

PERFORMING CUSTOMS FORMALITIES IN THE CAPACITY OF DIRECT REPRESENTATIVE

Direct representation pursuant to the Community Customs Code

Pursuant to the Community Customs Code (CCC), established in 1992, 'any person may appoint a representative in his dealings with the customs authorities to perform the acts and formalities laid down by customs rules' (Article 5, par. 1 CCC). Article 5, par. 2 CCC governs direct representation.

In direct representation, the customs agent performs the formalities and acts prescribed by the customs legislation in his/its capacity of representative 'in the name of and on behalf of another person'. A direct representative may act on behalf of persons/companies established within the European Union.

Direct representation in the Netherlands

In contradistinction to other member states, there was no possibility in the Netherlands to act as direct representative. In spite of the risk attached to this, i.e. liability under public law towards the customs authorities, customs agents have been acting in their own name and for their own account in order to serve their clients. The customs agent ran the risk that in case of the bankruptcy or the involuntary winding-up of his/its principal or in the event of falling victim to fraud, the agent could not recover the damage sustained. The possible financial consequences were disproportionate to the services rendered. Furthermore, the agent had no financial interest in the goods. For these reasons, it is desirable that customs agents are able to act as direct representatives.

From 25 September 2005 onwards, it is possible to make use of direct representation in the Netherlands. Pursuant to the customs rules, in direct representation the party represented is the declarant and as such must meet all obligations ensuing from the declaration. This means that the customs agent is no longer a customs debtor nor are possible entries for uncollected duties for his account. The customs agent may be liable under the criminal law in his/its capacity as submitter of the declaration. It makes the customs agent exclusively responsible for his/its own acts.

Obligations in connection with certain Customs Rules

The possibility to make use of direct representation exists in connection with the 'release for free circulation' (without particular obligations) declaration. In addition to this, pursuant to community legislation, the following declarations must be made by the party that is to meet the particular obligations or by its representative: temporary admission; inwards processing suspensive system/repayment system; processing under customs control; outward processing upon importation; customs warehousing (with the exception of Type B customs warehousing); release for free circulation for end-use goods or goods accompanied by an application for relief ('authorisation' required); and for agricultural products within the framework of Regulation 1291/2000/EC. From 25 September 2005 onwards, the holder of the authorisation, as the declarant, is responsible for such declarations, whereas customs agents may only make a declaration as its direct representative.

Payment facilities

The Dutch rules offer the possibility to make use of the payment facilities offered by the direct representative in order to pay the initial customs debt (duties, charges and taxes owed). Thus, the customs agent remains responsible towards the customs authorities for payment of the debt as specified in the declaration.

Obligation to keep records

The direct representative is under an obligation to keep records. On the basis of the license to submit an 'electronic declaration' issued to him/it, he/it must keep the (original) documents and records pertaining to each declaration for a period of seven years from the date at which customs control was completed. The authorisation to act as direct representative granted by the party represented must also be kept as part of the records of the direct representative.

Subject to the direct representative's duty to keep records, the party represented, as the declarant, has a statutory duty at declaration level to keep as part of its records all data in relation to the declaration, records and other data relating to the transaction, in so far as they pertain to the declaration, during the same period as applies to the direct representative. In addition to keeping copies of the documents and the records which must be made available to the direct representative, these may include original invoices, commercial agreements, freight bills, and so on. The customs agent may perform the activities of keeping and organising the accounts as a possible supplementary service on behalf of the principal. This will require a separate agreement, however. The records must in all instances be accessible to the customs authorities.

Authorisation

In order to act as direct representative, a customs agent must possess a valid authorisation from the declarant/party represented. The authorisation must state that the customs agent is authorised to represent him/it. The Dutch government has decided with regard to the authorisation that it must be possible to establish the identity of the principal, whether this party in effect exists, where it has its place of business, who has signed the authorisation in the name of the principal and whether this person is authorised to issue the authorisation. In this context, the customs agent will request a document from which this may be inferred, such as a recent excerpt of the entry into the Trade Register of the Chamber of Commerce or a statement by the company to serve as evidence of the authority of the person issuing the authorisation. If the principal is a private individual, he must hand over a copy of his passport/identity card.

Conclusion

Performing customs formalities is a profession in itself. Customs agents are therefore frequently engaged in practice. They are familiar with the acts and activities required and furthermore have available authorisations for simplified procedures, payment facilities and computerised procedures. Furthermore, they have the necessary contacts with the customs authorities. A customs agent engaged will, of course, continue to promote the interests of his clients to the same standard when acting as direct representative.