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## NOTE ON RETURNED GOODS

**Subject: Returned goods**

**NB: This note does not assess the conditions to consider as returned goods for goods that benefit from measures laid down under the common agricultural policy or that were previously placed under the inward processing procedure.**

### 1. BACKGROUND

Article 203 UCC establishes a relief from import duty, upon application of the person concerned (i.e. the declarant), for non-Union goods that are released for free circulation provided that such goods fulfil the following conditions:

- a) The goods were originally Union goods that were exported from the customs territory of the Union that return to this territory within a period of three years.
- b) The goods are returned in the state in which they were exported.
- c) The fulfilment of these conditions is supported by documentary evidence to be provided by the declarant.

It has to be stressed that the ECJ considers that the suspension of customs duties is an exceptional measure intended to facilitate certain economic activities. Since this involves a risk for the correct collection of duties, the beneficiaries of regimes involving the suspension of duties are required to comply strictly with the obligations resulting therefrom<sup>1</sup>.

Despite this case law refers to the inward processing procedure, it could be applied by analogy to the relief from import duty resulting from returned goods, as it also involves a risk for the correct collection of duties. Therefore, economic operators releasing goods for free circulation as returned goods should comply strictly with these conditions and the competent customs authorities should also enforce strictly such compliance, particularly taking into account that Article 203 UCC expressly says that it is applicable only upon application and that the relief depends on information supporting the conditions.

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<sup>1</sup> See paragraph 42 of cases C-430/08 and 431/08.

These conditions are explained below in detail.

***a) Union goods exported and returning within a period of three years and application from the declarant***

This condition is fulfilled also when only a part of the goods that were exported are brought back to the customs territory of the Union (see second subparagraph of Article 203(1) UCC).

The 3-year period may be extended in order to take into account special circumstances, not being the end of the transition period, established in Article 126 of the Withdrawal Agreement of the UK, considered as one of them<sup>2</sup>.

The declarant will normally apply for the relief from import duty by including a code (e.g. F01) in box 37(2) of the declaration for release for free circulation, according to Annex B of the UCC-DA and IA. For certain goods, e.g. means of transport, the declaration can be lodged by any other act and, in this case, no explicit application is requested.

The goods may return into any part of the customs territory of the Union, i.e. they do not necessarily have to be brought back to the place from where they were exported as there is no legal provision establishing this condition.

***b) The goods are returned in the same state in which they were exported***

These conditions are established in Articles 203(5) UCC and 158 UCC-DA. The latter stems from the delegation of power established in Article 206 UCC and mentions the cases in which the reimported goods are considered to be returned in the state in which they were exported. According to Article 158 UCC-DA, the goods can be considered to be returned in the same state if:

- 1) they do not receive any treatment or handling, or
- 2) they only receive a treatment or handling in order to:
  - a. alter their appearance,
  - b. repair them,
  - c. restore them in good condition, or
  - d. maintain them in good condition, or
- 3) they receive a treatment or handling other than the ones mentioned in 2), but it becomes apparent after such treatment or handling had commenced that the treatment or handling is unsuitable for the intended use of the goods, or
- 4) any of the treatment or handling mentioned in 2) or 3):
  - a. would have rendered the goods liable to import duty if they had been placed under outward processing (i.e. the operations had a cost, see Article 86(5) UCC), and

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<sup>2</sup> For goods moved to the UK before the end of the Brexit transition period please see page 18 of the Guidance note on Withdrawal of the UK and EU rules in the field of customs at [https://ec.europa.eu/info/sites/info/files/brexit\\_files/info\\_site/guidance-customs-procedures\\_en\\_0\\_0.pdf](https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/guidance-customs-procedures_en_0_0.pdf)

- b. that treatment or handling does not exceed what is strictly necessary to enable goods to be used in the same way as at the time of the export.

Conclusions:

- 1) Operations considered as handling or treatment under certain conditions are the limit to determine that goods are imported in the same state. Some of the usual forms of handling established in Annex 71-03 UCC-DA, such as packing or unpacking, simple cleaning operations, change of packaging or testing of machines to control the compliance with technical standards can be carried out to goods that are afterwards considered as returned goods because in principle these operations do not change the state of the goods (see below the exception applicable where the state is unforeseeably changed). Other usual forms of handling mentioned, such as any usual forms of handling improving the marketable quality of the import goods, cannot be carried out to goods if they are afterwards to be considered as returned goods, because those operations change their state. Therefore, goods undergoing processing operations as established in Article 5(37) UCC (with the exception of repair) do not fulfil the conditions established in Article 203(5) UCC. This means that apples may be considered as returned in the same state if they are exported from the Union to a third country to be repacked. However, if they are processed into apple juice, and then returned to the Union the month after the export, then they cannot be considered as returned in the same state as they were exported. A non-exhaustive list of examples may be provided, but every case has to be individually assessed to determine whether the goods can benefit from relief from import duty as returned goods or not.
- 2) The EU legislation on returned goods does not say anything on possible change of CN codes, which means that, although not excluded, a change in the CN code does not necessarily mean that the goods are not returned in the same state. An example of this could be wine vinegar, which has CN code 2209 00 11 (import duty of EUR 6.4/hl) if it is transported in containers holding 2 litres or less and CN code 2209 00 19 (import duty of EUR 4.8/hl) if it is transported in containers holding more than 2 litres. So wine vinegar taken out of the customs territory of the Union in 5-litre containers and returned to this territory the week after in 1-litre containers, undergoing no additional treatment or handling, may be considered as returned in the same state in the sense of Article 203(5) UCC.
- 3) Goods that undergo any treatment or handling may be considered as returned in the same state, provided that the goods can be used in the same way as at the time of export. The goods can be considered as returned goods even if they cannot be used as at the time of export only when **after the treatment or handling had commenced** it becomes clear that that treatment or handling is unsuitable for the intended use of the goods. This means that if it is known before the treatment or handling that afterwards the goods will not be suitable for their intended use, then such goods cannot be considered as returned goods. An example of this can be a machine exported to undergo stress tests after which a piece of the machine is broken, without this being reasonably predictable. Despite this machine cannot be used in the same way as when it was exported, it can still be considered as returned goods.
- 4) For goods that are repaired in a third country, two cases must be distinguished:
  - a. Goods that were exported in good state, they are broken abroad and get repaired therein in order to allow the continuation of its normal use can be considered as returned goods, **provided that the repair operations do not entail any upgrade to the goods.** In accordance with Article 158(3)

UCC-DA, the repair can entail operations included under the scope of the outward processing procedure, including the incorporation of spare parts. However, this repair must be limited to what is **strictly** necessary to enable the goods to be used in the same way as when they were exported, where the goods would become liable to import duty if they had been placed under outward processing. An example of this can be the machine mentioned above, whose piece breaks after a stress test. In this example, if the broken piece is replaced by another piece of the same technical characteristics as the one that was broken, i.e. of the same kind as the one that was used when the machine was exported, it can still qualify as returned good upon re-entry.

- b. Goods that are exported broken in order to be repaired in a third country and brought back to the Union cannot be considered as returned goods as they do not come back in the same state as they were exported. However, those goods might still be imported under duty free relief under the conditions and procedural requirements of the outward processing procedure as stated in Articles 260 and 260a UCC.

***c) The relief is supported by information establishing that the conditions are fulfilled.***

Articles 203(6) UCC and 253 UCC-IA establish that the declarant must make this information available to the customs office where the declaration for release for free circulation is lodged. This can be done by:

- a) access to the declaration of export where the goods were exported (either electronic access or by means of an authenticated document),
- b) by means of an INF3 document (see Annex 62-02 UCC-IA), which can be issued by means other than electronic. This document can be requested to the customs office of export at the time of the export or after this moment providing the data established in Part A of Annex 62-01 UCC-DA.

In certain cases, like goods that can be declared orally or by any other act (for instance, means of transport), this information does not have to be provided in the customs by any of the means mentioned in a) or b).

**Conclusions:**

- 1) The purpose of the provision of this information is to allow the customs authorities check that the goods exported are actually the same goods as the ones returning to the customs territory of the Union.
- 2) Exchange of information between the concerned customs authorities is established in Article 256 UCC-IA. The customs office where the goods were exported must provide all the information at its disposal establishing that the conditions for returned goods are fulfilled, if requested to do so by the customs office where the declaration for release for free circulation is lodged.

## 2. VAT ASPECTS

Article 143(e) of VAT Directive<sup>3</sup> provides for the exemption of import VAT upon the re-importation, by the person who exported them, of goods in the state in which they were exported, where those goods are exempt from customs duties.

Therefore, although overall, the VAT legislation follows the customs rules in order to determine whether the basic conditions for VAT exemption are fulfilled, the VAT exemption upon re-importation as returned goods is applicable only if the exporter and the importer of the goods are the same person.

## 3. PROCEDURAL ASPECTS

The duty relief for returned goods needs to follow the following steps:

- 1) The Union goods are exported by means of an export declaration. The exporter can declare the goods for permanent export (i.e. code 10 in data element 11 09 001 000 of Annex B to UCC-DA or box 37(1) of the SAD) and then move them back to the customs territory of the Union as returned goods. However, if the exporter is already aware that the goods will move back to the customs territory of the Union, he will use the customs code 23, as the goods are moved to a third country without being altered (e.g. due to an event, exhibition or competition). He can also use customs code 22 if the goods are going to be tested or if they are going to undergo a treatment or handling included within the scope of Article 158 UCC-DA.
- 2) The exporter may request an INF 3 sheet to the customs office of export, either at the time of export or after, according to the procedure established in Article 255 UCC-IA. This is one of the possibilities established in Article 253 UCC-IA in order to comply with the requirements established in Article 203(6) UCC. This document is a certification of the customs office of export that the conditions for returned goods are fulfilled, but such conditions have to be checked again by the customs authority of entry/import once the goods are released for free circulation when they are moved back to the customs territory of the Union. This means that the INF 3 itself is not enough to obtain the relief from import duty.
- 3) Upon return to the Union, when the goods are declared for release for free circulation, the declarant/importer has to request explicitly the relief for import duty. This is done by adding the code F01 to F03 or F05 for data element 11 10 000 000 (Annex B to the UCC-IA), 1/11 (Annex C to the UCC-IA), box 37(2) of the SAD (Annex 9 to the UCC-TDA). The declarant/importer has to mention in data element 12 03 000 000 (Annex B to the UCC-DA), 2/3 (Annex D to the UCC-DA), box 44 of the SAD (Annex 9 to the UCC-TDA) the documents establishing that the conditions for the relief from import duty for returned goods are fulfilled. Such documents have to be (digitally) attached to the customs declaration or made available by other means mentioned in Article 253 UCC-IA to allow the customs authorities check that such conditions are fulfilled. In

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<sup>3</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 31 (as amended))

accordance with Art 253 UCC IA, this can be provided by any of the following means:

- (a) access to the relevant particulars of the customs or re-export declaration on the basis of which the returned goods were originally exported or re-exported from the customs territory of the Union;
  - (b) a print out, authenticated by the competent customs office, of the customs or re-export declaration on the basis of which the returned goods were originally exported or re-exported from the customs territory of the Union;
  - (c) a document issued by the competent customs office, with the relevant particulars of that customs declaration or re-export declaration;
  - (d) a document issued by the customs authorities certifying that the conditions for the relief from import duty have been fulfilled (information sheet INF3).
- 4) The competent customs authorities have to check that the goods imported are actually the same as the ones that were previously exported (e.g. by means of checks). This means that customs have to match the goods declared for export with the goods declared for release for free circulation to ensure that they are the same.

#### **4. PROVISIONS ON RETURNED GOODS APPLICABLE TO VEHICLES**

Vehicles must fulfil the general conditions mentioned above to be considered as returned goods, namely:

- a) The vehicles were originally Union goods that were exported from the customs territory of the Union that return to this territory within a period of three years.
- b) The vehicles are returned in the state in which they were exported.
- c) The fulfilment of these conditions is supported by documentary evidence to be provided by the beneficiary of the procedure.

As mentioned above, the change of CN code does not necessarily entail per se that the goods are returned in a different state from the one in which they were exported. This means that in principle new Union cars brought to a third country can be returned to the EU as a used car (i.e. with a different CN code) and yet be considered as returned goods, provided that all the relevant conditions are fulfilled. However, the change of CN code can be an indicator showing that the state of the car has changed.

The value of the car is in principle not relevant in order to determine that the vehicles are returned goods or not. This means that the vehicles can be exported from the EU to a third country declaring a certain customs value and returned to the EU with a different customs value and yet be considered as returned goods, provided that all the relevant conditions are fulfilled. However, the fact that a vehicle is released for free circulation with a different customs value from the one it was declared when it was exported can be considered as a strong indicator that the state of the car has changed. For instance, the vehicles should have been upgraded if the value declared when they are released for free circulation is higher than the one declared for export, and therefore these vehicles should not be eligible as returned goods.

However, it is important to analyse the first two conditions mentioned above taking into account the particularities concerning vehicles:

*a) The vehicles were originally Union goods that were exported from the customs territory of the Union that return to this territory within a period of three years.*

It is important to stress that the vehicle that is returned to the EU has to be exactly the same vehicle as the one that was brought from the EU to the third country. The competent customs authorities in the customs territory of the Union must be certain that the specific vehicles for which the declarant is requesting duty relief as returned goods:

- a) were previously Union goods,
- b) were exported from the EU to a third country no longer than 3 years ago from the date in which the customs declaration for release for free circulation is accepted,<sup>4</sup> and

it can be proven **without any doubt** that the car declared for export is exactly the same as when the car is returned. An example of this can be the physical identification of chassis number both at EU exit and entry. The crossed check of such chassis number (physically checked at EU entry) with the one mentioned in the export declaration and in the transport documents at EU exit can be an indicator showing that the exported car is the same as the one that is returned. A declaration from the supplier or an invoice is not enough evidence to consider that the cars declared at entry and exit are the same.

*b) The vehicles are returned in the state in which they were exported.*

As mentioned above, if broken vehicles are brought from the EU to a third country for repair and then they are brought back to the EU, they cannot be considered as returned goods because the goods are not returned in the same state as they were exported.

Whether there has been a change in the state of the vehicle or not, **it has to be analysed on a case-by-case basis and for each individual vehicle**. That is, for a single vehicle importation by an individual for private use but also for each of the vehicles imported by a professional car dealer. It is therefore for the importer/beneficiary to provide irrefutable supporting documentary evidence for each individual vehicle in the consignment in order to enable Customs to assess that each individual vehicle fulfils all the conditions to be considered as returned goods, (including the 3 years provision mentioned above).

Any change in the vehicle is in principle considered as a change of its state. A non-exhaustive list of examples where the state of the vehicle is changed, and hence it is not considered as returned goods, is shown below:

- 1) A vehicle is exported from the EU to a third country, where the tyres are replaced into tyres with different technical characteristics (e.g. different brand, model or material).
- 2) A vehicle is exported from the EU to a third country, where it is painted with a different paint from the one it had before (e.g. different colour or quality).
- 3) A vehicle is exported from the EU to a third country, where the engine is replaced into a different one from the one it had before (e.g. different model, brand or technical characteristics).

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<sup>4</sup> For cars moved to the UK before the end of the Brexit transition period please see page 18 of the Guidance note on Withdrawal of the UK and EU rules in the field of customs at [https://ec.europa.eu/info/sites/info/files/brexit\\_files/info\\_site/guidance-customs-procedures\\_en\\_0\\_0.pdf](https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/guidance-customs-procedures_en_0_0.pdf)

Only handlings or treatments necessary to repair the vehicles, restore them to good condition or maintain them in good condition can be accepted, as long as the reparation or the bad condition of the vehicle is due to an event that took place in the third country. This is because, as said above, if the car is brought broken from the EU to a third country and it is repaired in the third country, then it cannot be considered as returned in the EU in the same state as it was exported. A non-exhaustive list of examples where the state of the vehicle is not changed, and hence it can be considered as returned goods, is shown below:

- 1) A vehicle is exported from the EU to a third country. After some days in the third country the car is dirty and it is washed before it is returned to the EU.
- 2) A vehicle is exported from the EU to a third country, where it has a puncture. The damaged tyre is replaced by another tyre of the same brand, model and characteristics.
- 3) Vehicles are exported to undergo stress tests after which their tyres are not able to be used anymore in the same way as they could be used when the vehicle was exported (e.g. because they have suffered too much erosion and/or they suffered a puncture), without this being reasonably predictable. Despite these vehicles cannot be used in the same way as when they were exported, they can still be considered as returned goods.
- 4) The vehicles mentioned in the previous example, if they receive in a third country where the tests are carried out tyres of the same technical characteristics as the ones the vehicles were using when they were exported (incorporation of spare parts).