

## CHAPTER 6

### ADMINISTRATION AND APPEALS

#### 6.1 Introduction

In this chapter we are going to cover administrative matters relating to duties. You have already seen the penalties that can be imposed where an importer does not comply with the law, and the wide ranging powers that Customs officers have in making sure they protect the revenue.

This chapter will cover the legislation as to when a '**customs debt**' is incurred, how long Customs have to recover the debt, **interest** that can be charged, and when we **dispute a decision** of Customs', **how can we challenge it**.

#### 6.2 Customs debt

Article 217 onwards of the Code deals with the collection of duties. It provides that duties shall be calculated by Customs as 'soon as they have the necessary particulars' and entered by Customs 'in the accounting records'. 'Entered into the accounting records' simply means that the **duty is ascertained and recorded by CHIEF**.

[Art 217  
2913/92](#)

Generally this will happen when Customs accept the C88 import declaration. There is a time limit imposed on Customs. They must have entered the amount in their account **within 2 days** after the goods were released, or where they were released under the duty deferment scheme, the entry can be made within **5 days of the end of the deferment period**. Article 219 of the Code allows these periods to be extended to **14 days**.

[Art 219  
2913/92](#)

#### 6.3 Retrospective recovery of duty

What if an importer has incorrectly classified his goods and has underpaid duty but this is not discovered until 2 years after the goods were imported. Customs will not have entered the 'debt' in their accounts within the maximum 14 day period, after the goods were released. So does this mean the importer does not have to pay?

[Art 220  
2913/92](#)

Article 220 provides for this type of scenario. It allows Customs to enter the debt in the accounts **within 2 days after they 'become aware of the situation'**. If they don't realise the error until they carry out an audit on the trader's records, which could be sometime later, they can still collect the back duty. However, Customs are prohibited from collecting the duty if Article 220(2) (b) is satisfied.

### Illustration 1

You have imported t-shirts from a GSP beneficiary country for the last 5 years and have paid 0% duty. However, Customs carry out a check of your import documentation, and realise that the GSP Form A certificates are invalid. The exporting country's authorities have been stamping the certificates as they believed the goods met the required origin rule, but unfortunately they don't. Customs now want to assess you for back duty, as the full rate of duty that was due on the consignment was 12%.

You are really annoyed as you checked the rules of origin for the t-shirts. You understood the rules and applied them to your imports and even visited the factory abroad and saw the processing being carried out on your goods. You feel that you could not have done anymore.

In this scenario you are likely to have a defence under Article 220(2)(b). This says that Customs can't recover the duty if the underpayment is as a result of '**an error on the part of the customs authorities which could not reasonably have been detected by the person liable for the payment**' and that person has '**acted in good faith**' and '**complied with all the provisions laid down by the legislation**'. Good faith is defined further down article 220(2) (b) and means that the person has taken '**due care**' to ensure all the conditions were satisfied.

You have taken reasonable steps to ensure compliance, by establishing the rules of origin, understanding and applying them, and by visiting the factory. It is likely Customs will not recover this back duty.

### 6.4 Time limits for retrospective recovery of duty

So far we've said that Customs have a **maximum of 14 days** to record the duty that is due. They then have to '**communicate**' the amount to the person that owes it. Article 221(3) only allows them to communicate up to a **maximum 3 years** after the debt was incurred. What this means practically, is that if Customs carry out an audit and find that you owe them some back duty, they can only go back 3 years.

[Art 221\(3\)  
2913/92](#)

In our illustration above then, even though Customs discover the back duty extends to 5 years, they can only go back 3 in total. This rule works both ways. If we discover that we have overpaid duties, then **we can go back 3 years** and **request a repayment** of those duties, under Article 235 of the Code.

[Art 235  
2913/92](#)

Duties are also repaid or remitted where the importer can show that there is a "special situation" and he has not been deceitful or obviously negligent. An example would be where the importer has incorrectly operated a customs procedure. For example, by incorrectly completing an export declaration for goods imported to IPR. If he is an inexperienced importer he might be deemed not obviously negligent and although a debt has been incurred, it may be remitted. You will learn more about IPR in a later chapter. Once you have read it - come back to this point.

## 6.5 Interest

Article 222 tells the importer how long he's got to pay, if Customs raise an assessment on him. The basic time limit is **10 days** after he receives the assessment, which is generally notified on a **form C18**.

[Art 222  
2913/92](#)

However, Article 224 onwards allows Customs to grant deferment of generally 30 days. In the UK, this means that the importer can pay the charges through his **duty deferment account**. Remember duty deferment allows charges in a calendar month to be paid by the **15<sup>th</sup> of the following month**.

[Art 224  
2913/92](#)

If the importer does not pay within the prescribed period, he may be liable to **interest** under Article 232 of the Code. Interest will be **waived** if it would cause the importer '**serious economic or social difficulties**', or if the importer **pays the duty within 5 days** of when it was due.

[Art 232  
2913/92](#)

Interest on unpaid duties in the UK was brought in from 1 April 2000 onwards, by the **Finance Act 1999**. Under section 126(2), interest will run from the latest date it was due until the day before the payment was made.

[s.126\(2\)  
FA 1999](#)

### Example 1

Customs raise an assessment on an importer and he is given 10 days to pay. The assessment is raised on 2<sup>nd</sup> July and is due to be paid by 12<sup>th</sup> July. He pays the amount on 20<sup>th</sup> August. When will interest run from and to?

## 6.6 Rates of interest

The rate of interest is contained within the **Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations of 1998**. At the time of writing the rate is **3%** and interest is subject to a **minimum £25**.

[Air Passenger Duty  
& Other Indirect  
Taxes \(Interest  
Rate\) Regs 1998](#)

If an importer has overpaid duties, then Customs may repay him with interest. This is given in s.127 of the Finance Act 1999.

This could apply where an importer has not claimed a preferential rate of duty because he was waiting for the required certificate of origin, but now he has it he lodges a repayment claim. Interest will be repaid for the **period that begins with the 31st working day from when the importer lodged his repayment claim with Customs**. 'Working day' means that weekends are excluded. The **interest runs up to the date that Customs issue the repayment**.

### Example 2

We lodge a reclaim with Customs on 1<sup>st</sup> July. They don't pay it until 26<sup>th</sup> August. For what period will we be paid interest?

The rate is given in the same legislation as for arrears, but the rate Customs pay you is not as good as what you pay them! At the time of writing the rate is 0.5%.

You can check current interest rates on HMRC's website at the following web address: [www.hmrc.gov.uk/thelibrary/interest-rates.htm](http://www.hmrc.gov.uk/thelibrary/interest-rates.htm).

## 6.7 Appealable matters

The final aspect we're going to look at in this chapter is the appeals process i.e. where a person disputes a decision given by Customs. We are only going to look at appeals up to the tribunal stage.

If an importer disagrees with a decision taken by Customs can he do anything about it? Appeals can be made in accordance with Articles 243-246 of the Code. Common appeals can arise over the classification of goods, or where goods have been imported using a preferential duty rate and Customs believe that the full duty rate should have been paid. We saw this earlier and in the last chapter.

[Art 243-246  
2913/92](#)

For a comprehensive list of matters that someone can appeal, look at section 13A and Schedule 5 of the Finance Act 1994. You will note from the list of appealable decisions that it is not only **customs duty** decisions that can be appealed but also decisions that relate to **excise duty**.

[s. 13A  
FA 1994](#)

[Sch 5  
FA 1994](#)

Examples of decisions that can be appealed are:

- **decisions taken under the Customs Code**, for example refusal to authorise someone to use a procedure such as Inward Processing Relief.
- **whether interest should be waived** - we saw this a little while ago; remember the phrase 'serious economic and social difficulties'.

Under Section 13A:

- decisions as to the **rate of duty chargeable** on goods,
- **whether a person is entitled to repayment of duty;**
- or **whether they are liable to penalties.**

## 6.8 Appeals process

Article 244 of the Code tells you that you either have to lodge security for any duties that are disputed or Customs may waive this if they feel it would cause **serious economic or social difficulties** to the importer.

[Art 244  
2913/92](#)

Article 245 of the Code goes on to say that the appeal procedure is a matter for national law. An importer has two choices. **Firstly, he can ask Customs to carry out a review of the initial decision.** If he wishes to do this he should **request the review within 30 days.** Customs then has **45 days** - or such longer period as agreed with the trader - to carry out the review. They can **either vary, confirm or overturn the original decision.** If the importer is still not happy with the outcome of the review he can **appeal to the First-Tier tax tribunal within 30 days.**

[Art 245  
2913/92](#)

Alternatively, instead of asking for a review he can **appeal against the original decision direct to the tribunal.** If he wishes to do this he should **appeal within 30 days.**

The tribunal rules are contained in statutory instrument SI 2009/273. Look these up now. The following rules are important:

Rule 20 - this talks about how an **appeal can be started.**

Rule 23 - this talks about the **4 different categories** that a case can be allocated to.

Rule 24 onwards - these talk about the **procedure to be followed once a case has been allocated into its appropriate category.**

Rule 35 - this talks about the **decision of the tribunal** and when it will be sent to the parties.

[SI  
2009/273](#)

Rule 10 - this talks about when an **order for costs** will be made.

**Appeals lie on a point of law to the Upper Tribunal** and from there to possibly the Court of Appeal and House of Lords.

It might be quite expensive for him to try and get the decision overturned. Whether he will do this or not will perhaps depend on how much duty is at stake.

### Example 3

Fill in the blank spaces with the missing words.

An importer may initially request that Customs review a decision. This should be requested within ..... days. Customs then have ..... days to review their original decision. If an importer is still not happy, he can appeal to the First-Tier tax tribunal. He should do this within ..... days.

**Answer 1**

Interest runs from the latest date it was due, which was 12<sup>th</sup> July to the day before payment is made, which is 19<sup>th</sup> August.

**Answer 2**

Interest runs from the 31<sup>st</sup> working day after the reclaim was made. If we count 31 days (ignoring weekends), from 1<sup>st</sup> July, this brings us to 13<sup>th</sup> August. Interest will run from this date to the day the repayment is issued, which is 26<sup>th</sup> August.

**Answer 3**

An importer may initially request that Customs review a decision. This should be requested within 30 days. Customs then have 45 days to review their original decision. If an importer is still not happy, he can appeal to the First-Tier tax tribunal. He should do this within 30 days.