C-09-11

24th October 2011

To: The Documentation Managers of all EUR1 Issuing Bodies

Dear Colleague

CUSTOMS INFORMATION PAPER (11) 89
Non Compliance with the Export Procedure

Who should read: Exporters, Excise warehouse-keepers, freight forwarders, Shipping Agents, loaders, freight shed operators, carriers, CSPs, shippers and anyone involved in the export process.

What is it about: Launch of Export Best Practice Guide to assist traders to be compliant with export procedures to minimise non-arrived goods and unauthorised removals. Actions which must be taken urgently to comply with HMRC export requirements. EXS Declarations. Responsibility of Manufacturers Selling Goods Ex Works for Export

When effective: Immediately

Extant until/ Expires Until further notice.

1. Introduction
Customs Information papers (CIPs) 10/33 and 10/63 highlighted gaps in compliance with UK export procedures for direct and indirect exports from the European Union. HMRC is concerned that there has been insufficient improvement in compliance and is working with the trade to address this in 3 ways:

- Production of an Export Best Practice Guide and associated trade documents to assist voluntary compliance by addressing key areas;
- Offering Export Unit of Expertise staff’s assistance to traders to comply with requirements; and
- HMRC contact to work with traders to improve compliance – starting with those traders with non arrived export declarations and those seeking retrospective arrivals at the National Clearance Hub.
The Export Best Practice Guide has been produced in collaboration with trade representatives and it is available on the HMRC website (see Import and Export then New Export System). We will be asking trade associations to assist in publicising it to their members. Traders are encouraged to work with the HMRC, Export Unit of Expertise, to promptly address any errors in the export procedure as this will make them easier to correct. As a last resort, HMRC will implement civil penalties for those traders remaining non compliant.

A business holding AEO status should also be aware that failure to comply with any export requirements may jeopardise their authorisation.

2. Export Best Practice Guide and the Export Process

The BPG (Best Practice Guide) is to assist voluntary compliance and the chart below shows the key milestones of the export process and where in the guide help is to be found.

3. Key Areas of Non Compliance to Address

The UK export procedure is based directly upon the provisions of the Community Customs Code Implementing Regulation (CCCIP or Regulation 2454/93) and involves a number of logical steps, performed by various parties through the HMRC declaration processing system, CHIEF (Customs Handling of Import & Export Freight). These can be summarised as:

- pre-lodgement of export data
- notification to Customs (by means of an arrival message) at the place of export (presentation)
- customs legal acceptance and positive clearance (permission to progress P2P)
- presentation of indirect export goods at customs office of exit.
- customs control and clearance of indirect export at office of exit.
- departure from UK (for direct exports)
- confirmation of exit from EU (for indirect exports)

Non Arrived Exports

If you fail to perform the arrival function, or fail to arrange for it to be performed by your representative, you have not complied with the export procedure. This is because arrival is a necessary precursor to acceptance and customs clearance. HMRC, via CHIEF, can only legally accept your declaration, perform risk assessment and give legal clearance for the goods to be shipped once the goods have been arrived correctly. Failure to do so means your export is non compliant with our rules and legislation.

22 days after export data is first entered to CHIEF HMRC issues an automated CHIEF print (P9) that warns the declarant that no arrival message has been received and that remedial action needs to be taken. Declarants or submitting traders who fail to take any action will see their entry data automatically deleted from CHIEF after a further 38 days. This period was
increased from 8 days from 1\textsuperscript{st} July 2011 to allow more time to investigate non arrivals as a result of discussion held between representatives of the export industry and HMRC via the ‘Export Non Compliance Working Group’.

HMRC expects the declarant (exporter or agent) to pro-actively, routinely and fully investigate and reflect on CHIEF whether: the export has still to take place; has already taken place; or the goods are now not going to be exported.

Failure to follow up P9 reports may prevent traders from zero rating their exports for VAT, receiving CAP refunds/export reliefs or from obtaining returned goods relief if the goods are re-imported, and may prevent electronic discharge of an ECS movement (where goods have travelled via another Member State).

**Indirect Exports – Costly Returns to UK from Office of Exit due to Non-Compliance**

HMRC is aware that UK exports using the Export Control System are being flagged up as irregular by customs offices of exit in other Member States. This is because export formalities have not been correctly completed in the UK. In some instances the goods have been sent back to the UK for clearance at considerable expense.

When making indirect exports traders must ensure box 29 of the declaration (intended office of exit) is completed and that the goods are presented to UK Customs by ensuring an arrival message is entered to CHIEF. This message will trigger customs’ risk assessment and permission to progress which then enables customs at the office of exit to view the transaction on the Export Control System. Printing the EAD (Export Accompanying Document) alone does not signify permission to progress the goods to the office of exit. The goods must be positively cleared by CHIEF. Compliance with export procedures will avoid unnecessary delays and costs.

**Unauthorised Removals**

If you have arrived export goods correctly, CHIEF will proceed directly to acceptance and clearance. This involves an automated risk analysis. As part of this, CHIEF may indicate that the goods should not be shipped (held) pending either further enquiries or submission of further paperwork or even the need for a physical check. This is what HMRC call route one or route two goods. While CHIEF is holding the goods, HMRC or the UK Border Agency (UKBA) carry out their additional tasks. This can involve asking BIS (Department for Business Innovation & Skills), the government department responsible for licensing controls over military and dual use technology goods, whether or not a licence is required.

If, at the end of the process, you satisfy HMRC and/or UKBA that all is in order, HMRC will grant permission to progress and CHIEF will indicate that the goods can then be shipped.
If you fail to wait for HMRC/UKBA to finalise their enquiries and ship the goods regardless, you have made an unauthorised removal and failed to comply with our rules and legislation.

Use of AI Statement LIC99

As stated in CIP 11(08) the person making the declaration must establish with the exporter the precise status of the goods. By use of AI statement LIC99 the declarant is stating the goods are not subject to any licence, permit, certificate or other document, other than those already declared in box 44 of the export declaration.

HMRC recommends that, where this is the case, exporters supply their representative with a formal statement to the effect that the goods are not subject to further licensing requirements, to enable the representative to enter code LIC99 in good faith. This might be achieved by way of a statement on the copy invoice or similar commercial document.

It is the responsibility of the person making the declaration to check back with the exporter and not to enter codes on their behalf without good cause.

Further information about the UK export controls can be found on the BIS (Department for Business Innovation & Skills) website and on the Business Link website.

EXS Declarations

HMRC is concerned about the low levels of EXS Safety and Security declarations being submitted.

The requirement to complete an Export Safety and Security declaration (EXS), when no other type of CHIEF export declaration is required for goods exiting the Community, came into effect on 1st Jan 2011.

Responsibility for lodging the EXS declaration will usually be with the carrier. The 3 main occasions when it is necessary are as follows:

1. Goods in temporary storage or a free zone are to be exported and have been in the EU for more than 14 calendar days or the exporting carrier is not aware of the original ICS Safety & Security declaration.

2. UK goods going to another Member State but being physically transhipped in a third country on the way. (e.g. from the UK port of Felixstowe, unloaded at the Egyptian port of Alexandria for loading to a new vessel bound for Limassol in Cyprus).

3. Where the carrier is being paid to move shipper owned empty containers rather than repositioning their own. The EXS requirement may be met by the container owner who will then provide DUCRs to the carrier.
Responsibility of Manufacturers Selling Goods Ex Works for Export

When a company sells goods to a company but does not arrange the exportation of those goods, these are termed “ex-works” sales. The purchaser usually arranges removal and shipping of the goods.

If the purchaser is not established in the EU then the EU established company that sells the goods for export is regarded as the exporter, for customs purposes. The seller will have a continued interest in the transaction as evidence of the export will be required to support the zero rating of the supply to the purchaser.

The agent completing the export declaration for a non–EU established purchaser will be the declarant, for customs purposes, and as such, responsible for the export declaration. They will be acting in an indirect capacity on behalf of the purchaser and completing all export formalities.

4. Contacts

Further information can be obtained from:

HM Revenue & Customs Export Unit of Expertise 13th Floor South Government Buildings Ty Glas Llanishen Cardiff CF14 5FP

Tel: 029 203 26371 Email: Export enquiries

Issued on the 19 October 2011 by the JCCC Secretary HMRC, Excise, Customs Stamps & Money Directorate.

If you have a question about the content of this paper please use the details provided in the Contacts section. For general HMRC queries speak to the VAT, Excise & Customs Helpline on Tel 0845 010 9000. To find out what you can expect from us and what we expect from you go to www.hmrc.gov.uk/charter and have a look at Your Charter

Yours

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