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## **TARIC – ADMINISTRATIVE AGREEMENT**

Revision history:

The final version of this document will replace working document XXI/294/97 – Add.1.

1. Paragraphs concerning non-tariff measures have been added.
2. A paragraph with regard to anti-dumping and countervailing duties has been added to point 4b.
3. The Legal Services of the Commission emphasised that, by its nature, the Administrative Arrangement, which is not legally binding, cannot derogate from the rules established in that relevant provisions of the Community Customs Code and accordingly cannot be interpreted in a manner contrary to these provisions.

Therefore paragraphs two and three of point 6 have been modified considerably:

"Where a delay in updating the TARIC has led to the debtor paying less than would have been due, it is the responsibility of the Member State to recover the amount owed. However, given that this recovery has to be carried out in the absence of a guarantee, the Member State cannot be held financially responsible if the Member State demonstrates that it has fulfilled the conditions of article 17(2) of Regulation (EC, Euratom) 1150/2000, i.e. that the non-recovery is not attributed to this Member State, and that it has had no implications in the updating process.

Where a delay in updating TARIC has led to the debtor paying more than would have been due, repayment of the customs duties may be granted in accordance with Article 236 of the Community Customs Code, i. e. upon request of the debtor."

have been replaced by

"Where a delay in updating the TARIC has led to the debtor paying less than would have been due, it is the responsibility of the Member State to recover the amount owed in accordance with Article 220 (1) of the Community Customs Code. Where necessary, customs authorities should act in accordance with Article 232(1) of the Community Customs Code.

Where a delay in updating TARIC has led to the debtor paying or being notified of an amount superior to the amount legally owed, repayment of the customs duties shall be granted in accordance with Article 236 of the Community Customs Code. Customs authorities shall also grant repayment or remission on their own initiative where they discover themselves the situation (third subparagraph of Article 236(2))."

## 1. INTRODUCTION

The legal base of the TARIC is Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (Official Journal L 256).

Article 3:

1. Each CN subheading shall have an eight digit code number:

(a) the first six digits shall be the code numbers relating to the headings and subheadings of the harmonized system nomenclature;

(b) the seventh and eighth digits shall identify the CN subheadings.

When a heading or subheading of the harmonized system is not further subdivided for Community purposes, the seventh and eighth digits shall be '00'.

2. The Taric subheadings shall be identified by the 9th and 10th digits which, together with the code numbers referred to in paragraph 1, form the Taric code numbers. In the absence of a Community subdivision, the 9th and 10th digits shall be '00'.

3. Exceptionally, additional Taric codes of four characters may be used for the application of specific Community measures which are not coded, or not entirely coded, at the 9th and 10th digit level.

The TARIC is an important tool for the uniform application of Union law in all Member States to guarantee the equal treatment of all traders. Among other things TARIC data is used for the collection of customs duties. Customs duties constitute traditional own resources into the budget of the European Union. Therefore uniform application is very important.

In this framework the problems of recovery or repayment of customs duties arising from various different cases are analysed and common solutions are laid down.

The document deals as well with the integration of non-tariff measures.

## **2. ERROR IN TARIC**

This can be a typing error, a miscalculation of a duty rate as well as a misinterpretation of the regulation by a TARIC manager.

If these cases are discovered before the measures enter into force TARIC will simply be corrected.

In cases where these errors are discovered after the measures entered into force the measures will be corrected retroactively in the TARIC database independently of the fact whether the error was in favour or not in favour of the trader.

If the duty transmitted via TARIC was more favourable than the one in the Official Journal, subsequent entry in the accounts shall not occur where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration according to Article 220(2)(b) of the Community Customs Code (Council Regulation (EEC) No 2913/92) (protection of legitimate expectations).

If the duty rate published in the Official Journal was more favourable than the one in TARIC, the question of protection of legitimate expectations does not arise.

Legal consequence: repayment or remission according to Article 236 of the Community Customs Code where it is laid down that import duties shall be repaid so far as it is established that when they were paid the amount of such duties was not legally owed.

Exception: non-tariff measures (e.g. prohibitions and restrictions to movements).

The integration of these measures has no financial consequences. Therefore, to avoid unnecessary burden for the customs administration, no retroactive correction will take place. The correction will be sent to the Member States. It will enter into force at a pre-agreed future date.

## **3. ERROR IN THE OFFICIAL JOURNAL, DISCOVERED BY TARIC BEFORE TRANSMISSION**

a) Error in favour of the trader: this can be a publication in the Official Journal of a lower duty rate than intended. In this case TARIC will transmit the "wrong" duty rate and the database will only be corrected retroactively after the publication of a corrigendum in the Official Journal. In this case customs offices should refrain from a post clearance collection of the duties (Article 220(2) (b) of the Community Customs Code).

b) Error not in favour of the trader: this can be the publication of a duty rate higher than it should have been. In this case and after contacting the author service of the legislation in question TARIC will transmit the correct duty rate to avoid the administrative work of repayment.

c) Error where it cannot be decided at Commission level whether it is in favour of the trader or not: for example wrong product description in the legislation. In this case and after contacting the author service of the legislation in question TARIC will transmit the correct data.

#### **4. ERROR IN THE OFFICIAL JOURNAL, DISCOVERED BY TARIC AFTER TRANSMISSION**

a) Error in favour of the trader: this can be a publication in the Official Journal of a lower duty rate than intended. In this case TARIC will be corrected retroactively after the publication of a corrigendum of the concerned legislation but the protection of legitimate expectation should apply (Article 220(2)(b) of the Community Customs Code).

b) Error not in favour of the trader: this can be the publication of a duty rate higher than it should have been. In this case TARIC will be corrected retroactively after the publication of a corrigendum of the concerned legislation and Article 236 of the Community Customs Code on repayment and remission of duties should apply.

c) **Non-tariff measures: In case an error is detected the author service of the legislation in question will be contacted. Once a corrigendum is published, the correct data will be integrated with the date of publication as a start date.**

#### **5. PUBLICATION IN THE OFFICIAL JOURNAL OF LEGAL ACTS WITH RETROACTIVE APPLICABILITY**

This concerns mainly preferential agreements or tariff quota regulations which are entering into force retroactively. In TARIC, measures will be closed and opened accordingly.

a) Tariff treatment in favour of the trader: Article 236 of the Community Customs code on repayment and remission of duties should apply.

b) Tariff treatment not in favour of the trader: Article 869(a) of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code applies:

The customs authorities shall themselves decide not to enter uncollected duties in the accounts:

(a) in cases in which preferential tariff treatment has been applied in the context of a tariff quota, a tariff ceiling or other arrangements when entitlement to this treatment had been ended at the time of acceptance of the customs declaration without that fact having been published in the *Official Journal of the European Union* before the release for free circulation of the goods in question or, where such fact is not published, having been made known in an appropriate manner in the Member State concerned, the person liable for payment for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

**This does not apply to trade defence measures as anti-dumping or countervailing duties.**

Non-tariff measures:

The integration of these measures has no financial consequences. In addition there is no reason to integrate prohibitions or restrictions with retroactive effect. Therefore, these measures will enter into force on the day of publication.

In all cases mentioned above Member States will be informed via a publication in the progress report on CIRCABC where explanations concerning the integration in question will be given.

**6. DELAYS IN THE INTEGRATION IN TARIC (LATE INFORMATION ABOUT NEW LEGAL ACTS, E.G. STANDARD IMPORT VALUES)**

This concerns legal acts which are published in the Official Journal and which enter into force on the same day without that the TARIC service were informed in advance. This matter has already been discussed in several TARIC committee meetings. A delay is not to be treated like an error. The position taken was that the legislation has to be applied as from the day of its entry into force.

Where a delay in updating the TARIC has led to the debtor paying less than would have been due, it is the responsibility of the Member State to recover the amount owed in accordance with Article 220(1) of the Community Customs Code. Where necessary, customs authorities should act in accordance with Article 232(1) of the Community Customs Code.

Where a delay in updating TARIC has led to the debtor paying or being notified of an amount superior to the amount legally owed, repayment of the customs duties shall be granted in accordance with Article 236 of the Community Customs Code. Customs authorities shall also grant repayment or remission on their own initiative where they discover themselves the situation (third subparagraph of Article 236(2)). However, it should be noted that, under the provisions of the third subparagraph of Article 236(2), Member States are not obliged to search out similar situations which would merit the repayment or the remission.

Non-tariff measures:

As delays are not to be treated like errors non-tariff measures will be integrated with the start date as defined in the legal act.

**7. NO TRANSMISSION BECAUSE OF PUBLIC HOLIDAYS IN BRUSSELS OR A WEEKEND**

This should be treated in the same way as point no 6.

**8. PUBLIC HOLIDAYS IN ONE MEMBER STATE AND THEREFORE NO INTEGRATION OF THE TRANSMISSION FROM BRUSSELS IN THE NATIONAL SYSTEM**

This should be treated in the same way as point no 6.

**9. NO TRANSMISSION BECAUSE OF TECHNICAL PROBLEMS IN BRUSSELS**

This would result in a delay in the transmission of the data. Therefore it should be treated like point 6.

#### **10. TECHNICAL PROBLEM IN A MEMBER STATE**

This would result in a delay of the integration of the transmission in the national systems. Therefore it should be treated like point 6.

#### **11. LIMITS OF APPLICABILITY**

This administrative agreement cannot be applied in case the legislation having retroactive effect contains its own rules on the (retroactive) recovery of duties.