

## FILING EXPORT DECLARATIONS IN THE CAPACITY OF DIRECT REPRESENTATIVE

As of 6 April 2008, the customs system with regard to export declarations is to be adapted. As a result, it will no longer be possible from this date onwards for customs agents/customs brokers to file the (re-) export(ation) declaration in their own name and on their own behalf.

### Particular obligations to be met by the exporter

The Community Customs Code (CCC) provides that the export declaration entails a number of 'particular obligations' for exporters, namely they must present the goods at the customs office of exit and, where the goods do not leave the EU, give notification to that effect to the customs office of exit. Pursuant to this legislation, declarations to which particular obligations are attached, are to be filed by the person who must meet these particular obligations or by his representative.

### Mandatory representation in the case of export

Performing customs formalities is a profession in itself. In practice, customs agents/customs brokers are therefore frequently engaged. This also applies to the filing of export declarations. For a long time, there was no possibility in the Netherlands to enter into the declaration the fact that the person filing the declaration was acting as the exporter's representative. This now is made possible as of 6 April 2008. In view of the particular obligations imposed on exporters, this means that the customs agents/customs brokers are obliged to act as representatives. If they fail to do so, the declaration is not accepted.

### Authorisation

In order to act as representative, customs agents/customs brokers must possess a valid authorisation from the exporter/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/customs broker 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.

### No authority to act as representative

If it emerges that the export declaration has been filed without the appropriate authorisation, it was accepted erroneously and the customs authorities will render the declaration null and void. As a result of such nullification, the entire procedure from exportation to exit will be viewed as null and void for the shipment in question. This means that the 'proof of export', which may be of relevance in demonstrating the 0% VAT rate, will also be viewed as null and void.

### Direct representation

Pursuant to the Community Customs Code, 'any person may appoint a representative in his dealings with the customs authorities to perform the acts and formalities laid down by customs rules'. Representation may be direct or indirect. A direct representative may only act on behalf of persons/companies established within the European Union. The customs authorities have decided to make indirect representation possible for exporters not established within the EU.

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'. Pursuant to the customs rules, the party represented is the declarant and as such must meet all obligations ensuing from the declaration. The customs agent, however, may be liable under the criminal law in his/its capacity of filer of the declaration. This renders the customs agent solely responsible for his/its own actions.

### Obligation to keep records

The direct representative is under an obligation to keep records. On the basis of the license to file 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.

### Conclusion

Customs agents are familiar with the acts and activities required and furthermore have available licenses for simplified procedures, payment facilities and computerised procedures. Furthermore, they maintain the necessary contacts with the customs authorities. A customs agent engaged will, of course, continue to promote the interests of his/its clients to the same standard when acting as direct representative.