



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Policy, Legislation, Tariff
Customs Legislation

Brussels, 21 August 2019

TAXUD/A2/SPE//GdMP (2019)

TAXUD/A2/SPE/2019/006-EN
Original EN

Commission Implementing Regulation 2019/1131, of 2 July
2019 establishing a **customs tool** in order to implement
Article 14a of Council Regulation (EU) 2016/1036 and Article
24a of Council Regulation (EU) 2016/1037

“Guidance for MSs and Trade”

Disclaimer: "It must be stressed that this document does not constitute a legally binding act and is of an explanatory nature. Legal provisions established in the customs tool or in any other applicable legislation take precedence over the contents of this document and should always be consulted. The authentic texts of the EU legal instruments are those published in the Official Journal of the European Union. There may also exist national instructions or explanatory notes in addition to this document."

Structure of the Customs tool –summary-

(the page number refers to the page of the OJ Customs tool text – L 179, 3 July 2019)

Art. 1 Subject matter	p.13
Art. 2 Definitions	p.13
Art 3 Lodging of a receipt declaration	p.14
Art. 4 Debt	p.14
Art. 5 Calculation of the amount of anti-dumping or countervailing duty	p.15
Art. 6 Notification, recovery, payment, repayment, remission, and extinguishment of debt and provision of a guarantee	p.15
Art. 7 Controls by customs authorities	p.15
<u>ANNEX: Receipt declaration</u>	<u>p.17</u>

Reminders: no colour mark: change agreed by the CEG
yellow: to check and not for the final text
[squared brackets] text to check

References:

- UCC Union Customs Code. Regulation (EU) No 952/2013
- IA Implementing act. Commission Implementing Regulation (EU) 2015/2447
- DA Delegated act. Commission Delegated Regulation (EU) 2015/2446

Abbreviations:

- TDI Trade Defence Instruments
- EEZ Exclusive Economic Zone
- CS Continental shelf
- UNCLOS United Nations Convention on the Law of the Sea
- ADD Anti dumping duty
- CVD Countervailing duty
- TOR Traditional Own Resources

Introduction

The Commission, the Council and the European Parliament reached on 5 December 2017 an agreement on the legislative proposal by the Commission to amend Regulation 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation 2016/1037 on protection against subsidised imports from countries not members of the European Union with a view to modernize the trade defence instruments of the European Union. The agreement foresees, inter alia, the application of TDI to certain products received in the continental shelf or to the Exclusive Economic Zone of a Member State of the Union.

The implementation of this new legislation requires a Commission Implementing Regulation establishing the “customs tool”.

The compromise reached by the co-legislators does not foresee an amendment to the UCC because of the following reasons:

- 1) Amending the UCC (i.e. extension of the customs territory of the Union pursuant to Article 4 UCC) would have entailed in principle the collection of all kind of import duty and other charges to all goods brought to the EEZ or to the continental shelf of a Member State. The objective of the TDI modernisation is to apply only antidumping and/or countervailing duty to such goods.

- 2) Article 2 UNCLOS states that "*the sovereignty of a coastal State extends, beyond its land territory and internal waters (...) to (...) the territorial sea*". Amending Article 4 UCC (i.e. extending the customs territory of the Union beyond the territorial sea by including EEZ and continental shelf) would have implied to extend the sovereignty/jurisdiction of the Member States concerning customs and non-customs laws and regulations which refer to entry, temporary imports, imports or exports of goods. Most of these laws and regulations are not covered by Articles 60 or 80 of the UNCLOS because the scope of these Articles is quite limited. Extending the customs territory of the Union would have triggered the above mentioned laws and regulations to be applied in the EEZ or in the continental shelf of a Member State, thus circumventing the UNCLOS.
- 3) The extension of the customs territory of the Union by including Exclusive Economic Zones and continental shelves would have implied that all customs measures concerning entry, temporary import, import and export have to be applied to goods entering these areas.

One of the consequences of an extension of the customs territory of the Union would have been that all goods have to be physically available for customs controls.

Businesses would have not accepted this scenario. It is also obvious that by requiring such customs formalities for all goods entering the EEZ the economic activities which may be carried out in accordance with the UNCLOS would have been discouraged.

In conclusion, an amendment to the UCC was not considered as an appropriate solution. However, as some formalities (e.g. re-export) are already established in the UCC, the customs tool refers in some of its Articles to the relevant Articles of the UCC.

The Customs Tool (Commission Implementing Regulation (EU) No 2019/1131) was published on 3 July 2019 (Official Journal of the European Union, L 179). It entered into force on 23 July 2019 and is entirely applicable as from 3 November 2019.

Guidance

Article 1

Subject matter

The customs tool has to be applied by the customs authorities only if explicit reference is made to this tool in Union legislation imposing a provisional or definitive anti-dumping or countervailing duty, making imports subject to registration or in a Notice of initiation of an anti-dumping or anti-subsidy investigation published in the Official Journal of the EU.

Article 2

Definitions

Only customs administrations of the Member States responsible for applying the customs legislation are also responsible for the application of the customs tool. Other authorities empowered under national law to apply certain customs legislation are not or cannot be competent for the application of the customs tool because the objective of tool is to ensure the collection of ADD/CVD (TOR). Therefore Article 2(1) has defined ‘customs authorities’ which excludes other authorities referred to in Article 5(1) UCC.

In order to avoid a misinterpretation regarding ‘customs debt’ as defined in Article 5(18), it was necessary to define the new term ‘debt’.

‘Recipient’ is the holder of a licence or authorisation to perform business activities in the Exclusive Economic Zone or in the continental shelf of a Member State. This licence or authorisation is issued or granted by the competent authority of the Member State to which the concerned Exclusive Economic Zone or continental shelf belongs and comprises the exploration or exploitation, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. The licences or authorisations mentioned in this paragraph are not issued or granted on the basis of the Union Customs Code.

Article 3

Lodging of a receipt declaration

On the basis of Article 14(6) of the basic anti-dumping Regulation Member States must report to the European Commission the relevant data available in the receipt declaration as regards the product concerned which is brought to the EEZ or to the CS of a Member State from the moment of initiation of an investigation, provided the Notice of initiation refers to the customs tool.

In order to comply with this obligation, the Member States must convey to the European Commission the data elements included in the receipt declaration that has to be lodged by the recipient. There is no concrete system or procedure established for the Member States in order to comply with this obligation. Therefore, Member States can convey the data in the way they consider more convenient for them, provided that all the relevant data is conveyed in due time.

The Member State responsible to comply with this obligation is the one shown in the following two examples:

Example 1:

A notice of initiation of an anti-dumping investigation also covering deliveries to EEZ/CS and referring to the customs tool is published in the Official Journal of the European Union on 1 October 2019. On 1 November 2019, a product concerned according to the definition established in Article 2(4) of the customs tool (that is the same as in the notice of initiation) is re-exported from Member State A to the EEZ of Member State B. The recipient of the product concerned in the EEZ of Member State B will have to lodge a receipt declaration to Member State A. Member State A must convey the information of this receipt declaration to the European Commission in due time.

Example 2:

A notice of initiation of an anti-dumping investigation also covering deliveries to EEZ/CS and referring to the customs tool is published in the Official Journal of the European Union on 1 October 2019. On 1 November 2019, a product concerned according to the definition established in Article 2(4) of the customs tool (that is the same as in the notice of initiation) is brought from a third country to the EEZ of Member State A. The recipient of the product concerned in the EEZ of Member State A will have to lodge a receipt declaration to Member State A. Member State A must convey the information of this receipt declaration to the European Commission in due time.

The receipt declaration contains all the necessary information to allow Member States to fulfil the obligation under Article 14(6) of the basic anti-dumping regulation: "Member States shall

report to the Commission every month on the import trade in products subject to investigation and to measures, and on the amount of duties collected". Such information would normally be reported to the Commission in the 14(6) reports that Member States send monthly to the 14(6) database.

Like with reporting for goods subject to measures released for free circulation, the reporting for goods brought to the EEZ/CS covers all transactions from the beginning of the investigation until the measures expire. Like in standard trade defence cases, transactions must be reported for products that are being investigated but not yet subject to measures because the investigation is on-going, for products subject to registration within the meaning of Article 14(5) of the basic anti-dumping Regulation or 24(5) of the basic anti-subsidy Regulation, and for products subject to anti-dumping and/or countervailing duty. The relevant measure applicable is provided for in the receipt declaration, mirroring those used for reporting in the framework of the 14(6) database.

However, given that the Commission is currently examining whether the 14(6) system requires a special field to distinguish deliveries to the CS or EEZ from those to the customs territory of a MS, and as obtaining this information will be crucial during the investigation, and that this is a new element that may require manual work on the side of MS, the Commission is ready to give Member States flexibility as to how to report these transactions, especially at the beginning. This means that MS for example do not need to integrate these transactions in their electronic 14(6) reports (they may report them separately if that suits better).

At the same time however, the Commission counts on Member States to get the necessary information in a timely manner as it will be crucial for the investigation. Therefore, it is necessary that MS report for continental shelf transactions the same information as for normal transactions that they report in 14(6) but there is a need for a change in the field "Member State". For transactions to the CS or EEZ, this field should be filled with the Competent Member State as defined in Article 3(1) of the customs tool, and it should indicate that this transaction was received in a CS or EEZ. The following example illustrates this.

Based on the following information from the receipt declaration:



Part II

Form

European Union

Receipt declaration

(Articles 3 and 4 of the Commission Implementing Regulation 201X/XXXX, of XX X 201X establishing a **customs tool** in order to implement Article 14a of Council Regulation (EU) 2016/1036 and Article 24a of Council Regulation (EU) 2016/1037)

1 Recipient identification No (name, address and EORI number of the recipient)				
2 Product concerned declared				
Commodity code – TARIC code (and TARIC additional code where applicable)	Country of origin code and/or, where applicable ⁱ , country of consignment code	Gross and net mass	Quantity expressed in supplementary unit (where applicable)	Description of product concerned
7019 31 00 90 B990	CN	365		Glass fibre mats
3 Competent Member State (see Articles 3(2) and 4(4)) Belgium				
4 Number of the Regulation(s) or notice(s) of initiation applicable to this declaration				
Measure applicable (tick box): <input type="checkbox"/> Anti-dumping/countervailing statistics <input type="checkbox"/> Notice of initiation <input type="checkbox"/> Registration <input type="checkbox"/> Provisional anti-dumping duty <input type="checkbox"/> Provisional countervailing duty <input checked="" type="checkbox"/> Definitive anti-dumping duty <input type="checkbox"/> Definitive countervailing duty				
5 Net, free-at-continental shelf or Exclusive Economic Zone price. 2920				
6 Calculation of the amount of anti-dumping and/or countervailing duty payable, where applicable 423				
7 Date of receipt of the product concerned and, where applicable, MRN 08/05/2018				
8 Documents produced, certificates and authorisations, additional references (invoice shall be attached in case of sale of product concerned) D008 "Invoice with a signed declaration" that grants the individual duty rate of 14,5%				

ⁱ In case anti-dumping or anti-subsidy measures have been extended to products consigned from a country other than the country concerned by the measures after an anti-circumvention investigation.

The information to report to the Commission should be the following (based on the 14(6) reports):

no	date	Taric_code	add_code	meas	origin	weight	suppl_qty	value	pr_cert	ad_duty	ms
1178	08/05/2018	7019310090	B990	552	CN	368	0	2920		423	BE - EEZ

Article 4

Debt

The terms “artificial island”, “fixed or floating installation” and “any other structure” mentioned in Article 4(1) must be understood as follows:

Artificial islands are areas of land, surrounded by water, that are above water that are not naturally formed but are the result of man building activity. These islands can be used to support the exploration or exploitation of the seabed or they can be used to support the production of energy from the water, currents or winds. Hence, they could be used as the point of delivery of dumped/subsidised products such as tubes to connect the platforms to the shore or to extract hydrocarbons from the seabed, drilling equipment and rigs or wind turbines.

Fixed or floating installations and any other structures are constructions, including facilities, such as platforms whether fixed to the sea floor or floating which are intended for the exploration or exploitation of the seabed. They also include the constructions on site for the production of energy from the water, currents or winds. Therefore, the products listed in the preceding paragraph could also be delivered for use on those constructions.

For the sake of clarity, tubes that are used for the mere transit of hydrocarbons from one point to another and that are not linked to the exploration or exploitation of the marine subsoil of the Member States of the EU are not concerned by this regulation.

For the purposes of the customs tool, 'debt' does not include import duty as provided for in the Common Customs Tariff. The term covers only anti-dumping or countervailing duties.

The following two examples provide additional information:

Example 1:

A Commission Implementing Regulation imposing anti-dumping duties also on deliveries to EEZ/CS and referring to the customs tool is published in the Official Journal of the European Union on 30 April 2019 and enters into force as of 1 May 2019. A product concerned by this Regulation is re-exported from Member State A to the EEZ of Member State B, by means of a re-export declaration lodged and accepted by the customs authorities of Member State A on 1 July 2019. The product concerned is received in the EEZ of Member State B on 5 July 2019. These facts entail the following consequences:

- a) The debt incurs on 1 July 2019.

- b) The recipient of the product concerned in the EEZ of Member State B must lodge a receipt declaration at the competent customs office of Member State A on 4 August 2019 at the latest (i.e. 30 days after the receipt of the product concerned).
- c) The recipient, i.e. the person who has to lodge the receipt declaration is the debtor.
- d) Member State A is responsible for the collection of the debt.

Example 2:

A Commission Implementing Regulation imposing anti-dumping duties also on deliveries to EEZ/CS and referring to the customs tool is published in the Official Journal of the European Union on 30 April 2019 and enters into force as of 1 May 2019. A product concerned by this Regulation is brought from a third country to the EEZ of Member State A. The product concerned is received in the EEZ of Member State A on 5 July 2019. These facts entail the following consequences:

- a) The debt incurs on 5 July 2019.
- b) The recipient of the product concerned in the EEZ of Member State A must lodge a receipt declaration at the competent customs office of Member State A on 4 August 2019 at the latest (i.e. 30 days after the receipt of the product concerned).
- c) The recipient, i.e. the person who lodged the receipt declaration, becomes the debtor.
- d) Member State A is responsible for the collection of the debt.

Regarding the additional reference code referred to in Article 4(5), one of the following codes has to be used:

The description for each Y*** is:

"<Member State>- Continental shelf or Exclusive Economic Zone (Regulation 2018/... establishing a customs tool, OJ...)"

- Y200 CS/EEZ of Belgium
- Y201 CS/EEZ of Bulgaria
- Y202 CS/EEZ of Denmark
- Y203 CS/EEZ of Germany
- Y204 CS/EEZ of Estonia
- Y205 CS/EEZ of Ireland
- Y206 CS/EEZ of Greece
- Y207 CS/EEZ of Spain
- Y208 CS/EEZ of France
- Y209 CS/EEZ of Croatia
- Y210 CS/EEZ of Italy
- Y211 CS/EEZ of Cyprus
- Y212 CS/EEZ of Latvia
- Y213 CS/EEZ of Lithuania
- Y214 CS/EEZ of Malta
- Y215 CS/EEZ of The Netherlands
- Y216 CS/EEZ of Poland
- Y217 CS/EEZ of Portugal
- Y218 CS/EEZ of Romania
- Y219 CS/EEZ of Slovenia
- Y220 CS/EEZ of Finland
- Y221 CS/EEZ of Sweden
- Y222 CS/EEZ of United Kingdom

These codes will be available in the TARIC for use when the customs tool has to be applied.

Article 5

Calculation of the amount of anti-dumping and/or countervailing duty

Article 5(2) corresponds to Article 86(3) UCC.

Example:

Goods subject to 57 % ADD with a customs value of EUR 100 000 are placed under IP in Member State A. Processing operations take place and the processed products are re-exported to the EEZ of this Member State. In this case, a debt worth EUR 57 000 (i.e. 100 000 x 57 %) will incur at the time of receipt of the processed products in the EEZ of Member State A.

Article 6

Notification, recovery, payment, repayment, remission and extinguishment of debt and provision of a guarantee

Notification of the debt:

Once the period of three years or the extended period in accordance with Article 103(2) UCC) has expired and no debt has been notified because the receipt declaration was not lodged, then the competent Member State should not be declared financially liable for the collection of the debt under the condition that the customs tool was correctly applied and the relevant controls established in Article 7 were carried out. An example of correct application of the customs tool in that case would be where the customs authority, after due implementation of the customs controls established in Article 7, finds out that the receipt declaration was not lodged because the product concerned was not finally brought to the Exclusive Economic Zone or to the continental shelf of a Member State, even though it was declared for re-export

Entry in the accounts of ADD/CVD:

Article 105(1) of the Union Customs Code will not apply if the product concerned is brought from the customs territory of the Union, because the debt cannot be notified once the product concerned is released for re-export as it cannot be calculated at that moment. In this case, the competent customs authority must enter in the accounts the debt according to Article 105(3) UCC, which applies *mutatis mutandis* i.e. within 14 days from the moment in which the customs authority is in position to take a decision. This means that the entry into accounts of

the debt cannot take place before the receipt declaration containing all the relevant data elements (e.g. debtor) is lodged. Therefore, the 14-day time-limit commences once the receipt declaration is lodged and all the necessary data elements to enter the debt in the accounts have been provided.

Example of payment of debt done after the deadline:

A Commission Implementing Regulation imposing anti-dumping duties also on deliveries to EEZ/CS and referring to the customs tool is published in the Official Journal of the European Union on 30 April 2019 and enters into force as of 1 May 2019. A product concerned covered by this Regulation is brought from a third country to the EEZ of Member State A. The product concerned is received in the EEZ of Member State A on 5 July 2019. The recipient lodges the receipt declaration on 4 August 2019 (i.e. 30 days after the receipt of the product concerned, hence after the debt incurred). The debt is notified on 5 August 2019 by the customs authorities to the recipient. These facts entail the following consequences:

- a) The recipient is the debtor and must pay the ADD within the time-limit established in Article 108(1) UCC. Therefore, the payment should take place on 15 August 2019 at the latest (i.e. no later than 10 days after the notification of the debt).
- b) If the payment is done after 15 August 2019, then Article 114 UCC applies, i.e. interest on arrears must be charged.

Guarantee:

A Commission Implementing Regulation imposing a provisional anti-dumping duty to a product concerned which is brought to the EEZ establishes the provision of a security deposit (guarantee) equivalent to the amount of the provisional duty. If a product concerned by such Commission Regulation is brought to the EEZ or to the continental shelf of a Member State, the Member State responsible for the collection of the anti-dumping duty must request the recipient to provide such deposit according to such Commission Implementing Regulation imposing a provisional anti-dumping duty at the time in which the receipt declaration is lodged.

Article 7

Controls by customs authorities

The competent customs authority of a Member State who is responsible for the collection of anti-dumping and/or countervailing duty is entitled to request from the economic operator any document linked to the operation that triggered the debt. This is a non-exhaustive list of documents that can be requested:

- License or authorisation to perform business activities in connection with the exploration or exploitation of the non-living natural resources of the seabed and its subsoil or the production of energy from the water, the currents or the winds, even if such license or authorisation was granted by another Member State.
- Invoices of all transactions which are related or may be related to business activities in CS/EEZ.
- If the operation is not a purchase, the documents or records supporting the concerned transactions.
- Records of the concerned economic operators (e.g. shipping company, recipient or declarant who lodged the re-export declaration) providing information about business activities.

Where appropriate, the competent customs authority may request other customs authorities to provide information which is relevant to the collection of anti-dumping and/or countervailing duty (administrative co-operation)

ANNEX

Receipt declaration

If the paper form of the receipt declaration is used, the moment in which the competent customs authority must consider that the receipt declaration has been lodged will be the moment in which such form is accepted by the customs authorities.