

Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code

TITLE VII

SPECIAL PROCEDURES

CHAPTER 1

General provisions

Section 2

Taking a decision on the application

Article 166

Examination of the economic conditions(Article 211(3) and (4) of the Code)

1 The condition laid down in Article 211(4)(b) of the Code shall not apply to authorisations for inward processing except in any of the following cases:

- a where the calculation of the amount of import duty is made in accordance with Article 86(3) of the Code, evidence exists that the essential interests of Union producers are likely to be adversely affected and the case is not covered by Article 167(1)(a) to (f);
- b where the calculation of the amount of import duty is made in accordance with Article 85 of the Code, the goods intended to be placed under the inward processing procedure would be subject to an agricultural or a commercial policy measure, 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 and the case is not covered by Article 167(1) (h), (i), (m), (p) (or (s));
- c where the calculation of the amount of import duty is made in accordance with Article 85 of the Code, the goods intended to be placed under the inward processing procedure would not be subject to an agricultural or a commercial policy measure, 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, evidence exists that the essential interests of Union producers are likely to be adversely affected; and the case is not covered by Article 167(1)(g) to (s).

2 The condition laid down in Article 211(4)(b) of the Code shall not apply to authorisations for outward processing except where evidence exists that the essential interests of Union producers of goods listed in Annex 71-02 are likely to be adversely affected and the goods are not intended to be repaired.

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Article 167

Cases in which the economic conditions are deemed to be fulfilled for inward processing(Article 211(5) of the Code)

1 The economic conditions for inward processing shall be deemed to be fulfilled where the application concerns any of the following operations:

- a the processing of goods not listed in Annex 71-02;
- b repair;
- c the processing of goods directly or indirectly put at the disposal of the holder of the authorisation, carried out according to specifications on behalf of a person established outside of the customs territory of the Union, generally against payment of processing costs alone;
- d the processing of durum wheat into pasta;
- e the placing of goods under inward processing within the limits of the quantity determined on the basis of a balance in accordance with Article 18 of Regulation (EU) No 510/2014 of the European Parliament and of the Council⁽¹⁾;
- f the processing of goods which are listed in Annex 71-02, in any of the following situations:
 - (i) unavailability of goods produced in the Union sharing the same 8-digit CN code, the same commercial quality and technical characteristics as the goods intended to be imported for the processing operations envisaged;
 - (ii) differences in price between goods produced in the Union and those intended to be imported, where comparable goods cannot be used because their price would not make the proposed commercial operation economically viable;
 - (iii) contractual obligations where comparable goods do not conform to the contractual requirements of the third-country purchaser of the processed products, or where, in accordance with the contract, the processed products must be obtained from the goods intended to be placed under inward processing in order to comply with provisions concerning the protection of industrial or commercial property rights;
 - (iv) the aggregate value of goods to be placed under the inward processing procedure per applicant and calendar year for each eight-digit CN code does not exceed EUR 150 000;
- g the processing of goods to ensure their compliance with technical requirements for their release for free circulation;
- h the processing of goods of a non-commercial nature;
- i the processing of goods obtained under a previous authorisation, the issuing of which was subject to an examination of the economic conditions;
- j the processing of solid and fluid fractions of palm oil, coconut oil, fluid fractions of coconut oil, palm kernel oil, fluid fractions of palm kernel oil, babassu oil or castor oil into products which are not destined for the food sector;
- k the processing into products to be incorporated in or used for civil aircraft for which an airworthiness certificate has been issued;
- l the processing into products benefitting from the autonomous suspension of import duty on certain weapons and military equipment in accordance with Council Regulation (EC) No 150/2003⁽²⁾;

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- m the processing of goods into samples;
 - n the processing of any electronic type of components, parts, assemblies or any other materials into information technology products;
 - o the processing of goods falling within CN codes 2707 or 2710 into products falling within CN codes 2707, 2710 or 2902;
 - p the reduction to waste and scrap, destruction, recovery of parts or components;
 - q denaturing;
 - r usual forms of handling referred to in Article 220 of the Code;
 - s the aggregate value of goods to be placed under the inward processing procedure per applicant and calendar year for each eight-digit CN code does not exceed EUR 150 000 with regard to goods which are covered by Annex 71-02 and EUR 300 000 for other goods, except where the goods intended to be placed under the inward-processing procedure would be subject 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.
- 2 The unavailability referred to in paragraph 1(f)(i) shall cover any of the following cases:
- a the total absence of production of comparable goods within the customs territory of the Union;
 - b the unavailability of a sufficient quantity of those goods in order to carry out the processing operations envisaged;
 - c comparable Union goods cannot be made available to the applicant in time for the proposed commercial operation to be carried out, despite a request having been made in good time.

Article 168

Calculation of the amount of import duty in certain cases of inward processing(Article 86(4) of the Code)

1 Where no examination of the economic conditions is required and the goods intended to be placed under the inward processing procedure would be subject to an agricultural or a commercial policy measure, 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, the amount of import duty shall be calculated in accordance with Article 86(3) of the Code.

The first subparagraph shall not apply if the economic conditions are deemed to be fulfilled in the cases set out in Article 167(1) (h), (i), (m), (p) or (s).

2 Where the processed products resulting from the inward processing procedure are imported directly or indirectly by the holder of the authorisation and released for free circulation within a period of one year after their re-export, the amount of import duty shall be determined in accordance with Article 86(3) of the Code.

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Article 169

Authorisation for the use of equivalent goods(Articles 223(1) and (2) and 223(3)(c) of the Code)

1 Whether the use of equivalent goods is systematic or not shall not be relevant for the purposes of granting an authorisation in accordance with Article 223(2) of the Code.

2 The use of equivalent goods as referred to in the first subparagraph of Article 223(1) of the Code shall not be authorised where the goods placed under the special procedure would be subject to a provisional or definitive anti-dumping, countervailing, safeguard duty or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation.

3 The use of equivalent goods as referred to in the second subparagraph of Article 223(1) of the Code shall not be authorised where the non-Union goods processed instead of the Union goods placed under the outward processing procedure would be subject to a provisional or definitive anti-dumping, countervailing, safeguard duty or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation.

4 The use of equivalent goods under customs warehousing shall not be authorised where the non-Union goods placed under the customs warehousing procedure are of those referred to in Annex 71-02.

5 The use of equivalent goods shall not be authorised for goods or products that have been genetically modified or contain elements that have undergone genetic modification.

6 By way of derogation from the third subparagraph of Article 223(1) of the Code, the following shall be regarded as equivalent goods for inward processing:

- a goods at a more advanced stage of manufacture than the non-Union goods placed under the inward processing procedure where the essential part of the processing with regard to these equivalent goods is carried out in the undertaking of the holder of the authorisation or in the undertaking where the operation is being carried out on his behalf;
- b in case of repair, new goods instead of used goods or goods in a better condition than the non-Union goods placed under the inward processing procedure;
- c goods with technical characteristics similar to the goods which they are replacing provided that they have the same eight-digit Combined Nomenclature code and the same commercial quality.

7 By way of derogation from the third subparagraph of Article 223(1) of the Code, for goods referred to in Annex 71-04 the special provisions set out in that Annex shall apply.

8 In case of temporary admission, equivalent goods may be used only where the authorisation for temporary admission with total relief from import duty is granted in accordance with Articles 208 to 211.

Article 170

Processed products or goods placed under inward processing IM/EX(Article 211(1) of the Code)

1 The authorisation for inward processing IM/EX shall, upon request by the applicant, specify that processed products or goods placed under that inward processing IM/EX which

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have not been declared for a subsequent customs procedure or re-exported on expiry of the period for discharge shall be deemed to have been released for free circulation on the date of expiry of the period for discharge.

2 Paragraph 1 shall not apply in so far as the products or goods are subject to prohibitive or restrictive measures.

Article 171

Time-limit for taking a decision on an application for an authorisation referred to in Article 211(1) of the Code(Article 22(3) of the Code)

1 Where an application for an authorisation referred to in Article 211(1)(a) of the Code involves one Member State only, a decision on that application shall, by way of derogation from the first subparagraph of Article 22(3) of the Code, be taken without delay and at the latest within 30 days from the date of acceptance of the application.

Where an application for an authorisation referred to in Article 211(1)(b) of the Code involves one Member State only, a decision on that application shall, by way of derogation from the first subparagraph of Article 22(3) of the Code, be taken without delay and at the latest within 60 days from the date of acceptance of the application.

2 Where the economic conditions have to be examined in accordance with Article 211(6) of the Code, the time-limit referred to in the first subparagraph of paragraph 1 of this Article shall be extended to one year from the date on which the file was transmitted to the Commission.

The customs authorities shall inform the applicant, or the holder of the authorisation, of the need to examine the economic conditions and, if the authorisation has not yet been issued, of the extension of the time-limit in accordance with the first subparagraph.

Article 172

Retroactive effect(Article 22(4) of the Code)

1 Where the customs authorities grant an authorisation with retroactive effect in accordance with Article 211(2) of the Code, the authorisation shall take effect at the earliest on the date of acceptance of the application.

2 In exceptional circumstances, the customs authorities may allow an authorisation referred to in paragraph 1 to take effect at the earliest one year, in case of goods covered by Annex 71-02 three months, before the date of acceptance of the application.

3 If an application concerns renewal of an authorisation for the same kind of operation and goods, an authorisation may be granted with retroactive effect from the date on which the original authorisation expired.

Where, in accordance with Article 211(6) of the Code, an examination of the economic conditions is required in connection with a renewal of an authorisation for the same kind of operation and goods, an authorisation with retroactive effect shall take effect at the earliest on the date on which the conclusion on the economic conditions has been drawn.

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Article 173

Validity of an authorisation(Article 22(5) of the Code)

1 Where an authorisation is granted in accordance with Article 211(1)(a) of the Code, the period of validity of the authorisation shall not exceed five years from the date on which the authorisation takes effect

2 The period of validity referred to in paragraph 1 shall not exceed three years where the authorisation relates to goods referred to in Annex 71-02.

Article 174

Time-limit for the discharge of a special procedure(Article 215(4) of the Code)

1 At the request of the holder of the procedure, the time-limit for discharge specified in an authorisation granted in accordance with Article 211(1) of the Code may be extended by the customs authorities, even after the time-limit originally set has expired.

2 Where the time-limit for discharge expires on a specific date for all the goods placed under the procedure in a given period, the customs authorities may establish in the authorisation as referred to in Article 211(1)(a) of the Code that the time-limit for discharge is automatically extended for all goods still under the procedure on that date. The customs authorities may decide to terminate the automatic extension of the time-limit with regard to all or some of the goods placed under the procedure.

Article 175

Bill of discharge(Articles 6(2), 6(3)(a) and 211(1) of the Code)

1 Authorisations for the use of inward processing IM/EX, inward processing EX/IM without the use of standardised exchange of information as referred to in Article 176, or end-use shall stipulate that the holder of the authorisation must present the bill of discharge to the supervising customs office within 30 days after the expiry of the time-limit for discharge.

However, the supervising customs office may waive the obligation to present the bill of discharge where it considers it unnecessary.

2 At the request of the holder of the authorisation, the customs authorities may extend the period referred to in paragraph 1 to 60 days. In exceptional cases, the customs authorities may extend the period even if it has expired.

3 The bill of discharge shall contain the particulars listed in Annex 71-06, unless otherwise determined by the supervising customs office.

4 Where processed products or goods placed under the inward processing IM/EX procedure are deemed to have been released for free circulation in accordance with Article 170(1), that fact shall be stated in the bill of discharge.

5 Where the authorisation for inward processing IM/EX specifies that processed products or goods placed under that procedure are deemed to have been released for free circulation on the date of expiry of the period for discharge, the holder of the authorisation shall

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present the bill of discharge to the supervising customs office as referred to in paragraph 1 of this Article.

6 The customs authorities may allow that the bill of discharge be presented by means other than electronic data-processing techniques.

Article 176

Standardised exchange of information and obligations of the holder of an authorisation for the use of a processing procedure(Article 211(1) of the Code)

1 Authorisations for the use of inward processing EX/IM or outward processing EX/IM which involve one or more than one Member State and authorisations for the use of inward processing IM/EX or outward processing IM/EX which involve more than one Member State shall establish the following obligations:

- a use of the standardised exchange of information (INF) as referred to in Article 181, unless the customs authorities agree other means of electronic exchange of information;
- b the holder of the authorisation shall provide the supervising customs office with information as referred to in Section A of Annex 71-05;
- c where the following declarations or notifications are lodged, they shall refer to the relevant INF number:
 - (i) customs declaration for inward processing;
 - (ii) export declaration for inward processing EX/IM or outward processing;
 - (iii) customs declarations for release for free circulation after outward processing;
 - (iv) customs declarations for the discharge of the processing procedure;
 - (v) re- export declarations or re-export notifications.

2 Authorisations for the use of inward processing IM/EX which involve only one Member State shall establish that, at the request of the supervising customs office, the holder of the authorisation shall provide that customs office with sufficient information about the goods which were placed under the inward processing procedure allowing the supervising customs office to calculate the amount of import duty in accordance with Article 86(3) of the Code.

Article 177

Storage of Union goods together with non-Union goods in a storage facility(Article 211(1) of the Code)

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 disproportionate cost to identify at all times each type of goods, 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 the goods.

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- (1) Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 (OJ L 150, 20.5.2014, p. 1).
- (2) Council Regulation (EC) No 150/2003 of 21 January 2003 suspending import duties on certain weapons and military equipment (OJ L 25, 30.1.2003, p. 1).

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