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Subject: Position paper transmitted to EU27 on **Customs related matters needed for an orderly withdrawal of the UK from the Union**

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

Objective: For discussion at the Council Working party (Art. 50) of 7 September 2017

Remarks: The attached position paper on **Customs related matters needed for an orderly withdrawal of the UK from the Union** contains the main principles of the EU position in this regard, to be presented to the UK in the context of negotiations under Art. 50

Essential principles on customs related matters needed for an orderly withdrawal of the UK from the Union

As of the withdrawal date, the United Kingdom will no longer be part of the customs and tax (VAT and excise) territory of the Union. Consequently movements of goods between the UK and the EU 27 will constitute third country trade. The principles outlined in this paper aim to ensure an orderly withdrawal of the United Kingdom from the Union in respect of customs related matters.

To this end, the Withdrawal Agreement should determine the customs status (Union and non-Union goods) of goods that enter, leave or transit the customs and tax territory of the Union, the United Kingdom or the EU27, where the movement starts before and ends on or after the withdrawal date, and the legal provisions applicable to them. It should also set out the appropriate treatment in relation to VAT and excise duties and licencing requirements in those circumstances. Furthermore, principles have to be agreed on administrative cooperation procedures ongoing at the withdrawal date as well as cooperation procedures launched after the withdrawal date and relating to facts which occurred prior to that date.

I General principles

The basic approach to be followed should be that the rules applicable in respect of an operation when it is commenced should continue to apply to that operation until its completion.

It is for the declarant to demonstrate the status of the goods (Union or non-Union) before the date of withdrawal and the fact that the relevant movement or entry into a customs regime was initiated before the date of withdrawal.

The following general rules seek to implement that approach and should apply in accordance with Union Law, as interpreted by the Court of Justice of the European Union on the date of entry into force of the Withdrawal Agreement:

- (1) Regarding non-Union goods loaded before the withdrawal date in a third country for introduction into the United Kingdom or the EU27 on or after the withdrawal date:
 - Where an entry summary declaration in accordance with Title IV, Chapter I of the Union Customs Code¹ has been submitted pre-arrival to the EU customs territory before the withdrawal date to a first office of entry, that declaration should remain valid and be recognised by the competent customs authorities of first office of entry (UK or EU 27).
- (2) Regarding goods under temporary storage or under a special customs procedure, in accordance with the Union Customs Code, in the United Kingdom or the EU27 or in a third country on the withdrawal date:
 - The relevant provisions of the Union Customs Code should continue to be applied by the UK or EU27 customs authorities to non-Union goods which at the date of withdrawal are in temporary storage or in a free zone, under transit, customs warehousing, inward processing, or temporary admission, where the procedure is ended or discharged on or after the withdrawal date.
 - The relevant provisions of the Union Customs Code should continue to be applied by the UK or EU27 customs authorities to Union goods which on the date of withdrawal are in outward processing, where the procedure is ended or discharged after the withdrawal date.

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council (OJ L 269 of 10-10-2013)

(3) Regarding goods which immediately prior to the withdrawal date are Union goods and which are being shipped between the United Kingdom and the EU27:

- A movement of goods which has started before and ends on or after the withdrawal date should continue to be treated as an intra-EU movement²:
 - for the purpose of customs as well as for VAT and excise duties:
 - for VAT purposes such movements should thus continue to be governed by the provisions relating to intra-Union supplies and acquisitions;
 - for excise purposes, such movements should continue to be covered by the provisions relating to the excise movement and control system;
 - regarding importation and exportation licencing requirements in Union law.

(4) Regarding goods which immediately prior to the withdrawal date are Union goods and which are being exported:

- Goods that have been declared and released for export and are in transport before or on the withdrawal date should be treated as domestic or Union goods respectively when they exit via the United Kingdom or the EU27 on or after the withdrawal date. Where a pre-departure declaration in accordance with Title VIII, Chapter I of the Union Customs Code has been submitted before the withdrawal date, that declaration should remain valid and be recognised by the competent customs authorities.

(5) Administrative cooperation procedures in regard to customs related matters launched before the withdrawal date should continue³ after the withdrawal date in accordance with the provisions of Union law applicable before the withdrawal date. This relates to the following administrative cooperation procedures:

- Information exchange in the area of VAT and excise duties (Regulations (EU) 904/2010 and 389/2012), as well as mutual assistance for recovery of taxes and duties (Directive 2010/24/EU).
- Enquiry procedures for transit, and in the context of export goods exiting the customs union relating to the application of customs legislation (Regulation (EU) 952/2013).
- Cooperation procedures in the context of mutual administrative assistance between Member States related to the verification of proofs of origin (Article 61-66 Commission Regulation (EU) 2015/2447).
- Investigative and coordination actions in the area of customs including, where applicable, any subsequent legal proceedings until the related court decision becomes final, in accordance with Regulation (EU, Euratom) 883/2013, Council Regulation (EC, Euratom) 2988/95, Council Regulation (Euratom, EC) 2185/96, Council Regulation (EC) 515/97 (including the exchange of information procedures and mechanisms applied regarding cash controls (Regulation (EC) No 1889/2005) and cultural goods (Regulation (EC) No 116/2009)).
- Direct cooperation and exchange of information concerning export controls on dual-use items (Article 19 Council Regulation (EC) 428/2009).
- For the verification of proofs of origin issued or made out by third country authorities or exporters (preferential arrangements) (Articles 108-111 and 125 Commission Regulation (EU) 2015/2447, Article 32 of Annex II to Regulation 2016/1076, Article 55 of Annex VI to Decision 2013/755/EU and equivalent provisions in all preferential agreements.

² The principles applicable to live animals and animal products entering the EU27 at or after the withdrawal date are set out in the essential principles paper on goods placed on the market under Union law before the withdrawal date.

³ The impact on IT customs systems needs to be reviewed in order to ensure an appropriate automated support to ensure the ending and discharging of the administrative procedures.

(6) The withdrawal agreement should provide for the possibility to launch after the withdrawal date administrative cooperation procedures in regard to customs related matters relating to facts that have occurred prior to the withdrawal date. This relates to the following administrative cooperation procedures:

- Information exchange in the area of VAT and excise duties (Regulations (EU) 904/2010 and 389/2012), as well as mutual assistance for recovery of taxes and duties (Directive 2010/24/EU).
- Enquiry procedures for transit, and in the context of export goods exiting the customs union relating to the application of customs legislation (Regulation (EU) 952/2013).
- Cooperation procedures in the context of mutual administrative assistance between Member States related to the verification of proofs of origin (Article 61-66 Commission Regulation (EU) 2015/2447).
- Investigative and coordination actions in the area of customs, including where applicable, any subsequent legal proceedings until the related court decision becomes final, in accordance with Regulation (EU, Euratom) 883/2013 , Council Regulation (EC, Euratom) No 2988/95, Council Regulation (Euratom, EC) 2185/96, Council Regulation (EC) 515/97.
- Direct cooperation and exchange of information concerning export controls on dual-use items (Article 19 Council Regulation (EC) No 428/2009).
- For the verification of proofs of origin issued or made out by third country authorities or exporters (preferential arrangements) (Articles 108-111 and 125 Commission Regulation (EU) 2015/2447, Article 32 of Annex II to Regulation 2016/1076, Article 55 of Annex VI to Decision 2013/755/EU and equivalent provisions in all preferential agreements.

(7) The withdrawal agreement should provide that where in accordance with the customs legislation a customs debt arise in regards of the ending or discharge of the customs procedures as mentioned above, the amount of import duty to be paid shall be that in force at the time when the customs debt is incurred in accordance with the Common Customs Tariff and the EU regulatory provisions on EU traditional own resources⁴.

- For the purpose of the management of tariff quotas, Articles 51 and 52 Commission Regulation (EU) 2015/2447, will apply for respectively:
 - Allocation of quantities under tariff quotas by the Commission to the UK customs authorities based on requests submitted immediately prior to the withdrawal date.
 - Cancellation of requests and returns on unused allocated quantities under tariff quotas after the withdrawal date and related to requests to benefit from tariff quotas that have been submitted immediately prior to the withdrawal date.

II Definitions

For the purpose of this paper definitions apply in accordance with article 5 and Title VII of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

⁴ Council Decision 2014/335/EU, Council Regulation (EU, Euratom) 608/2014 and Council Regulation (EU, Euratom) 609/2014.