



Representation In Case Of Customs Declarations

Contents

1 Why this informationsheet?	1
2 What is representation?	1
3 You Are The Stakeholder (An Importer, Exporter Or Licence Holder)	3
4 You Are A Customs Agent	4
5 Further Information	7

1 Why this informationsheet?

Do you intend on having your customs declarations handled by an agent, or will you be handling declarations as an agent on behalf of a client? This informationsheet will give you insight into your options, rights and obligations. You will read about what representation entails (Chapter 2). You will also read about what representation entails for importers, exporters or licence holders for a procedure with economic impact (Chapter 3). This informationsheet also contains information on what representation entails for customs agents (Chapter 4).

Please note:

This informationsheet is restricted to representation where the customs declaration is lodged by means of the Customs Sagitta Import (CSI) and Customs Sagitta Export (CSE) declaration systems.

2 What is representation?

The Community Customs Code allows people to be represented at Customs for the fulfilment of the actions and formalities laid down in the Community Customs Code. This is known as 'representation'. In this chapter, you will find information on the two parties involved in representation and the differences between direct and indirect representation. You will also read about lodging declarations and declarations with particular obligations.

Parties Involved In Representation

Representation involves two different parties: the stakeholder and the customs agent.

- The stakeholder is the represented party. He or she has direct control over the goods and takes the initiative in assigning the goods a customs-approved treatment or use. The stakeholder is the importer, exporter or licence holder for a procedure with economic impact, and is the client of the customs agent. The stakeholder authorises his or her representation by the customs agent.
- The customs agent acts for its client. The broker is also the point of contact for Customs.

Direct And Indirect Representation

Representation in the customs declaration processes means that the party which has to lodge a declaration outsources this to a representative: the customs agent. The law distinguishes between two forms of representation: direct and indirect.

- In case of direct representation, a customs agent lodges a declaration in the name of and on behalf of the stakeholder. The stakeholder is the declarant and, as such, responsible for the declaration. In the Netherlands, direct representation may be sought for the import, export and re-exportation declaration processes.
- In case of indirect representation, a customs agent lodges a declaration in his or her own name but on behalf of a stakeholder. A customs agent who acts as an indirect representative is the declarant and, as such, responsible for the content of the declaration. In the Netherlands, indirect representation may only be sought for the export declaration process. Indirect representation is particularly intended for situations where the stakeholder (the exporter) is established outside the European Community (EC). In that case, he will not be able to act as a declarant himself. In case of indirect representation, a customs agent who is established inside the EC acts as the declarant. In order to be able to act as an indirect representative, a customs agent needs to be authorized as a Customs Broker.

Please note:

In both direct and indirect representation, declarations are lodged on behalf of the stakeholder.

Please note:

In the Netherlands, indirect representation may only be used for export declarations.

Lodging A Declaration

The main rule in customs legislation is that customs declarations can be lodged by anyone who is able to present goods and submit all the required documents to apply the provisions applicable to the customs procedure for which the goods have been entered to Customs. Moreover, this person needs to be established inside the EC.

There is one important exception to this rule; customs declarations whose acceptance involves particular obligations for a certain person need to be lodged by the person themselves or at their own expense. These declarations are referred to as “declarations with particular obligations”. If a stakeholder has these declarations lodged at his or her own expense, one can speak of representation.

Declarations With Particular Obligations

The following customs declarations are declarations with particular obligations:

- the declaration for release into free circulation
- with a special customs-approved treatment or use
- with an exemption from customs duties
- following outward processing
- the declaration towards placement under the customs warehousing procedure
- the declaration towards placement under the inward processing procedure (suspension and repayment)
- the declaration towards placement under the processing under customs control procedure
- the declaration towards placement under the temporary import procedure
- the export declaration
- the re-exportation declaration
- the declaration towards placement under the outward processing procedure

There is only one customs declaration which does not involve any particular obligations. This concerns the ‘regular’ declaration for release into free circulation, i.e. a declaration for release into free circulation which does not involve the application of other customs procedures.

You can use the ‘What are your declaration options?’ flow chart to work out the stakeholder’s options in each of the various situations.

3 You Are The Stakeholder (An Importer, Exporter Or Licence Holder)

As an importer, exporter or licence holder of a procedure with economic impact, you will always be able to lodge your own customs declarations. You can also outsource the declaration process to a customs agent. In that event, it will not matter whether you are established inside or outside the EC. In this chapter, you will read about what customs agents can do for you in each of the various situations. Moreover, you will find information on your payment options in case of representation, the provision of security and the procedure concerning adjustments to the customs declaration following release. At the end of the chapter, you will find a list of basic principles which are relevant for you if you, as the stakeholder, wish to make use of direct or indirect representation.

Are you established inside the EC?

If so, you may choose to have your customs declarations handled by a customs agent. A customs agent can lodge the declarations as your direct representative. In that case, the customs agent will lodge the declarations in your name and at your expense. You may seek direct representation for all customs declarations; thus also for:

- ‘regular’ declarations for release into free circulation
- all declarations with particular obligations

In case of a ‘regular’ declaration for release into free circulation, you may also arrange with your customs agent that the latter lodges the declaration in their own name and at their own expense. In that case, one cannot speak of representation. Your customs agent will act as the declarant and will be fully responsible for the content of the declaration.

In case of an export declaration, you will, in addition to direct representation, also be able to make use of indirect representation: in that case, your customs agent will act as the declarant. He will lodge a declaration in his or her own name but at your expense.

For a number of procedures with economic impact, you will be able to request a licence the moment you lodge the declaration towards placement under the desired customs procedure. We refer to this as ‘licence application upon declaration’. If Customs grants the licence upon declaration, the acceptance of the declaration will result in particular obligations. From that time onwards, you will essentially only be able to lodge declarations yourself, but you may also seek direct representation and have them lodged by a customs agent in your name and at your expense.

Are you established outside the EC?

If so, you will not be able to lodge a customs declaration yourself, since customs legislation sets the requirement that the declarant – the person in whose name a declaration is lodged – is established within the EC. You will, however, be able to have your declaration handled by a customs agent who is established within the EC.

In that event, it will not make any difference whether you act as an exporter or importer.

- If you are the owner of goods which are in free circulation in the EC, you can have the export declaration lodged by a customs agent who is established within the EC. He will only be able to lodge the declaration as an indirect representative: he will lodge the export declaration in his or her own name but at your expense;
- If you wish to release goods into free circulation in the EC, you can have the declaration lodged by a customs agent who is established within the EC. In such an event, you will not be able to make use of any representation: the customs agent will only be able to lodge the declaration in their own name and at their own expense. As the declarant, the customs agent will be fully responsible for the content of the declaration.

Please note:

If you are established outside the EC, you will:

- *not qualify for a licence for a procedure with economic impact;*
- *be able to lodge a declaration for temporary import;*
- *be able to lodge declarations in special cases (with Customs’ permission).*

Payment Options In Case Of Direct Representation

In case of direct representation, you, the declarant, will be responsible for payment of any customs debt. You will be able to pay any such debt in a number of different ways: in cash, by means of your monthly line of credit or by means of your customs agent’s monthly line of credit. Payment by means of a monthly line of credit is the most accepted method.

A monthly line of credit is a kind of current account, covered by a comprehensive security deposited with Customs. In most cases, this security is covered by a bank guarantee in the form of a contract of suretyship. The customs debt is debited against the monthly line of credit no later than the moment Customs releases the goods for a customs procedure. At the end of the month, Customs will charge that month’s total customs debt in one go.

Practically all customs agents in the Netherlands have got a monthly line of credit. You can arrange with your customs agent that the latter has the customs duties and other taxes debited against their monthly line of credit, and that they will subsequently charge you these amounts. In that case, you will not require your own monthly line of credit.

If you lodge declarations, or have them lodged by a customs agent, on a regular basis, resulting in debts in terms of customs duties and other taxes, a monthly line of credit with Customs can be an attractive option. In that case, you can arrange with your customs agent that the latter specifies in the declaration that the customs duties and other taxes need to be debited against your monthly line of credit.

Providing Security In Case Of Direct Representation

In a number of procedures with economic impact, you will be able to place goods under the procedure under suspension of the customs duties and other taxes. This means that you will not have to pay the customs debt at that time. In that case, your licence for the procedure with economic impact will stipulate that you provide security for the customs debt you will owe if you do not satisfy the conditions of the procedure. In most cases, you will have to provide this security in the form of a contract of suretyship. A contract of suretyship is a written agreement between the approved guarantor (usually a banking institution) and the collector of customs. In that case, the security will stand surety for you.

You will also need to provide security in case of a licence application upon declaration. If you have the declaration lodged by your customs agent, you may choose to provide security yourself, or to use the comprehensive security of your customs agent. Most customs agents have got a comprehensive security with Customs. In both cases, Customs will not release the security until after you have properly completed the customs procedure.

Adjustments To The Customs Declaration Following The Release Of The Goods

After the goods have been released, Customs may check the information in the declaration which was lodged at your expense. This inspection may result in an adjustment to the declaration and an additional assessment of underpaid tax.

- In case of direct representation, the additional assessment will always be addressed to you, and will be in your name; after all, you are the declarant. In that case, you will receive the payment notification.
- In case of indirect representation, your customs agent will have lodged a declaration in his or her own name but at your expense. The additional assessment will be addressed to both of you. You will both receive a payment notification, whereby you will be able to agree amongst yourselves who will make the payment.

If you wish to object to an additional assessment, you will essentially have to do so yourself. You may of course seek representation in such a case. In that case, you will authorise another person to object on your behalf. This could be the customs agent who handles your declaration. However, you could also authorise someone else, for example, a tax consultant, to object on your behalf.

Do you wish to make use of direct representation?

If so, please take the following basic principles into consideration:

- You may seek direct representation for all your customs declarations.
- You will have to authorise (preferably in writing) your customs agent to act on your behalf.
- You will be the declarant; the declaration will be in your name. This means that you will be responsible for the content of the declaration. You will also be responsible for complying with the obligations connected with lodging the declaration.

- Your customs agent will be the point of contact for the customs authorities up until the moment the latter release the goods which have been entered for the requested customs-approved treatment or use.
- You will be responsible for complying with the particular obligations ensuing from the acceptance of the declaration.
- You will be the debtor for any customs debt ensuing from the declaration. You may pay the tax owed yourself, but may also arrange with your customs agent that the latter pays. The customs agent will settle this with you at a later stage.
- You will have to keep the documents pertaining to the transaction on which the declaration is based for at least 7 years.
- You may ask your customs agent to keep copies of the declarations and corresponding documents. As your broker, he will keep a declaration file up to date.

Do you wish to make use of indirect representation?

If so, you should take the following basic principles into consideration:

- You may only seek indirect representation for your export declarations;
- Your customs agent will need to be authorized as a Customs Broker.
- You will have to authorise your customs agent to act on your behalf.
- Your customs agent will be the declarant; the declaration will be in his or her name. This means that he or she will be responsible for the content of the declaration and for complying with the obligations connected with lodging the declaration.
- You will be responsible for complying with the particular obligations ensuing from the acceptance of the declaration, since it will be lodged at your expense. This also means that you will be the co-debtor for any customs debt which may ensue from the declaration.
- Your customs agent should keep records of the declarations he or she handles on your behalf.

4 You Are A Customs Agent

As a customs agent, you handle the declarations for your client; usually an importer, exporter or licence holder for an economic procedure. In such an event, it will not make any difference whether your client is established inside or outside the EC. In this chapter, you will receive information on your options in the various forms of representation. You will also be given answers to such questions as: What will happen when I lodge a declaration without any authorisation, who will be responsible for the content of the declaration, who will be the point of contact for Customs, how can I pay the customs debt or provide security and what will happen after an adjustment to a declaration? Finally, you will find a list of the conditions and basic principles which are relevant for you as a direct or indirect representative.

Is your client established inside the EC?

If so, you will always be able to act as a direct representative. In that case, you should lodge declarations in the name of and on behalf of your client. You may seek direct representation for all customs declarations; thus also for:

- ‘regular’ declarations for release into free circulation
- all declarations with particular obligations

In case of a ‘regular’ declaration, you will have the additional option of arranging with your client that you lodge the declaration in your own name and at your own expense. In that case, one cannot speak of representation. You will act as the declarant and will be fully responsible for the content of the declaration.

In case of an export declaration, you will have the additional option of lodging the declaration as an indirect representative: in that case, you will act as the declarant. You will lodge the declaration in your own name but on your client’s behalf. You will be fully responsible for the content of the declaration. However, your client will be the co-debtor for any customs debt.

For a number of procedures with economic impact, a licence can be requested the moment a declaration towards placement under the desired customs procedure is lodged. We refer to this as ‘licence application upon declaration’. If Customs grants a licence upon declaration, the acceptance of this declaration will entail particular obligations for your client. You will only be able to lodge such a declaration as a direct representative, in the name of and on behalf of your client.

Is your client established outside the EC?

If so, they will not be able to lodge a customs declaration themselves, since customs legislation sets the requirement that the declarant – the person in whose name a declaration is lodged – is established within the EC. Due to the fact that your client does not satisfy these licensing requirements, you will not be able to lodge declarations in their name and, thus, act as their direct representative.

You will only be allowed to handle customs declarations on your client’s behalf in the following cases:

- If your client wishes to release goods into free circulation in the EC,
- you will be able to lodge the customs declaration in your own name and at your own expense. In that case, you will act as the declarant and, as such, will be fully responsible for the content of the declaration. One cannot speak of any representation.
- If your client owns the goods which are in free circulation in the EC you will be able to lodge the export declaration on his or her behalf as an indirect representative: in that case, you will lodge the export declaration in your own name but on your client’s behalf.

Your Authorisation

You will need to be authorised by your client in order to be able to act as an agent. The authorisation has no set form, but in case of indirect representation you will need to have written authorisation. You will be able to find a model authorisation on your trade association’s website. You can complete this authorisation together with your client.

Customs will assume that you will be able to perform all the actions and formalities laid down in customs legislation. The authorisation will be valid up until the moment Customs releases the goods for the requested customs-approved treatment or use.

The moment you lodge a declaration as a representative and do not have adequate authorisation, Customs will assume that you have lodged the declaration in your own name and at your own expense. However, you will not be able to lodge declarations with particular obligations in your own name and at your own expense. If you have lodged such a declaration without any authorisation, Customs will declare it invalid. This need not happen if your client confirms your authority as an agent at a later date. In that case, Customs will be able to accept the declaration as a declaration which you have lodged as a representative.

Who will be responsible for the content of the declaration?

As a direct representative, you will lodge declarations on behalf of your client. The latter will be responsible for the correctness of the information contained in the declaration, for the authenticity of the enclosed documents and for complying with all obligations. However, criminally speaking, you are responsible for the correctness of your actions.

As an indirect representative, you yourself will be the declarant and, as such, responsible for the correctness of the information contained in the declaration, for the authenticity of the enclosed documents and for complying with all obligations. Criminally speaking, you are responsible for the correctness of your actions.

In case of an incorrect declaration, you will in the first instance be liable as the broker. If the investigation reveals that you are not to blame in any way, your client will be held responsible.

For Customs

If you act as the broker, you will be the point of contact for Customs. For example, the customs authorities will contact you if they wish to inspect goods physically. In that case, you yourself will have to determine whether or not your authorisation will allow you to be present during a sample-taking on behalf of your client. You will be the point of contact up until the moment Customs releases the goods which have been entered for the requested customs-approved treatment or use.

Payment Options In Case of Direct Representation

Your client will be responsible for payment of any customs debt. If your client has their own monthly line of credit, the customs debt may be debited against it. You may also arrange with your client that you will pay your customs debt by means of your monthly line of credit, charging them the amount at a later date. In order to be able to pay the customs duties and other taxes by means of your monthly line of credit, you will require a special contract of suretyship, referred to as the 'contract plus'.

Providing Security In Case of Direct Representation

In a number of procedures with economic impact, the goods may be placed under the procedure under suspension of the customs duties and other taxes. This means that the licence holder for the procedure with economic impact will not have to pay tax at that point in time. He will, however, need to provide comprehensive security for any customs debt which may arise if he does not comply with the conditions of the procedure.

A security will also need to be provided in case of a licence application upon declaration. If you lodge this declaration, you can arrange with your client that you will provide this security. Your client may also choose to provide the security himself. In both cases, the security will not be released until after your client has properly completed the customs procedure.

Adjustment To The Customs Declaration Following Release Of The Goods

After the goods have been released, Customs may check the information contained in the declaration in retrospect. This inspection may result in an adjustment to the declaration, and an additional assessment of underpaid tax.

- In case of direct representation, the additional assessment will always be addressed to your client, since he or she is the declarant. The client will receive the payment notification.
- In case of indirect representation, you will have lodged a declaration in your own name but on behalf of your client. For this reason, the additional assessment will be addressed to both of you. You will both receive a payment notification, whereby you will be able to agree amongst yourselves who will pay the additional assessment.

If you wish to object to an additional assessment, you will essentially have to do so yourself. You may of course also authorise another party to object on your behalf. This could, for example, be a tax consultant.

Are you acting as a direct representative?

If so, you will be dealing with the following conditions and basic principles:

- You are established inside the EC.
- Your client has authorised your representation in writing. You will need to be able to submit this authorisation at the request of Customs.

- The information provided in the declaration reveals that you are lodging the declaration as a direct representative.
- Your client will be the declarant. This means that he or she will be responsible for the content of the declaration and for complying with the obligations connected with lodging the declaration.
- You will be the point of contact for Customs up until the moment Customs releases the goods which have been entered for the requested customs-approved treatment or use.
- Your client will be responsible for complying with the particular obligations ensuing from the acceptance of the declaration.
- Your client will be the debtor for any customs debt ensuing from the declaration. You will be able to arrange with your client that you will pay the debt and that you will settle it with him at a later stage. If you have specified in your declaration that you will pay the debt, the amount of the debt will be debited against your monthly line of credit. In that case, you will need to have what is referred to as a 'contract plus'.
- You will keep a declaration file up to date, keeping the following documents for at least 7 years:
 - copies of the declaration and corresponding documents
 - the authorisation
 - the instruction to lodge a declaration

Are you acting as an indirect representative?

If so, you will be dealing with the following conditions and basic principles:

- You may only seek indirect representation for export declarations.
- You are established inside the EC.
- You are authorised as a Customs Broker.
- Your client has authorised you in writing to represent him. You will need to be able to submit this authorisation at the request of Customs.
- The information provided in the declaration reveals that you are lodging the declaration as an indirect representative.
- You are the declarant. This means that you will be responsible for the content of the declaration and for complying with the obligations connected with lodging the declaration.
- You will be responsible for the correctness of the declaration details, and will remain so after the goods have been released and verification has been completed.
- You will be the debtor for the customs debt. Your client will be the co-debtor.
- You will keep records, keeping the following documents for at least 7 years:
 - every document pertaining to the transaction on which the declaration is based
 - a declaration file containing copies of the declaration, the corresponding documents, the authorisation and the instruction to lodge the declaration

5 Further information?

You may have some questions or require further information after reading this informationsheet.

- You may contact the collector of the customs region in which you are established to request a monthly line of credit and/or a 'contract plus'.
- You will be able to find more information on the customs regions and addresses on www.douane.nl. On this site, you will also find information on representation and declarations with particular obligations.
- You may also call the Customs Information Line on tel. 0800 - 0143 for general information on direct representation and declarations with particular obligations.
- You may direct any questions you may have regarding the technical specifications and other automation-related issues to the National Customs Helpdesk on tel. (055) 577 66 55.
- You will be able to find a model authorisation on the website of your trade association.

Flow Chart: What are your declaration options?

