



How to control the movements of EU raw tobacco

EMCS or ELTI proposals ?

Carlo Sacchetto - ELTI Conference – WTE Sofia May 18, 2022



The ECJ Judgement on Eko-Tabak case – where it all began

The ECJ Judgment on Eko Tabak case, on April 6, 2017, finds that **the products seized** were excisable as smoking tobacco under the Tobacco Excise Directive (TED), it ruled that the Directive *“must be interpreted as meaning that:*

1. *dried, flat, irregular, partly stripped leaf tobacco and/or parts thereof which have undergone primary drying and controlled dampening, which contain glycerine and*
2. *which are capable of being smoked after simple processing by means of crushing or hand-cutting, fall within the definition of ‘smoking tobacco’ for the purpose of those provisions.”*

But the preamble (8-1) of the ECJ Judgement states that:

3. *“Those products were, in their entirety, intended for sale to the final consumer.”*

- For countless decades loose processed but non manufactured raw tobacco was freely shipped intra-EU never being considered excisable goods by the MS fiscal Authorities
- Certain MS unduly considered the ECJ Judgement to include in the scope of the TED also raw tobacco as an excisable good, performed several **seizures of raw tobacco** shipped to legal manufactures' tax warehouses, some also led to millionaire **criminal proceedings** for tax evasion against first processors
- This situation created a disruption of the EU single market and the free movement of goods, manufacturers stopped intra-EU shipments, especially by land, impacting on the activity of EU first processors and therefore of growers, paradoxically **advantaging non-EU growers and first processors** (outside the excise system)
- The issue generated a chaos where every MS took different approaches and solutions, causing total uncertainty for operators
- Currently the issues is under scrutiny by the European commission under the revision of the TED

ECOFIN conclusions of June 2, 2022
concerning the structure and rates of excise duty applied to manufactured tobacco

10. *UNDERLINES that the illegal trade in 'bulk' tobacco is on the rise and ACKNOWLEDGES:*

- *the need for a system to control the movement of raw tobacco, and that*
- *the risks of diversion to the illegal circuit should be addressed at EU level by establishing a common definition of raw tobacco and*
- *appropriate control rules, with a clear assessment and understanding of the costs and benefits of increased control and monitoring, taking into account the relevant practices introduced by Member States in this area and*
- *avoiding risks of double taxation*

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12. *MAINTAINS the view that definitions of certain manufactured tobacco products in EU legislation on excise duties should be improved, as the presence of some subjective criteria in these definitions results in legal uncertainties that need to be addressed. In this context, definitions based on the classification for customs purposes in the Combined Nomenclature could be considered. Where necessary, new product categories as well as a definition of raw tobacco should be added to the Directive 2011/64/EU [TPD];*

ELTI and its members Unitab and Fetratab:

- Fully share the EU Council of Ministers of Finance Conclusions of June 2, 2020
- Support the EU Commission's commitment to address illicit trade in tobacco and the significant and growing issue of clandestine tobacco manufacturing in the EU
- Witness that the raw tobacco seized by the police forces across EU is mainly (if not exclusively) coming from third countries
- Witness that not all MS are facing the same issues, and that some are doing better than others, by establishing appropriate policies
- Believe that there is a strong need to harmonize the EU regulations in order to keep a real EU Single Market and provide certainties to legitimate operators

ELTI strongly believes necessary to control raw tobacco movements in order to tackle the illicit operations and trade, and is ready to support the EU Institutions, to avoid frauds which badly impacts on multiple aspects, among others:

- Finance organized criminality
- Deploys MS Government fiscal revenues
- Put at an increased risk the final consumers' health for the complete lack of sanitary controls on raw materials and processes
- Doesn't respect the prohibition of sale to minors
- Harms the activity of the legal operators of the EU raw tobacco supply chain, namely the growers, the processors and their waged workers

The available options in the framework of the Tobacco Excise Directive revision

1. Extend to raw tobacco EMCS – EU Excise Movement and Control System
2. ELTI 3 steps proposal

Setting an EU Common definition of raw tobacco

The term “**raw tobacco**” is currently used both to refer to:

- “**green raw tobacco**” which is an agricultural product, the living or harvested tobacco plant or part of it, mainly the leaves, even dried (cured)

and

- “**processed raw tobacco**” is the result of the first and second processing of the cured tobacco leaves and includes also tobacco refuses (remnants of leaf processing)

Putting raw tobacco, in any form, under EMCS would mean that

- Raw tobacco, in any form/stage, would become a fiscal good and operators must treat it likewise:
 - Growers must establish bonded fiscal warehouses/accountability and be deemed (criminally) responsible in case of damage/loss of product (humidity changes?), even by natural means (fire, flood, etc.). The average size of a tobacco farm in the EU is <2 ha in some MS is <0,8 ha
 - Processors must do the same at all authorized facilities/delivery stations
- There will be extreme and disproportionate administrative burden and costs for the loyal operators
- Same burden and costs will impact on PAs
- Extending the EMCS to raw tobacco would only assist the PAs in identifying legal shippings, but not to address illicit trade, the system will be ineffective because it may impact only registered/legitimate operators of the raw tobacco supply chain while the illicit operators will never emerge to be put under control, being so even more advantaged than today

ELTI 3 steps proposal to monitor the movements of raw tobacco effectively and efficiently in the EU:

1. green raw tobacco: from growers to first purchasers (processors), based on cultivation contracts rules, controls and sanctions, under EU umbrella rules: mandatory registration by the PA of all legitimate operators = system in force until crop 2009 (raw tobacco CMO) and reinstated in some MS like Italy, Poland, Spain, etc.
2. processed but not manufactured raw tobacco: from first processors to manufacturers (including second processors and merchants flows) through a system based on the registration by the PAs of all legally authorized operators and pre-authorization of all shipments by the same PAs through an electronic system (block-chained 2D code) managed by a third-party operator sharing info only with the COM and MS PAs (costs will be irrelevant, operators may be charged)
3. ONLY manufactured tobacco products should remain under the current EMCS

First processing outputs (CN code 24.01.XXXX) – setting a definition:

- **Processed whole leaves** (wrapper leaves): unstemmed/unstripped whole leaves (CN code 24.01.10XX) stabilized for storage and further manufacturing (cigars/cigarillos wrappers)
- **Strips**: threshed tobacco leaves lamina from partly or wholly stemmed/stripped leaves (CN code 24.01.20XX). Lamina particles of irregular shape, prevalent size $> \frac{1}{2}$ square inch. Portion below $\frac{1}{8}$ square inches $< 10\%$. Residual content of stems shall $< 5\%$
- **Tobacco refuses** (CN code 24.01.3000):
 - **Scraps**: threshed tobacco leaves lamina from partly or wholly stemmed/stripped leaves, not regular shaped, with portion below $\frac{1}{8}$ square inch $> 60\%$. Absence of residual stems
 - **Fines**: same as Scraps not regular shape, with portion $< \frac{1}{16}$ of square inch $> 60\%$. Absence of stems
 - **Dust**: powder from tobacco leaves lamina, generated during first processing/manufacturing activity containing residual portion of silicates
 - **Stems**: naked broken tobacco leaves stems/ribs of various size. Absence of lamina (apart small particles of lamina attached to the stems/ribs), presence of some tobacco dust as remnant of processing activity
 - **Winnows**: particles of stems as remnants of the manufacturing activity, usually mixed with tobacco fines

Second processing outputs (of processed whole leaves, strips and/or refuses) – setting a definition:

- **Reconstituted tobacco** (CN code 24.03.9100): homogenized raw tobacco based semi-finished product obtained from the secondary processing of tobacco whole leaves, strips and/or refuses, added with natural binding agents, eventually humectants and flavorings, usually in a homogenous form, packed in strips, flakes (regular or irregular) or in sheets bobbins
- **Expanded shredded stems**: raw tobacco semi-finished product obtained from the secondary processing of dried stems, to change their woody consistency into soft flakes

ELTI Proposals for new TED “other smoking tobacco” definitions: “*Draw the border*”

Article 5

For the purposes of this Directive smoking tobacco shall mean:

Tobacco which has been cut or otherwise split, twisted or pressed into blocks and is capable of being smoked without further industrial processing and which is put up for retail sale;

Tobacco refuse put up for retail sale which does not fall under Article 3 [cigarettes] and Article 4(1) [cigars/cigarillos] and which can be smoked. For the purpose of this Article, tobacco refuse shall be deemed to be remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products.

Article 5-bis NEW

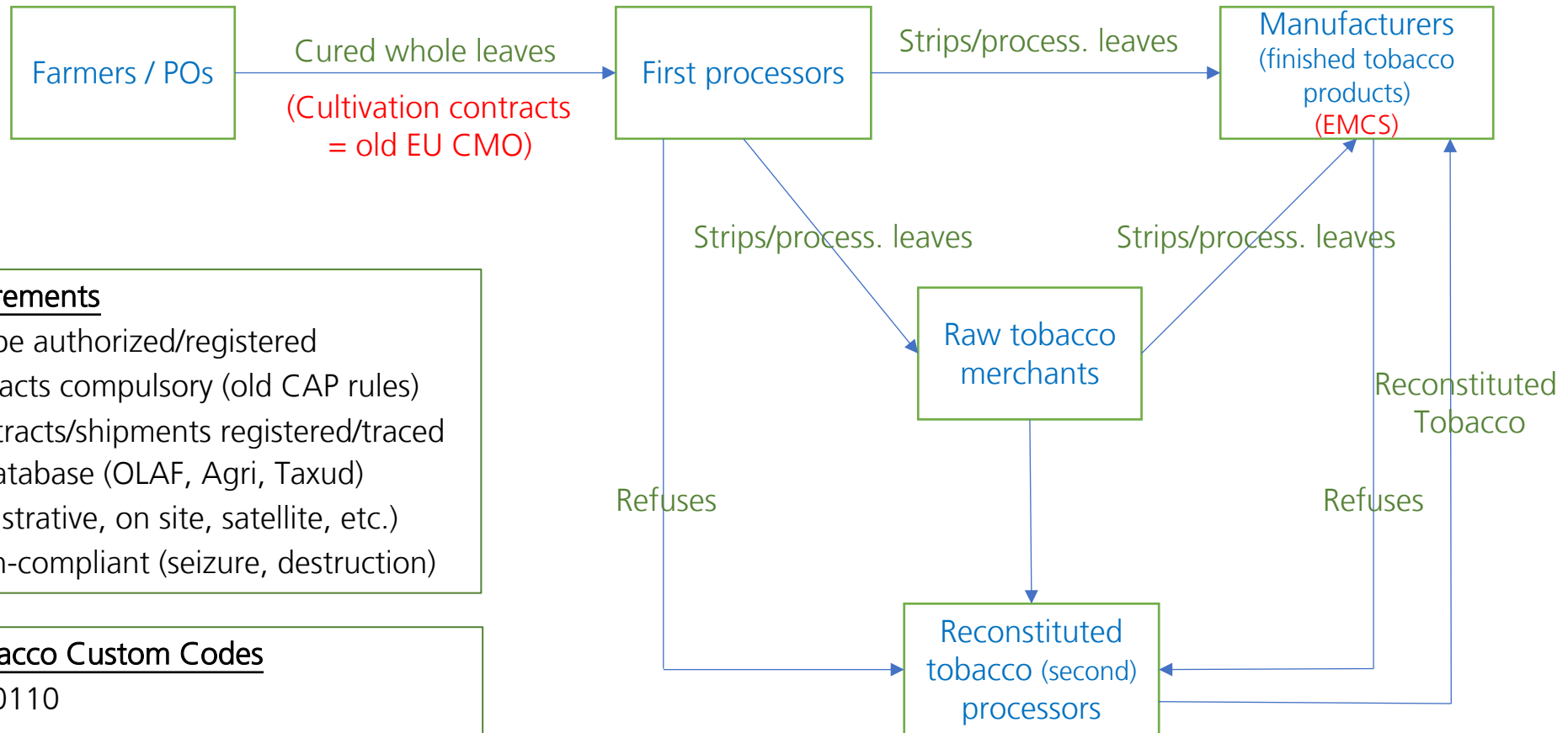
For the purposes of this Directive put up for retail sale shall mean a product which is packaged in individual packs, according to the definition provided in Chapter II of the Directive 2014/40/EU [TPD], and weighting, in any case, less than 5 kgs each.

For the purpose of this Directive raw tobacco packaged in a loose/bulk form in containers of any kind of at least 80 kgs (15 kgs for raw oriental tobacco alone) each shall not be considered excisable.

Article 5-ter NEW

All movements of raw processed but not manufactured tobacco, including tobacco refuses, reconstituted tobacco and expanded tobacco stems, must be performed following the 2D code scheme ...

EU raw tobacco marketing flows control scheme



Control system requirements

1. All operators to be authorized/registered
2. Cultivation contracts compulsory (old CAP rules)
3. Commercial contracts/shipments registered/traced
4. EU centralized database (OLAF, Agri, Taxud)
5. Controls (Administrative, on site, satellite, etc.)
6. Sanctions on non-compliant (seizure, destruction)

Unmanufactured tobacco Custom Codes


Whole leaves: HS 240110

Strips: HS 240120

Refuses: HS 240130

Reconstituted Tobacco: HS 240391

(2D code electronic pre-authorization monitoring system)



Thank you
for your
attention

ELTI CONFERENCE

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