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Separating release from clearance procedures

Description

The WCO Revised Kyoto Convention (RKC) defines Customs clearance as "the accomplishments of the Customs formalities necessary to allow goods to enter home use to be exported or to be placed under another Custom procedure" (WCO, RKC, General Annex Chapter 2), and release as "the action by the Customs to permit goods undergoing clearance to be placed at the disposal of the persons concerned" (WCO, RKC, General Annex Chapter 2).

Traditionally, Customs authorities do not release goods until all issues related to the transaction are resolved and duties and taxes due are paid – thus, the clearance completed. However, the final clearance can be delayed for various reasons, such as pending decision on classification and valuation, missing documents, or appeal process against decision. Such delays have a negative impact on traders' supply chains, as the goods are upheld in a Customs-controlled facility and are not at the disposal of the trader.

Separating release from clearance means that goods are released by Customs prior to the payment of duties and taxes in cases where final classification of the goods, assessment of value and other transactions are pending. A security for the applicable duties and taxes in the form of a deposit or bond is usually required.

Benefits

Introducing regulation allowing for the separation of release from clearance of goods yields substantial benefits for traders in particular, as it supports a seamless and faster supply chain used in particular in e-commerce and just-in-time delivery. Furthermore, goods spent in Customs warehouses are subject to fees and induce inventory and insurances costs for traders. On the Customs side, the separation reduces requirements for storage and warehouse infrastructure. Risks related to the early release are sufficiently controlled through the deposit of a security before release.

Sources of delay

Delays in the final clearance process can arise for a variety of reasons; the most frequent are the assessment of the value of the goods for Customs purposes, determination of the correct classification, and missing documentation.

Valuation problems – Problems often surface with respect to the assessment of Customs valuation, because the value and related costs form the direct basis for calculation of duties and taxes in most cases. An invoice may be missing, a deduction in the price may not be well documented or Customs may want further documentation to verify the declared value. In particular, valuation in cases where the exporter is an affiliate of the importing company – or otherwise related – has proven to be difficult (transfer pricing).

[1] This Technical Note has been produced jointly by the World Customs Organization (WCO) and UNCTAD.

Such cases may sometimes be referred to an expert panel established within Customs, but the inevitable consequence is a delay in the release. Therefore, Customs in many countries have implemented the provision in Article XIII of the WTO Agreement on Customs Valuation. The provision reads as follows:

"If, in the course of determining the Customs value of imported goods, it becomes necessary to delay the final determination of such Customs value, the importer shall nevertheless be able to withdraw them from Customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument covering the ultimate payment of Customs duty for which the goods may be liable. The legislation of each [WTO] Member shall make provisions for such circumstances."

Apart from valuation difficulties, a number of other reasons may cause substantial delays in the clearance process, and for which there is no similar support from any WTO provisions, such as:

- Classification problems, e.g. cases where the tariff heading cannot be determined on the basis of the details available at clearance, or where there is a dispute between Customs and the declarant;
- Missing documents, e.g. insufficient information about transport conditions, quality or quantity; lack of certificates of origin to qualify for preferential treatment, or of health certificates.

Implementation issues

Prerequisites

- Capacity-building and awareness-raising on the benefits of the separation of release from clearance procedures, on the financial guarantee system and the conditions relating to the new procedure for Customs staff and the trading community, including carriers and clearing agents, professional associations and the banking sector;
- Training Customs staff – While the government carries the responsibility for planning and providing the means for Customs modernization, the actual implementation and operation will be undertaken at local Customs offices. Local Customs staff needs to be trained in the new Customs procedures, including computer systems, and develop good relations with the trading community;
- Surety – When importing companies want to take advantage of separate release procedures, a guarantee system must be available to ensure proper payment of duties and taxes. Such systems should offer a variety of instruments, including bank guarantees, bonds, and deposit of funds;
- Amendment of legislation – Governments may need to revise their Customs law and provide necessary authority to implement new release procedures.

Security for payment

Putting in place financial mechanisms for securing payment and compliance by traders is a prerequisite for the release of goods in advance. Once a trader has posted a surety or guarantee with Customs, a number of simplified procedures can be made available. Security instruments can take several forms, including cash deposits, surety by banks or insurance companies, bonds or other legally binding obligations confirming final payment of duties and taxes. The security can cover a single transaction or be of a general nature, i.e. it covers a number of transactions.

Examples of a credit scheme to allow for deferred payment
The European Union operates a credit scheme available to traders in its member States. It is a general system under which payments relating to imports in one calendar month become payable by the 16th day of the following month. A guaranty, bond or other suitable surety is required for all importers using the credit system.

Assessment

There are several ways to assess the effective implementation of separate release procedures. Indicators of effective implementation will be the actual use by traders of the new procedures, and the time it takes for goods to be released.

Internal auditors can verify whether new procedures have been properly communicated to staff and the trading community. In addition, the review must ensure that capacity-building activities have been completed and followed up. The involvement of local business organizations in the assessment process can be very useful, add credibility to the assessment and, at the same time, strengthen cooperation between Customs and the business community.

References and tools available

World Customs Organization (WCO)

Relevant WCO instruments and references are:

- International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention, 1999);
- WCO Time Release Study.

The Global Facilitation Partnership for Transportation and Trade (GFP)

The Global Facilitation Partnership for Transportation and Trade (GFP) brings together the world's leading organizations and practitioners in trade and transport facilitation. It creates an open information and exchange platform on major new developments and all aspects of trade and transport facilitation. See www.gfptt.org.

Further UNCTAD Technical Notes

Further Technical Notes and various reports are available via http://r0.unctad.org/ttl. See in particular http://www.unctad.org/technicalnotes:

- Technical Note No. 5 (Post-clearance audit)
- Technical Note No. 12 (Risk management for Customs control)
- Technical Note No. 15 (Pre-arrival Customs processing)

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