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Working paper

CUSTOMS EXPERT GROUP
Section Special Procedures other than transit

**Subject: Common storage, accounting segregation and usual forms of handling (UHF)
in Special Procedures**

Background

As regards accounting segregation, the UCC-DA shows the following differences in comparison with former CCIP:

1) Requirements for common storage:

Article 534(2) CCIP	Article 177 DA
The customs authorities may permit common storage <u>where it is impossible to identify at all times the customs status of each type of goods.</u> Goods in common storage <u>shall share the same eight-digit CN-code, the same commercial quality and the same technical characteristics.</u>	Where Union goods are stored together with non-Union goods in a storage facility for customs warehousing and it <u>is impossible or would only be possible at a disproportionate cost to identify at all times each type of goods,</u> the authorisation as referred to in Article 211(1)(b) of the Code shall establish that accounting segregation shall be carried out with regard to each type of goods, customs status and, where appropriate, origin of goods.

Several requirements mentioned in the former customs legislation do not exist today, namely the condition that the goods to be stored together must share the same eight-digit CN code, the same commercial quality and the same technical characteristics for common storage to be allowed. This fact could lead to the possibility that, for instance, Union goods could be stored together with non-Union goods (e.g. subject to anti-dumping duty) in the same customs warehouse (e.g. in a silo), which could lead to a misuse of the authorisation that allows accounting segregation.

2) Use of Union-goods and usual forms of handling (UFH):

Article 531 CCIP	Article 220 UCC
<u>Non-Community goods</u> may undergo the usual forms of handling listed in Annex 72	Goods placed under customs warehousing or a processing procedure or in a free zone may undergo usual forms of handling intended to preserve them, improve their appearance or marketable quality or prepare them for distribution or resale.

According to Article 237(3) UCC, Union-goods which are authorised to be in a storage facility for customs warehousing are not regarded as being under the customs warehousing procedure.

In addition, Article 223(1) UCC states that Union-goods which are used as equivalent goods must comply with the requirements mentioned in former Article 534(2) CCIP (i.e. same eight-digit CN-code, same commercial quality and same technical characteristics). Furthermore, Article 223(3) UCC does not allow the use of equivalent goods in the following cases:

- a) IP procedure where only UFH are carried out;
- b) Prohibition of draw-back of, or exemption from, import duty applying to non-Union goods used for the IP procedure;
- c) Unjustified import duty advantage.

The former Annex 72 CCIP, which covered the cases of UFH, provided for that:

Usual forms of handling listed below shall not be granted if, in the opinion of the customs authorities, the operation is likely to increase the risk of fraud.

This “risk of fraud” requirement for UFH is neither explicitly mentioned in Annex 71-03 DA nor in the rest of current customs legislation. Therefore, the “non risk of fraud/unjustified import duty advantage” condition only covers the use of equivalent goods, but not the UFH.

Conclusion

According to current customs legislation, some situations which could trigger risk of fraud or result into unjustified import duty advantage seem to be possible. These situations are:

- a) Common storage of goods with different “import duty” which have been placed under the customs warehousing procedure and stored in storage facilities;
- b) UFH are not exclusively destined anymore to non-Union goods (except for the case mentioned in Article 223(3)(a) UCC)
- c) According to the terms of former Annex 72 CCIP – which are not explicitly stated in the current customs legislation – UFH could be allowed even if the operation is likely to increase the risk of fraud.

Solution proposed

Some of the requirements that were applicable under the former customs legislation do not exist in the one which is applicable today. Therefore, as this former customs legislation has been applied with no notice of any major problems since the entry into force of the CCC and the CCIP (i.e. since 1992 and 1993, respectively), the solution proposed comprises the following amendments:

Article 177 DA:

1. Where Union goods are stored together with non-Union goods in a storage facility for customs warehousing and it is impossible or would only be possible at a disproportionate cost to identify at all times each type of goods (common storage), the authorisation as referred to in Article 211(1)(b) of the Code shall establish that accounting segregation shall be carried out with regard to each type of goods, customs status and, where appropriate, origin of goods.
2. Union goods stored together with non-Union goods in a storage facility as referred to in paragraph 1 shall share the same eight-digit CN code, the same commercial quality and the same technical characteristics.
3. Non-Union goods which would be subject, at the time where they would be going to be stored together with the Union goods, to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation, shall not be considered to have the same commercial quality as the Union goods which are stored together with such non-Union goods.

Annex71-03 DA:

Unless otherwise specified, none of the following forms of handling may give rise to a different eight-digit CN code.

In addition, none of the following forms of handling may result in an unjustified import duty advantage. Any of the usual forms of handling listed below which entail a change in the CN code or in the origin shall be deemed to result in an unjustified import duty advantage if the goods which would be going to undergo these usual forms of handling would be subject, at the time where the usual form of handling begins to take place, to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation.