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NOTE

From:	General Secretariat of the Council
To:	Working Party on Customs Union
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013 - Title IX - Presidency compromise text

Delegations will find enclosed the Presidency compromise text for Title IX of the UCC reform proposal. Changes to the Commission proposal (doc. ST 9596/23) are marked in **bold underline** and ~~striketrough~~.

*PL Presidency redrafting proposal regarding Title IX – to be discussed on CUG 29/04
(The amendments are presented in comparison to the Commission proposal COM(2023) 258 final)*

Title IX

TARIFE CLASSIFICATION, ORIGIN AND CUSTOMS VALUE OF GOODS

Chapter 1

Common Customs Tariff and tariff classification of goods

Article 145

Common Customs Tariff and customs surveillance

1. Import and export duty due shall be based on the Common Customs Tariff.

Other measures prescribed by Union provisions governing specific fields relating to trade in goods shall, where appropriate, be applied in accordance with the tariff classification of those goods.

2. The Common Customs Tariff shall comprise all of the following:
 - (a) the Combined Nomenclature of goods as laid down in Regulation (EEC) No 2658/87;
 - (b) any other nomenclature which is wholly or partly based on the Combined Nomenclature, or which provides for further subdivisions to it, and which is established by Union provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;

- (c) the conventional or normal autonomous customs duty applicable to goods covered by the Combined Nomenclature;
- (d) the preferential tariff measures contained in agreements which the Union has concluded with certain third countries or groups of third countries;
- (e) preferential tariff measures adopted unilaterally by the Union in respect of certain third countries or groups of third countries;
- (f) autonomous measures providing for a reduction in, or exemption from, customs duty on certain goods;
- (g) favourable tariff treatment specified for certain goods, by reason of their nature or end-use, in the framework of measures referred to under points (c) to (f) or (h);
- (h) other measures provided for by agricultural or commercial or other Union legislation that are based on the tariff classification of the goods, in particular, a provisional or definitive anti-dumping duty, countervailing duty or safeguard measure.

3. Where the goods concerned fulfil the conditions included in the measures laid down in paragraph 2, points (d) to (g), these measures may apply instead of those provided for in point (c) of that paragraph. Such measures may be applied retrospectively, provided that the time-limits and conditions laid down in the relevant measure or in this Regulation are complied with and that:

- (a) insofar as the measures laid down in points (d) and (e) are concerned, they provide for such retrospective application;
- (b) insofar as the measures laid down in point (d) are concerned, the third country or group of third countries also allow for such retrospective application.

4. Where application of the measures referred to in paragraph 2, points (d) to (g), or the exemption from measures referred to in point (h) thereof, is restricted to a certain volume of imports or exports, such application or exemption shall, in the case of tariff quotas, or other quotas, cease as soon as the specified volume of imports or exports is reached.

In the case of tariff ceilings such application shall cease by virtue of a legal act of the Union.

- [5. The customs authorities shall refuse the application of the simplified tariff for distance sales where they establish, based on relevant and objective data, that the distance sale of goods imported from third countries was intended for persons other than those referred to in Article 14(2)(a) VAT Directive.]
6. The Commission may subject to ~~customs~~ surveillance the release for free circulation, the export and the placement under certain special procedures of goods, for the purposes referred to in Article 31(4) **(b)**.
7. The Commission shall adopt, by means of implementing acts, the measures on the uniform management of the tariff and other quotas and the tariff and other ceilings referred to in paragraph 4, and on the management of the customs surveillance referred to in paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Article 146

Tariff classification of goods

1. For the application of the Common Customs Tariff, tariff classification of goods shall consist in the determination of one of the subheadings or further subdivisions of the Combined Nomenclature under which those goods are to be classified.
2. For the application of non-tariff measures, tariff classification of goods shall consist in the determination of one of the subheadings or further subdivisions of the Combined Nomenclature, or of any other nomenclature which is established by Union provisions and which is wholly or partly based on the Combined Nomenclature or which provides for further subdivisions to it, under which those goods are to be classified.
3. The subheading or further subdivision determined in accordance with paragraphs 1 and 2 shall be used for the purpose of applying the measures linked to that subheading.
4. The Commission may, by means of implementing acts, determine the tariff classification of goods in accordance with paragraphs 1 and 2.
Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

On duly justified imperative grounds of urgency related to the need to rapidly ensure the correct and uniform application of the Combined Nomenclature, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 262(5).

Chapter 2

Origin of goods

Article 147

Non-preferential origin

The rules for the determination of the non-preferential origin of goods in Articles 148 and 149 shall be used for applying the following:

- (a) the Common Customs Tariff, except for the measures referred to in Article 145(2), points (d) and (e);
- (b) measures, other than tariff measures, established by Union provisions governing specific fields relating to trade in goods; and
- (c) other Union measures relating to the origin of goods.

Article 148

Acquisition of non-preferential origin

1. Goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory.
2. Goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.

3. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by laying down the rules under which goods, whose determination of non-preferential origin is required for the purposes of applying the Union measures referred to in Article 147, are considered as wholly obtained in a single country or territory or to have undergone their last, substantial, economically justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture in a country or territory, in accordance with paragraphs 1 and 2 of this Article.

Article 149

Proof of non-preferential origin

1. Where the importer has indicated an origin of the goods pursuant to the customs legislation, the customs authorities may require **the importer** ~~a proof of~~ **to prove the** origin of the goods.
2. Where a proof of origin of goods is provided pursuant to the customs legislation or other Union legislation governing specific fields, the customs authorities may, in the event of reasonable doubt, require any additional evidence needed in order to ensure that the indication of origin complies with the rules laid down by the relevant Union legislation.
3. Where the exigencies of trade so require, a document proving origin may be issued in the Union in accordance with the rules of origin in force in the country or territory of destination or any other method identifying the country where the goods were wholly obtained or underwent their last substantial transformation.
- [4. Where the importer has opted to apply the simplified tariff treatment for distance sales as referred to in Article 156(2), the customs authorities shall not require the importer to prove the origin of the goods.]
5. The Commission shall adopt, by means of implementing acts, the procedural rules for the provision and verification of a proof of origin. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Preferential origin of goods

1. In order to benefit from the measures referred to in Article 145(2), points (d) ~~and~~ or (e), or from non-tariff preferential measures, goods shall comply with the rules on preferential origin referred to in paragraphs 2 to 5 of this Article.
2. In the case of goods benefiting from preferential measures contained in agreements, which the Union has concluded with certain third countries or with groups of such countries, the rules on preferential origin shall be laid down in those agreements.
3. ~~In the case of goods benefiting from preferential measures adopted unilaterally by the Union in respect of certain third countries or groups of such countries, other than those referred to in paragraph 5, the Commission shall adopt delegated acts in accordance with Article 261 to supplement this Regulation by laying down rules on preferential origin. Those rules shall be based either on the criterion that goods are wholly obtained or on the criterion that goods result from sufficient processing or working [moved to Article 150 paragraph 10a]~~
4. In the case of goods benefiting from preferential measures applicable in trade between the customs territory of the Union and Ceuta and Melilla, as contained in Protocol 2 to the 1985 Act of Accession, the rules on preferential origin shall be adopted in accordance with Article 9 of that Protocol.
5. In the case of goods benefiting from preferential measures contained in preferential arrangements in favour of the overseas countries and territories associated with the Union, the rules on preferential origin shall be adopted in accordance with Article 203 TFEU.
6. Upon its own initiative or at the request of a beneficiary country or territory, the Commission may, for certain goods, grant that country or territory a temporary derogation from the rules on preferential origin referred to in paragraph 3.

The temporary derogation shall be justified by one of the following reasons:

- (a) internal or external factors temporarily deprive the beneficiary country or territory of the ability to comply with the rules on preferential origin;

(b) the beneficiary country or territory requires time to prepare itself to comply with those rules.

7. A request for derogation shall be made to the Commission by the beneficiary country or territory concerned. The request shall state the reasons, as indicated in the second subparagraph **of paragraph 6**, why **the** derogation is required and shall contain **the** appropriate supporting documents.

8. The temporary derogation shall be limited to the duration of the effects of the internal or external factors giving rise to it or the length of time needed for the beneficiary country or territory to achieve compliance with the rules.

9. Where a derogation is granted, the beneficiary country or territory concerned shall comply with any requirements laid down as to information to be provided to the Commission concerning the use of the derogation and the management of the quantities for which the derogation is granted.

[10. Where the importer has opted to apply the simplified tariff treatment for distance sales, the importer may not benefit from the measures referred to in Article 145(2), points (d) and (e), or from non-tariff preferential measures.]

10a. In the case of goods benefiting from preferential measures adopted unilaterally by the Union in respect of certain third countries or groups of such countries, other than those referred to in paragraph 5, the Commission shall adopt delegated acts in accordance with Article 261 to supplement this Regulation by laying down rules on preferential origin. Those rules shall be based either on the criterion that goods are wholly obtained or on the criterion that goods result from sufficient processing or working.

11. The Commission shall adopt by means of implementing acts:

(a) the procedural rules on the preferential origin of goods for the purposes of the measures referred to in paragraph 1;

(b) a measure granting a beneficiary country or territory the temporary derogation referred to in paragraph 6.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Article 151

Determination of origin of specific goods

The Commission may, by means of implementing acts, adopt measures to determine the origin of specific goods in accordance with the rules of origin applicable to those goods. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

On imperative grounds of urgency relating to such measures, duly justified by the need to rapidly ensure the correct and uniform application of rules of origin, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 262(5).

Chapter 3

Value of goods for customs purposes

Article 152

Scope

The customs value of goods, for the purposes of applying the Common Customs Tariff and non-tariff measures laid down by Union provisions governing specific fields relating to trade in goods, shall be determined in accordance with Articles 153 and 157.

Article 153

Method of customs valuation based on the transaction value

1. The primary basis for the customs value of goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Union, adjusted in accordance with Articles 154 and 155.
2. The price actually paid or payable shall be the total payment made or to be made by the buyer to the seller or by the buyer to a third party for the benefit of the seller for the imported goods and include all payments made or to be made as a condition of sale of the imported goods.

3. The transaction value shall apply provided that all of the following conditions are fulfilled:
- (a) there are no restrictions as to the disposal or use of the goods by the buyer, other than any of the following:
 - (i) restrictions imposed or required by a law or by the public authorities in the Union;
 - (ii) limitations of the geographical area in which the goods may be resold;
 - (iii) restrictions which do not substantially affect the customs value of the goods;
 - (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
 - (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made;
 - (d) the buyer and seller are not related or the relationship did not influence the price.
4. The Commission shall specify, by means of implementing acts, the procedural rules for determining the customs value in accordance with paragraphs 1 and 2, including those for adjusting the price actually paid or payable, and for the application of the conditions referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Article 153a

Transaction value for goods purchased in distance sales

- 1. The transaction value for goods purchased in distance sale as referred to in Article 5(47) shall be determined on the basis of that sale.**
- 2. Where the goods are purchased in distance sale not before they were brought into the customs territory of the Union but while placed under the warehousing customs procedure as referred to in Article 122a, the transaction value shall be determined on the basis of that sale.**

Elements of the transaction value

1. In determining the customs value under Article 153, the price actually paid or payable for the imported goods shall be supplemented by:
 - (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one, for customs purposes, with the goods in question; and
 - (iii) the cost of packing, whether for labour or materials;
 - (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
 - (i) materials, components, parts and similar items incorporated into the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods; and
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Union and necessary for the production of the imported goods;
 - (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and
 - (e) the following costs up to the place where goods are brought into the customs territory of the Union:
 - (i) the cost of transport and insurance of the imported goods; and
 - (ii) loading, **unloading** and handling charges associated with the transport of the imported goods.
2. Additions to the price actually paid or payable, pursuant to paragraph 1, shall be made only on the basis of objective and quantifiable data.
3. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.
4. The Commission shall specify, by means of implementing acts, the procedural rules for determining the customs value in accordance with this Article, including those for adjusting the price actually paid or payable. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Article 155

Elements not to be included in the customs value

1. In determining the customs value under Article 153, none of the following shall be included:
- (a) the cost of transport of the imported goods after their entry into the customs territory of the Union;
 - (b) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after the entry into the customs territory of the Union of the imported goods such as industrial plants, machinery or equipment;
 - (c) charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of the imported goods, irrespective of whether the finance is provided by the seller or another person, provided that the financing arrangement has

been made in writing and, where required, the buyer can demonstrate that the following conditions are fulfilled:

- (i) such goods are actually sold at the price declared as the price actually paid or payable;
- (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided;
- (d) charges for the right to reproduce the imported goods in the Union;
- (da)** buying commissions;
- (e) import duties or other charges payable in the Union by reason of the import or sale of the goods;
- (f) notwithstanding Article 154(1), point ~~(e)~~**(c)**, payments made by the buyer for the right to distribute or resell the imported goods, if such payments are not a condition of the sale for export to the Union of the goods.

2. The Commission shall specify, by means of implementing acts, the procedural rules for determining the customs value in accordance with this Article, including those for adjusting the price actually paid or payable. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Article 156

Simplifications

1. The customs authorities may, upon application, authorise that the following amounts be determined on the basis of specific criteria, where they are not quantifiable on the date on which the customs declaration is accepted **or on the date on which the data must be available to the customs authorities:**
 - (a) amounts which are to be included in the customs value in accordance with Article 153(2); and
 - (b) the amounts referred to in Articles 154 and 155.

- [2. Where the importer has opted to apply the simplified tariff treatment for distance sales, Article 155(1), point (a), shall not apply and both the costs of transport of the imported goods up to the place where goods are brought into the customs territory of the Union and the costs of transport after their entry into that territory, shall be included in the customs value.]
3. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the conditions for granting the authorisation referred to in paragraph 1.

Article 157

Secondary methods of customs valuation

1. Where the customs value of goods cannot be determined under Article 153, it shall be determined by proceeding sequentially from points (a) to (d) of paragraph 2, until the first point under which the customs value of goods can be determined.

The order of application of points (c) and (d) of paragraph 2 shall be reversed if the importer ~~or the exporter~~ or, where applicable, the declarant so requests.

2. The customs value, pursuant to paragraph 1, shall be:
- (a) the transaction value of identical goods sold for export to the customs territory of the Union and exported at or about the same time as the goods being valued;
 - (b) the transaction value of similar goods sold for export to the customs territory of the Union and exported at or about the same time as the goods being valued;
 - (c) the value based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the customs territory of the Union in the greatest aggregate quantity to persons not related to the sellers; or
 - (d) the computed value, consisting of the sum of:
 - (i) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - (ii) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of export for export to the Union;

(iii) the cost or value of the elements referred to in Article 154(1), point (e).

3. Where the customs value cannot be determined under paragraph 1, it shall be determined on the basis of data available in the customs territory of the Union, using reasonable means consistent with the principles and general provisions of all of the following:

- (a) the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade;
- (b) Article VII of the General Agreement on Tariffs and Trade;
- (c) this Chapter.

3a. [In fully justified cases], Where the deemed importer does not dispel reasonable doubts that the declared transaction value represents the total price actually paid or payable as referred to in Article 153(1), customs authorities may apply [directly] the secondary method of customs valuation they consider appropriate, unless the deemed importer provides for the necessary information, within a reasonable time limit, to justify that the customs value may be determined in the manner prescribed in paragraph 1.

Subparagraph 1 shall apply only in respect of distance sales.

4. The Commission shall specify, by means of implementing acts, **[cases to which paragraph 3a refers to and]**, the procedural rules for determining the customs value referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Determination of the value of goods in specific situations

- 1.** The Commission may, by means of implementing acts, adopt measures establishing the appropriate method of customs valuation or criteria to be used for determining the customs value of goods in specific situations, **including distance sales.** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).
- 2.** On imperative grounds of urgency relating to such measures, duly justified by the need to rapidly ensure the correct and uniform application of rules for the determination of the customs value of goods, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 262(5).