of goods brought into and out of the customs territory of the Union

- **Consistency with other Union policies**

The proposal aims at ensuring that the UCC is aligned with the international trade agreements signed by the EU. The element of the proposal that concerns the inclusion of the municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the Union is linked to the parallel amendments to Directives 2008/118/EC (the Excise Directive) and 2006/112/EC (the VAT Directive). These amendments should all apply as from the same date of 1 January 2019.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Articles 33, 114 and 207 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

The proposal falls under the exclusive competence of the EU according to Article 3(1)(a) and (e) TFEU. Member States cannot act individually in this area.

- **Proportionality**

The proposal does not entail any new policy developments compared to the legislative act it intends to amend; it modifies a few provisions of that legislative act in order to ensure the proper application of other provisions of the same Regulation, to align the Regulation with an international agreement that entered into force after the adoption of the Regulation and to respond to a particular request of a Member State that has a limited effect.

¹ OJ L 269, 10.10.2013, p.1.

- **Choice of the instrument**

As the Code is a legal act of the EU, it can only be amended by way of an equivalent legal act.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This amendment does not alter the substance of Regulation (EU) No 952/2013 so the consultation of interested parties held before the adoption of that Regulation is still valid.

Furthermore, the relevant amendments have been discussed with the Member States and with trade representatives in joint meetings of the Customs Expert Group and the Trade Contact Group, where consensus was reached on the substance of the present text. The Commission consulted the general public on the proposal via a Roadmap published on the Better Regulation portal "Have Your Say" and has noted the feedback received.

- **Impact assessment**

This initiative does not require an impact assessment because it does not concern a policy choice. It simply involves making corrections to the UCC to i) amend some technical issues and anomalies that have arisen in the first two years of its application and ii) respond to a request by one Member State that two parts of its territory hitherto excluded should now be brought within the scope of the EU customs territory. Furthermore, it ensures coherence with other provisions of Regulation (EU) No 952/2013, which is itself a recast of Regulation (EC) N° 450/2008 for which the Commission conducted an impact assessment.

- **Regulatory fitness and simplification**

The proposal assists in the achievement of the objectives of the UCC. It makes some technical amendments to the Code so as to ensure that the Code successfully meets its objectives of improving the competitiveness of European businesses while also better protecting the financial and economic interests of the Union and the Member States and the safety and security of EU consumers.

4. BUDGETARY IMPLICATIONS

The amendments proposed do not have any direct budgetary implications but will facilitate the achievement of the Union customs objectives including the collection of own resources and trade facilitation.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will, by 2021, carry out an interim evaluation of the UCC legal framework and the electronic systems implemented by that date. It will launch a more comprehensive fitness check after 2025, once all the UCC electronic systems are in place, so as to determine whether there are gaps or errors in the Code that need to be addressed by a more comprehensive proposal for amendment. Given the current transitional phase of the UCC and these plans for future evaluations, no evaluation is deemed necessary in respect of this specific proposal.

- **Detailed explanation of the specific provisions of the proposal**

The proposal includes amendments to the following UCC provisions:

- Article 4, providing the definition of the customs territory of the EU, should be amended following a request from Italy to include the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano within its scope. The geographic location of the two territories as Italian exclaves within the territory of Switzerland has historically justified their exclusion from the EU customs territory but Italy considers this exclusion to be no longer necessary, in particular because otherwise Switzerland now wishes to include them within its customs territory. It is proposed that this amendment should apply from 1 January 2019.
- Article 34(9), which, under certain conditions allows the extended use of Binding Tariff Information (BTI) decisions that cease to be valid or are revoked, should be amended so that the possibility of extended use is also given in additional situations covered by Article 34(5) UCC, i.e. in situations where the BTI decision has been revoked because it does not conform to customs legislation or because the conditions laid down for the issuing of the BTI decision were not or are no longer fulfilled (e.g. as a result of bilateral negotiations between two Member States or of guidance on classification adopted at Union level).
- Article 124(h)(i) should be amended to add temporary storage to the list of cases where a customs debt (that arises due to not having complied with customs formalities) may be extinguished if there was no significant negative effect, no attempt at deception and the situation was subsequently regularised. The current exclusion of temporary storage is a mere oversight caused by the fact that temporary storage is not considered a customs procedure. The corresponding delegation of power to the Commission to supplement the provision should also be amended to include temporary storage.
- Article 129(2)(b) should be amended to clarify that, in cases where customs authorities have to invalidate an entry summary declaration because the non-Union goods covered by the declaration are not brought into the customs territory, the invalidation must happen once 200 days have elapsed since the declaration was lodged rather than "within" the period of 200 days. The 200 days was designed as the period of time that declarants have to present the goods to customs following the lodging of the declaration.
- Article 139(5) should be amended to clarify that, in all cases where economic operators or carriers of goods have not submitted pre-arrival information concerning non-Union goods (in the form of "entry summary declarations") before the actual arrival of the goods and their presentation to customs, a customs declarations or temporary storage declarations must contain the particulars that would have been included in entry summary declarations.
- Article 146(2)(b) should be amended to clarify that, in cases where customs authorities have to invalidate a temporary storage declaration due to non-presentation of the relevant goods, the invalidation must happen once 30 days have elapsed since the declaration was lodged rather than "within" the period of 30 days. The 30 days was designed as period of time that declarants have to present the goods to customs following the lodging of the declaration.
- A new Article 260a should be proposed to provide total relief from import duty for goods that cannot benefit from the total relief laid down in Article 260 but have been

repaired or altered under the outward processing procedure in a country with which the Union has concluded a preferential agreement (like CETA with Canada) providing for such relief.

- Article 272 (2)(b) and Article 275 (2)(b) should be amended to clarify that, in cases where customs authorities have to invalidate an exit summary declaration or re-export notification due to the non-export of the relevant goods, the invalidation must happen once 150 days have elapsed since the declaration or notification was lodged rather than "within" the period of 150 days. The 150 days period was designed as the period of time that declarants have to bring the goods out of the EU customs territory before the declaration or notification is invalidated.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 114 and 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 952/2013 of the European Parliament and of the Council² establishes the Union Customs Code (the Code) and lays down general rules and procedures applicable to goods brought into or taken out of the customs territory of the Union.
- (2) The Italian municipality of Campione d'Italia, an Italian exclave in the territory of Switzerland, and the Italian waters of Lake Lugano should be included in the customs territory of the Union because the historical reasons justifying the exclusion of these territories, such as their isolation and economic disadvantages, no longer apply. For the same reasons these territories should be included in the general arrangements for excise duty while continuing to be excluded from the common system of value added tax. In order to ensure that all those changes apply consistently at the same point in time, the inclusion of those territories in the customs territory of the Union should apply from 1 January 2019.
- (3) The Code should be amended in order to clarify that a holder of a Binding Tariff Information (BTI) decision can use that decision for up to six months after the decision has been revoked if the revocation results from the fact that the decision does not conform with customs legislation or that the conditions laid down for issuing the decision were not or are no longer fulfilled.
- (4) Temporary storage should be added to the list of customs formalities covered by the provision that extinguishes a debt due to non-compliance in cases where there was no significant negative effect, no attempt at deception and the situation was subsequently regularised. For the purposes of extinguishment of debt in those cases, temporary storage should not be treated any different than a customs procedure. The

² Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

corresponding delegation of power to the Commission to supplement the provision should also be amended to include temporary storage.

- (5) Where customs authorities must invalidate an entry summary declaration due to the fact that the goods covered by the declaration have not been brought into the customs territory of the Union, the entry summary declaration should be invalidated without delay 200 days after the declaration was lodged rather than within 200 days as that is the period within which the goods must be brought into the customs territory of the Union.
- (6) In order to enable the customs authorities to carry out proper risk analysis and appropriate risk-based controls, it is necessary to ensure that economic operators provide them with pre-arrival data concerning non-Union goods in the form of an entry summary declaration. Where an entry summary declaration has not been lodged before the arrival of the goods and the obligation to lodge it has not been waived, economic operators should submit the data normally included in entry summary declarations in their customs declarations or temporary storage declarations. For these purposes, the possibility to lodge a customs declaration or a temporary storage declaration instead of an entry summary declaration should be available only if the customs authorities where the goods are being presented so allow. Where customs authorities must invalidate a temporary storage declaration due to the fact that the goods covered by the declaration have not been presented to customs, the declaration should be invalidated without delay 30 days after the declaration was lodged rather than within 30 days as that is the period within which the goods must be presented to customs.
- (7) Total relief from import duty should be provided for goods that have been repaired or altered under the outward processing procedure in a country or territory with which the Union has concluded a preferential agreement providing for such relief, so as to ensure that the Union fulfils its international commitments in this respect. The preferential agreements providing for the relief do not require that the relief applies to the import of repaired or altered products obtained from equivalent goods or of replacement products under the standard exchange system. The duty relief should therefore not apply to those goods and products.
- (8) Where customs authorities must invalidate an exit summary declaration or a re-export notification due to the fact that the relevant goods have not been taken out of the customs territory of the Union, the declaration or notification should be invalidated without delay 150 days after it was lodged rather than within 150 days as that is the period within which the goods must be taken out of the customs territory of the Union.
- (9) In accordance with the principle of proportionality, it is necessary and appropriate, for the achievement of the basic objectives of enabling the customs union to function effectively and of implementing the common commercial policy, to address a number of technical issues that have been detected in the implementation of the Code, to bring two territories of a Member State within the scope of the customs territory of the Union and to align the Code with an international agreement that was not in force at the time of its adoption. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on European Union.
- (10) Regulation (EU) No 952/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 952/2013 is amended as follows:

(1) in Article 4(1) the twelfth indent of is replaced by the following:

"— the territory of the Italian Republic, except the municipality of Livigno,";

(2) in Article 34(9) the first subparagraph is replaced by the following:

"9. Where a BTI or BOI decision ceases to be valid in accordance with point (b) of paragraph 1 or paragraph 2, or is revoked in accordance with paragraph 5, 7 or 8, the BTI or BOI decision may still be used in respect of binding contracts which were based upon that decision and were concluded before it ceased to be valid or was revoked. That extended use shall not apply where a BOI decision is taken for goods to be exported.";

(3) in Article 124(1)(h), point (i) is replaced by the following:

"(i) the failure which led to the incurrance of a customs debt had no significant effect on the correct operation of the temporary storage or of the customs procedure concerned and did not constitute an attempt at deception;"

(4) Article 126 is replaced by the following:

"Article 126

Delegation of power

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the list of failures with no significant effect on the correct operation of the temporary storage or of the customs procedure concerned and to supplement point (i) of Article 124(1)(h).";

(5) in Article 129, paragraph 2 is replaced by the following:

"2. Where the goods for which an entry summary declaration has been lodged are not brought into the customs territory of the Union, the customs authorities shall invalidate that declaration without delay in either of the following cases:

(a) upon application by the declarant;

(b) if 200 days have elapsed since the declaration was lodged.";

(6) in Article 139, paragraph 5 is replaced by the following:

"5. Where non-Union goods presented to customs are not covered by an entry summary declaration, and except where the obligation to lodge such declaration is waived, one of the persons referred to in Article 127(4) shall, without prejudice to Article 127(6), lodge immediately such declaration or if allowed by the customs authorities shall instead lodge a customs declaration or temporary storage declaration. Where in these circumstances a customs declaration or a temporary storage declaration is lodged, it shall contain at least the particulars necessary for the entry summary declaration.";

(7) in Article 146, paragraph 2 is replaced by the following:

"2. Where the goods for which a temporary storage declaration has been lodged are not presented to customs, the customs authorities shall invalidate that declaration without delay in either of the following cases:

- (a) upon application by the declarant;
- (b) if 30 days have elapsed since the declaration was lodged.";

(8) the following Article is inserted:

“Article 260a

Goods repaired or altered in the context of agreements between the Union and third countries

1. Total relief from import duty shall be granted to processed products resulting from goods placed under the outward processing procedure where it is established to the satisfaction of the customs authorities that:

(a) the goods have been repaired or altered in a country or territory outside the customs territory of the Union with which the Union has concluded an agreement providing for such relief, and

(b) the conditions for the relief laid down in the agreement referred to in point (a) are fulfilled.

2. Paragraph 1 shall not apply to processed products resulting from equivalent goods as referred to in Article 223 and to replacement products as referred to in Articles 261 and 262.”;

(9) in Article 272, paragraph 2 is replaced by the following:

"2. Where the goods for which an exit summary declaration has been lodged are not taken out of the customs territory of the Union, the customs authorities shall invalidate that declaration without delay in either of the following cases:

- (a) upon application by the declarant;
- (b) if 150 days have elapsed since the declaration was lodged.";

(10) in Article 275, paragraph 2 is replaced by the following:

"2. Where the goods for which a re-export notification has been lodged are not taken out of the customs territory of the Union, the customs authorities shall invalidate that notification without delay in either of the following cases:

- (a) upon application by the declarant;
- (b) if 150 days have elapsed since the notification was lodged.".

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 1(1) shall apply from 1 January 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President