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Subject: Guidance on Customs issues related to the COVID-19 emergency

As a result of the crisis created by the COVID-19 pandemic, questions have emerged concerning the application of customs provisions relating to the customs decision-making process, customs procedures and customs formalities. For the particular cases outlined below, a number of existing provisions have been identified that provide valid solutions in these exceptional circumstances.

The objective of this document is, therefore, to offer guidance to the concerned stakeholders on practical solutions given by the current legal framework, in order to ensure a uniform application of the UCC even in this time of crisis. As the situation can evolve rapidly and imply further guidance on additional issues, this note is intended as an evolving document that will be updated as needed.

1. E-commerce - Empowerment for customs representation

Due to temporary unavailability of staff, postal operators all over Europe are struggling to cope with the delivery of huge volumes of e-commerce parcels and to meet their universal service obligations. The same situation is faced by express carriers and customs agents acting on behalf of consumers for the release into free circulation of low value consignments (value below 150€).

Obtaining empowerments from consignees who might themselves be hindered by the consequences of the COVID-19 pandemic may pose a significant additional administrative burden for all these categories of economic operators.

In Article 19(2) 2nd subparagraph, the UCC allows customs authorities to waive the requirement to prove that the person represented (i.e. the consignee) has provided the empowerment.

Considering the specific circumstances related to the COVID-19 crisis, customs authorities could, during the period of the crisis, apply this provision without requiring any evidence of the empowerment from postal operators, express carriers or customs agents for the customs clearance activities they are carrying out on behalf of the consignee.

2. Customs Decisions

a) New applications for customs decisions – only essential

In the present emergency circumstances, economic operators might require some urgent customs authorisations to ensure the functioning of the supply chain and free flow of essential goods needed in the Member States.

Article 22(2) UCC and Article 11 UCC Delegated Regulation (EU) 2015/2446 oblige the customs authorities to accept applications for a decision that meet all the requirements. Therefore customs authorities are not legally entitled to refuse applications for customs decisions that meet the legal requirements.

However, in the present situation, economic operators are strongly encouraged to only apply for essential customs decisions, so that customs authorities can focus on the most urgent demands.

b) Extension of the time-limit to take decisions on applications already submitted

The last subparagraph of Article 22(3) UCC provides for a derogation from the 120-day general time limit set out in the same provision for taking customs decisions and/or for granting authorisations.

This provision allows an extension of the time-limit to take a decision upon request of the applicant, where the applicant needs additional time to ensure fulfilment with the relevant conditions and criteria. This could arise, for instance, in cases where the applicants cannot allow customs to enter and inspect their premises due to the restrictions of movement and quarantine measures. In such cases, they could request the customs authorities to postpone such a visit due to the restrictions applied in several Member States. Such requests would constitute requests by economic operators for extensions to carry out adjustments in order to ensure the fulfilment of the conditions and criteria.

3. Customs Debts and Guarantees

a) Possibility to take into account economic operators' serious difficulties

As regards possible payment facilities, while a blanket exemption is not possible, several provisions in the current legislation allow the customs authorities, on a case by case basis, to take account of serious economic or social difficulties in respect of the debtor, upon request by the operator and subject to the overall respect of the conditions foreseen by those provisions. It is up to the operator to document the likelihood of the economic and social difficulties:

- Article 45(2) and (3) UCC allows customs to suspend the implementation of a customs decision, even without a guarantee, if it is established on the basis of a documented assessment that such a guarantee would be likely to cause the debtor economic and social difficulties;
- Article 112(1) and (3) UCC provides that customs authorities may refrain from requiring a guarantee or charging credit interest if it is established on the basis of a documented assessment that this would create serious economic or social difficulties;

- Article 114(3) UCC allows customs to refrain from charging interest on arrears if it is established on the basis of a documented assessment that it would create serious economic or social difficulties;
- Article 89(3) UCC DA provides that customs shall suspend under some conditions the time limit for payment of a customs debt in relation to which there is an application for remission. When the goods subject to such application are no longer under customs supervision, customs shall not require a guarantee if it is established that providing such a guarantee would be likely to cause the debtor economic and social difficulties;
- Article 91(2)(b) UCC DA provides for the suspension of the time limit for payment of a customs debt incurred through non-compliance, even without a guarantee, if it is established that providing such a guarantee would be likely to cause the debtor economic and social difficulties.

b) Exceeding the guarantee limits

Exceeding the guarantee limits is not legally possible outside the scope of the current legal provisions on reduction of the guarantee amount or on the guarantee waiver (paragraphs (2) and (3) of Article 95 of the Code).

Nevertheless, the Commission is currently taking actions to ensure that the temporary admission of items for disaster victims of the COVID-19 pandemic crisis becomes free of customs duties and VAT, which would de facto waive the requirement of the guarantee for these specific goods.

4. Entry of goods

4.1 Medical, surgical and laboratory equipment for emergency treatments

a) Entry summary declaration

The medical, surgical and laboratory equipment are not exempted from the obligation to lodge an entry summary declaration (ENS), even in emergency cases. However, Article 127(7) UCC provides for the possibility to use commercial, port or transport documents for this purpose, under the condition that these other documents contain the necessary particulars of the ENS and are available before a specific time-limit prior to the arrival of the goods in the EU.

b) Presentation of goods to customs

Non-Union goods entering the customs territory of the EU have to be presented to customs. Whilst in principle there is no possibility to waive this obligation for medical, surgical and laboratory equipment, such presentation can be considered as being fulfilled by the oral declaration of such goods for temporary admission (see point 7(a) below).

c) Import of human organs and bone marrow destined for transplant in the EU

In order to ensure their timely delivery and use, the customs formalities for import of organs and other human or animal tissue during the current emergency times should be as minimal as possible, so as not to delay their release into free circulation.

A facilitation in this respect is offered by an amendment to Article 138(h) UCC DA, which is about to be adopted as part of a package of amendments to the DA. This provision allows that organs and other human or animal tissue or human blood, where not declared using other means, are deemed to be declared for release for free circulation by any of the acts laid down in the amended Article 141(1) UCC DA (declaration by any other act). This possibility should also be applicable to the import of bone marrow, which can be considered as a human organ or tissue for transplant.

In order to facilitate the import of bone marrow in the present crisis situation, the Commission will make the amendment to Article 138(h) retroactively applicable from 15 March 2020¹. This will allow importers to already use this this solution in order to facilitate the release of these goods in the present crisis situation. Nevertheless the national competent authorities remain responsible for ensuring compliance with the relevant national, EU or international rules governing the transportation and trade of these goods.

4.2 Other categories of goods

a) Presentation of goods to customs

Economic operators are encouraged to use the Union or Common transit procedure, TIR or pre-lodged customs declarations to the widest possible extent in order to speed up border crossing and optimize customs controls at the EU external borders.

b) T2L

Economic operators are encouraged to consider moving goods in such a way that they will benefit from the presumption of the Union status in accordance with Article 119(2) UCC-DA.

Customs authorities may, at national level, find ways to accept on a temporary basis T2L copies instead of originals, as long as circumstances prevail that make the timely presentation of originals impossible. However post-release control or other measures should apply.

5. Customs Procedures

a) Goods in temporary storage for longer than 90 days

As the maximum time limit of 90 days for temporary storage cannot be prolonged without amending the UCC, a customs debt occurs for goods that are not declared for a customs procedure (or re-exported) within that period. If the goods fail to be placed under a customs procedure or re-exported due to circumstances related to the spread of COVID-19 disease, the economic operator may invoke force majeure. Customs authorities will assess each situation on a case-by-case basis and, when conditions so justify, apply equity in accordance with Article 120 UCC or regularise

¹ The rest of measures included in the amendment to the UCC DA will become applicable once the amendment enters into force, i.e., 20 days after the publication of the legal text in the Official Journal. The publication will happen after the period that the European Parliament and the Council have to scrutinise the text that the Commission has adopted. That period is generally of two months but it can be extended.

the situation of the goods in accordance with Article 124(1)(h) UCC. This should not, however, lead to a situation where the due customs duties are not paid at all for goods remaining in free circulation.

b) Possibility to use simplified declarations without prior authorisation

Such a possibility is foreseen by the UCC under the condition that the simplified declaration constitutes a non-regular or occasional use. The absence of a definition of the term 'regular use' allows for a certain flexibility.

c) Time-limit for submitting the supplementary declaration

The time limits for submitting the supplementary declaration provided for in Article 146 DA are determined by reference to the date of the entry into accounts which do not apply in cases of unforeseeable circumstances or in cases of force majeure.

Accordingly, if an economic operator cannot meet the deadline for submitting the supplementary declaration due to reasons linked to the COVID-19 pandemic, he or she should inform the supervising customs office as soon as possible. The request for extending the deadline is to be submitted to the customs authorities and justified by duly substantiated unforeseeable circumstances.

d) Presentation of goods at approved places

The presentation of goods to customs could be performed in a 'place approved by the customs authorities' referred to in Article 139(1) UCC. This facilitation allows traders to present the goods, e.g. critical goods, directly at their premises.

e) Longer period to amend declarations

In accordance with Article 173(3) UCC, after release of the goods the declarant may request the amendment of the customs declaration within three years of the date of its acceptance, in order to comply with the obligations relating to the placing of the goods under the customs procedure concerned. For declarations lodged during the COVID-19 crisis, this time-limit should be sufficient for economic operators to request the amendment.

6. Transit

a) Time-limits to present goods at the customs office of destination (Art. 297 and 306(3) IA)

Economic operators can expect that the customs office of departure will take into consideration possible longer transport times due to anti-corona measure when setting the time-limit within which the goods shall be presented at the customs office of destination.

When the goods are presented to the customs office of destination after expiry of the time-limit, the customs authority may presume that the delay was not attributable to the carrier.

b) Time-limits for the control results

The time-limit to send the control results may be extended to six days in accordance to Article 309(1) UCC-IA.

c) TIR

Carriers could ask the customs authorities to allow the use of the TIR procedure on paper only, if this is necessary under the current circumstances in the context of the rules on business continuity.

d) CIM consignment note as customs transit declaration for rail transport (Article 24, 30,33 et seq. TDA)

Some customs administrations (NL, AT, CH²) have temporarily agreed to accept scanned copies of the paper document(s) in the context of this procedure, subject to suitable verifications ex post and subject to informing the actors involved.

7) Special procedures

a) Use of the temporary admission procedure

The present exceptional situation should be considered as a ‘disaster’ in the terms of Article 221 UCC DA. Therefore, all goods brought to the customs territory of the Union to counter the effects of this ‘disaster’, i.e. COVID-19, such as ambulances or some support medical equipment, should be eligible to be declared for temporary admission with total relief from import duty. Article 139 UCC DA may allow these goods to be declared by any other act, e.g. by the sole act of crossing the border, according to Article 141(1)(d) UCC DA.

Another possibility would be to lodge an oral declaration according to Article 136(1) UCC DA. The provision of the form established in Annex 71-01 is mandatory in this case (see Article 165 UCC DA), but such provision could be postponed up to 120 days after the release of the goods if customs authorities allow it (see Articles 166(2) UCC and 147(2) UCC-DA).

The same approach can apply for the temporary admission of medical, surgical and laboratory equipment referred to in Article 222 DA by any other act, in accordance with Article 139 DA or by an oral declaration based on Article 136(1)(d) DA.

b) Possibility to extend the limit for re-exporting the goods under temporary admission

As many economic operators have been obliged to close their premises and stop working, it may be impossible for them to re-export the goods declared for temporary admission by means of ATA carnets within the established time-limit.

In such cases, Article 251(3) UCC allows the holder of the procedure to ask customs authorities to prolong the time limit for re-export of goods declared for temporary admission under exceptional circumstances (such as COVID-19). This applies regardless of the type of declaration used for the placing of goods under the temporary admission procedure. In case the ATA Carnet was used for this purpose, there is no need to issue a new ATA carnet, as Article 14 of the Istanbul Convention is a ‘may’ provision.

² List to be completed by 31-3-2020

c) Use of Inward processing

For the customs declaration of medicines the IP can be used where usual forms of handling are allowed (see Article 256(3)(b) UCC and Annex 71-03 UCC-DA). The simplification established in Article 324(1)(e) UCC-IA may be used in most of the cases as most of the medical products are free of import duty (see, inter alia, chapter 30 of the Common Customs Tariff). This means that the delivery of such products can be subject to Article 324(1)(e) UCC-IA, i.e. such delivery is regarded to be a re-export.

8) Exit of Goods

a) Ship supplies

Ship supplies are goods and equipment for use on board the ship by the crew, and not for export. According to Article 269(2)(c) UCC, the export procedure does not apply to ship supplies. Ships leaving EU ports are considered to be leaving the EU (even if this is a voyage between two EU ports - maritime law), and therefore medical supplies on board are subject to export formalities, even if they are not formally placed under the export procedure.

Ships must have on-board pharmacies (Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels), and therefore they should be allowed to leave EU ports carrying protective gear and medication for the on-board pharmacies catering for their crews.

This specific type of “ship supplies” is, therefore, exempted from the export restrictions on personal protective equipment implemented by Regulation (EU) 2020/402 of 14 March 2020.

Other questions related to the customs elements of Regulation (EU) 2020/402 are being dealt with in a separate specific guidance document.

b) Possibility to delay the invalidation of the customs declaration for export or the re-export declaration

Economic operators have requested the prolongation of the period for the exit of goods from the customs territory without the export or re-export declaration being invalidated by the customs office of export.

Indeed, if the customs office of export has not received any information or evidence that the goods have left the customs territory of the EU within 150 days from the date of the release of the goods for the export, re-export or outward processing procedure, the customs office may invalidate the declaration concerned, in accordance with Article 248 UCC DA.

Considering the current exceptional circumstances, it is recommended that the customs office of export does not initiate such invalidation, unless it is explicitly requested by the declarant of the declaration concerned.

