

LITHUANIA'S COMMENTS ON EMPOWERMENT FOR CLEARANCE OF LVC

1. In our view, it is an important issue to be addressed properly. Therefore, we hope that additional explanations in the Guidance Document on the Importation and Exportation of Low Value Consignments related to empowerment for clearance of LVC will be only the first step towards a sustainable solution.

We would like to remind that this issue was first discussed in the context of Implementing Provisions of the Community Customs Code (Commission Regulation No 2454/93) but only in relation to postal consignments (see highlighted parts of the document attached as Annex 1). Unfortunately, due to divergent views proposed amendments haven't been adopted, as the Commission decided to stop discussions with a promise to renew them in the context of Implementing Provisions of the Modernised Customs Code and that was done (see the highlighted part in Annex 2). Unfortunately, similar provisions haven't been included into the UCC package and, after a long brake, this issue was put on the agenda again, now as Finnish proposal. Hopefully, this time renewed discussions will not be stopped again for a long time without any practical results.

2. National provisions on tacit empowerment of the postal operator or the express courier by the person represented, which are in place in Lithuania since 2004, are not always sufficient, therefore, we are in favour of a harmonised EU-wide solution. In our understanding, it is necessary because situations when the customs representative is established in Member State A, the person represented is established in Member State B and the customs clearance of goods is carried out in Member State C are rather common. In such situations, it isn't clear according to which national legislation the empowerment shall be issued and how the customs authorities of another Member State can check whether or not the specific empowerment exists and is valid.

3. After the withdrawal of the UK from the EU, which took place in the situation of Covid-19 pandemic when flight movements decreased drastically, LVCs are often transported from the UK to the EU by road. The analysis of complaints sent to our administration by consignees in Lithuania showed that clearance of such consignments is normally carried out and the import VAT is paid at the Member State of entry (e.g. in France, the Netherlands). In some cases the carrier informs the consignee about the consignment to be delivered and offers him or her two options: 1) to pay the VAT and the service fee online and, by doing that, to appoint the carrier as direct representative, 2) to refuse payment and return the consignment to sender (see Annex 3). The only legal basis indicated in explanations provided by the carrier is the Union Customs Code. In some other cases the consignee simply receives a request to pay taxes and fees for the consignment to be delivered to avoid the parcel being returned to the sender. There was even a case when LVCs have presumably been released into free circulation as a consolidated cargo without a differentiation of goods according to their intrinsic value, nature (i.e. commercial and non-commercial) and delivery address (i.e. consignments addressed to consignees in Russia and Belarus have been released into free circulation as well).

As the clearance of LVCs is carried out in another Member State we don't have reliable information how those consignments are declared. However, it is obvious that often consignees aren't properly granted the possibility to choose the type of representation, to appoint another representative or even to self-declare the goods. Therefore, additional explanations in the Guidance Document related to cases when LVCs are transported by road, in our view, would be helpful.

4. In our view, provisions of the UCC and related legislation on customs representation are rather vague, therefore, that area looks like one of “grey zones” of customs legislation with national peculiarities. According to Article 18(1) of the UCC “any person may appoint a customs representative”. Similarly, according to Article 170(1) of the UCC a customs declaration may be lodged by any person who is able to provide all necessary information and to present the goods in question or to have them presented to customs. Therefore, both the carrier and the consignee may appoint a customs representative without any priority and the only important aspect is the responsibility for the information provided and for the payment of customs and VAT debt.

5. Empowerments could also be an area for automation. Existing national or commercial solutions are not always sufficient, in particular, in cases when an empowerment is issued in one Member State and evidence of it is to be provided in another Member State. Creation of a trans-European IT tool which could be used for the registration of empowerments and for checking their existence and validity could speed-up the clearance of goods when declarations are lodged by customs representatives. In our view, at least the feasibility of such solution is worth discussion.

ANNEX 1



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
CUSTOMS POLICY
Customs procedures

Brussels, 21 February 2008
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Working document

CUSTOMS CODE COMMITTEE**Section for general customs rules**

Postal traffic - proposed amendments to Articles 237-238 and 251 (1b) and to Annex 30A of the implementing provisions of the Community customs code (CCIP)

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

Proposed amendments to Articles 237-238 and 251 (1b) and to Annex 30A of the implementing provisions of the Community customs code (CCIP)

Introduction

Due to the particular circumstances of postal traffic, and in particular the UPU Convention, there is a need for specific provisions.

Explanations

A) The current mechanism for the customs treatment of postal consignments can be summarised as follows:

- a) Article 237 CCIP:
 - i) creates a legal fiction according to which:
 - items of correspondence (essentially letters, postcards, braille letters and printed matter not liable to import or export duties) are considered to be declared to customs at the time when they are either introduced into the customs territory of the Community (for import) or accepted by the postal authorities (for export),
 - other consignments are considered to be declared to customs at the time when they are presented to customs, provided they are accompanied by a CN22 and/or CN23 declaration,
 - ii) establishes a legal framework for empowering the postal administration to act, on its own initiative, as a representative of the consignee or consignor.
- b) Article 238 CCIP provides for certain exclusions from the system of Article 237 (notably for goods for commercial purposes of an aggregate value exceeding €1,000, or which form part of a regular series of like operations, and for consignments containing the goods referred to in Article 235 CCIP);

As a result of the above legal fiction, the burden of customs clearance is transferred to the customs authorities, which have to calculate, where appropriate, import or export duties and taxes on the basis of information which is not always ideal. Moreover, serious implementation difficulties have arisen, in particular where goods forming part of a regular series of like commercial operations must be identified and subjected to the normal rules.

The limitations of the present system have been clearly exposed. Conceived at a time when the postal traffic was slower, the number of parcels smaller (and moreover their content less sensitive from both a trade and security point of view) and when this activity was handled by State monopolies, this system now needs to be fully reviewed and simplified, in accordance with Article 19 of the Code.

B) The proposed new system would:

- a) maintain the existing legal fiction for items of correspondence;
- b) replace the other existing legal fictions by a system based on simplified declarations for postal consignments. Moreover, postal consignments containing goods neither liable to import or export duties nor to other charges would be considered to have been declared when they are presented to customs.

Within this framework:

- considering that this new approach for the customs treatment of postal traffic will affect various parts of the implementing regulation and not only provisions belonging to Chapter 3 of Title VII of Part I of the CCIP ('Customs declarations made orally or by any other acts'), it would be appropriate to delete Section 4 of this Chapter and to gather all specific provisions pertaining to 'Postal traffic' – except the ones concerning transit which will remain in Article 462a - in a new Title X of Part I.

- the holders of the rights and obligations under the UPU would continue to be entitled to use the data appearing on CN22 and/or CN23 forms, but the presence of either of these forms on a postal consignment would no longer exempt them from the obligation to lodge a (simplified) customs declaration;

- irrespective of whether postal consignments are destined for (or exported by) private persons or businesses, postal services would be able to declare the goods on behalf of the consignee or consignor without an explicit power to act as a representative, unless, in so far as imports are concerned, the consignee would have beforehand expressed his opposition to such a course of action. For that purpose, postal services should offer on their Websites the possibility to private persons or businesses to register on a list which could for instance be called a "Do Not Clear My Consignments" list. In so far as the export procedure is concerned, both private persons and businesses choosing to use a postal service for shipping a parcel should be aware that they cannot declare the goods themselves in such a context and should accept that the postal service does it on their behalf. As a general rule, postal services may also choose to act as declarant in accordance with Article 64 of the Code, which means that they would automatically be considered as acting as indirect representatives;

- in order to safeguard the rights of private persons or businesses eventually to refuse the goods and have them returned to the consignor, the substance of Article 251 (1b) CCIP would be kept in a new Article 289d so as to provide the possibility for the customs authorities to invalidate declarations for release for free circulation where the consignee does not accept the goods. No parallel invalidation provision is required in the context of the export procedure, given that the rejection of the goods by the consignee would take place outside the customs territory of the Community.

Through the elimination of the above-mentioned legal fiction, the need for exceptions (i.e. the current Article 238 CCIP) would disappear. Indeed:

- in the case of goods of a value exceeding €1000, a simplified declaration may replace a customs declaration with the full set of SAD data;

- in the case of goods forming part of a regular series of like commercial operations, the current system has proved to be unworkable; these rules will therefore not be maintained for the purposes of collecting import or export duties; as far as VAT is concerned, the case of these repetitive deliveries should be examined with a view to dealing with them without resorting to customs procedures.

C) In addition to the above change to Article 251 (1b) (new Article 289d) CCIP, the proposed changes to Articles 237-238 (new Articles 289a and 289c) CCIP will make it possible to repeal Article 900 (1) (g) CCIP as this specific repayment/remission provision will become redundant as a result of the introduction of the proposed change to Article 251 (1b) CCIP. The amended Article 251 (1b) CCIP will indeed provide for a more comprehensive provision (based on the invalidation of the declaration) that will have the same effect as current Article 900 (1) (g) CCIP and, moreover, will solve problems related to the limited scope of that Article.

D) The provisions of Article 235 CCIP have been integrated, for the purposes of this Article, into Article 289c(4) CCIP, without a reference to export refunds given that no export refunds are paid to private persons sending goods by post under a simplified procedure.

E) How would the proposed system fit in with the amendments made to the CCIP by Regulation (EC) No 1875/2006 of 18 December 2006?

By virtue of Articles 181c and 592a CCIP respectively, goods moved under the rules of the Universal Postal Union Convention are exempted from pre-arrival (entry summary declaration) and pre-departure information. However, it should be stressed that, in accordance with Article 184d (3) CCIP, they are not exempted from risk analysis and control, which must be carried out upon arrival. In order to clarify this and, by the same token, solve the issue, it is proposed that the new provisions specify that CN22 and/or CN23 forms or its electronic equivalent may be made

available to the customs authorities for the purpose of risk analysis and customs controls, either before or upon presentation of the postal consignment.

Should such a submission of data be made electronically and before presentation of the postal consignment in order for it to benefit from an early completion of the risk analysis, the data submitted will, however, have to comply with the provisions of Table 2 of Anex 30A which covers the required data for entry summary declarations and pre-departure declarations, that may be provided electronically to customs authorities for risk analysis purposes prior to departure or arrival of postal consignments.

E) As to the timing of the proposed amendments to Articles 237 and 238 CCIP, the Commission services are aware that a three year transitional period, sufficient for allowing Community postal services to adapt, is necessary before the changes can be actually implemented. This is why it is proposed that the new provisions be applicable at the latest as from three years (36 months) following their entry into force.

Draft legal provisions

Article 1

Regulation (EEC) No 2454/93 is hereby amended as follows:

1. Section 4 of Chapter 3 of title VII of Part I shall be deleted.
2. Article 251(1b) shall be deleted.
3. The following Title X is inserted in Part I:

"TITLE X

Postal traffic

Article 289a [Definitions]

For the purposes of this Title and of Annex 30A, (*that would allow deleting note 4.2 in the Annex to avoid duplication of the definition of postal consignments*)

- an '*item of correspondence*' means a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping¹. Postcards, letters containing personal messages only, braille letters or printed matter not liable to import or export duties shall be regarded as items of correspondence;
- a '*postal consignment*' means a postal item, normally a single parcel or package containing goods other than items of correspondence, conveyed under the responsibility of or by a postal service in accordance with the provisions of the Acts of the Universal Postal Union in force;
- '*postal service*'² means a public or private body authorised by the government to provide the international services governed by the Acts of the Universal Postal Union in force.

Article 289b [Items of correspondence]

1. Items of correspondence shall be considered to have been declared to customs:
 - for release for free circulation, at the time when they are introduced into the customs territory of the Community by, or on behalf of, a postal service,
 - for export, at the time when they are accepted by a postal service.
2. For the purposes of paragraph 1, the customs declaration for items of correspondence shall be considered to have been accepted and release granted:
 - in the case of imports, when they are delivered to the consignee by a postal service,
 - in the case of exports, when they are accepted by a postal service.
3. Where, in the case of imports, it has not been possible to deliver items of correspondence to the consignee through no fault of the postal service the corresponding customs declaration shall be deemed not to have been lodged .

Where undelivered items of correspondence cannot be returned to the sender in accordance with the Acts of the Universal Postal Union in force because of the unavailability of the latter's address, they shall be deemed to be in temporary storage until they are destroyed, re-exported or otherwise placed under a customs-approved treatment or use.

¹ This definition is taken from the 'Postal Directive' (i.e. directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

² This definition is taken from the 'Revised Kyoto Convention (Specific Annex J, Chapter 2 - <http://www.wcoomd.org>)

Article 289c [Goods contained in postal consignments]

1. A postal service may declare goods contained in postal consignments on behalf of the consignee or consignor without an explicit power to act as a representative:
 - for export in all cases and,
 - for release for free circulation, except where the consignee has made known in advance his intention to declare himself such consignments.
2. Where prior to departure or arrival, data of goods contained in postal consignments are not provided electronically to customs authorities for risk-analysis purposes in accordance with Annex 30A, CN22 and/or CN23 forms or their electronic equivalent shall be made available to the customs authorities for such purposes upon presentation of the goods contained in the postal consignment. (*see Note 4.1 of Annex 30A*)
3. Where the simplified declaration or local clearance procedure is applied for the purpose of declaring goods contained in postal consignments, the postal service is entitled to use the data appearing on CN22 and/or CN23 forms affixed to the postal consignment, or its electronic equivalent, as well as on the package itself, for establishing the simplified declaration or entry in the records.
4. Goods contained in postal consignments:
 - (i) which are not liable to import or export duties;
 - (ii) which are not subject to prohibitions and restrictions;
 - (iii) for which no repayment or remission of import or export duties is sought;
 - (iv) which are not liable to charges other than import or export duties
 shall be considered to have been declared to customs when they are presented to customs. The customs declaration shall be considered to have been accepted and release granted:
 - in the case of imports, when the postal consignment is delivered by or for a postal service to the consignee;
 - in the case of exports, when the postal consignment is accepted by a postal service.
5. Where the information on a postal consignment is insufficient or where doubts as to its accuracy exist, a postal service shall:
 - use, where available, all documents referred to in Articles 218 and 221;
 - where appropriate and authorised, examine the goods in order to establish the relevant particulars.

Article 289d

In the case of goods contained in postal consignments, the customs authorities shall invalidate a declaration for release for free circulation lodged by a postal service, where a request to that effect is made, provided that the goods have been re-exported or assigned to another customs-approved treatment or use within two months of the date of acceptance of the declaration, either where the consignee has refused the goods or, through no fault of the postal services, it has not been possible to deliver them to the consignee."

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4. Article 900 (1) (g) shall be deleted.

5. Annex 30A is replaced by the text set out in the Annex to this Regulation.

Article 2

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

2. Article 1 shall apply at the latest as from the first day of the month following the thirty sixth month following its entry into force. Where a Member States applies Article 1 before that date, it shall notify the Commission the date of application. The Commission shall publish that information.

ANNEX 2

*Article 522-5-03***Postal consignments**

MCC implemented provision	MCC empowering provision	Current IP provision	Annex	Adoption procedure
Article 107 (2)	Article 107 (3)	Articles 237-238	-	R

1. For postal consignments containing goods other than those referred to in Article 522-5-02(1), a customs declaration other than that referred to in that Article shall be lodged or made available.

2. The postal operator concerned may declare goods contained in postal consignments as a representative.

The postal operator may act as a representative of the consignee or consignor without an explicit power to act as a representative, except when, for release for free circulation, the consignee has made known in advance his intention to declare such consignments himself.

Where the postal service acts as a direct representative it shall provide a guarantee for duties and other charges.

3. Where prior to departure or arrival, the particulars of goods contained in postal consignments are not provided electronically to the customs authorities for risk analysis purposes, CN22 and/or CN23 forms or their electronic equivalent shall be made available to the customs office of import or export for such purposes before or upon presentation of the goods contained in the postal consignment

4. The customs authorities shall require the postal operator to use all available information to establish the particulars required for the customs declaration in either of the following cases:

- (a) where the information on a postal consignment is insufficient;
- (b) where doubts as to its accuracy exist.

In order to establish the particulars required, customs authorities may allow in such cases the postal operator to scan or open, under the supervision of the competent customs office, the postal consignment.

Language : English

Shipment summary *

Sender		Consignee	
Name		Name	
Address		Address	
Post code	KT13HD	Post code	03105
City	KINGSTON UPON THAMES, KT13HD	City	VILNIUS, 03105
Country	United Kingdom	Country	Lithuania

Shipment	Description	VAT	Administration fees	Total
1597687364278X	HEALTH - SIMPLE HEALTH TEAS	€12.00	€5.00	€17.00

For legal reasons, you must scroll to bottom of the terms and conditions to proceed.

DIRECT CUSTOMS REPRESENTATION MANDATE FROM THE CLIENT/ CUSTOMER (the buyer of the goods) TO CHRONOPOST

Article 5 of the Union Customs Code (Regulation 952/2013) states that the customs representative means any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities. CHRONOPOST acts as the Customer's representative and has the necessary authorisations to act as well in accordance with the Union Customs Code and national regulations.

Article 18 of the Union Customs Code (Regulation 952/2013) states that the customs representative may be direct, in which case the customs representative shall act in the name of and on behalf of another person.

The present representation is direct.

I have read and agree to the terms and conditions.

Pay online

Refuse payment and return the package to sender

* As part of your order to the indicated shipper and considering the arrival of your shipment in European territory, you are liable for import tax and duty. The base for the tax is the goods value + transport costs.

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The present representation is direct.

In that context, CHRONOPOST as a customs representative, processes the customs formalities in the name and on behalf of the Customer (i.e. sign all customs declarations for import and export, carry out all the related acts, present the relevant documents and goods to the Customs Administration).

For the purpose of the present, the Customer, under **direct** representation, is solely responsible for the payment of :

- According to Article 5 of the Union Customs Code, of the **customs debt**, which the amount of import or export duties (and all related import taxes, i.e. VAT) calculated under the Customs and Tax legislation in force. The Customer will then be the actual consignee of the goods, and the sole debtor of the customs and tax debt, pursuant to Article 18 of the Customs Code of the Union ;
- **All penalties, late payment interests** notified by the administration and relating the customs debt as described above.

The representative is solely responsible for the offences and penalties committed directly by himself, outside the mandate provided by the Customer.

Proof of the authorization of the mandate given to CHRONOPOST is provided by the validation of the "Pay online" button.