



International Chamber of Commerce

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ICC comments on the duty relief systems under the EU Customs Code

Prepared by the Commission on Customs and Trade Regulations

Mobility and globalization have led to an increase of cross-border transactions of goods and services. It is imperative for the smooth operation of such trade that customs duty relief programmes are effective and easy to access, but throughout the world this is rarely the case. The European Union is no exception, and at a time when the EU is considering other simplifications to its Customs Code, this paper identifies a need for a radical reassessment of the EU duty relief environment, and recommends an alternative solution.

The need for change

ICC believes that even the largest organizations sometimes decline to adopt available programmes, simply because the administrative burden is too onerous. This may be because the administrative cost outweighs the benefit, or because the degree of complexity takes to unacceptable levels the risk of non-compliance with legal requirements.

Benefits

ICC is convinced that widespread adoption of a simplified duty relief structure such as is recommended in this statement will deliver the following significant benefits to the EU:

- reduced cost of policing a variety of complex programmes;
- more cost-effective revenue collection;
- better risk comparisons based on common procedures adopted by all users of the relief;
- secure, effective inland controls, predicated on accurately targeted risk analysis;
- more efficient and correct application of simplified regulations, thereby ensuring that any differential treatment of traders is based on objective criteria;
- more predictable and faster movement of goods;
- increased trade, increased revenue, and improved economic performance, and
- faster, more efficient and predictable border procedures encouraging increased foreign direct investment;
- easier integration of the Customs Administrations and importers of the 2004 and future Accession countries.

At the same time, traders might expect the following additional benefits:

- ability to take advantage of all eligible duty relief mechanisms in a cost-effective manner;
- low-cost duty management software, used throughout the EU for all customs reliefs, and therefore relatively cheap;
- faster clearance at the port;
- no need to maintain and administer multiple duty relief programmes;
- no need to transfer goods between duty relief programmes as they move out of the scope of one relief and into the ambit of the other;
- transparency as to the usage of all relief programmes from a single management source.

Features of an inefficient suite of duty relief programmes

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Duty relief programmes tend to grow up over time, as solutions to specific needs. This has certainly been true within the EU. Once in place, though admirable progress has been made in harmonizing the common requirements of the various reliefs, they have tended to be maintained as stand-alone facilities, and are not reviewed as a part of a comprehensive suite of relief programmes. In consequence, numerous inefficiencies have come to be seen as the inevitable norm. These include:

- the requirement for importers to be authorized for multiple relief programmes to satisfy varying needs;
- the need to transfer control of goods between one program and another;
- different customs offices controlling different reliefs - often determined by the physical location of the goods without necessarily any thought to whether the trader's personnel at that facility are in control of the process or the goods;
- variant and sometimes conflicting reporting requirements for each relief program;
- multiple guarantees to secure the potential duty within different suspensive regimes;
- complexity at the port of arrival in the territory, to define the regime to which the goods are to be assigned;
- complexity at the port of export to alert control staff to the termination of the process;
- over-reliance on drawback processes rather than duty suspension mechanisms.

Features of an efficient suite of duty relief programmes

An efficient relief mechanism is one that has few or none of the inefficiencies outlined above. It is instructive to examine how these inefficiencies arise. All suspensive customs duty reliefs can be discharged in one of the following ways:

- by export;
- by import on payment of appropriate duty;
- by transfer to another suspensive relief;
- by transfer to another trader operating a suspensive relief.

Nearly all the identifying features of an inefficient suite of relief programmes relate to the transfer of control of the goods subject to the program. ICC believes that simplification is best achieved by limiting the number of times that control of the relief has to be transferred. In a well-designed suite of duty relief programmes, such transfers will be rare. As long as there are numerous relief programmes available to meet different needs, it is difficult, if not impossible, to avoid transfers between them. ICC believes that the ultimate solution is the adoption within the EU of a Unitary Relief Program.

What is a Unitary Relief Program?

Under a Unitary Relief Program, authorized traders are permitted to enter goods to a single duty-suspensive environment. If the goods are subsequently exported from that environment in the same state, the situation is akin to customs bonded warehousing as currently permitted. If they are processed before being exported, the situation is akin to processing for re-export. Alternatively, the goods might be intended for the activities currently covered by Temporary Admission relief, in which case the situation would be akin to their current location being treated as part of a Type E Customs Warehouse. In this way, all the core reliefs are incorporated in the concept of the single Unitary Relief.

Many of the EU's other relief mechanisms can also come under the Unitary Relief. If the goods are processed within the Unitary Relief and subsequently imported by duty payment, the situation is akin to Processing under Customs Control, as currently permitted. The valuation of the exported goods under PCC rules safeguards the correct revenue.



When the goods are transferred to another trader without title passage, perhaps for completion of a stage in a chain of processing operation, there is no reason to transfer control responsibilities to another customs administration or between offices within the same Customs administration. The goods remain within the Unitary Relief, under the responsibility of the authorized trader. If they have not been discharged from the relief, the trader's systems should be able to locate them (perhaps by reference to a 3rd party processor's factory) and show what processes they are subject to. If the authorized entity is not able to do that, the customs administration can raise a duty demand based upon the value and nature of the goods as last identified in the system. In a world of instant communication, there is no reason to assign responsibility for the control of goods solely on the basis of the physical location of those goods. It should rest with the entity that has economic responsibility for dealing with the goods.

How the Unitary Relief would function

A schematic diagram of the Unitary Relief concept appears in the annex at the end of this paper. However, aspects of the detailed working must be explained, because such details have held back the implementation of concepts such as the Single European Authorization for duty relief programmes. Perhaps the biggest hurdle for the SEA to overcome is the retention of a portion of duties for the collecting authority. This is not a consideration for the initial adoption of a Unitary Relief.

Authorisation for the relief would follow the terms of the current Single Community Authorisation. Regulation 2454/93 Articles 500 and 501 would require minimal changes.

Entering goods to the procedure would follow the procedure currently adopted for the existing reliefs, except that the importer would have to select from only very few Customs Procedure Codes for use in Box 37 of the import entry document. Where a guarantee is required, it should be adequate to cover the potential liability to customs duty, excise duty and VAT in the light of operations envisaged at the time of import.

Control of the procedure would be exercised by examination of commercial records, coupled with selective physical checks to confirm the accuracy of those records. There is no difference of control applied to goods that are not in the same EU country as the controlling customs administration. Wherever the goods may be, a request for a physical check can be made to the nearest designated customs office.

The goods will be removed from the procedure either by export or by duty payment. If they are not in the same state at that time as they were on import, the valuation and classification of the goods must reflect the changes. The import entry will be made to the designated customs office in the country where the goods are physically located, though if at any future time SEA becomes a reality, it will be appropriate to apply its simplification to the Unitary Relief. Until that time, it follows that the relief will require as a matter of course an integrated Local Clearance Procedure, and adoption of the simplifications permitted under Article 76 of the Customs Code.

Periodic reporting requirements can act as an obstacle to the use of customs duty regimes. In the computer world, the Customs administration can be presumed to be capable of identifying all imports and exports made under a particular Customs Procedure Code in its own country. However, it is not yet possible for the Customs Administration in one member state to access this information directly from the computer of another member state. Consequently, the importer should be required to obtain this information from the customs administrations used for imports or exports during the reporting period. The Commission should set a limit on the fee that might be charged by an Administration for supplying this information, and should set performance standards for its delivery. One month from the



date of request is reasonable, and both request and delivery should be made by email or other electronic communication.

Other changes to support a Unitary Relief

The Unitary Relief would replace reliefs currently defined in Community Customs Code Article 4(15) (b) and 4(16) (c)-(f). These are Inward Processing, Processing under Customs Control, Customs Warehousing, Free Zones, Free Warehouses and Temporary Admission. It does not cover Transit or Outward Processing Relief.

To deal with Outward Processing, Customs Code Article 4(8) should be repealed. This provision dictates that Community Goods lose their Community Status on export. As a result of this provision, both Outward Processing Relief (OPR) and Returned Goods Relief are required. If the provision is repealed, it becomes far easier to deal with both of these reliefs.

Once Article 4(8) is repealed, it is easy to permit the reimport of such goods without duty payment subject to proof that they, or equivalent items, were exported from the EU with Community status. Since this proof would not in all probability be available at the port, the importer should enter the goods to the Unitary Relief, so that their removal can be subject to post-import control by the appropriate customs office.

The inclusion of equivalent items for this purpose is actually no more than the flexible adoption of the INF5 procedure already envisaged by Article 523(b)iii of regulation 2454/93. The result is that there is no net inflow of goods to the EU without duty payment.

The same principle facilitates Outward Processing - at least for repair. The INF5 can be amended to indicate whether the item is likely to return or be replaced. If so, the officer controlling the Unitary Relief can check that the appropriate amount of duty has been paid on the returning item. Since the control hinges exclusively on the INF5 document, it would make sense to adopt for this a computer system comparable to the NCTS system. Until then, the paper document is perfectly adequate to deal with repair OPR with or without standard exchange. It may be necessary to maintain the existing approach to OPR for manufacturing rather than repair processes, but ICC anticipates that a more flexible approach consistent with the Unitary Relief might be found once the latter beds down.

Conclusions

Effective duty relief mechanisms are fundamental to international trade in goods on a global basis. ICC is committed to assisting Members to realize the full benefits of international trade through effective trade facilitation measures that discourage both inefficient and artificially complex or burdensome border procedures. To realize these benefits for all parties, the concept of the Unitary Relief should be recognized as best practice, and adopted by the EU as soon as possible.

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