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Working paper

CUSTOMS CODE COMMITTEE

Section for Special Procedures

Inward Processing

Use of the information sheet INF 5

This document will be examined at a forthcoming meeting of the Committee.

The issues

A

The information paper TAXUD/2033/2009 REV 2 provides in its Annex 1 the following example of particular cases:

"Second case:
Company A is a processor of *inter alia* jam and caramel. This company manufactures products with Community sugar (equivalent goods) within the framework of its IP authorisation. The products are exported under the IP EX/IM system. Company A subsequently imports non-Community sugar under the IP EX/IM system. Company B (a dealer in sugar), which is mentioned in the IP authorisation of company A, wishes to import third-country sugar under the equivalence system. Company B wishes to sell the imported sugar under exemption from customs duties on the Community market. Company A treats this as a transfer of import rights because company B lodges the import customs declaration.

Question:
Company B is never involved at all in the processing operations of company A and the third-country sugar which is imported is never used in an inward processing operation. Can this application for inward processing be accepted?

Answer:
Yes, this application for inward processing could be accepted. The intended operation could be carried out under the IP EX/IM system with triangular traffic. Company B would be indicated in Box 2 of the information sheet INF5. *(general information)* "

A Member State asked for more detailed information about this case, namely whether it is necessary that company B (sugar broker) must be mentioned in company A's national authorisation for inward processing. If yes, is a prior consultation required if company B intends to declare import goods for inward processing in another Member State?

In this connection the Member State would also like to know at what moment box 2 of the INF 5 must be completed. It seems that the importer must be indicated in box 2 at the latest when the processed products are declared for export.

The argument was put forward that economic operators would like to operate in a flexible manner. This would not be possible if company B has to be entered in the inward processing authorisations because the importer is not necessarily known at the time when the application for an IP authorisation is made. Requiring a modification of an IP authorisation would be time-consuming.

Proposed answers

1. The holder of the procedure is also the holder of the authorisation (Company A). As such, Company A has the right to declare (the import) goods to IP but there are no obligations to pay any import duty due to the change of customs status. The right to import goods "duty free" can be transferred to Company B. The INF5 is completed and certified by the customs authorities. Company B can then declare goods to IP and put these goods

on the EU market without payment of duty. The fact that the transfer takes place before the goods are declared for IP is not considered to impact upon the principle of "transfer of rights and obligations" (TORO).

2. The holder of the authorisation (Company A) must apply for TORO before the processed products are exported under IP EX/IM.

The details about the transferee (importer) should be entered in box 9 (details of the planned activities) of the IP application. However, it is possible to provide the details about the transferee at a later stage after the IP authorisation was granted with a request to modify the IP authorisation.

It would be possible to enter more than one transferee or potential transferee in box 9. The importer which is mentioned in box 2 of the INF 5 must be covered by the authorisation which is referred to in box 3 of the INF5. In any case there must be a link between an INF5 and the relevant IP authorisation.

The practice to state in box 9 of the IP authorisation "rights may be transferred to the person mentioned in box 2 of the INF5" is not acceptable because it would mean that Customs give "carte blanche" approval to the holder of the authorisation without any check or assessment of potential importers. However, it would be acceptable to state in box 9 of the IP authorisation "Rights and obligations may be transferred to the person mentioned in box 2 of the INF5 if this person has the status of authorised economic operator for customs simplifications and is established in the Union.".

3. The IP authorisation has to be considered as a single IP authorisation if Company B may declare the import goods at an office of entry/ a customs office of placement which is located in another Member State (see box 11a of the IP authorisation and box 8 of the INF5). A prior consultation is not required because of Article 501(3)(a) CCIP. However, in order to ensure a smooth customs clearance process in the other Member State it is recommended to inform via encrypted email or ordinary (postal) mail the relevant contact point(s) for consultation/notification about a possible involvement of the customs office(s) of entry/placement which are indicated in box 8 of the INF5. Therefore, a copy of the IP authorisation should be sent electronically to all involved contact points (see http://ec.europa.eu/taxation_customs/customs/procedural_aspects/general/single_authorisation/index_en.htm and document TAXUD/702/2002 in its latest version) in due time before the import goods are declared for IP.

4. Box 2 of the INF 5 must be completed by the holder of the IP authorisation at the latest when the processed products are declared for export. The use of the INF 5 is related to an actual business operation concerning specific goods which means that only one importer may be indicated as transferee in box 2 of the INF 5. This importer has to be established in the EU (Article 64(2)(b) CC).

The practice to insert in box 2 a list of names of potential importers would not be in line with the customs rules.

It is fairly common to find that the importer of the goods, which have been replaced by equivalent goods, changes in an INF5 process. If this arises, a second TORO is required. Company A would request from the issuing or supervising customs office a TORO from Company B to Company C. The INF5 would be modified. Company A's authorisation

would also require amendment to reflect the change unless Company C has the status of authorised economic operator for customs simplifications and is established in the EU (see point 2 above).

The supervising customs office may allow Company C to declare goods for inward processing at a customs office other than the office indicated in box 8 of the INF 5 (see Article 510 CCIP). If the supervising does not allow Company C to declare goods at another office in accordance with Article 510 CCIP, Company A's authorisation needs to be amended accordingly.

5. In boxes 1 and 2 of the INF 5 the EORI Nos should be entered in addition to the details of the holder and importer.

6. It is not possible to indicate more than one office of entry in box 8 of the INF5.

B

Problem
Some MSs reported about problems with the use of INF 5. Copy 3 would be lost or sent back late to the supervising customs office. In many cases the original and copies 1 and 2 of the INF 5 are not returned to the declarant. In addition it was suggested that the customs office of export should be allowed to complete box 10 after it has received the exit result message (ECS MRN). The paper-based INF 5 procedure is not compatible with the electronic ECS. Therefore a pragmatic solution would be necessary.

Proposed solution
The original and copies 1, 2 and 3 of the INF 5 could be kept at the customs office of export until this office has completed box 10 on behalf of the customs office of exit (confirmation that compensating products have left the customs territory of the Union). Box 10 can be completed if the customs office of export has received the exit message from the customs office of exit. Afterwards the original and copies 1 and 2 are immediately returned to the declarant. Copy 3 of the INF 5 has to be sent without delay to the supervising customs office.