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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	ST 8794/18
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 952/2013 laying down the Union Customs Code - Confirmation of the final compromise text with a view to agreement

1. On 8 May 2018, the Commission submitted to the Council and the European Parliament a Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 952/2013 laying down the Union Customs Code.
2. At its meeting on 31 October 2018, the Permanent Representatives Committee confirmed the mandate to start negotiations with the European Parliament on the amended text of the proposal for a Regulation as laid down in doc. ST 13503/18.
3. In the European Parliament, this proposal was referred to the Committee on Internal Market and Consumer Protection (IMCO). Mr Jasenko SELIMOVIC (ALDE) was appointed rapporteur. The IMCO Committee voted their draft report on 12 November 2018.

4. At the technical meeting on 4 December 2018, a provisional agreement on a compromise text was reached between the co-legislators.
5. **Against this background, the Permanent Representatives Committee is invited to:**
- **approve the text of the proposal for a Regulation as set out in Annex to this Note with a view to reaching an agreement at first reading with the European Parliament; and**
 - **give to the Chairman of the Permanent Representatives Committee the mandate to inform the Chair of the European Parliament's IMCO Committee that, should the European Parliament adopt the text of the proposal in the exact form as set out in Annex to this Note , the Council would adopt the proposed Regulation thus amended, subject to legal-linguistic revision by both Institutions.**

**Proposal for a
Regulation of the European Parliament and of the Council amending
Regulation (EU) No 952/2013 laying down the Union Customs Code**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 114 and 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 952/2013 of the European Parliament and of the Council¹ establishes the Union Customs Code (the Code) and lays down general rules and procedures applicable to goods brought into or taken out of the customs territory of the Union.

- (2) The Italian municipality of Campione d'Italia, an Italian exclave in the territory of Switzerland, and the Italian waters of Lake Lugano should be included in the customs territory of the Union because the historical reasons justifying the exclusion of these territories, such as their isolation and economic disadvantages, no longer apply. For the same reasons these territories should be included in the general arrangements for excise duty while continuing to be excluded from the common system of value added tax. In order to ensure that all those changes apply consistently at the same point in time, the inclusion of those territories in the customs territory of the Union should apply from 1 January 2019.

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (3) The Code should be amended in order to clarify that a holder of a Binding Tariff Information (BTI) decision can use that decision for up to six months after the decision has been revoked if the revocation results from the fact that the decision does not conform with customs legislation or that the conditions laid down for issuing the decision were not or are no longer fulfilled.
- (4) Temporary storage should be added to the list of customs formalities covered by the provision that extinguishes a debt due to non-compliance in cases where there was no significant negative effect, no attempt at deception and the situation was subsequently regularised. For the purposes of extinguishment of debt in those cases, temporary storage should not be treated any different than a customs procedure. The corresponding delegation of power to the Commission to supplement the provision should also be amended to include temporary storage.
- (5) Where customs authorities must invalidate an entry summary declaration due to the fact that the goods covered by the declaration have not been brought into the customs territory of the Union, the entry summary declaration should be invalidated without delay 200 days after the declaration was lodged rather than within 200 days as that is the period within which the goods must be brought into the customs territory of the Union.

- (6) In order to enable the customs authorities to carry out proper risk analysis and appropriate risk-based controls, it is necessary to ensure that economic operators provide them with pre-arrival data concerning non-Union goods in the form of an entry summary declaration. Where an entry summary declaration has not been lodged before the arrival of the goods and the obligation to lodge it has not been waived, economic operators should submit the data normally included in entry summary declarations in their customs declarations or temporary storage declarations. For these purposes, the possibility to lodge a customs declaration or a temporary storage declaration instead of an entry summary declaration should be available only if the customs authorities where the goods are being presented so allow. Where customs authorities must invalidate a temporary storage declaration due to the fact that the goods covered by the declaration have not been presented to customs, the declaration should be invalidated without delay 30 days after the declaration was lodged rather than within 30 days as that is the period within which the goods must be presented to customs.
- (7) Total relief from import duty should be provided for goods that have been repaired or altered under the outward processing procedure in a country or territory with which the Union has concluded a preferential agreement providing for such relief, so as to ensure that the Union fulfils its international commitments in this respect. The preferential agreements providing for the relief do not require that the relief applies to the import of repaired or altered products obtained from equivalent goods or of replacement products under the standard exchange system. The duty relief should therefore not apply to those goods and products.
- (8) Where customs authorities must invalidate an exit summary declaration or a re-export notification due to the fact that the relevant goods have not been taken out of the customs territory of the Union, the declaration or notification should be invalidated without delay 150 days after it was lodged rather than within 150 days as that is the period within which the goods must be taken out of the customs territory of the Union.

- (9) In accordance with the principle of proportionality, it is necessary and appropriate, for the achievement of the basic objectives of enabling the customs union to function effectively and of implementing the common commercial policy, to address a number of technical issues that have been detected in the implementation of the Code, to bring two territories of a Member State within the scope of the customs territory of the Union and to align the Code with an international agreement that was not in force at the time of its adoption. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on European Union.
- (10) Regulation (EU) No 952/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 952/2013 is amended as follows:

- (1) in Article 4(1) the twelfth indent of is replaced by the following:
"— the territory of the Italian Republic, except the municipality of Livigno,";
- (2) in Article 34(9) the first subparagraph is replaced by the following:
"9. Where a BTI or BOI decision ceases to be valid in accordance with point (b) of 1 or paragraph 2, or is revoked in accordance with paragraph 5, 7 or 8, the BTI or BOI decision may still be used in respect of binding contracts which were based upon that decision and were concluded before it ceased to be valid or was revoked. That extended use shall not apply where a BOI decision is taken for goods to be exported.";

(3) in Article 124(1)(h), point (i) is replaced by the following:
"(i) the failure which led to the incurrence of a customs debt had no significant effect on the correct operation of the temporary storage or of the customs procedure concerned and did not constitute an attempt at deception;"

(4) Article 126 is replaced by the following:

"Article 126

Delegation of power

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the list of failures with no significant effect on the correct operation of the temporary storage or of the customs procedure concerned and to supplement point (i) of Article 124(1)(h).";

(5) in Article 129, paragraph 2 is replaced by the following:
"2. Where the goods for which an entry summary declaration has been lodged are not brought into the customs territory of the Union, the customs authorities shall invalidate that declaration without delay in either of the following cases:
(a) upon application by the declarant;
(b) if 200 days have elapsed since the declaration was lodged.";

(6) in Article 139, paragraph 5 is replaced by the following:
"5. Where non-Union goods presented to customs are not covered by an entry summary declaration, and except where the obligation to lodge such declaration is waived, one of the persons referred to in Article 127(4) shall, without prejudice to Article 127(6), lodge immediately such declaration or if allowed by the customs authorities shall instead lodge a customs declaration or temporary storage declaration. Where in these circumstances a customs declaration or a temporary storage declaration is lodged, it shall contain at least the particulars necessary for the entry summary declaration.";

- (7) in Article 146, paragraph 2 is replaced by the following:
"2. Where the goods for which a temporary storage declaration has been lodged are not presented to customs, the customs authorities shall invalidate that declaration without delay in either of the following cases:
(a) upon application by the declarant;
(b) if 30 days have elapsed since the declaration was lodged.";
- (8) the following Article is inserted:

“Article 260a

Goods repaired or altered in the context of agreements between the Union and third countries

1. Total relief from import duty shall be granted to processed products resulting from goods placed under the outward processing procedure where it is established to the satisfaction of the customs authorities that:
 - (a) the goods have been repaired or altered in a country or territory outside the customs territory of the Union with which the Union has concluded an agreement providing for such relief, and
 - (b) the conditions for the relief laid down in the agreement referred to in point (a) are fulfilled.

2. Paragraph 1 shall not apply to processed products resulting from equivalent goods as referred to in Article 223 and to replacement products as referred to in Articles 261 and 262.”;

- (9) in Article 272, paragraph 2 is replaced by the following:
"2. Where the goods for which an exit summary declaration has been lodged are not taken out of the customs territory of the Union, the customs authorities shall invalidate that declaration without delay in either of the following cases:
(a) upon application by the declarant;
(b) if 150 days have elapsed since the declaration was lodged.";
- (10) in Article 275, paragraph 2 is replaced by the following:
"2. Where the goods for which a re-export notification has been lodged are not taken out of the customs territory of the Union, the customs authorities shall invalidate that notification without delay in either of the following cases:
(a) upon application by the declarant;
(b) if 150 days have elapsed since the notification was lodged."

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 1(1) shall apply from 1 January 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President