

PRACTICAL ASPECTS IN DOING INTERNATIONAL BUSINESS

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Chapter 6

Customs procedures in foreign trade

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All imported and exported goods must be customs cleared. This is applicable to the items brought in as personal ones and also imported by trade and business establishments. Customs policy that stipulates the conditions under which goods and are eligible to be exported, imported, processed, stored or undergo other customs approved use and customs procedures, is highly coordinated by member countries, especially those of the World Customs Organization (180 countries) and the World Trade Organization (162 countries), whose objectives are to secure the highest degree of harmony and uniformity in customs systems by developing and maintaining international customs instruments such as the Agreements on Customs Valuation and Origin, the Harmonized System Convention, the Revised Kyoto Convention, the Istanbul Convention³ and other instruments developed by other multilateral institutions encouraging the uniform application of simplified and harmonized customs systems, procedures and the increased use of IT. This is why the European Union customs regulations described in this chapter do not differ from those of other countries.

Harmonized System Convention – entered into force in 1988. "HS" is a multipurpose international product nomenclature developed by the WCO through the Harmonized System Committee and used by more than 200 countries and economies as a basis for their customs tariffs and for the collection of international trade statistics.

Revised Kyoto Convention (RKC) on the Simplification and Harmonization of Customs Procedures (the Kyoto Convention was adopted in 1973, revised in 1999 and entered into force in 2006).

³ Convention on Temporary Admission/ATA/, Istanbul (1990) entered into force in1993, merged 13 existing temporary admission agreements into a single instrument.

6.1. European Union Customs Code

The European Union forms a single customs area, whereby customs laws are uniformly applied. It is the result of the existence of the customs union, which eliminates borders between the Member States creating a single customs area, with a uniform customs tariff applied to goods originating from third countries. The system of EU customs law consists of directly applicable provisions of primary law (treaties), secondary law (regulations and decisions) as well as international agreements and customs regulations adopted by individual Member States. The most important document of the Union's customs law is the Union's Customs Code (UCC) which entered into force on 30th of October 20134, although on its basis the former provisions are still being applied5. The substantive provisions of the UCC apply only from 1st May 2016.

6.2. TARIC - Integrated Tariff of the European Union

The integrated Tariff of the European Union – TARIC – contains the system of goods codes (customs nomenclature), all requirements (together with the legal bases and explanatory information) and measures of commercial policy, applied to particular goods imported and exported to/from the European Union. These include: ad valorem, specific and mixed tariff rates; customs preferences (including tariff quotas and tariff ceilings), the Generalised System of Preferences (GSP), applied to developing countries; countervailing duties, antidumping duties (temporary and definitive), suspension of duties, supplementary charges and countervailing charges, minimum and reference prices, quantitative limits (quotas), imports and export prohibitions, export refunds, export repayments, release into free circulation, conditional exportation, as well as data for the surveillance of imports and exports. TARIC does not include, however, information on national taxes (e.g. VAT and excise duties). The Directorate General for Taxation and Customs Union assigns the code numbers and publishes them daily on the official TARIC website.

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (Official Journal of the European Union L 269 of 10.10.2013). Commission Implementing Decision of 29 April 2014 establishing the Work Programme for the Union Customs Code (2014/255/EU) Official Journal of the European Union L 134/46 of 7.05.2014.

Community Customs Code (CCC) established by the Council Regulation (EEC) No 2913/92 of 12 October 1992 and implementing provisions to CCC (established by Commission Regulation (EEC) No 2454/93 of 2 July 1993 with later amendments).

The tariff is based on the Combined Nomenclature (CN), introduced for the purpose of the Common Customs Tariff and for statistical purposes. CN is in turn based on the Harmonised System (HS) for labelling and coding of goods, established by the international convention and subsequently extended by Union's subdivisions, called CN subheadings added in the case where a duty rate is specified for them. Every CN subheading has an 8-digit code.

The first six digits are the code numbers referring to HS headings and subheadings, while the seventh and eight digits identify the CN subheading. The ninth and tenth digits are those relating to TARIC subheadings. In the absence of them, the ninth and tenth digits are '00'. The 10-digit TARIC codes can be further subdivided with the use of additional codes. when specific EU measures are applied but not coded, or not entirely coded, at the ninth and tenth digit level and it would be pointless to divide the very codes of the goods' nomenclature. Supplementary codes are used when the following measures are applied: combined anti-dumping and countervailing duties, agricultural components, reference prices for fish or in the case of CITES products (defined by the Washington Convention) or some pharmaceutical products. The supplementary codes consist of four alphanumeric characters (letters and/or digits). The first letter or digit of the code represents a separate nomenclature and has its own description. For example, the letter 'A' stands for anti-dumping. For their internal purposes, the EU Members States may insert subdivisions after the CN subheadings, and the TARIC subheadings and the identifying numeric codes are assigned to such subdivisions.

The 10-digits TARIC codes, and, where appropriate, the supplementary codes, are applied to all imports of goods from non-EU countries and from the new Member States during the transitional period. In the case of exports and intra-Community transactions, the 8-digit CN codes are applied and, where appropriate, the supplementary codes.

The example of classification for 'radio-telephonic apparatus for use in civil aircraft': Section XVI. Machinery and mechanical appliances; electrical equipment. Chapter 85. Recorders and reproducers of sound or image. HS heading 8517. Apparatus for the transmission or reception of voice, images or other data. HS subheading 851712. Telephones for cellular networks or for other wireless networks. CN subheading 00 indicates the absence of further subdivision. TARIC subheading 8517120010. Radio-telephonic apparatus for use in civil aircrafts. The country supplementary code V999 indicates that the VAT rate applies to this product (see Fig.6.1).

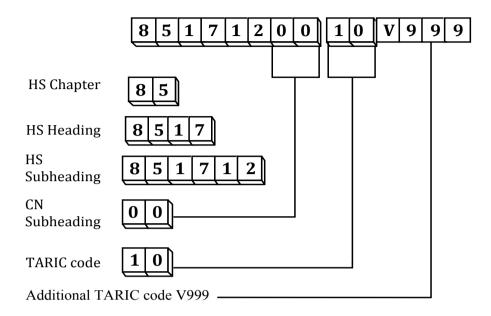


Figure 6.1. Stucture of the TARIC code

Source: Own work based on TARIC

If a particular merchandise is classifiable under two or more headings, preference should be given to the heading providing the most specific description. When goods consist of different materials, or are made up of different components which cannot be classified, then the goods should be classified according to the heading classifying the material or component which gives these goods their essential character.

In case of doubts regarding the classification of a subject of a foreign trade transaction, an interested party may apply to the customs authorities for the official confirmation of classification for the goods in question, i.e. for a Binding Tariff Information (BTI), indicating the appropriate CN code. The BTI is valid in all EU Member States for six years from the date of delivery.

6.3. Documenting the origin of goods in foreign trade

Depending on their country of origin, imported goods are treated differently from the customs point of view. The application of a given duty rate depends on complying with the requirements laid down in the rules of origin and on providing evidence that the given goods come from the country or from the territory for which a rate was set. The rules of origin identify the economic association of goods with a single country (area) that can be recognised as the place of origin.

The European Union's non-preferential and preferential rules of origin of goods, provided for in its customs code and implementing provisions, set the rules for determining the origin of the goods entering into and sent outside the Union's customs area.

The rules for determining the non-preferential origin of goods were laid down for the purpose of applying the tariff measures (Common Customs Tariff) and non-tariff measures established in EU provisions regulating individual sectors of trading.

Goods acquire the non-preferential origin of a given country or territory if: they are entirely obtained in a given country or if the last substantial processing has taken place in this country. The customs authorities may require that the declarant prove the origin of the goods in order to ensure that the origin indicated complies with the rules laid down by the relevant Union legislation.

The **rules of preferential origin** of goods are laid down in agreements on granting customs preferences concluded with some countries or adopted unilaterally by the European Union in order to apply preferential tariffs and non-tariff measures.

6.4. Customs value of goods as a basis for determining the charges due

There are several methods for determining the customs value of goods:

- the transaction value method (primary),
- · the transaction value of identical goods method,
- the transaction value of similar goods method,
- the unit price method (deductive),
- the computed value method,
- the residual valuation provision method.

The following conditions must be fulfilled to determine the transaction value:

- a) there are no restrictions as to the disposal or use of the goods by the buyer; the sale or price is not subject to conditions or considerations for which a value cannot be determined,
- b) no part of the income from any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller,
- c) the buyer and seller are not related, or if they are related the transaction value can be accepted under certain conditions.

In order to determine the customs value with the use of the transaction value method, the price actually paid or payable for imported goods must be supplemented by:

- a) elements such as: commissions and brokerage fees (buying commissions excluded), costs of containers (if, for customs purposes, they are treated as being one with the merchandise), costs of packaging (both labour and materials) to the extent that they were incurred by the buyer but not included in the price actually paid or payable for the merchandise.
- b) the apportioned value of the following goods and services, delivered directly or indirectly by the buyer free of charge or at a reduced price for use connected with the production and sales for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
 - materials, components, parts and similar elements incorporated into the imported goods,
 - tools, dies, moulds or similar elements used in the production of the imported goods,
 - materials consumed during the production of the imported goods,
 - engineering work, research and development work, art and design work, as well as plans and sketches produced outside the EU and necessary for the production of the imported goods.

- c) honoraria, royalties and licence fees related to the merchandise being valued, which the buyer must pay directly or indirectly as a condition of sale of the goods valued to the extent that these honoraria, royalties and licence fees are not included in the price actually paid or payable;
- d) the value of any part of the income from any further resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- e) costs of transportation or insurance of the imported goods as well as the loading and handling fees related to the transport of imported goods to the place of their entry into the EU customs territory.

The **costs not included in the customs value**, provided that they can be extracted from the price actually paid or payable, are the following:

- a) the costs of transport of the imported goods after their entry into the EU customs territory;
- b) charges related to construction, installation, assembly, maintenance or technical assistance works, undertaken after the entry into the EU customs area of the goods such as industrial plants, machinery or equipment;
- c) interest charges resulting from the financing agreement concluded by the buyer and relating to the purchase of the imported goods, irrespective of whether the financing is provided by the seller or another person, on condition that the financing agreement has been made in writing and that – where required – the buyer can demonstrate that the conditions given below are fulfilled:
 - the goods have been actually sold at the price declared as price paid or payable;
 - the rate of interest claimed does not exceed the level for such transactions prevailing in the country where and when the financial operation was executed;

- d) fees for the right to reproduce the imported goods in the Union;
- e) buying commission;
- f) import duties or other charges levied in the EU by reason of the import or sales of goods.

The sales invoice is the principal commercial document serving the purpose of determining the transaction value of merchandise. The same applies to the elements added or subtracted in order to determine the customs value (invoice for transportation costs or assembling services, etc.).

The transaction value of identical goods method is used when the customs value cannot be determined based on the transaction value; the method comprises determining the customs value on the basis of the transaction value of identical goods sold for export to the customs territory of the Union and exported at the same or about the same time as the goods being valued. The goods are considered identical if they have been produced in the same country as the goods being valued and, when they are exactly the same, including their physical characteristics, quality and reputation.

The transaction value of similar goods method is used when the customs value cannot be determined either on the basis of the transaction value or on the transaction value of identical goods. The transaction value of similar goods method accounts for determining the customs value on the basis of the transaction value of similar goods sold for export to the EU and exported at the same or about the same time as the goods being valued. The goods are considered similar if they have been produced in the same country as the goods being valued and – without being similar in all respects – still possess similar characteristics and composition by which they can carry out the same functions and be commercially interchangeable with the goods being valued. While determining the similarity of goods, the quality, trademarks and goods' reputation should be taken into account.

The unit price method is used when the customs value cannot be determined with the use of any of the foregoing methods (the transaction value method, the methods of transaction value of identical or similar goods). The unit price method consists in calculating the value based on the unit price at which the goods imported, or identical goods

or similar goods, are sold in the EU in the greatest aggregate quantity to buyers not related to sellers. However, the following should be deducted from the unit price established in the way described above:

- a. commissions usually paid or agreed to be paid, or additions usually made for profits and general expenses (including direct and indirect costs of trading in these goods), related to the sales in the EU of imported goods of the same class or kind;
- b. costs of transport and insurance as well as associated costs incurred within the EU;
- c. the customs duties and other levies payable in the EU by reason of the importation or sale of the goods.

When the unit price method is used, the notions of identical and similar goods as well as the related parties (buyers and sellers) should be understood identically as in the case of the previously discussed customs value determination methods.

The computed value method is applied when the customs value cannot be determined with the use of the transaction value method, transaction value of identical and similar goods methods or the method based on the unit price. The customs value determined with the use of the computed value method is calculated as the sum of the following:

- a) the costs or value of materials and production or other processing employed in manufacturing the goods imported;
- b) the amount for profit and general expenses equalling the amount usually included in the sales price of goods of the same class or kind as the goods being valued, produced in the country of exportation for sales to the EU;
- c) the costs of transport and insurance of imported goods as well as loading and handling charges associated with the transport of the imported goods to the point of their entry into the EU customs territory.

The residual valuation provision method (also called the fall-back method or the derivative method) applies when it is not possible to apply any of the previously mentioned methods. This method does not provide

for the use of any specific way to determine the customs value of a merchandise, but requires that the customs value is determined on the basis of data available in the EU customs territory with the use of appropriate means consistent with the principles and general provisions.

The customs value determined on the basis of this method cannot be based on the following:

- 1. The selling price in the EU of goods produced in the EU;
- 2. A system providing for the acceptance for customs purposes of the higher of two alternative values;
- 3. The price of goods on the domestic market of the country of exportation;
- 4. The costs of production other than the computed value determined for identical or similar goods;
- 5. Prices for export to a country not being part of the customs territory of the EU;
- 6. Minimum customs values;
- 7. Arbitrary or fictitious values.

It is essential that the customs value determined with the use of the above method be based – to the largest possible extent – on other methods of valuation, which should be used with 'reasonable flexibility'.

6.5. Incurrence of customs debt and guarantees

6.5.1. Customs debt on import

A customs debt on import is incurred as a result of placing non-Union goods, liable to import duty, under one of the following customs procedures:

- a) release into free circulation, including the release under the end-use provisions;
- b) temporary admission with partial relief from import duties.

A customs debt is incurred at the time of accepting the customs declaration. The debtor is the declarant submitting the customs declaration. In the case of indirect representation, a debtor is also the person on whose behalf the customs declaration is made. If the customs declaration, related to one of the previously mentioned procedures, is drawn up on the basis of information leading to the situation in which all or part of the import duty is not collected, the person who provided the information required for drawing up the declaration, and who knew or ought to have known that the information was false, is also a debtor.

A customs debt is incurred when:

- a) an obligation, the non-fulfilment of which causes the rise to the customs debt, is not met or ceases to be met;
- b) a customs declaration for the placing of goods under a customs procedure is accepted and subsequently it is found that a condition that governs placing the goods under this procedure or granting of a duty exemption or granting a reduced rate of import duty by virtue of the end-use of goods, was not actually fulfilled.

6.5.2. Customs debt on export

A customs debt on exports is incurred as a result of placing the goods liable to export duty under the export procedure or the outward processing procedure and by acceptance of the customs declaration. The declarant is the debtor and, in the case of indirect representation, the debtor is also the person on whose behalf the declaration has been made.

6.6. Customs-approved use of goods

From the moment any goods are brought into the customs territory, they are subject to customs supervision and fall under the control of customs authorities. The goods entering the customs office, or another place designated or accepted by the customs authorities, should be presented to the customs authorities by the person who has brought the goods into the Community customs territory or – depending on the actual situation – by the person holding the responsibility for transporting the goods after their entry.

The presentation of goods to the customs authorities is equivalent to notifying the customs authorities in due form about the entry of the goods to the customs office or any other place.

Customs-approved use of goods

All merchandise, both entering into any customs territory and taken out of this territory, should have its use defined. The customs-approved uses are:

- 1) placing of goods in a customs-free zone (CFZ) or a customs warehouse (CW),
- 2) abandonment of goods to the State,
- 3) re-export of goods,
- 4) destruction of goods,
- 5) placing of goods under customs procedures.

The following are among the duty suspension procedures:

- 1) customs warehousing,
- 2) processing under customs control,
- 3) temporary importation (or temporary admission) and temporary exportation,
- 4) inward processing,
- 5) transit,
- 6) export.

The customs procedures under the drawback system are:

- 1) inward processing under the drawback system,
- 2) outward processing.

The duty suspension procedures consist in the suspension of payments due, while the person granted the right for such a procedure is obliged to provide a guarantee in order to cover the amount resulting

from the customs debt that may be incurred on the goods subject to the procedure. The discharge of the suspension procedure takes place when a new customs-approved treatment or use is assigned to the goods under this procedure, or to compensating products or to goods processed under customs control (with the exception of transit).

6.6.1. Entering the goods into customs free zones or customs ware-

Customs free zones (CFZ) and customs warehouses (CW) are enclosed parts of the EU customs territory, or designated spaces within this territory, where:

- a) non-Union goods, for the purpose of the application of import duties and the commercial policy measures applied in imports, are treated as being from outside the EU customs territory, on condition that they have not been released for free circulation or placed under any other customs procedures, or have not been used or consumed in a way non-conformant with the provisions of EU customs laws;
- b) the goods identified by specific EU provisions are subject by virtue of their entry into a customs-free zone or a customs warehouse to measures usually applied to exports.

The Union Customs Code, as a matter of principle, leaves the establishment of customs-free zones and customs warehouses in the hands of the Member States. The customs-free zones and customs warehouses are usually established with a view to:

- facilitating international transit of goods; the preferred location then should be in the vicinity of the crossing of major communication routes, e.g. near sea ports, airports, border crossings or in areas neighbouring major transit roads;
- developing exports and creating new jobs.

Such a construct attempts to combine the two concepts of the free zones' operation – as a place a) used only for the purposes of international transit, b) a place whose primary function is manufacturing related to the processing, treatment or refinement of goods.

The basic assumption behind this construct is the need to exploit the free zone concept fully, in particular as an instrument allowing governments to narrow the trade deficit and to lower the unemployment rates in a given region. The following circumstances are usually taken into account when CFZ and CW are created: the suspension of duty and tax payments, the suspension of commercial policy measures, the possibility to store transit goods before their re-exportation, the storage of goods and preparing them for sales as well as the exploitation of various measures related to the export of Community goods.

The delivery to a customs-free zone of goods intended for further exports outside the EU territory and placed under the exports procedures in the meaning of EU customs provisions, including those related to completing, packaging and the formation of collective consignments, is subject to a 0% VAT rate. The goods are entered into a CFZ on the basis of transport-related documents such as consignment notes, delivery notes, manifestos or dispatch notes; these documents should contain all the information necessary to establish the identity of the goods being entered.

The operators of the CFZ are responsible for keeping detailed records of goods (both entering into and taken out of the CFZ), which fall under the supervision of the customs authorities. The acknowledgement of the goods' entry into the CFZ may take the form of e.g. a print-out from the electronic register of the goods entered. For the purposes of a potential tax control, it is worth retaining the sales invoices, the storage contract concluded with the CFZ and, obviously, the acknowledgement of the lodging of the export declaration (card 3 of SAD or the electronic ECS confirmation)⁶.

The use of the CFZ instrument is advantageous for the user in the situation when he/she intends to export the goods and wants to gain the right to apply the 0% rate of VAT promptly.

A Customs-free Zone – a separated, uninhabited part of a larger customs territory, treated as a foreign territory, where a single customs system applies. The domestic and foreign economic entities can conduct there manufacturing and commercial activities, taking advantage of the tax and duty exemptions.

⁶ Customs declaration of goods can be made in writing on the Single Administrative Document (SAD) form or in electronic version i.e. the Export Control System (ECS), which is the EU system that supports electronic export declaration, and which replaced SAD.

A Customs Warehouse – a separated part of a customs territory, treated as a foreign territory, where enterprises can warehouse and store the foreign and domestic goods as well as re-pack, refine, treat, process, assemble or repair them.

6.6.2. Abandonment of goods for the benefit of the state

As abandonment to the State results in the transfer of ownership, only the owner of the goods may renounce his or her ownership rights. The customs authority may authorise the abandonment to the State without any fees other than import charges.

6.6.3. Re-export

Applies to non-Union goods which:

- after their entry into the customs territory have not been placed under any of customs procedures or
- have been previously placed under a suspensive procedure.

Re-exportation of goods placed under a custom procedure with economic impact requires presentation – together with the customs declaration – of all documents related to the placing of the goods under this procedure. Assignment of this customs-approved use may take place only if the merchandise leaves the Union's customs territory in the same state as it was in at the moment when the application for re-export was lodged. The re-export is deemed to have taken place at the moment when the goods actually depart from the Union's customs territory.

6.6.4. Destruction of goods

In practice, the destruction of goods is important from the point of view of the protection of human life and health, protection of the environment or public security. There are two procedures provided for in the destruction of goods:

- a) by application the destruction can take place after the previous approval by a customs authority. The application should be made in writing, and the destruction of goods is supervised by a customs authority,
- b) destruction ex officio takes place on the basis of a customs authority's decision and it is compulsory when:

- international agreements or other relevant provisions in force prohibit the possession, dissemination or trading in these goods and the customs authority cannot order the withdrawal of the goods outside the border or to the country's customs territory,
- where the subject of trading is goods hazardous or harmful to health or the environment, and international agreements provide that trading in or dissemination of these goods depends on the fulfilment of specific conditions and when neither the immediate withdrawal outside the border nor confiscation are possible.

6.7. Placing of goods under customs procedures

The suspension procedure applies to non-Union goods in the following types of procedures:

- customs warehousing;
- inward processing under the suspension system;
- processing under customs control;
- temporary importation or temporary exportation;
- external transit.

The notion of 'customs procedures with economic impact' is of a rather conventional nature, and it is meant to indicate economic character of the procedures in question. In most cases, these procedures apply to entities conducting business activities and are subject to authorisation by customs authorities. The customs offices of entry, supervision and discharge can be involved in the course of these procedures.

6.7.1. Customs warehouse

The procedure of customs warehousing is among the group of procedures with economic impact and suspensive arrangements at the same time. It allows for the warehousing of goods for which the right to apply the procedure in the customs warehouse area was granted, until the time when the goods fall under other customs-approved uses. The placing of

goods under customs warehousing procedure takes place on the basis of an application made in writing with the use of SAD.

The customs warehousing procedure allows for the warehousing of:

- a) non-Union goods, which during the warehousing period are not subject to import duties or commercial policy measures;
- b) Union goods which, by virtue of their placement in a customs warehouse, are subject to measures normally applied to exports of such goods.

The use of the customs warehousing procedure makes it possible for economic operators to postpone the costs related to customs and tax charges on goods in import until the goods are released for free circulation in the EU. Thus, an importer can bring in a larger amount of merchandise than needed for current production or distribution and subsequently release them in smaller tranches. The procedure for release into free circulation allows only a portion of the goods, which is actually needed at the moment, to be released into the Union's market, while the customs and tax charges due are incurred only in relation to the tranche of goods that actually exits the warehouse. The customs duties and VAT are thus paid only for the portion of goods actually released into the market.

The procedure is also used in order to avoid these charges if the goods will be subject to export without their release into the domestic market.

The use of the customs warehousing procedure can arise for a variety of reasons, depending on the character of a given warehouse:

- the warehousing of goods intended for further export a transit warehouse,
- storage of goods until the actual market need for them occurs, without the obligation to pay customs charges previously – a credit warehouse,
- storage until appropriate procedures prior to intended export are cleared – an export warehouse,
- waiting out the temporary limitations or restrictions resulting from commercial policy measures a temporary warehouse,

 in the case of agricultural goods, in relation to Common Agricultural Policy, when the goods are warehoused in order to obtain appropriate export subsidy at the time of the goods' exit from the warehouse

 a pre-financed repayment warehouse.

An authorisation by customs authorities is required for the use of the customs warehousing procedure. It can be granted to any person intending to warehouse goods in a customs warehouse, on condition that the applicant meets all the criteria allowing the customs authority to consider that the procedure can be executed properly. The application for authorisation should be lodged not later than 30 days before the goods are declared for placing under the customs warehouse procedure. If a public warehouse is to be used, the storage contract should be attached as well. When issuing the authorisation, the customs authority may require that the applicant provide a guarantee to cover a potential customs debt which may be incurred for the goods placed under the procedure. There are no limits to the length of time during which the goods may remain under a customs warehousing procedure.

A customs warehouse means any place approved by and under the supervision of the customs authorities, where goods may be stored under the conditions laid down in customs laws.

There are two basic types of customs warehouses:

1) public – customs warehouses available for use by any person for the storage of goods.

Public warehouses are run by freight companies, customs agencies and other entities running their business activities in the field of chargeable storage of goods. Three types of public warehouses can be distinguished:

Type A - a public customs warehouse where the responsibility for the goods stored lies with the warehouse keeper;

Type B-a public customs warehouse where the responsibility lies with the depositor;

Type F – a public customs warehouse operated by the customs authorities.

2) private – customs warehouses reserved for the warehousing of goods by the warehouse keeper for his own use related to the warehouse keeper's economic operations.

Private customs warehouses are established by enterprises and are used for the storage of goods intended for their own business activities. In this case, the responsibilities lie with the entity operating the warehouse. Among the private warehouses, three other types can be distinguished:

Type D – where release into free circulation is made by way of local clearance procedures.

Type E – where storage takes place in a different location than the very customs warehouse (e.g. in special containers or external refrigeration plants).

Type C – the basic private warehouse used when neither storage type D nor E applies.

The goods placed under the customs warehousing procedure may undergo usual practices aimed at their proper preservation, improving their appearance or marketable quality, preparing for distribution or resale. However, an authorisation is required for the execution of such processes. They may take place on the premises of the customs warehouse or under the temporary removal procedure. The typical processes that goods may undergo are: sorting, sampling, labelling, repairs resulting from transport damage or stock-taking. The exit of goods from the customs warehouses, according to the user's order, in most cases means their release into free circulation or export outside the EU customs territory. The customs warehousing procedure may also end with placing of goods in a customs-free zone, destruction or abandonment to the State.

The above activities may result in minimising the costs of transportation of the imported goods or open the possibility to negotiate competitive prices or more efficient use of time needed for preparing the goods for distribution – without the necessity to incur the customs and taxation costs.

6.7.2. Processing under customs control

The processing under customs control procedure allows non-Union goods to be used in the customs territory of the EU in operations which alter their nature or state, without being subject to import duties or commercial policy measures. It also makes it possible that the products resulting from such operations (processed products) be released into free circulation at the rate of import duty assigned exclusively to them. An authorisation for processing under customs control is granted at the request of the person who carries out the processing, or arranges such processing.

Such authorisation is granted at the request of the authorised person lodged in writing on a special form used for inward processing, although a simplified form of the application is also provided, i.e. the acceptance of a customs declaration made in writing or with the use of electronic data processing techniques.

The benefits of the processing under a customs control procedure may be the following:

- lowering the production costs by minimising expenditures related to the import of goods intended for processing. It is of particular importance when the import duties on goods imported are higher than those applying to goods produced under this procedure,
- the possibility of placing the non-Union goods under processes that secure the compliance of the imported goods with the technical requirements conditioning the release of these goods for free circulation on the customs territory,
- avoiding the application to non-Union goods of commercial policy measures. They should apply only when the goods obtained in processing are subject to the release into free circulation procedure.

The placing of goods under the customs control processing procedure opens with the customs declaration lodging (under both the standard and the simplified procedures). The declaration should be lodged at one of the offices of entry for the procedure, identified in the authorisation document.

Processing means any operation leading to obtaining the products to which lower import duty rates apply than those applying to imported non-Union goods. Processing – for any kinds of goods, irrespective of

the rate of applicable import duties, means also such an operation that leads to securing the compliance of these goods the with technical requirements which must be met when the they are being released for free circulation. As there is no absolute obligation to place the goods under processing, it is possible that the goods – in the unaltered state – are assigned another customs-approved use or treatment.

The procedure of processing under customs control in relation to imported goods is discharged when the processed products or goods in unaltered state, or products processed partly (as compared with the degree of processing stipulated in the authorisation), are released for free circulation or another customs-approved use is assigned to them, and when all other requirements of the procedure are fulfilled. The procedure of processing under customs control should be completed within the so-called period for discharge, when the goods placed under the procedure, or the processed goods, should have a new customs-approved treatment or use assigned. The period of discharge, laid down in the authorisation document and allowing the time necessary for processing and sales of processed products, may be extended, even if the originally set period has already expired.

Under the procedure of processing under customs control, the collection of import duties on non-Union goods is suspended until the processed products are assigned a new customs-approved treatment or use.

6.7.3. Temporary importation or exportation procedures

Temporary importation and temporary exportation are among the permitted customs procedures applied to goods imported to or exported from the EU customs territory. Temporary importation/temporary admission means importation into the EU customs territory of goods for a specific purpose and intended for re-export within a given time-frame. Temporary exportation means exporting goods for a specific purpose with the possibility of re-importing within a specified period restricted.

The temporary admission procedure when importing allows the use in the customs territory of the EU, with total or partial relief from import duties, of non-Union goods imported for a specified period of time and intended for re-export, without having undergone any change except that resulting from normal depreciation due to use. These goods are totally or partially relieved from duties and are not subject to commercial policy measures.

The temporary procedure with partial relief from duties is among the suspensive procedures and requires the appropriate authorisation. It applies to:

- a) goods intended for repair, refinement, working or processing,
- b) means of production and means of transport with the exception of passenger cars leased, rented or commissioned for use, brought in or sent outside in order to conduct business activities,
- c) means of transport other than those listed above,
- d) goods intended for testing (samples and models without commercial value can be cleared and relieved from duties).
- e) industrial models and designs,
- f) reusable packaging,
- g) goods intended for use at auctions, exhibitions or fairs.

Goods taken out of the customs warehouses or customs-free zones can also be eligible for temporary admission/temporary importation.

Declaring for temporary arrangements of the goods, whose type or quantity indicates their use in business activities, takes place by submission of a SAD document, with which an application identifying and justifying the purpose of temporary importation or exportation, together with the date by which the goods will be re-imported or re-exported, should be made. If required by the customs authorities, supplementing documents authenticating the purpose of importing or exporting (a contract with a foreign party, a description of industrial treatment or processing procedure the goods are to undergo, a document confirming participation in an event) should be annexed to the application. Additionally, only on request should other documents be attached (photographs, illustrations, samples) that may be useful for establishing the identity of the goods during the discharge procedure, if the description included in SAD document or in specifications or invoices is not sufficient.

The submission of an ATA carnet⁷ also results in exemption from submission of the SAD document. The release into circulation in the Union's

The ATA carnet (Admission Temporaire/Temporary Admission Carnet) is used for the temporary import or export of goods. It is not mandatory but it simplifies customs clearances in dispatching and receiving countries that are parties to the Istanbul Convention.

customs territory or temporary export outside this area takes place by way of a decision which can be issued in the form of a SAD document – if the goods are intended for business activities, a proof of temporary admission, an ATA carnet or in the simplified form. The simplified temporary procedures apply (by entry in the appropriate departure or arrival registry) to sea-going ships, inland navigation vessels, aircraft and railway vehicles providing transportation links with abroad as well as the road vehicles belonging to domestic and foreign carriers. The simplified clearance procedures (without registration) also apply to vehicles in passenger traffic. The time for re-export or re-import in all these cases expires with the date of re-departure abroad or return from abroad of the person who declared the means of transport for clearance.

A decision on the temporary arrangement, issued in writing, should specify the date of re-export or re-import, the indication of the customs value as well as the duty and tax charges applicable and – in the case of export – the domestic value of the goods.

6.7.4. Inward processing

Inward processing is a procedure with economic impact, which allows for avoidance of payment of duties on goods imported from outside the EU. The inward processing procedure applies to non-Union goods that are entered into the EU customs territory in order to use them in processing procedures (such as assembling, repair or manufacturing).

Inward processing is applied under two basic systems: the suspension system and the drawback system.

Goods intended for inward processing under the suspension system are not liable to customs duties and to non-tariff measures. Customs duties are paid only when the goods (in the form of compensating products or goods in an unaltered state) are released for free circulation. It is at that time also that commercial policy measures are applicable to these goods, the ones in force at the moment when the declaration of release is accepted. The use of the procedure allows for inward processing in the Union's customs territory of:

- a) non-Union goods intended for re-export outside the EU territory in the form of the so-called compensating products,
- b) goods released for free circulation with repayment or remission of the import duties chargeable on such goods, if they are exported

from the customs territory of the Union in the form of compensating products.

In inward processing under the drawback system, the import charges on the goods imported in order to be placed under the procedure are collected and subject to later repayment, provided that specific conditions for such a repayment are met.

The appropriate authorisation may be granted only to a person established in the Union, on condition that:

- a) the applicant intends to re-export the goods or to export the compensating products,
- b) the import goods can be identified in the compensating products, with the exception of the situation when the compensating products are produced from equivalent goods,
- c) when the procedure allows for the creation of the most favourable conditions for export or re-export of compensating products,
- d) the non-Union goods have been declared for inward processing (under suspension or the drawback system) at one of the entry offices identified in the authorisation.

The goods undergoing the inward processing procedure should be processed according to the permitted processes catalogue, including: working of goods (erecting, assembling or fitting them to other goods), processing of goods and repair of goods (including restoring them and putting them in order), use of certain goods which cannot be found in the compensating products but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process.

By way of the discharge of the procedure, the potential customs debt and its amount is identified. The holder of the authorisation undertakes the discharge procedure on his/her own and submits its results to the supervision office within 30 days of the expiry of the period for discharge. Under justified circumstances, the authorities may allow for an extension of this period. Basically, the procedure under the suspension system is treated as a procedure without collecting the duties and import charges, and the one in which a customs debt is not incurred. A customs debt may, however, be incurred, if the goods are not re-exported

but released into free circulation or if irregularities have been identified within the course of the procedure. The inward processing procedure under the suspensive system ends when the compensating products or goods in an unaltered state are re-exported, or when another customs-approved treatment or use is assigned to them.

6.7.5. Outward processing

Outward processing consists in temporary exportation from the EU customs territory of Union goods, processing them outside the EU and subsequent release into free circulation of the goods produced under these processing operations – with total or partial relief from import duties. The purpose of exportation is specifically the processing of goods and later release of products resulting from these procedures, into free circulation, thus enabling the exporter to benefit from the total or partial release from import duties. The procedure does not have a suspensive nature.

6.7.6. Release into free circulation

Release into free circulation – the principal procedure used in the importation of goods into the EU customs territory. The procedure assigns to non-Union goods the status of Union goods. Both businesspersons and those not conducting business activities may use the goods or resell them further, after the goods have been released into circulation.

Union goods are those wholly sourced on the EU customs territory, without the addition of goods imported from countries not forming the EU customs territory as well as goods imported from these countries and released for free circulation in the EU territory. The customs declaration for the release into free circulation procedure can be submitted in written, oral or another form. In order to assess the amount of duties due, the state of the goods and other calculative elements are taken into account. The declarant should submit invoices, specifications of goods or loading lists, permits or other documents (if required in relation to import), which can constitute the basis for the calculation of taxes due, certificates issued by the producer or an authorised research centre, declarations containing data allowing the assessment of the customs

value of the goods and the documents required for the application of preferential tariff arrangements.

The import customs duties are calculated according to the state of the goods and their customs value on the date of the customs declaration acceptance and according to the tariff rates in force on this date. The customs declaration is made on the SAD 4 form. If the consignment contains goods falling under different tariff classification codes, the customs authorities may, on request of the declarant, authorise the collection of import customs duties on the entire shipment. A number of suspensive procedures, consisting in the temporary postponement of duties payment, previously described, are linked with the release into free circulation procedure.

When the **EU supervision of goods** is required, the Member States provide the Commission with the data extracted from customs declarations for release into free circulation and exports declarations at least once a week. The goods released into circulation lose their status of Union goods when: a) the declaration for release is invalidated, b) the import customs duties for these goods are subject to refund or remission under the inward processing procedure, c) goods that are defective or noncompliant with the contract are returned and the customs charges are subject to repayment or remission.

6.7.7. External and internal transit

The essence of external transit consists in the movement from one point to another within the EU customs territory of both non-Union goods on which the duties, other charges and commercial policy measures have been suspended, and of Union goods subject to these payments, which have been, however, suspended due to the goods movement to third countries and after the customs formalities in exports have been fulfilled. The transit procedure does not require prior authorisation.

Forms of transit procedure:

- · with the application of the external community transit procedure,
- with the use of a TIR carnet,
- with the use of an ATA carnet used as a transit document,
- · with the application of the Rhine manifesto,

- with the application of NATO Form 302, provided for by the Agreement between the Parties to the North Atlantic Treaty Organisation regarding the status of their force,
- with the use of postal services.

Transit with the use of a TIR carnet may only be performed if the movement either starts or ends in a third country; it concerns the shipment of goods which are to be unloaded within the EU customs territory and which are shipped together with goods intended for unloading in third countries. TIR transit concerns the situation where an intra-Community movement of goods goes via a third country's territory.

The ATA Convention lists the following categories of goods that may be shipped with the use of the ATA carnet: commercial samples and designs exported for marketing purposes or market research, or the demonstration of goods before concluding a contract. The list also includes goods intended for use during fairs and exhibitions: all kinds of exhibits, show exhibit booths and decorations, etc. The following types of professional equipment are also included in the list: film, television and video equipment, theatrical props, musical instruments, sports equipment, research and scientific equipment, tools, etc.

The ATA carnet is a special international customs document which eliminates the customs procedure related to temporary importation and exportation, because a user does not have to fill in a SAD document, customs declaration or provide a deposit at all borders crossed. The carnet is valid for 12 months from the date of issue and the validity period cannot be extended. ATA carnets are available to both legal and natural persons. The authorised person (subject responsible) has to: submit the customs declaration with necessary accompanying documents, present the complete Carnet within the period specified in the appropriate customs office and lodge a guarantee. A guarantee is not required in the case of sea and air freight, freight transport on the Rhine and Rhine inland routes, transportation via pipelines, and freight conducted by Member States-based railway operators.

The authorised person is obliged to lodge a guarantee securing the payment of a customs debt or other charges that may be incurred on the goods. The guarantee should be lodged at the customs office of exit where the goods are being declared and should be valid throughout the EU. The guarantee can be lodged in respect to a single transit a single guarantee (of up to 7,000 €) or to a number of transit operations – as a general guarantee.

The **internal transit procedure** allows for the transfer of Community goods – without changing their customs status – from one point in the customs territory of the EU to another though the territory of a third country.

The procedure applies to the transportation of Union goods and results in the suspension of measures normally applicable in the case of the transfer of goods within the EU customs territory, if the goods are consigned through the territory of one or more EFTA countries, according to the provisions regulating the Common Transport Policy. This procedure does not apply when the goods are carried entirely by sea or by air.

The internal transit procedure in a way facilitates transit operations, because it allows that the goods temporarily leaving the EU territory retain the Union goods status and because it eliminates formalities on the borders between EU and EFTA countries.

Two documents are used in the internal transit procedure, namely: T2 (for Union goods) and T2F (if the goods from outside of the Union's fiscal area fall under the transit procedure). The procedure of internal transit 'T2F' applies to the movement of Union goods which are consigned to, from or between the non-fiscal areas of the customs territory of the EU. The non-fiscal areas of the customs territory of the EU are those areas where the provisions of Directive 77/388/EC do not apply (the VAT Directive).

Opening of the CTP (common transit) procedure takes place in a customs office of a non-EU country with the issue of customs declaration documents (SAD), and the lodging of a security guarantee and customs charges, if applicable. On the borders of the countries neighbouring the EU customs territory, only the presentation of documents and guarantees issued in non-member countries is necessary. These documents are valid until the moment of the goods' delivery to the customs office of the destination in the country where the importer is based.

6.7.8. Exports

The nature of this procedure consists in the departure of Union goods from the EU customs territory. The pre-departure formalities that relate to the export customs duties must be fulfilled and commercial policy measures, if relevant, should be also applied.

The goods placed under the export procedure remain under the customs supervision until they depart from the EU customs territory. However, they must leave the EU customs territory in the same state as at the moment of lodging the original export declaration. Additionally, if the goods do not leave the EU customs territory, the exporter is obliged to notify the customs office about this fact without delay and to return to this office Card 3 of the declaration. The customs declaration should be lodged at the customs office relevant for the seat of the declarant or for the place where the goods were packed or loaded into the export consignment.

The 'exporter' means the person on whose behalf an export declaration is made and who is the owner of the goods, or who has a similar right of disposal over them, at the time when the export declaration is accepted. Where ownership or similar right of disposal over the goods belongs to a person established outside of the EU, the exporter is considered to be the contracting party established in the EU, pursuant to the contract on which the export is based. There are, however, exceptions to this rule:

- a) in the case of subcontracting, the export declaration can be lodged at the customs office relevant to the seat of the subcontractor (e.g. when the exporter has purchased the goods from the subject to which he/she has also contracted out the exportation outside the EU customs territory – in this case, the export declaration can be lodged at the customs office with the local competence relevant for the seat of the subcontractor);
- b) when, for organisational reasons, there is no possibility to apply the above rule, the export declaration can be submitted at any customs office competent to accept the declarations in the Member State in question. Such a situation may take place when, for example, the customs office relevant to the seat of the declarant is not competent to accept declarations on certain types of goods;
- c) for duly justified reasons, the declaration may be accepted in a customs office different from that mentioned above. Since EU law does not regulate the cases discussed here, each case is subject to individual assessment. For example, a justified exemption from the rules could take place in the situation when the rules, if applied, would lead to economically unjustified costs to be borne on the part of the exporter.

6.8. Customs declaration with the use of the SAD

The customs declaration for export procedure should be made in writing and lodged at the customs office of export with the use of the SAD document consisting of cards 1, 2 and 3. The documentation workflow is as follows: Card 1 is intended for the customs office at which the customs declaration has been lodged, Card 2 is used for statistical purposes, while Card 3 is indented for the exporter. After the formalities at the customs office are completed, this card is returned so that it could be presented at the customs office of exit. This office will supervise the departure of goods for the territory outside the EU customs area and will provide confirmation of the goods' departure from the EU customs territory.

The competent offices of exit are respectively: 1. in the case of goods departing by railroads, postal services, sea or air – the customs office with local competence relevant to the place where goods are taken over by a railway company, post office, air or sea navigation company within a single contract for freight to a third country; 2. in the case of goods transferred by transmission lines (gas, oil, electric energy) – the customs office designated by the Member State in which the exporter is based; 3. in the case of goods transported by other means or under circumstances not covered by point 1. or 2. – the last customs office before the actual exit of goods from the EU customs territory.

In **road transport**, after presentation of the goods and Card 3 of the SAD document at the customs office of exit, this office supervises the departure and provides the confirmation of departure outside the EU customs territory on Card 3 of the SAD document, and returns the Card on request of the declarant. However, the declarant may express the wish to get back the Card and to obtain the confirmation of departure in another way. The confirmation of departure is made by placing on the back side of Card 3 of the SAD document an official stamp with the date and name of the customs office. The duly confirmed Card 3 is returned to the person who presented the Card with the goods (exporter, declarant, representative or carrier) or, if this is not possible, to the person named in the SAD document (i.e. person based in the territory under local competence of the customs office of exit).

When the goods are transferred by postal services, by railway, sea or by air, the competent office of exit is the one with local competence for the place where the goods were taken over by the carrier under a single contract for freight to a third country. As far as regular navigation lines, direct transportation or direct flights to the third countries of destination are concerned, if the operators are able to guarantee (with the use of other means) the appropriate execution of the procedure, the annotation 'Export' is not required.

In the case when goods previously released for export have not actually left the Union customs territory, the exporter has to notify immediately the customs office of export (at which the declaration was lodged) and return Card 3 of the SAD document. However, when goods are shipped by railway, post, sea or air, or if the transfer involves transit, if the change in transport contract occurs and the goods previously indented for unloading outside the EU are actually delivered to an EU destination, the execution of the changed transport contract is subject to the authorisation by the customs office of export or (in the case of transit) by the customs office of exit, after Card 3 of SAD is returned.

If the confirmation of departure on Card 3 of SAD has been provided by an internal customs office, the release of goods for actual departure outside the EU territory by the border customs office is not conditioned upon the presentation of Card 3 of SAD, as this Card is intended for the exporter. The documents accompanying the goods at the border customs office are shipment documents with the 'EXPORT' annotation, transit documents or equivalents and – in the case of goods on which the excise duty has been suspended – also the accompanying administrative document.

If the goods released for exportation have not actually left the EU customs territory, the exporter is obliged to notify the customs office of export (at which the procedure was declared) and return Card 3 of the SAD document without delay.

Generally speaking, export and import documentation includes sales invoices, packing lists, transportation documents (bills of lading, air waybills, CMR or CIM consignment notes), certificate of origin and any other specific documentation required by the buyer, financial institutions, letter of credit terms or by regulations of the importing and exporting countries. It is worth stressing that, nowadays, the paper forms of those documents are being replaced by electronic forms. It saves time and the cost of international transactions.

Questions and assignments

- 1. Name the methods for determining the customs value of goods.
- 2. When do the preferential and non-preferential rules of origin apply?

- 3. Name the possible customs-approved uses of goods.
- 4. What is customs value?
- 5. Describe the requirements for goods to be disposed of or destroyed.
- 6. What does 'placing under a customs procedure' mean?
- 7. Name the types of customs procedures suspending the collection of customs duties.
- 8. What are the benefits of processing goods under customs control?
- 9. What documents are used in export and import customs clearance?

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Project: The creation of new interdisciplinary curricula in the field of economics of environmental protection (in Polish and English) at the University of Łódź. Project supported by a grant from Norway through the Norway Grants and co-financed by the Polish funds.

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Grant amount: 533 083 PLN



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