Commission Implementing Regulation (EU) 2019/1131 of 2 July 2019 establishing a customs tool in order to implement Article 14a of Regulation (EU) 2016/1036 of the European Parliament and of the Council and Article 24a of Regulation (EU) 2016/1037 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1131

of 2 July 2019

establishing a customs tool in order to implement Article 14a of Regulation (EU) 2016/1036 of the European Parliament and of the Council and Article 24a of Regulation (EU) 2016/1037 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)], and in particular Article 14a(1) thereof,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union[(2)], and in particular Article 24a(1) thereof,

Whereas:

(1) Regulation (EU) 2016/1036 and Regulation (EU) 2016/1037 make it possible to apply and collect anti-dumping and/or countervailing duty on certain goods in the continental shelf of a Member State or the exclusive economic zone declared by a Member State pursuant to the United Nations Convention on the Law of the Sea[(3)].

(2) If the product concerned is brought to an artificial island, a fixed or floating installation or any other structure in the continental shelf or in the exclusive economic zone of a Member State of the Union from the customs territory of the Union, Regulation (EU) No 952/2013 of the European Parliament and of the Council[(4)] requires in that case that a re-export declaration, a re-export notification or an exit summary declaration be used to declare such product before its departure. To ensure that the information necessary to determine whether the payment of anti-dumping and/or countervailing duty is due is available to the customs authorities or to fulfil the registration and reporting obligations under Article 14(5), (5a) and (6) of Regulation (EU) 2016/1036 and Article 24(5), (5a) and (6) of Regulation (EU) 2016/1037, the recipient should be required to lodge a receipt declaration at the competent customs authority of the Member State where the re-export declaration was accepted or where the re-export notification or the exit summary declaration was registered within 30 days of the receipt of the product concerned on an artificial island, a fixed or floating installation or any other structure in the continental shelf or in the exclusive economic zone.

(3) If the product concerned is brought to an artificial island, a fixed or floating installation or any other structure in the continental shelf or in the exclusive economic zone of a Member State of the Union directly from outside the customs territory of the Union, it is not possible to make use of the instruments provided for in Regulation (EU) No 952/2013. To ensure that the information necessary to determine whether the payment of anti-dumping and/or countervailing duty is due is available to the customs authorities or to fulfil the registration and reporting obligations under Article 14(5), (5a) and (6) of Regulation (EU) 2016/1036 and Article 24(5), (5a) and (6) of Regulation (EU) 2016/1037, the product concerned should be declared by means of a receipt declaration lodged by the recipient within 30 days of the receipt of the product concerned on an artificial island, a fixed or floating installation or any other structure in the continental shelf or in the exclusive economic zone. As the Member State to which the continental shelf or exclusive economic zone belongs is best placed to carry out controls, the declaration should be lodged at the competent customs authority of that Member State.

(4) In order to simplify the controls to be carried out by the customs authorities under this Regulation, the concept of the debtor should as a general rule be limited to the holders of licences permitting commercial operation in the continental shelf and exclusive economic zone of the Member States who receive the products concerned in an artificial island, a fixed or floating installation or any other structure in that continental shelf or that exclusive economic zone, regardless of the place from which the product concerned is brought. However, in specific situations, persons other than holders of licences may also be debtors.

(5) With regard to cases where the product concerned is placed under the inward processing procedure prior to being delivered to an artificial island, a fixed or floating installation or any other structure in the continental shelf or in the exclusive economic zone of a Member State of the Union, special rule is necessary to avoid possible circumvention of anti-dumping and/or countervailing duty.

(6) In order to allow for the effective operation of the framework set out in this Regulation, the relevant procedures already laid down in Regulation (EU) No 952/2013 as regards the calculation, notification, recovery, repayment, remission and extinguishment of the customs debt and the provision of a guarantee should apply insofar as they are relevant under this Regulation.

(7) As the provisions on customs control contained in Regulation (EU) No 952/2013 do not apply outside the customs territory of the Union, it is necessary to establish specific rules as regards customs controls in this Regulation.

(8) In order to give customs authorities sufficient time to prepare for the processing of receipt declarations, the application of the provisions of this Regulation should be deferred.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 15(1) of Regulation (EU) 2016/1036 and Article 25(1) of Regulation (EU) 2016/1037,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the conditions for the levying of anti-dumping and/or countervailing duty on products brought to an artificial island, a fixed or floating installation or any other structure in the continental shelf or the exclusive economic zone of a Member State, as well as procedures relating to the notification and declaration of such products and the payment of such duty, where those products are the subject of any of the following:

(a) a notice of initiation of an anti-dumping or anti-subsidy investigation;

(b) a Commission Implementing Regulation making imports subject to registration;

(c) a Commission Implementing Regulation imposing a provisional or definitive anti-dumping or countervailing duty.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘customs authorities’ means the customs administrations of the Member States responsible for applying this Regulation and the customs legislation as defined in Article 5(2) of Regulation (EU) No 952/2013;

(2) ‘continental shelf’ means the continental shelf as defined in the United Nations Convention on the Law of the Sea;

(3) ‘exclusive economic zone’ means the exclusive economic zone as defined in the United Nations Convention on the Law of the Sea and which has been declared as exclusive economic zone by a Member State pursuant to the United Nations Convention on the Law of the Sea;

(4) ‘product concerned’ means goods that are the subject of any of the following:

  (a) a notice of initiation of an anti-dumping or anti-subsidy investigation;

  (b) a Commission Implementing Regulation making imports subject to registration;

  (c) a Commission Implementing Regulation imposing a provisional or definitive anti-dumping or countervailing duty;

(5) ‘receipt declaration’ means the act whereby the recipient indicates, in the prescribed form and manner, the receipt of the products concerned on an artificial island, a fixed or floating installation or any other structure in the continental shelf or in the exclusive economic zone of a Member State containing data elements which are needed for the collection of the payable amount of antidumping duty and/or countervailing duty or for reporting and/or registration in accordance with an act referred to in point(a) or (b) of Article 1;

(6) 'debt' means the obligation of a person to pay the amount of anti-dumping and/or countervailing duty which applies to the product concerned;

(7) 'recipient' means the person who is the holder of a licence or an authorisation to carry out business activities in the continental shelf or in the exclusive economic zone of a Member State and receives or has arranged for the receipt of the product concerned on an artificial island, a fixed or floating installation or any other structure in that continental shelf or in that exclusive economic zone;

(8) 'debtor' means any person liable for a debt.

Article 3

Lodging of a receipt declaration

1 The receipt of a product concerned on an artificial island, a fixed or floating installation or any other structure in the continental shelf or in the exclusive economic zone of a Member State shall be declared by the recipient by means of a receipt declaration.

2 The receipt declaration shall be lodged without delay and at the latest within 30 days of receipt of the product concerned using electronic data-processing techniques at the following customs authorities:

a where the product concerned is brought from the customs territory of the Union, at the customs authority of the Member State where the re-export declaration is accepted or the re-export notification or the exit summary declaration is registered;

b where the product concerned is not brought from the customs territory of the Union, at the customs authority of the Member State to which the continental shelf or exclusive economic zone belongs.

3 The receipt declaration shall contain the data elements set out in Part I of the Annex and shall be accompanied by the documents supporting those data elements.

4 The customs authority may allow the receipt declaration to be lodged by means other than electronic data-processing techniques. In that case, the recipient shall lodge the paper form set out in Part II of the Annex in an original and one copy together with the documents supporting the data elements provided in the form. The original shall be kept by the customs authority. The copy shall be returned by the customs authority to the recipient after it has registered the receipt declaration and acknowledged its receipt.

5 Member States shall use the information in the receipt declaration to fulfil their registration obligations under Article 14(5) and (5a) of Regulation (EU) 2016/1036 and Article 24(5) and (5a) of Regulation (EU) 2016/1037 as well as their reporting obligations to the Commission under Article 14(6) of Council Regulation (EU) 2016/1036 and Article 24(6) of Council Regulation (EU) 2016/1037.

Article 4

Debt

1 The following shall give rise to a debt:

a lodging a re-export declaration, a re-export notification or an exit summary declaration for the product concerned, including a processed product resulting from the product concerned under the inward processing procedure as referred to in Regulation (EU) No

952/2013, to be brought to an artificial island, a fixed or floating installation or any other structure in the continental shelf or the exclusive economic zone of a Member State from the customs territory of the Union;

b the receipt of the product concerned brought from outside the customs territory of the Union at an artificial island, a fixed or floating installation or any other structure in the continental shelf or the exclusive economic zone of a Member State.

2 In the cases referred to in paragraph 1(a), the debt shall be incurred at the time of acceptance of the re-export declaration or of the registration of the re-export notification or exit summary declaration.

In the cases referred to in paragraph 1(b), the debt shall be incurred at the time of receipt of the products concerned.

3 The debtor shall be the recipient.

Where the re-export declaration, the re-export notification, the exit summary declaration referred to in paragraph 1(a) or the receipt declaration referred to in paragraph 4 is drawn up on the basis of information which leads to all or part of the anti-dumping and/or countervailing duty not being collected, the person who provided the information required to draw up the declaration or notification and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

Where several persons are liable for payment of the amount of anti-dumping duty and/or countervailing duty corresponding to one debt, they shall be jointly and severally liable for payment of that amount.

4 The recipient shall, without delay and at the latest within 30 days of receipt of the product concerned, lodge a receipt declaration. Paragraphs 2, 3 and 4 of Article 3 shall apply.

5 For the purposes of the application of paragraph 1(a), the re-export declaration, re-export notification or exit summary declaration shall provide the information about the continental shelf or exclusive economic zone of the Member State to which the product concerned is to be brought by using the relevant additional reference code as defined in data element 2/3 in point 2 of Title II of Annex B of Commission Implementing Regulation (EU) 2015/2447[(5)].

6 A debt shall be incurred at the place where the receipt declaration is lodged or, where it has not been lodged in accordance with Article 3(2) or Article 4(4), at the place it ought to have been lodged.

Article 5

Calculation of the amount of anti-dumping and/or countervailing duty

1 The amount of anti-dumping and/or countervailing duty payable shall be determined mutatis mutandis on the basis of those rules of Regulation (EU) No 952/2013 for the calculation of import duty payable which were applicable to the product concerned at the time at which the debt in respect of the product concerned was incurred.

2 Where a product concerned which has been placed under the inward processing procedure as referred to in Regulation (EU) No 952/2013, the calculation of the debt concerning the processed products resulting from the product concerned which are re-exported with destination continental shelf or exclusive economic zone of a Member State shall be determined on the basis of the tariff classification, customs value, quantity, nature and origin of the product