

Montreuil, 29 January 2020

Memorandum to operators

Object : Free circulation of EU and third country reusable packaging
Returned-goods and temporary admission procedure

Ref. : Note aux opérateurs 20000031 du 29 janvier 2020 sur la circulation des emballages
communautaires et tiers réutilisables.

Encl. : Model of annex 71-01

This document is a courtesy translation of the official French note on the subject which is indicated in reference.

Please find below the reporting requirements and conditions for granting benefit of temporary admission and returned-goods regimes for reusable EU and third-country packaging.

These requirements apply only to packaging bearing indelible and non-movable markings, identifying a person established either outside the customs territory of the Union or in the EU, which is the most frequent occurrence.

Glossary and terms of use:

- The term "packaging" refers to external and interior containers, packing and supports, excluding transport equipment - notably pallets and containerized cargo - and transport accessory equipment.
- The general rule 5.b for the interpretation of the combined nomenclature, determines that [...] "packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use."
- EU regulation does not provide for a free circulation agreement, either for temporary admission or for return-goods.

1. Non-EU packaging bearing indelible and non-removable markings identifying a person established outside the EU

1.1 Requirements for granting temporary admission (Article 165 and 228 of the CDR).

The benefit of the temporary admission regime is always subject to authorization.

The request for authorization is submitted in SOPRANO, via an electronic declaration (DELTA) or by verbal statement.

With regard to the verbal declaration, the request for authorization and the granting of the regime are formalized by filing an accompanying document (Annex 71-01 of the Delegate Regulation (EU) 2015/2446 of 28 July 2015), with the relevant customs office which is the entry office of the Union's customs territory.

The customs authorities place their visas on this document and determine the period of stay, thus granting the benefit of the regime.

1.2. Reporting formalities (Article 136 CDR)

Packaging that are imported empty and are intended to be re-exported full, bearing indelible and non-removable markings, identifying a person established outside the Union's customs territory, may be placed under the regime of temporary admission by verbal declaration.

1.2.1 Application to import flows:

- Packaging imported filled: the request for Temporary Admission (AT) and the verbal declaration are materialized, on the declaration of the goods transported, by the inscription in box 31 of the DAU (SAD) - Parcels and designation of goods - of the following statement : « AT - Packaging - identification number (part number) and quantity ». As a result, the temporary admission regime starts with the date of the customs clearance authorisation for a period of 24 months maximum.

Note that the value of the packaging should not be included in the declared value for the goods. Indeed, to the extent that imported packaging suspended from import duties remains the property of a third-party operator and is intended for re-export outside the EU, then under article 70-1 of the UCC, the value of these packages should not be part of the customs assessment.

Therefore, the above-mentioned statement is essential to justify, in the event of a customs control, that the packaging benefits from the Temporary Admission special procedure.

This data is required on the declaration of goods for information and simplification purposes.

Therefore, this measure does not contradict the provisions of Article 163.2.c of the CDR, which provide that in the case of using the centralized customs clearance, it cannot be requested for a special procedure via customs declaration. The applicability of the centralised clearance will only apply to goods transported and not to packaging.

- Packaging imported empty: they are reported verbally. The accompanying document (Annex 71-01) must be presented to customs authorities for visa.

1.2.2 Application to Re-export flows:

- Packaging re-exported filled: the verbal statement materializes by the inscription, in box 31 of the declaration relating to the goods, of the following statement: "AT - Packaging - identification numbers (part number) and quantity." In order to prove re-export, the entry documents must be attached (import declaration or accompanying document);

- Packaging re-exported empty: these will necessarily be filled packages previously imported; at the time of re-export, no customs formalities are required.

2. Union packaging with indelible and non-removable markings identifying an EU-based person

Union packaging are those purchased in the EU or those imported and released into free circulation.

2.1. Terms of exemption from customs duties for returned-goods (Article 203 of the UCC and 253 of the implementing regulation)

2.1.1 Information to be provided in order to benefit from the return-goods system:

For packaging bearing indelible and non-removable markings identifying an EU-based person, the benefit of the return-good regime is granted without the operator having to provide additional information, provided that the operator:

- holds at the disposal of the customs service evidence of the EU status of the packaging (commercial accounting, invoices, declaration for release, tracking system...);
- Holds a return-goods regime authorization.

2.1.2 Issuance of a Return-goods Regime Authorization:

Article 203 of the UCC makes the exemption from customs duties conditional to "the request of the person concerned". Therefore, operators with regular flows of Union packaging must apply to the Customs regional directorate of the location of their establishment, if they are based in France, or the place where their representative is located.

Attention called: In the case of the Large Accounts, the return-goods regime authorizations will be issued by the centers of expertise (Toulouse-Blagnac, Rouen-port, L'Isle-d'Abeau or Nantes Atlantique) for the operators whose declarative flows they manage, until the Large Accounts Department (Service Grands Comptes – SGC) regains the legal competence to issue these authorizations.

This request must specify:

- the flows concerned;
- the customs offices of import and export;
- the list (models and references) of the packaging used;
- an extract from the accounting relating to packaging, if such accounting is kept;
- photographs of each type of packaging allowing verification of the presence of an indelible and non-removable marking identifying a person established in the EU.

An authorization will be issued to them. This authorization is only national in scope and therefore cannot cover offices located in other Member States.

2.2 Terms and conditions of VAT exemption

Pursuant to Article 291 III 1° of the General Tax Code, returned goods are exempt from VAT only if the exporter and the importer are the same person.

Otherwise, VAT is payable in accordance with Article 291 III 1° of the General Tax Code and a customs declaration must be filed so that the VAT can be liquidated.

This condition is considered to be met when the packaging is not subject to a transfer of ownership.

Consequently, packaging bearing indelible and non-removable marks allowing the identification, upon export and reimport, of the same owner established in the EU may benefit from VAT exemption.

2.3 Reporting formalities (Articles 135.2, 136.1.I and 137.2 of the delegated regulation)

By analogy with temporary admission (cf. point 1.2), the verbal declaration is authorized for the export and import of packaging bearing indelible and non-removable marks identifying a person established in the EU, without any distinction as to whether it is full or empty.

The verbal declaration materializes as follows:

- Packaging filled: the verbal declaration is materialized by the mention, on the declaration relating to the contained goods, of the quantity and the identification numbers (part number) of the packages.
- Packaging empty: no particular declarative formality.

My services remain at your disposal for any further information.

**Le chef du bureau
Politique du dédouanement,**

Claude Le Coz