

CHAPTER 1

INTRODUCTION TO CUSTOMS DUTIES

1.1 European Union

Customs duties are applied to goods that are imported from non European Union member states into the **European Union**, or **EU**. Sometimes the EU is called the '**European Community**', and non-EU countries are referred to as '**Third countries**'.

The same rates are charged by all Member States, as the countries have formed a '**Customs union**'. Therefore, there is no monetary benefit in importing the goods through France, for example, rather than directly into the UK. At the time of importation, **import VAT** must also be paid. We will come onto how you calculate customs duty and import VAT in a later chapter.

First we need to understand which countries make up the EU. There are currently 27. They are the **UK, France, Belgium, Luxembourg, Germany, Ireland, Spain, Portugal, Italy, Denmark, Austria, Greece, The Netherlands, Finland, Sweden, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia**. **Bulgaria and Romania** were the latest countries to join and did so from 1st January 2007.

Other countries are currently in negotiations to join the EU. They include: Turkey, Croatia, Macedonia and Serbia.

There is a list of the current EU member states in a variety of places in the legislation.

The first place you can find them is detailed in **Regulation 2 of SI 1995/2518**. This regulation is helpful as it also lists the alphabetical codes that are used to denote each member state. For instance, the United Kingdom is denoted with GB, Greece is EL and Austria AT.

[Reg 2
SI 1995/2518](#)

You can also find a list of each EU member state in **Article 3 of EU Regulation 2913/92**. This regulation is affectionately referred to as the "**Code**".

[Art 3
2913/92](#)

The European Commission has been engaged in a major re-write of the Code. Some of the reasons for this were:

- 1) To reduce the number of articles;
- 2) Simplify the rules;
- 3) Provide common rules for different customs regimes; and
- 4) Resolve problems that had arisen from the current terminology.

The new Code has now been written and was published in the Official Journal on 4th June 2008.

[450/2008](#)

It is contained in regulation 450/2008/EC. However, the substantive provisions require further legislation - known as the implementing provisions - to be written. There is a five year time scale within which this must be done. Implementation is scheduled to take place between 24th June 2009 and 24th June 2013. In the meantime, the original Code (Regulation 2913/1992) still applies. All references in this manual are to the Original Code.

1.2 Introduction to legislation

Most of the legislation to do with customs duties is European and as they are mainly regulations, they are **automatically binding on all Member states**. You will find all of what you need in **Tolleys Customs Duties Handbook**, or the "**Red Book**" for short.

As well as the "Code", another important piece of legislation is Regulation **2454/93** also known as the "**Implementing Regulations**". The Code contains the basic law relating to customs duties and the Implementing Regs contain the more detailed procedural requirements. [2454/93](#)

As mentioned already, the new Code has been written but needs implementing legislation to give legal effect to most of its provisions. The new implementing provisions once written will repeal the current implementing regulations 2454/93. All references in this manual are to the current implementing regulations 2454/93.

One final bit of legislation that you will want to become familiar with is the **Customs & Excise Management Act of 1979** or **CEMA** for short. This legislation, although not European, provides the administrative rules for importing into the UK, such as the powers that Her Majesty's Customs have in respect of importations, and criminal offences. Throughout these lectures we will refer to 'Her Majesty's Revenue and Customs' as 'Customs'. This piece of legislation is also reproduced in the Tolley's Red book. As you go through the rest of the chapters you will be introduced to other important legislation. [CEMA 1979](#)

Also from 1st January 2011, the new '**Import Control System**' (**ICS**) is taking effect, which will require traders to **submit pre-arrival information about the goods they are intending to import**. This will enable the authorities to carry out risk analysis on the impending import. This is the first phase of the EU wide '**Automated Import System**' (**AIS**).

1.3 Customs duties and goods in free circulation

We've already mentioned that customs duties are EU wide. Therefore, once the goods have been imported into any one of the member states, they are deemed to be in "**free circulation**". This means that the goods are free to move around the '**territory**' of the EU member states without any further customs duty implications. 'Territory' simply means the **area in which the customs rules are applied**. Goods that originate in the EU Member states are also able to move freely. Goods that have been released to free circulation and **EU originating goods** are often referred to as '**Community Goods**'.

1.4 VAT and excise duties

Although customs duties are EU wide, VAT and excise duties are specific to each member state. You will learn more about these in later chapters. Also, unlike its sister tax, VAT, **customs duties are irrecoverable**. Therefore, by minimising any customs duty due, we can increase the final profits of the importer.

1.5 Importation of goods and the C88

One of the aims of EU law is to protect EU industry and regulate trade. One way of doing this is by imposing an indirect tax, or customs duty, on non-EU produced goods. Note that it is only goods that are charged with duty, not services.

How are goods imported? When goods arrive at the seaport or airport they must be declared to Customs in accordance with **Articles 38 & 40 of the Code**. The declaration to Customs is usually done through submission of a **Single Administrative Document** or **SAD** for short. Sometimes this is called a **C88** or a **Customs Declaration**, or an **import entry**. You will find an example of a C88 at the end of the chapter.

[Art 38 & 40
2913/92](#)

Historically, the C88 was a paper document which was physically completed when the goods were imported. The information on the C88 was subsequently input into Customs' computer system. These days the **majority of declarations are completed and filed electronically**. However, unless the importer is authorised to use simplified procedures - which you will learn about in a later chapter - a lot of information is required at the time of import.

Annex 31 of the Implementing Regs shows an example of a C88. The C88 comes in an 8 part set, but only certain copies are needed, depending on the type of import being made. It asks for a variety of information and although there are 68 boxes on the declaration not all of them need to be completed. Looking at a few of the most important ones, these include;

[Annex 31
2454/93](#)

- a **description of the goods** needs to be inserted in **Box 31**; This can help to identify any specific rules that need to be complied with, for example, whether the goods might need an import licence;
- the **country of origin** of the goods is inserted in **Box 16**. This is important, as it can help to determine the rate of duty applicable to the goods;
- the **commodity code** is required in **Box 33**. This is also sometimes called the **classification code**, **CN code**, or **CCN**. This determines primarily what rate of customs duty is going to be due on the goods.

Goods are 'classified' in a big book called the Tariff where there are approximately 150,000 codes! Therefore, it is vital that the code given to the goods is correct. The codes are **usually ten digits in length**, but can be more, especially if agricultural goods are being imported.

The classification code determines the following.

- the **duty rate**;
- the **import VAT rate**;
- any **excise duties** that may be applicable to the goods;
- whether the goods are liable to **anti-dumping duty** or **ADD**;
- any **licence** that may be required; and
- **preferential duty rates** that may be available.

You will learn more about these topics in later chapters. Also, remember that **import VAT and excise duty rates are member state specific**. The others listed re EU wide.

- A **CPC** code is required in **Box 37** on the C88. This stands for 'Customs Procedure Code'. It tells Customs what we are doing with our goods - for instance are we importing them to free circulation or are we importing them to a different customs regime or procedure? You will learn more about the types of regimes and procedures in later chapters and why you might use them.
- Box 54 is considered by some to be the most important box. This tells Customs who is '**declaring**' the goods to them and who therefore is liable for any duties due on the goods. Let's look at this in more detail.

1.6 Freight Forwarders

Usually an importer uses a freight forwarder to import his goods on his behalf. This means the importer does not have to keep running to the port every time goods arrive and declare them to Customs himself! The freight forwarder is an '**agent**' acting on behalf of the importer.

However, this agent can act for the importer and sign the declaration in one of two ways. He could be an '**indirect representative**' of the importer. This means that the importer and the freight forwarder are **jointly and severally liable** for any customs duties. In this case Customs could pursue either of them for unpaid duties.

Otherwise the freight forwarder acts as a '**direct representative**' of the importer which means he is **acting under the importer's direct instruction**, and the declarant and **person liable for any duties is the importer**. Consequently most, if not all, freight agents will act as direct representatives!

1.7 Other documentation required at importation

As well as the C88 or Customs Declaration, other documents are usually required at the time of import. The main ones are:

- a **valuation declaration**; (see the Valuation chapter for more details on this because sometimes one of these is not required)
- an **invoice** for the goods; and
- where appropriate, an **import licence** and **certificate of origin**.

In later chapters you will learn more about why these documents are needed.

1.8 Payment of duties

Once the goods have been declared to Customs, the **duty needs to be paid or secured** before they will release the goods into free circulation. On acceptance of the declaration, Customs will issue an **E2** which is an **entry acceptance advice slip**. This is generated by Customs' computer called **CHIEF**, which stands for "**Customs Handling of Import and Export Freight**".

Customs require customs duties to be paid or secured before they will release the goods. So that a trader does not have to hand over cash every time he imports goods, Customs will allow him to use other methods of paying the duty. Perhaps the most important of these is the duty deferment scheme.

1.9 Duty deferment scheme

To use this scheme, an importer must be authorised. To obtain authorisation, he needs to complete a variety of forms and send them to Customs. Once authorised, Customs will issue the importer with a **deferment approval number** or **DAN** for short, which needs quoting on each import declaration.

To become authorised, the importer needs a **recognised bank guarantee**, or equivalent from an insurance company, so that in the event that the importer can't pay, Customs will still get their money. The guarantee needs to cover all charges that an importer wishes to defer in a calendar month.

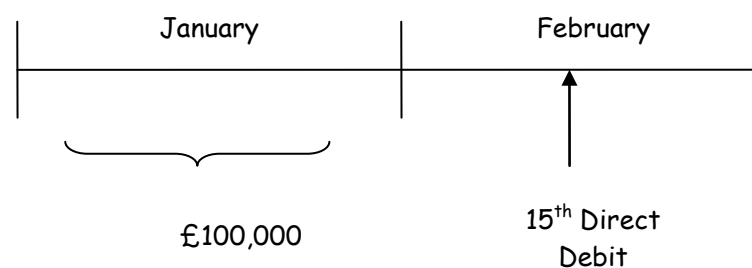
Traders may be able to use a duty deferment account without providing a guarantee for import VAT due. A guarantee is still required for the Customs duty. This is where they are authorised under the **SIVA** Scheme. This stands for '**Simplified Import VAT Accounting**'. Application is made to Customs who will apply certain criteria to see whether the trader qualifies to operate a reduced security.

How you use the duty deferment scheme is as follows.

Illustration 1

Let's imagine that you have a guarantee to cover charges of £100,000 each month. You import goods in January and the charges due are exactly the amount of your guarantee, i.e. £100,000. The freight agent quotes his principal's duty deferment approval number or DAN on the Customs declaration C88. Customs will now release the goods as the charges due have been secured.

On the **15th day of the next month**, i.e. February, Customs will take the £100,000 due directly from the importer's bank account. If the trader does not have enough funds, then Customs will invoke the guarantee.

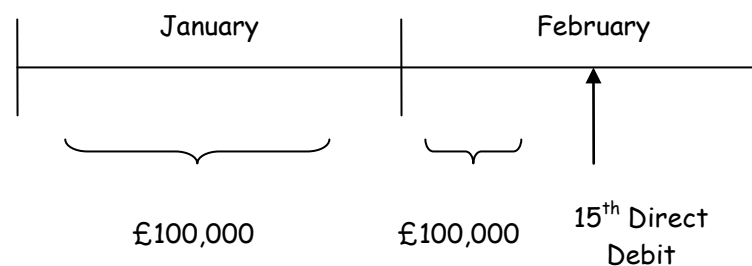


Note that the guaranteed £100,000 is available for every calendar month. This means technically that the guarantor could be **liable at any time for double the amount of the guarantee**.

Illustration 2

Continuing with illustration 1...

Imagine if in the first week of February you import goods with charges of £100,000. You haven't exceeded your guarantee for the month so Customs will release the goods. However, by the time Customs try to take the direct debit on the 15th of February, for January's charges, £200,000 is outstanding and may be claimed ultimately from the guarantor if the importer fails to pay.



1.10 Advantages of Duty deferment

There are a number of advantages to using duty deferment.

One advantage is a **speedier clearance of the goods**. Customs don't have to wait for you to physically pay, so as soon as CHIEF recognises the duty deferment approval number on the C88, the goods will be released.

There is also a **reduction in administration**, as there is only one monthly payment of duties and VAT.

Finally, the importer will obtain a **cash flow benefit** by receiving up to 45 days of credit, i.e. if he imports on the 1st January, the duty on those goods will not be paid until the 15th February.

Deferment statements are usually sent to an importer on a weekly basis so they can establish if they are about to exceed their guaranteed limit. If they exceed their limit, CHIEF will not allow the goods to be released to their deferment account, and the importer will have to pay the charges in another way.

The **monthly import VAT certificate**, the **C79** will be sent to the VAT registered address of the importer on or about the 12th of the month. This is needed so that the importer can recover the VAT as input tax. The duty deferment statement itself cannot be used to support input VAT deductions.

1.11 Authorised Economic Operators (AEOs)

Our next look in this chapter is at Authorised Economic Operators or AEOs.

From January 2008 an amendment to the Code took effect to allow a person to become an AEO. Being an **AEO allows an importer certain simplifications under Customs Legislation**. For example, he should be able to obtain speedier clearance of his goods.

The relevant legislation is contained in article 5a onwards of the Code and article 14a onwards of the implementing regulations. To become an AEO, an **application has to be made to Customs and they will grant a certificate**. There are three **types of AEO certificates**. One allows them to benefit from simplifications under Customs rules. The second one allows them to benefit from facilitations of Customs controls relating to security and safety of goods and the third one allows both of the above simplifications.

[Art 5a
2913/92](#)

[Art 14a
2454/93](#)

Depending on which certificate the importer wants they might have to demonstrate all or some of the following:

1. an appropriate record of compliance with Customs requirements;
2. a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate Customs controls;

3. appropriate financial solvency; and
4. appropriate security and safety standards.

Once Customs receive the application, they must **communicate it to the other Member States within 5 working days**. The other **Member States then have 35 calendar days to communicate any relevant information to Customs** that might prejudice the granting of the certificate. Where a certificate is issued, it **must correspond with the model contained in annex 1D** of the Implementing regulations.

[Annex 1D
2454/93](#)

It must be issued within 90 calendar days starting with the date of receipt. This **period can be extended by 30 days**. The **certificate takes effect on the 10th working day after its issue**. It is **recognised in all Member States**. There is **no period of validity** attaching to it. **Certificates can be suspended or revoked** by the authorities in certain situations.

Customs authorities across the EU have been finding that the authorisation process is generally taking longer than 90 days. From the **1st January 2010**, the **period for issuing a certificate or rejecting an application has been extended to 120 days with a further extension allowed of up to 60 days**.

Make sure that you look through Articles 14A to 14X in your Tolley Red Book and become familiar with the rules on AEOs.

Remember you can highlight your legislation and if a detailed question were to appear on this in the exam, the information will be in front of you.

1.12 Economic Operator Registration and Identification Scheme (EORI)

We'll now take a look at the EORI Scheme. This scheme commenced across the EU on the **1st July 2009** and **replaced the current TURN system**. Each importer is assigned a **unique number which is valid throughout the EU**. It is **quoted on various documents such as the Customs declaration** and one of the uses is for the exchange of information between the customs authorities.

The **number is still essentially the same as that used under the old TURN system** (i.e. the letters 'GB' are followed by the trader's VAT registration number plus a 3 digit suffix)

More traders were automatically transferred over to the new system but new businesses need to apply for a number, which can be done at the same time as their application for VAT registration.

Example 1

Decide which of the following statements are true and which are false.

True False

Customs Duties are EU wide.

Customs Duties are recoverable.

Complete the following blanks with the correct words, numbers or letters.

Goods are declared on an import declaration. This is a C_____ or _____.

Goods are classified in a book called the _____.

The classification code determines the rate of duty and whether the goods are liable to _____ duty or _____ _____ duty and whether they need a _____.

Duty deferment enables an importer to pay his duties and import VAT on the _____ of the following month.

Answer 1

	True	False
Customs Duties are EU wide.	✓	
Customs Duties are recoverable.		✓
Goods are declared on an import declaration. This is a <u>C88</u> or <u>SAD</u> .		
Goods are classified in a book called the <u>Tariff</u> .		
The classification code determines the rate of duty and whether the goods are liable to <u>excise</u> duty or <u>anti dumping</u> duty and whether they need a <u>licence</u> .		
Duty deferment enables an importer to pay his duties and import VAT on the <u>15th</u> of the following month.		