

THE VALIDITY OF IMPORT DUTY RELIEFS

Import Duty Reliefs are an essential part of international trade, as they facilitate the use of Suspension of Import Duties and VAT on items which are subsequently re-exported. However, they also imply that goods processed or stored under such conditions will not be and cannot be sold to customers while they are under Customs control.

There are 2 primary forms of Import Duty and VAT Relief, namely Customs Warehousing (CW) and Inward Processing (IP) Relief. These are explained as follows:

CUSTOMS WAREHOUSING

Customs Warehousing is used as a means of storing goods and materials that are imported in bulk in medium-term or long-term storage under Customs control, i.e. duty and tax suspension. These goods are held under such conditions until required by the customer, at which point the individual consignments required by the customer are drawn off from the total stock held under Customs control and are released into free circulation by paying the import duty and tax at the point of release and declaration, but only on the consignment being released from the warehouse. The rest of the consignment remains under Customs control in the warehouse until required by the customer(s).

Customs Warehouses are also especially useful for the Customs-controlled storage of goods subject to import quotas, be these physical or tariff-based. It is often the case that imported goods are subject to quota limits, where only a limited quantity of goods can be imported per year subject to government-imposed quota controls. In cases where such quotas are in force, goods can still be imported, but cannot be cleared into free circulation because of the limits imposed. They are therefore held in a Customs warehouse until the quotas are relaxed and import of these goods into free circulation is allowed.

The use of Customs Warehouses means that goods can be inspected and examined for quality or other reasons while still held under Customs control, in case there is need to reject elements of the consignment because of substandard quality or damage, without these items being subject to Import Duty and Tax liability.

Materials can also be re-exported from the Customs warehouse under duty suspension, with no duty or tax liable on the basis of re-export.

Such facilities are especially applicable to materials stored in bulk, whether finished products, components, sub-assemblies or raw materials such as steel, timber or other basic commodities. The finished products market such as the large retail groups use these facilities, as well as large industrial and productive sectors such as the automotive sectors, including companies such as BMW, Mercedes and Volkswagen, which use these facilities on a global scale.

Customs Warehousing therefore allows imported goods to be stored on suspension of Import Duty and VAT until they are to be released into free circulation to their respective buyers. It should be remembered that such goods are not duty-free, but are liable to Import Duty and VAT once they are released into free circulation. They are held in a Customs warehouse under Duty and VAT/Sales Tax suspension.

Customs Warehousing is an advantage if the importer:

- wants to delay paying duty and/or VAT on stocks of imported goods; or

- wants to delay having a Customs treatment, i.e. release into free circulation, applied to imported goods; or
- wants to re-export goods under Customs control (import duty and/or VAT may not be payable at all); or
- has difficulty at the time of import in meeting certain conditions or licence/certification requirements (including national regulations and requirements such as SPS (Phytosanitary), POAO (Products of Animal Origin) or REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals)).

A Customs warehouse can be either a place or inventory system authorised by HMRC for storing non-GB goods which are:

- chargeable with import duty and/or VAT, or
- otherwise not in free circulation

Goods can be warehoused in a Customs warehouse:

- directly from import
- on removal from a Free Zone (see Free Zones) or from another Customs warehouse within GB
- on transfer from another Customs regime under which duty has been suspended

Goods can be removed for:

- Free Circulation;
- Export to the EU;
- Export to a third country;
- Shipment as stores;
- Transfer to another Customs warehouse;
- Transfer to a Free Zone.

A variety of goods and also basic commodities or raw materials can be warehoused, and usually HMRC will allow goods to be warehoused for an unlimited period. Such goods can also include Consignment Stock, which is the property of the exporter at the time of entry into the free zone, and which will be kept in Customs-controlled storage until called/drawn off by the importer and paid for at the time of release into free circulation. Such facilities are necessary because, under Customs and Tax Law, Import VAT can only be reclaimed by the actual owner of the goods, and not necessarily the importer of record. Since Consignment Stock is still the property of the exporter at the time of import into the free zone, the importer cannot release the goods into free circulation and account for the import duty and VAT. This can only be done once the importer has paid for the consignment in question and therefore is liable for the Import Duty and VAT on the release of the consignment into free circulation.

Goods liable to Excise duty and VAT may also be imported for warehousing. Excise warehousing takes place at premises specifically approved for this purpose and, unless the premises are also approved for Customs warehousing, the goods must be in free circulation before they can enter the warehouse. Some traders use both Customs Warehousing and Excise (Tax) Warehousing regimes on the grounds that they not only trade in Excise goods, but they also import Excise goods from outside the UK.

The other issue concerns Inventory Control. In a Customs Warehousing or Freeport environment, it is imperative that the trader is able to identify and control all inventory stock, especially where there is a combination of Customs-controlled and free circulation stock. In a Customs warehouse, the trader must be able to ensure that they have full control over all stock records, the Customs status

of the stock, inward deliveries of stock and releases of stock for onward shipment. These are conditions imposed by HMRC, and must be adhered to at all times. Indeed, HMRC require from the trader a set of warehouse and stock records showing how these activities are controlled and monitored on a frequent basis. In general, all records must be electronically maintained and controlled, so that spreadsheet records can be submitted to and monitored by HMRC, including the relationship between the company's Warehouse Management System (WMS) and Duty Management System (DMS).

The distinction between Customs Warehouses or CWs and Free Zones, and the risks that they pose, also needs to be clearly understood and included in any Regulatory Governance review of Free Zones. Customs Warehouses are effectively temporary goods storage centres established under the general supervision of Customs. The owners of the warehouse must be able to guarantee to the Customs Authority that they can store goods in the Customs Warehouse with complete safety and security, and these guarantees are assessed at the time of application for Customs Warehouse approval. Once approval has been granted by the Customs Authority, the goods stored in the Customs Warehouse are suspended from all duty and VAT liability. Goods at the warehouse may be manipulated, or even repackaged, but their identity, description and Commodity Code is largely preserved for the purpose of tariff classification. This process is in contrast to activity within the adjacent Free Zone, which may involve manufacturing and legitimate changes in tariff classification, value, and country of origin, as long as approval has been given to the zone operators by the national Customs Authority. This additional facility generally falls under the generic function of Inward Processing Relief (IPR).

Given that the UK Freeport concept automatically includes and embraces the facility of Customs Warehousing as a matter of course, the aforementioned conditions imposed by HMRC apply to all Freeport operators, albeit using Simplified Procedures as sanctioned by HMRC.

INWARD PROCESSING

Inward Processing is a facility where materials are imported under duty and tax suspension for the purpose of manufacturing into finished or semi-finished products. These products can then be imported into free circulation using the commodity code of the finished product, or re-exported as finished products. While the goods are under the Customs IP facility, they are under import duty and tax suspension, and only become liable for import duty and tax when they are released into domestic free circulation. If they are re-exported, there is no duty or tax liability.

The **Duty Suspension** principle works in such a way that all imported materials may be declared on the basis of Duty and VAT Suspension on the grounds that they are to be incorporated in a process where the finished product resulting from the incorporation of such materials will be re-exported in its entirety to a non-GB customer. The condition is that the process allows for a complete transformation from raw materials to finished product, i.e. the implication being that there will be a transformation of the item concerned either by refining, processing or manufacture into another item which is completely different from the original imported components which constitute it. Thus, the Tariff Commodity Code of the Raw Material will be changed to that of the Finished Product.

In the case of the UK, it is necessary for the processor to apply to HM Revenue & Customs for a full IPR authorisation in advance of any such activities being commenced. The application details all activities to be undertaken, as well as details of both raw materials to be imported and finished products to be processed.

What does IPR cover?

Inward Processing Relief (IPR) covers a wide range of activities, all of which relate in some way to manufacturing or processing work being undertaken on a specific **imported** item of non-GB origin for the purposes of **re-export** to another non-GB destination.

The implication for most forms of IPR is that there will be a transformation of the item concerned either by refining, processing or manufacture into another item which is completely different from the original imported components which constitute it. Where Simplified Authorisation is concerned, the nature of the goods concerned may not change, but some process is applied to enhance the product in some way without altering its essential structure, nature or description.

Examples

IPR activities cover the following processes:

- Manufacturing;
- Processing;
- Refining;
- Assembly;
- Preparing for distribution and sale;
- Sorting, repackaging and relabelling;
- Removal of defective items or parts;
- Repair;
- Maintenance;
- Modification.

The main reason for the use of Inward Processing Relief (IPR) is so that the trader may be approved for suspension from Import Duty and VAT on all imported items used in a process for the purposes of re-export of the finished product on condition that they abide by the requirements imposed by HMRC. The trader must agree to abide by these requirements, and must ensure that appropriate records are kept for the purposes of monitoring and controlling such operations.

IMPLICATIONS FOR OTHER REGULATIONS

Because both types of facility concern Customs-controlled operations of either storage or processing, the goods involved are not in free circulation and cannot be sold to other customers under such conditions. Equally, they are not subject to national regulations such as those mentioned in the section on Customs Warehousing and which equally apply to Inward processing conditions. Under these circumstances, UK domestic regulations cannot apply, as the goods have not been entered into Home Use (Free Circulation). Therefore, regulations such as REACH or other requirements **cannot** be applied until the goods concerned are entered into domestic Free Circulation on a Duty and VAT-paid basis. Given that these stipulations apply in the EU, they must also apply in the UK. UK REACH regulations cannot apply to goods deemed to be in international conditions, which include the use of CW and IP facilities. Both CW and IP conditions imply that the goods are still under international conditions, and therefore cannot be admitted to national regulations until they have been entered into national Home Use/Free Circulation.