

EU customs law - common issues import & export

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This presentation simplifies some issues for easier comprehension and can therefore not replace legal analysis.

Overview

1. Customs/fiscal territory
2. Rights and obligations
3. Placing goods under a customs procedure
4. Centralised clearance
5. Authorised economic operator (AEO)
6. Questions and answers

1. Customs/fiscal territory

- EU customs legislation applies only in the EU customs territory which is the territory of the 28 EU Member States
 - to which certain territories are added (e.g. Monaco), and
 - from which certain territories are excluded (e.g. the French overseas territories)
- EU fiscal legislation applies only in the fiscal territories of the Member States which are the national parts of the EU customs territory from which certain territories are excluded (e.g. the Canary Islands)

2. Rights and obligations – economic operators (1)

The rights and obligations of economic operators and the EU customs authorities are mainly laid down in the Customs Code and its implementing provisions:

Economic operators have, inter alia, the following obligations:

- to notify, in advance, the arrival of the goods to the customs office of entry
- to lodge a customs declaration for goods brought into the EU customs territory and for goods to be brought out of this territory (in most cases, the declarant must be established in the EU; consequently a foreign exporter must use a representative)
- to pay import duties in cases of release for free circulation or irregularities concerning goods for which the duties have been suspended

2. Rights and obligations - economic operators (2)

- to keep appropriate records of all import/export operations
- to make available to customs the required records and documents
- to ensure compliance with customs, tax, trade, agricultural, health and environmental legislation
- to lodge a guarantee where goods are released for free circulation with deferred payment or where duty liability is suspended

2. Rights and obligations – economic operators (3)

Economic operators have, inter alia, the following rights:

- to choose the customs procedure for the goods concerned
- to request a decision (e.g. for binding tariff information, using a specific customs procedure, AEO status or a simplified procedure)
- to use a representative in dealing with the customs authorities
 - direct representation: acting in the name of the person represented
 - indirect representation: acting in one's own name but on behalf of someone else (the indirect representative is also liable for duties)

Either type of representation and the person represented must be made known to the customs authorities

- to lodge an appeal
- to discharge one customs procedure by another (e.g. customs warehousing by release for free circulation or re-exportation)
- to transfer dutiable goods to another place or another person

2. Rights and obligations – customs authorities (1)

The customs authorities have, inter alia, the following obligations:

- to accept a customs declaration which fulfils the formal requirements
- to release the goods for the procedure concerned where all the material requirements are fulfilled (this may include the need for prior authorisation)
- to grant an authorisation, or to take any other decision requested, where all the requirements are fulfilled
- to ensure compliance of economic operators, e.g. by performing controls on goods, supporting documents or records, or by imposing penalties
- not to disclose confidential information to other persons
- to apply duty relief and any other favourable treatment where this is requested and justified according to the legislation
- to honour decisions and other measures taken by the customs authorities of another Member State
- to cooperate with third countries where this is stipulated in an international agreement

2. Rights and obligations – customs authorities (2)

The customs authorities have, inter alia, the following rights:

- to annul, revoke or amend decisions which were based on wrong information or do not comply with the law
- to request information and perform controls on goods, means of transport, persons, documents and records insofar as they relate to international trade in goods
- to request a guarantee for import duties, VAT and excise duties in cases where such duties are at stake
- to take identification measures (e.g. sealing)
- to seize, confiscate, destroy or sell goods under certain circumstances of non-compliance

3. Placing goods under a customs procedure (1)

Apart from free zones and temporary storage, goods can only be placed under a customs procedure by means of a customs declaration

A customs declaration can be lodged

- electronically (according to the specifications of the Member State concerned)
- in paper-based form (e.g. Single Administrative Document, ATA carnet) where this is still allowed
- orally (mainly for travellers)
- by any other act (e.g. passing the frontier, mainly for means of transport)

For electronic and paper-based declarations, the following simplifications may be authorised:

- entry in the records followed by a notification and a periodic declaration
- simplified declarations followed by a periodic declaration (this is also possible with regard to a single incomplete declaration which is then followed by the supplementary declaration)
- deferred payment against a guarantee (the two previous simplifications are combined with deferred payment)

3. Placing goods under a customs procedure (2)

The customs declaration is accepted if

- the goods have been presented (i.e. their availability for controls has been notified)
- any authorisation or other document required is available
- the formal requirements of an electronic or paper-based declaration are fulfilled

The customs declaration, the goods and any supporting document may be controlled by customs

If duties are due, they must either be paid or guaranteed

Subsequently, the goods are released for the procedure concerned if there is no obstacle due to prohibitions or restrictions

4. Centralised clearance (1)

In principle, a customs declaration must be lodged with the customs office competent for the place where the goods are available for controls. As an exception, an economic operator may be authorised to lodge his customs declaration at the place where he is established and to make available the goods for controls at another place (example: an importer in Berlin declares the goods which have arrived at the port of Rotterdam).

Advantages:

- The importer has to deal only with his national administration in his own language
- The establishment of a customs department in the other Member State or the use of a representative (with additional cost) can be avoided
- The use of a transit procedure (with additional cost) can be avoided

4. Centralised clearance (2)

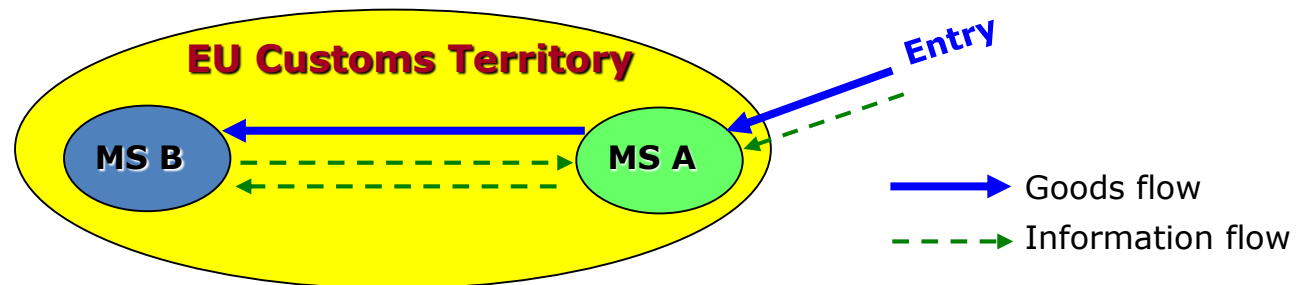
Though customs duties can be paid centrally, this is not the case with regard to VAT and excise duties in cases where the goods are not destined for the Member State where the importer is established (e.g. if the goods declared in Berlin remain in Rotterdam, VAT and excise duties must be paid there; if the goods are destined for Austria, VAT and excise duties must be paid there)

Any prohibitions and restrictions applicable to the goods are controlled

- either on request of the supervising customs office (at the place where the importer is established),
- or at the initiative of the customs office of presentation (at the place where the goods are presented and where the goods are released)

4. Centralised clearance (3)

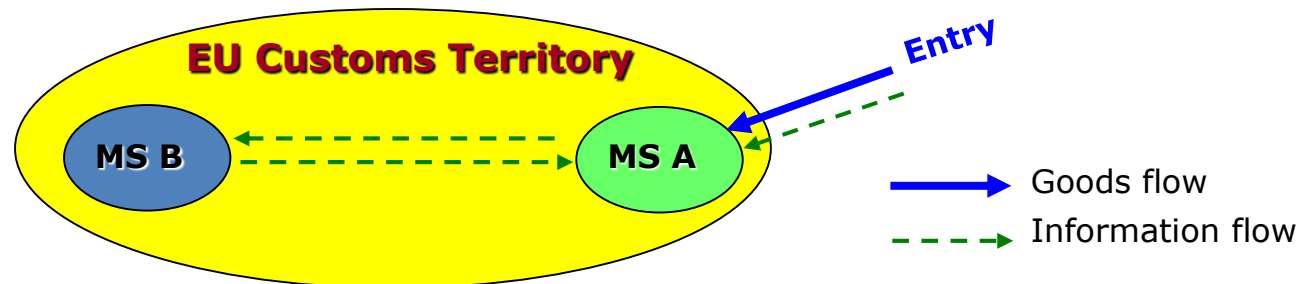
Scenario 1: Goods entering in MS A are declared for free circulation in MS B (where the declarant is established) and end up in MS B



Customs duties and VAT are declared and collected in MS B. In MS A import VAT is waived if procedure code 42 is declared, given that an intra-EU supply takes place. MS A needs nevertheless information in order to be able to release the goods and to have proof that import VAT is waived.

4. Centralised clearance (4)

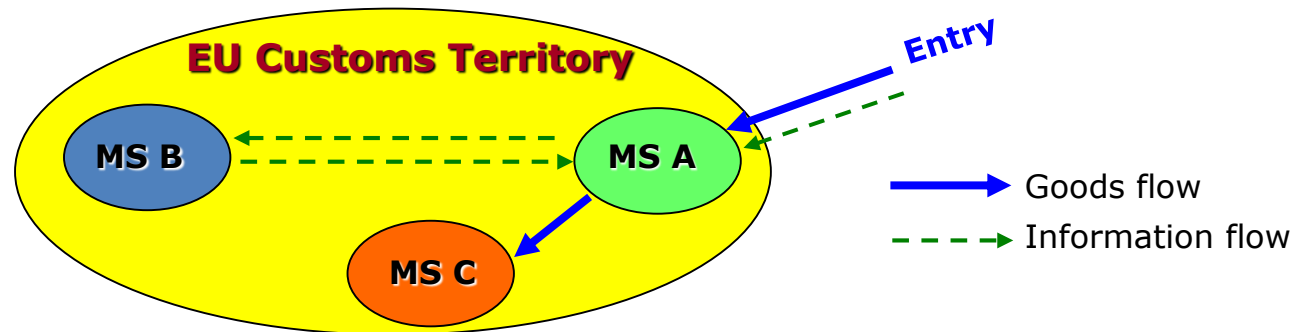
Scenario 2: Goods entering in MS A are declared for free circulation in MS B (where the declarant is established) but the goods remain in MS A



The customs and VAT declaration is available in MS B but the VAT data (including the amount of customs duty) are needed in MS A where the import VAT is collected; some MS combine the handling of customs duties and VAT (and therefore need to use deferred payment but will have to dissociate VAT payment from payment of customs duties) while other MS allow postponed accounting (so that payment of customs duties and VAT is dissociated anyway)

4. Centralised clearance (5)

Scenario 3: Goods entering in MS A are declared for free circulation in MS B (where the declarant is established) and end up in MS C



The release for free circulation in MS A is exempt from import VAT if procedure code 42 is declared; the dispatch from MS A to MS C is VAT exempt as intra-EU supply. In MS C (which is not involved in the authorization for centralised clearance) VAT is due on an intra-EU acquisition. MS C is informed through the VAT information exchange system (VIES) of the VAT exempt supply from MS A.

5. Authorised economic operator (AEO)

The granting of AEO status requires:

- being established in the EU (exceptions: airlines, maritime carriers)
- record of compliance (as of 1 May 2016 also with regard to taxes)
- satisfying system of managing records
- financial solvency
- professional qualifications (as of 1 May 2016)
- security and safety standards (for facilitations relating to security and safety)

The following benefits are available to AEO:

- immediate access to authorisation-based facilitations
- notification of controls prior to arrival
- fewer controls; controls carried out as a matter of priority
- mutual recognition with certain countries (Japan, US, Switzerland, Norway)
- reduced guarantee for deferred payment (as of 1 May 2016)
- Centralised clearance and self-assessment (as of 1 May 2016)

6. Questions

1. Does the EU customs territory consist of the territory of its Member States?
And how about the territory of Turkey?
2. Do the customs and the fiscal territories (for VAT, excise duties) of the EU match?
3. May an importer or exporter use a representative in order to fulfil his obligations towards the customs authorities?
4. Is an importer free to choose any customs procedure available for import goods?
5. Are customs authorities free to decide whether and when they perform controls?
6. Which forms of customs declarations exist?
7. What does "centralised clearance" mean?
8. What do you see as major benefit of being AEO?
9. Your questions?

6. Answers (1)

1. In principle, the EU customs territory consists of the territory of its Member States, including the 12-miles zone of their territorial waters. In addition, Monaco is part of the EU customs territory, and some territories belonging to a Member State are excluded (complete list in Article 3 CC).

Though the EU has concluded a customs union agreement with Turkey, both parties apply their own (albeit largely identical) customs legislation. However, customs formalities are applied for goods moving between both parties.

2. The customs and fiscal territories of the EU match largely; however, there are some exceptions (complete list in Art. 6 (1) of Directive 2006/112/EC and Art. 5 (2) of Directive 2008/118/EC).
3. An importer or exporter is free to use a representative in his dealings with the customs authorities. However, in order to facilitate audits, he must keep records of his transactions (these records may, of course, be established and maintained by a service provider).

6. Answers (2)

4. An importer is free to choose any customs procedure available for import goods. However, in certain cases (e.g. inward processing) a prior authorisation is needed.
5. Customs authorities are free to perform controls on goods and supporting documents before the release of the goods or during post-clearance audits.
6. The following forms of customs declarations exist:
 - electronic declarations
 - paper-based declarations (where still allowed)
 - oral declarations
 - declarations made by any other act
 - entry in the records (with or without notification), followed by a periodic declaration.

6. Answers (3)

7. "Centralised clearance" means that the customs declaration is lodged at the place where the authorisation holder is established (e.g. Munich) whereas the goods are available for controls at another place (e.g. Rotterdam).
8. The major benefits for AEO are:
 - easy access to authorisation-based facilitations (e.g. entry in the records)
 - fewer controls
 - reduced guarantee for deferred payment (UCC)
 - centralized clearance and self assessment (UCC)

The AEO status may also enhance the reputation of the company in international trade as being a secure, reliable partner.