

# Customs duties

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## **Introduction**

The fourth and final unit of the module on *International taxation and customs* is about customs duties.

The module is divided in six sections. The first section explains what customs duties are and looks into the types of customs duties that currently exist. The second section looks into the taxable events in relation to import and export duties; this section also covers the time-limits and territorial limitations of taxable events for customs duties. The third section analyses customs relief and special customs procedures for customs duties, while the fourth section looks who is responsible for paying these duties. The fifth section is dedicated to quantifying customs duties, examining the taxable base, the tax rate, and the Common Customs Tariff. Finally, the sixth section looks into customs management.

## Objectives

The main objectives for students to strive for when taking this module are as follows:

1. To distinguish between the different types of customs duties.
2. To know about the regulations relating to taxable events for customs duties, both for import and export duties.
3. To understand regulation on customs duty relief, as well as the special customs procedures for these duties.
4. To understand regulation on taxable persons in relation to customs duties.
5. To gain in-depth knowledge of calculating customs debt, both in relation to the taxable base and tax rates.
6. To understand current customs management regulation.

# 1. Function and classes

## 1.1. The function of customs duties

Of all the taxes that have been standardised on a EU level, customs duties are, without doubt, the taxes that have been the most widely homogenised. These taxes are directly regulated by the European Union, and the proceeds go straight into the EU coffers to fund its budgets. In other words, they are a **European Community resource**.

After the European Community established a single internal market in 1993, with the subsequent **Customs Union**, these duties were imposed to regulate the trade of existing goods between the European Union and third countries.

### **The EU customs Territory and EU customs law**

Currently, goods and people may travel freely between the countries in the European Union. The existing trade borders within the EU have been removed to create a single **EU customs territory**, which coincides almost exactly with the European Union, with certain exceptions. The entry and exit of goods to or from countries outside the European Union is always treated in the same way, from a commercial and administrative perspective, regardless of which Member State will receive or is sending these products.

**EU customs law** refers to the law and regulations that apply to the international movement of goods.

These taxes are not only governed by **EU regulations**, but also form part of the European Union's income system. It should be kept in mind that customs management is, broadly speaking, carried out in each one of the EU Member States, and that, for now, there is no EU tax authority.

### **Regulations**

The customs regulation is formed largely by Regulation (EU) 952/2013 of the European Parliament and of the Council of 9 October 2013, laying down the **Union Customs Code**. As of 30 October 2013, only certain provisions of the regulation are in force (delegation of powers, the conferral of implementing powers and in relation to charges and costs); the other provisions will enter into force from 1 June 2016.

The adoption of this regulation responds to the need, firstly, to harmonise the regulations with the Treaty on the Functioning of the European Union (TFEU), especially articles 290 and 292, and secondly, to adapt to changes in EU law. With the aim of completing or modifying some of the non-essential elements of said regulation, the Commission delegated powers to adopt acts pursuant to article 290 of the TFEU. Furthermore, in the interest of the economic operators and customs authorities of the European Union, it is advisable to compile customs regulation into a code.

This code replaced the Modernised Customs Code (MCC), approved by Regulation (EC) 450/2008 of the European Parliament and of the Council of 23 April, and modifies the Integrated Customs Tariff (otherwise known as the TARIC), as ruled by Regulation (EEC) 2658/1987 of 23 July on the tax rates for customs duties. Both of these EU regulations

have been subject to continuous modifications, with the aim of adjusting them to a changing reality.

In relation to the MCC, approving this regulation meant defining customs duty legislation that aimed to be more simple, rational and better-adapted to managing the current reality of customs, which is generally managed through electronic means. This meant that the code was improved, and the regulations relating to customs debt were simplified by grouping together all the factors that might cause customs debt due to failure to comply for any reason. In addition, the provisions related to customs procedures were reorganised and customs management was streamlined.

In terms of Spanish regulation, Royal Decree 335/2010 of 19 March should be kept in mind, as it regulates the right to make customs declarations and the position of the customs representative.

Finally, there are many multilateral international treaties to take into account, in particular the GATT-WTO and the Customs Cooperation Council.

**Customs duties** are indirect, objective, EU taxes with two aims: firstly, to collect taxes, and secondly, to protect the goods produced or manufactured in the EU customs territory.

Therefore, it can be said that customs duties are taxes levied on goods that cross customs borders, whether the goods are being imported or exported.

### **The customs office**

Customs offices control the movement of goods, both as they enter the European Union (imports), and as they leave (exports). Therefore customs offices are where all the procedures and operations are carried out to authorise goods to be exchanged between a country in the European Union and a country outside the EU. In this sense, the role of customs offices are fiscal, statistical and monitory (for health, political and military reasons, etc.).

After paying import duties and once the corresponding administrative procedures have been carried out, products from outside the European Union that have been brought into the EU will acquire the customs status of EU products, and will be allowed to circulate freely within the member countries.

In terms of the **function** of customs duties, it should be kept in mind that, originally, these duties represented an important source of income for the Member States, but that due to economic globalisation and trade liberalisation, the role of customs duties in collecting revenue is not of great significance nowadays, which means they are primarily justified for non-tax purposes. In this sense, import duties represent a tool that protects national production of certain goods from goods produced elsewhere, while export duties (which are currently very rarely employed) are used to ensure that there is a supply of certain essential products on the domestic market.

## **1.2. Types of customs duties**

A number of different **types** of customs duties are listed as follows:

1) **Import duties**<sup>1</sup> are the most important, and are made up of the following duties and levies.

<sup>(1)</sup>Articles 77 to 80 of the UCC.



a) The Common Customs Tariff and equivalent levies that apply to import goods.

b) Agricultural levies and other import duties established under the Common Agricultural Policy (CAP).

2) **Export duties**<sup>2</sup> are very rarely applied, and they are made up of the following duties and levies:

<sup>(2)</sup>Articles 81 and 82 of the UCC.

a) The customs duties and equivalent levies that apply to export goods.

b) Agricultural regulatory levies and other export duties established under the CAP.

## 2. Taxable events

Customs duties, in general terms, cover **multiple taxable scenarios**, which means that, within current regulation, there are charges applied to a series of circumstances for goods being imported or exported for commercial trade.

### 2.1. Import duties

In general, these duties are applied to goods entering a defined territory that are subject to charges.

#### Import scenarios

In addition, they cover a series of scenarios that range from the legal entry of goods into the EU customs territory to be sold on the internal market, also known as *release for free circulation and final customs destination* (art. 201 of the UCC), to the temporary admission of goods with partial relief from import duty. This range also covers the unlawful entry of goods, avoiding customs supervision and failure to comply with a series of formalities and conditions indicated in customs regulations for circumstances in which goods are subject to a customs suspensive procedure, which might include customs warehousing and external transit, among other things.

#### Non-compliant entry on the market

For example, the entry of undeclared goods.

Some circumstances that are **not taxable** include, for example, the entry of goods from another Member State of the European Union or the introduction of goods with a destination that is not subject to charges, such as customs warehousing and free trade zones, as long as the goods are not released on the internal market.

Articles 77 to 79 of the UCC divide the general conditions for import duties into three taxable events: release for free circulation, temporary admission and the non-compliant entry of goods.

In relation to **release for free circulation**, this refers to the general customs destination that goods from third countries are sent to, said goods being *non-EU goods*<sup>3</sup>. This consists of complying to the necessary procedures for imports, and applying any legally applicable duties, so that goods are then considered as EU goods (art. 201 of the UCC). In short, the taxable event is verified by the lawful and legal introduction of goods into the EU customs territory.

<sup>(3)</sup>Art. 77.1 of the UCC.

With regard to goods subject to the **temporary admission procedure** with partial relief for import duties<sup>4</sup>, it should be noted that this procedure allows non-EU goods to be used in the EU customs territory, within a set period, with the total or partial relief of import duties, as long as the goods are re-exported without having been modified in any way except for depreciation through use (articles 250 to 253 of the UCC).

<sup>(4)</sup>Art. 77.1b of the UCC.

In cases that involve **the non-compliant entry of non-EU goods**, or if goods are subject to a non-standard customs procedure, the UCC states that a customs debt will be charged upon their import<sup>5</sup> for failure to comply with any of the following:

<sup>(5)</sup>Art. 79.1 of the UCC.

- 1) Obligations regarding the entry of non-EU goods, removing these goods from customs supervision, circulation, processing, storage, temporary admission or provision of these goods in the EU customs territory.
- 2) Obligations regarding the final destination of the goods within the EU customs territory.
- 3) Conditions governing non-EU goods being included in a customs procedure or granting total or partial relief based on the final destination of the goods.

## 2.2. Export duties

These duties are charged when EU goods leave the EU customs territory, whether a customs declaration is made or not, if the goods in question breach the conditions that allow them to leave the EU, with total or partial relief from export duties.<sup>6</sup>

<sup>(6)</sup>Arts. 81, 82 and 269 of the UCC.

Export charges are minimal and rarely applied. However, they may be of some importance, as certain measures adopted under the framework of the CAP, for example (such as agricultural export refunds), require goods to be exported for certain conditions to be met.

## 2.3. Time factor

Customs duties are a complex taxable event, and tax is only applied at a specific moment. In order to understand more about this moment, it is necessary to detail the stages that goods have to go through if they legally enter the EU customs territory to be sold on the internal market (known as *release for free circulation*).

### Stages the goods go through

<sup>(7)</sup>Arts. 153 to 198 of the UCC.

- 1) First of all, it is important to verify the arrival of the goods at the designated customs office.
- 2) Secondly, a summary declaration must be submitted for the goods<sup>7</sup> that are requesting permission to be imported (request for a customs destination), which must be approved by the customs authorities.
- 3) Next, the customs debt must be calculated and paid when the goods are imported, and finally, the goods are given EU status and may be released. In order for the goods to be released for consumption, they must pay all the applicable indirect taxes, such as VAT, and any special taxes, where applicable.

**Import duties** are incurred, in general, when the goods are released for free circulation, at the moment when the customs declaration is accepted<sup>8</sup>; or upon acceptance of a customs declaration that subjects the entry of goods to a specific procedure, and if it is subsequently shown that these the conditions for entry, or for total or partial relief on the basis of the final destination, were not met (art. 79.2 of the UCC), and in any other circumstances (temporary admission, non-compliant entry of goods, customs suspensive procedures), when these situations arise.

<sup>(8)</sup>Art. 77.2 of the UCC.

When it comes to **export duties**, the customs debt will be incurred at the moment when the customs declaration is accepted for the goods being exported, or when the undeclared goods<sup>9</sup> leave.

<sup>(9)</sup>Art. 81.2 of the UCC.

The customs debt for exports is incurred when goods from the EU customs territory leave the area in a lawful manner, which means under an export procedure or as part of outward processing.

In addition, as with imports, export duties may also be applied as a consequence of some kind of non-compliance. More specifically, the UCC<sup>10</sup> establishes that such duties will be applied due to failure to comply with one of the established conditions for the departure of goods, such as, for example, not submitting an exit summary declaration, or failure to comply with the conditions that allow for the total or partial relief of export duties.

<sup>(10)</sup>Art. 82 of the UCC.

## 2.4. Territorial factor

Customs duties are levied on goods transported between the **EU customs territory** and third countries, which in Spain's case excludes Ceuta and Melilla as they are not considered part of the common customs area, like other European territories with similar circumstances.

### Example

**Some of Mrs. Gómez's goods that were released for free circulation were sent by plane to Ceuta, while the remaining goods were sent by plane to Palma de Mallorca.**

As Ceuta is not part of the EU customs territory, even though it is in Spain, sending goods there is classed as an export. Accordingly, the goods must comply with all the procedures and requirements associated with exporting goods.

It is important to keep the **assigned customs destination of the goods** in mind at all times, as the destination might be subject to special economic procedures or suspended duties and, subsequently, may circulate within the customs territory or be stored in customs warehousing without import duties being incurred until the transit is completed, or until they have been released from storage for free circulation or export, etc.

The same thing happens when non-EU goods are held in storage or in a free zone (parts of the customs territory that are blocked off from the rest). However, EU goods leaving these facilities will be prepared for export, and will be subject to the corresponding charges.

The territorial area where customs duties are applied is defined as the **EU customs territory**<sup>11</sup> in the UCC. In general, it coincides with the political territory of the Member States of the EU, but there are certain exceptions, such as Gibraltar, the Faroe Islands and Greenland, for example. As for Spain, Ceuta and Melilla are not part of this area, while the Canary Islands – although excluded from the application of Spanish VAT – are part of said customs territory. The customs territory also includes non-EU countries such as Monaco, as a consequence of international treaties. In addition, it should be kept in mind that the EU has signed customs agreements with San Marino, Andorra and Turkey.

<sup>(11)</sup>Art. 4 of the UCC.

## 3. Customs relief and special customs procedures

### 3.1. Customs relief

**Customs relief** occurs in a series of circumstances where all the conditions for a taxable event are met (goods entering the customs territory), but there is exemption from charges and the corresponding customs duties.<sup>12</sup>

<sup>(12)</sup>Arts. 203 to 209 of the UCC.

Some of the **situations** that give rise to relief include the following:

#### 1) Customs relief for imports and exports

**Customs relief** for import and export duties apply when certain conditions are met. These include:

- **Objective conditions:** cultural, scientific or educational products, low-value goods, study materials, etc.
- **Subjective conditions:** personal property when transported by an individual from a country outside the European Union, goods imported for marriage, and goods to be used by heads of state, etc.

There is customs relief on import and export duties for certain goods. This customs relief means that the customs debt will not be applied when the concessionary conditions are met. These may apply under various circumstances, such as for personal reasons (moving house, marriage, inheritance, personal equipment); in order to incentivise economic activity (transferring capital, agricultural products, goods for commercial research); educational, scientific or cultural goods (study materials, scientific instruments and apparatus, laboratory material); low-value goods (goods of negligible value); and for technical reasons (documents, fuel held in the tanks of vehicles), etc.

#### 2) Tariff quotas

**Tariff quotas** are the maximum amount of a non-EU product that can be imported with full customs relief from import duties, in order to avoid products becoming more expensive or problems in the supply of these products in the

EU customs territory; these quotas normally apply for a set period of time. Once the quota amount has been exceeded, the importer will have to pay the corresponding import duty.

This means it is possible to import a certain type of product, paying a reduced rate or with no charge, as long as the pre-determined amount is not exceeded, for a limited time. Sometimes there is an additional condition that these goods come from certain countries. It should be kept in mind that if the quotas are exceeded, the normal charge will be applied.

On the other hand, it should be emphasised that the tariff quotas are different from quantitative or trade quotas, which are also known as *allowances*. The latter consist of setting a maximum amount of products that can be imported, paying the corresponding duties at the normal rate, or in other words, without any applicable customs relief. Over this limit, all imports are prohibited.

### 3) Returned goods

The UCC allows customs relief from import duties for goods that have been exported and then returned for free circulation, if they are returned within three years. In order for this customs relief to apply, the interested party must request it and the goods must be in the same condition as when they were exported. However, goods may be processed to conserve their condition, or otherwise altered in terms of presentation or modified if the goods were defective or not suitable for their intended use.<sup>13</sup>.

<sup>(13)</sup>Arts. 203 to 205 of the UCC.

### 4) Goods from fishing

Goods are exempt from import duties when released for free circulation if they are products from sea fishing or from waters in the territory of a third country that were fished by vessels registered by a Member State of the EU, while flying the flag of that state, including products obtained from factory ships that meet the same conditions.<sup>14</sup>.

<sup>(14)</sup>Art. 208.1 of the UCC.

### 5) Temporary export

EU goods may leave the EU customs territory, with customs relief from import duties when the goods are later re-imported. It could be considered a situation of returned goods, but unlike this procedure, temporary exports involve a re-import of the goods that is already planned at the time of export, and the customs relief is granted at that moment.<sup>15</sup>.

<sup>(15)</sup>Art. 277 of the UCC.

### 3.2. Special customs procedures

Sometimes, depending on the destination of the goods arriving in the customs territory, the charges levied on the goods are suspended or reduced. This suspension may apply to certain industrial and agricultural products, etc. These types of exceptions are conceded according to strict controls to avoid fraud.

#### 1) Internal transit and external transit

**External transit procedures**<sup>16</sup> allow the movement of non-EU goods from one point to another within the EU customs territory, without the need to pay customs duties and other import duties, and without applying any trade policy measures.

<sup>(16)</sup>Art. 226 of the UCC.

In contrast, **internal transit procedures**<sup>17</sup> apply to EU goods when they are moved from one point to another within the EU and travel through a third country, without there being any change in the customs status (this means that the goods are still EU goods throughout the transit).

<sup>(17)</sup>Art. 227 of the UCC.

In both cases, the movement of the goods is subject to stringent controls to avoid the circumvention of customs duties and other charges, such as VAT or other special taxes. The holder of the transit procedure is the main responsible party, and as such must ensure the goods arrive intact at the customs offices of destination with all of the required information, within the prescribed time-limit and with due observance of the means of identification requested by customs authorities.

Similarly, the person responsible for the transit procedure must provide a guarantee to ensure payment of the customs debt and any other charges<sup>18</sup>.

<sup>(18)</sup>Arts. 89 to 100 of the UCC.

#### 2) Temporary storage and customs warehousing

Temporary storage is provided for non-EU goods when they come from a third country or from a free zone in the EU and when the goods are to enter the EU customs territory, but are stored while waiting to be subject to certain customs procedures<sup>19</sup>. The goods arrive at the customs offices with an entry summary declaration, and customs authorities may request that the owner provide a guarantee to ensure the payment of the customs duties and any other applicable charges. The goods may only be subject to the handling and processing necessary to make sure they are preserved.

<sup>(19)</sup>Arts. 129 to 237 of the UCC.

The customs warehousing procedure<sup>20</sup> allows non-EU goods to enter and be stored in the EU customs territory, without any import duties being charged, and without applying any trade policy measures. These measures mean that

<sup>(20)</sup>Art. 240 of the UCC.



the importer can defer payment of this tax until it is clear that the final customs destination meets its needs. Under this procedure, goods can be processed in a way that preserves them, or improves their presentation or trade qualities, or to prepare them for distribution or re-sale.

### 3) Free zones

Free zones are physically separate areas within the EU customs territory, with entrances and exits, and where all kinds of goods may enter, for an unlimited period of time, without any customs duties being charged and without any trade policy measures being applied.<sup>21</sup> Goods that leave these free trade areas may be exported or re-exported outside the EU, or they may enter the rest of the customs territory in accordance with a particular customs procedure.

<sup>(21)</sup>Art. 243 of the UCC.

### 4) Special destinations

This customs procedure allows for the import of certain goods with the total or partial relief of duties, and without applying trade policy measures, under the condition that the goods are re-exported in a maximum of twenty-four months, a limit that may be extended for a reasonable amount of time. Use of this procedure is subject to authorisation from the authorities<sup>22</sup>.

<sup>(22)</sup>Arts. 250 to 252 of the UCC.

### 5) Outward and inward processing

**Outward processing**<sup>23</sup> allows EU goods to be exported temporarily to undergo processing operations for improvements and to be released for free circulation, with a total or partial relief of duties for the resulting products of such operations. Processing operations include manufacturing, developing and repairing goods, including their assembly, installation and adaptation, as well as their restoration and fine-tuning. In order to apply this procedure, authorisation is required from customs authorities.

<sup>(23)</sup>Arts. 259 to 262 of the UCC.

#### **Example**

**Company A sends materials to Brazil so that they may be used to make wardrobes, which will then be sent back to be sold in Spain.**

For the purposes of customs duties, this is an outward processing operation, which must be authorised by the customs authorities, as the EU goods are temporarily exported to be put together.

**Inward processing**<sup>24</sup> is symmetrical to the above. It consists of temporarily allowing non-EU goods into the EU customs territory to undergo processing operations for improvements, without these goods being subject to any import duties or any other charges, and without any trade policy measures being applied. The resulting processed products do not necessarily have to be re-

<sup>(24)</sup>Arts. 256 to 258 of the UCC.

exported, but they are eligible for any customs procedure, which means they can be released for free circulation, may leave the EU or may even undergo further processing operations.

**Example**

**Company A brings vehicles from Japan into Spain, with the aim of repairing them and re-exporting them to Russia.**

Given that the vehicles enter the EU customs territory with the aim of being repaired, in terms of customs duties they are undergoing inward processing. Accordingly, the vehicles are not subject to import duties nor any other charges.

## 4. Taxable persons

EU legislation states that, when goods are released for free circulation or temporary import, the taxable person is the person who submits the customs declaration, or in other words, the **declarant**<sup>25</sup>.

<sup>(25)</sup>Arts. 101 to 114 of the UCC.

### Acting through a representative

When the importer acts through a representative or through a customs agent, as happens in most cases, it is important to see whether they have direct or indirect representation. In cases of direct representation, when the agent acts on behalf of another party, the taxable person is the person in whose name the declaration was made (the owner of the goods or the principal). In contrast, in cases of indirect representation, when the goods are submitted under one's own name but on behalf of another, then the customs agent is the taxable person, and the owner of the goods is jointly and severally liable.

### Recommended reading

See Royal Decree 335/2010 of 19 March for more information on the right to make customs declarations in your own name, or via a customs representative.

### Example

**Mrs. Suárez is a customs representative who is presenting a customs declaration in her own name, on behalf of Mr. Martínez (the owner of the goods).**

Given that we are dealing with indirect representation in this case, Mrs. Suárez should pay the customs duties, while Mr. Martínez is considered jointly and severally liable.

Along with these general circumstances, another series of situations resulting from imports should also be kept in mind, such as the non-compliant entry of goods, avoiding customs supervision and failure to comply with a suspensive procedure. Generally, under these circumstances the taxable person is the party who carries out these actions (the party who brings the goods in illegally, or breached a suspensive procedure, etc.).

### Example

**Goods originating from Morocco arrive at Barcelona airport on 1 May 2011, and they are held in temporary storage. On 2 May, some of the goods disappear, so on 3 May Mr. Martínez, the owner of the goods, decides to release the goods for free circulation.**

Article 79.1.a of the UCC states that customs debt for imports will be applied to any goods removed from customs that are subject to import duties. This customs debt is incurred the moment the goods are removed, which, in the case of the goods that disappeared, was on 2 May.

In addition, the parties responsible for the customs debt include those persons who have to comply with the obligations related to keeping goods in the temporary storage area, which in this case is the owner of the customs warehouse. Therefore, the parties responsible for the customs debt are the owner, Mr. Martínez, who is responsible for the goods released for free circulation, and the owner of the temporary storage area, even if it is shown that they had nothing to do with the disappearance of the goods.

The declarant is also held responsible, and if no declaration was made, then the person who was involved in the goods leaving the storage area in a non-compliant manner is responsible.

The UCC uses the general expression **debtor** to refer to the taxable person. According to article 5.19 of the UCC, a debtor is any party who is responsible for a customs debt. Articles 77 to 82 of the UCC establish which parties hold the status of debtors for the respective taxable events.

According to the UCC, a **declarant**<sup>26</sup> is any person who presents a summary declaration or a re-export notification, or any person who makes a customs declaration in their own name, or any person on behalf of whom such a declaration is made (direct representation). In contrast, for circumstances involving indirect representation (when the representative acts in his or her own name, but on behalf of someone else), both the representative and the represented hold the status of debtors. Furthermore, when a customs declaration is submitted on the basis of information that involves not paying all or some of the customs duties, and this information was submitted by a third party, then this party will also hold the status of debtor if this information is found to be false, when the third party is aware of the circumstances or could reasonably be presumed to be aware of them.

<sup>(26)</sup>Art. 5.15 of the UCC.

Accordingly, it is possible for there to be **several debtors** for the same customs debt. In this case, the UCC establishes that they are all jointly and severally liable for the total amount of the customs debt.<sup>27</sup>

<sup>(27)</sup>Art. 84 of the UCC.

In customs matters, it is normal practice for a debtor to fulfil his or her obligations through a **representative**. The UCC outlines this right to representation, which may be direct or indirect.<sup>28</sup> The representatives should be established within the EU customs territory. If the representative does not declare that he or she is acting as a representative, or does not provide proof of the same, then it is understood that the representative is acting on his or her own behalf and alone.

<sup>(28)</sup>Articles 18 and 21 of the UCC.

Finally, the UCC also details the figure of the **authorised economic operator**, who has certain benefits in terms of simplifying customs procedures, and is entitled to extra security and protection measures. The status of authorised economic operator<sup>29</sup> is granted at the request of the interested party, once the customs authorities have verified that the party complies with the requirements for reliability, professionalism and financial solvency.

<sup>(29)</sup>Articles 22, 23, 32 and 38 to 40 of the UCC.

## 5. Quantifying customs debt

### 5.1. Taxable base

There are two types of **taxable base** for import duties: a monetary taxable base (which is most frequently used and which is calculated using the *ad valorem* rights or the customs value of the goods), or the non-monetary value (specific customs duties, calculated in tonnes, weight, units etc.).

In terms of the taxable base, the main problem arises when determining what exactly is understood as the **customs value**. The customs code includes guidelines established by the GATT (General Agreement on Tariffs and Trade).

Additionally, the customs code details a series of criteria and **methods** to determine this value, which are as follows:

- The transaction value.
- The transaction value for identical goods.
- The transaction value for similar goods.
- The subtractive method.
- The cost-of-production method.

When the taxable base cannot be determined by any of the methods stated above, reasonable valuation criteria compatible with the general principles and standards of the GATT will be applied. In addition, on certain occasions some limits will have to be put in place, such as, for example, if the sales price is not the same as the one shown in the export market.

Within the EU, articles 69 to 76 of the UCC regulate the methods used to determine the customs value of goods in terms that are almost exactly the same as those in the GATT valuation, of 12 December 1979, which is widely used in international commerce.

#### 1) Main method: transaction value

#### Applying the methods

These methods are not applied randomly, but rather in the order indicated below. This means that the value of the goods is the most frequently used method, which consists of the total amount the buyer has to pay the seller for the goods, as long as a series of conditions are met, once all the corresponding expenses have been included (packaging, transport, handling, etc.), and after any of the applicable export and import duties have been deducted.

The main valuation method used to determine the customs value is the transaction value, which is used under almost all circumstances. It consists of applying a series of positive and negative adjustments to the **price** that was paid, or the price to be paid. This price is the total amount, which means that it includes the payments made and any that are made later, whether to the seller or to a third party, in order to satisfy the obligation to the seller.

Some of the **positive adjustments** to the total price are as follows:

- Commissions and brokerage fees, the cost of any packaging that forms part of the goods, and the packaging costs.
- The value of certain goods that have been supplied by the buyer for free or at a reduced price, or that have been used to produce the goods and are not included in the price.
- Any royalties and licence fees that the buyer has to pay as part of the sales conditions.
- The value of any part of the product that falls directly or indirectly on the seller as a result of re-sales.
- Transport costs, insurance, freight forwarding costs and handling fees associated with the goods, that are applicable before their arrival.

As for the **negative adjustments**, these include the following:

- Transport costs subsequent to the arrival of the goods.
- Costs from construction, installation, assembly and technical assistance performed after the goods are imported.
- Interest accrued under a written financing agreement.
- Expenses related to copyright fees for the imported goods.
- Sales commissions.
- Import duties and other charges relating to imports or the sale of goods that are applied in the EU.

### Example

Some goods sent to Palma de Mallorca, once released for free circulation, have an invoice price of 100,000 euros, with a discount of 10,000 euros, which means the total invoice amount to pay is 90,000 euros. The seller, Mr. Domínguez, charges a sales commission of 5,000 euros. As the goods are paid for after 90 days, interest was charged on the invoice price for an amount totalling 1,500 euros.

Generally speaking, and in accordance with article 70 of the UCC, the customs value is the transaction value, which means the price paid or to pay for the goods. In this case, the price to pay is 90,000 euros (the invoice price minus the 10,000 euros discount).

With regard to sales commission, articles 71.1.a.i. and 72.e of the UCC state that it is not included in the customs value. In addition, the interest accrued for delayed payment of the invoice amount is not included in the customs value, as detailed in article 72.c of the UCC.

## 2) Subsidiary methods

The **transaction value for identical goods** is applied first if possible, where identical goods are understood as goods produced in the same country and with the same physical characteristics, quality and reputation. Every attempt will be made to assess the value of goods produced by the same person. In addition, goods sold in the same commercial field and in the same amounts will be taken into account.

If there are no identical goods, then the **transaction value of similar goods** will be used, applying the same rules of quantification as in the previous method. Similar goods are deemed as those produced in the same country which, while they are not identical in every way, have similar characteristics and composition, which means they have the same functions and are commercially interchangeable.

The next method, which is applied in the absence of the above options, is known as the **subtractive or deductive method**. The start point is the unit price that the majority of the imported goods (or identical or similar products) are sold for in the EU customs territory, at a date close to that of the import. A series of amounts that are not part of the customs value (commissions, profit margins, transport, insurance and tax) are then subtracted from this price.

Next, the UCC prescribes the **reconstructed or recalculated value**, which is based on the production costs for the imported goods. This value is the sum of the cost or value of the materials and manufacturing, the profits and general expenses that are normally applied to goods of a similar kind by the manufacturers in the country or origin, and the costs for transport, insurance, freight forwarding and handling prior to the goods entering the EU customs territory. The declarant can request for the order established in the UCC to be reversed, and for the reconstructed value to be applied over the deductive value method.

Finally, to finish off the methods available, there is also a system in place in case it is not possible to calculate the customs value in accordance with any of the previous methods. Under such circumstances, the **last resort procedure** will be used, which consists in applying a reasonable means of valuation based on available information, as long as the method used is not contrary to any of the general principles in EU regulation or international agreements on valuation.

## 5.2. Tax rates

As for the **tax rates** applied to the taxable base in the case of import duties, they are included in the Common Customs tariff, which systematically compiles the different tax rates levied on foreign trade for various goods that are imported and, where applicable, exported.

### Tax rate

As there are two kinds of taxable bases, the tax rate applied differs for each. This means that when the base used is the customs value (*ad valorem duties*), the tax rate is an aliquot rate or percentage, while if it is a non-monetary based rate (specific duties applied to units, tonnes, etc.), the rate applied will be per non-monetary unit. There are also types of tax rate that combine both types.

For agricultural products and under the framework of the CAP, there are certain tax rates levied on both imports and exports, such as compensatory and supplementary taxes, additional duties for sugar, etc.

As for exports, tax rates are only applied under very specific circumstances, in order to avoid shortages of certain products within the customs territory.

Tax rates are classified depending on whether they are conventional or autonomous. **Conventional tax rates** are those that are applied in the states that make up the GATT (currently the WTO), or in states with which the EU has an agreement that includes a most-favoured-nation clause, which ensures that a specific country is given preferential treatment by the EU. Meanwhile, **autonomous tax rates** are those that apply to countries that do not hold the status of most-favoured-nation.

## 5.3. The Common Customs Tariff

Finally, the special importance of the **tariff classification of the goods** should be kept in mind, not only for tax purposes, but also for trade reasons. In order to facilitate the process and to provide information to the economic operators, given the diverse trade agreements and tariff policies between the European Union and other countries, the Member States make use of the integrated tariff



of the European Union (known as TARIC). It lists all of the measures, whether fiscal or otherwise, that apply in the EU in relation to the international trade of goods.

The **Common Customs Tariff, or EU integrated tariff (TARIC)** is determined in EEC Regulation 2658/1987. According to article 56 of the UCC, this EU tariff includes the combined nomenclature, which is a classification of all goods, based on the International Convention on Harmonized Commodity of 14 June 1983. Under this convention, all goods have a six digit code (the first two numbers correspond to the chapter, the next two to the heading, and the final two to the subheading). There are a further two digits, called *CN subheadings*, which allow for a more precise classification.

This code is used to specify the duties corresponding to the EU tariff, but also for other purposes, such as producing statistics on trade outside the EU and other EU policies on trade.

The UCC provides a procedure by which the customs authorities can obtain **binding information** about the tariff classification of the goods. In addition, it is possible to find out more information relating to the origin of goods<sup>30</sup> in order to determine whether preferential tariff measures can be applied. Such decisions are valid for three years from the date the decision comes into effect.

#### Recommended links

You can look up TARIC information on the following websites:

<https://aeat.es/aduanet>

<http://europa.eu.int/eur-lex>

[www.taric.es](http://www.taric.es)

<sup>(30)</sup>Arts. 22 to 25, 32 and 34 to 36 of the UCC.

## 6. Customs management

The procedure to **manage customs duties** is characterised by extensive and changing legislation, and by the numerous procedures and thorough controls that the goods have to be subjected to. The national regulation in force should also be kept in mind, as it has certain importance in this matter, although the customs code also dedicates a significant section to the topic.

As indicated previously alongside incurrance of duties, once goods enter the territory, a **summary declaration** thereof must be submitted to the national authorities, and a request must be made to the authorities for a customs destination. After this declaration is made, and after the goods have been verified, the corresponding customs debt is calculated and communicated, and once paid or, where applicable, guaranteed, the goods may be authorised for departure or release for free circulation.

### Example

**Goods from Thailand arrive at the port of Barcelona on 30 May 2012, and they are brought to the customs offices on the same day.**

As established in articles 71 to 76 of the UCC, any goods presented at the customs offices must be included in a summary declaration when they are presented or at the very latest by the next working day after the goods were presented, provided this extension is granted by the customs authorities.

Once the declaration has been accepted by customs, it may be **verified** by the customs authorities, who can carry out different checks (on documentation, by physically checking the goods, or *a posteriori*).

If the debt is not paid in the payment periods indicated, then **debt collection** proceedings will be enforced in accordance with the national regulation applicable in each Member State of the European Union.

Finally, it should be mentioned that the national regulation for the different Member States of the European Union have to cover the possibility that, in accordance with the Customs Code, the taxable persons may **contest** the jurisdiction of the customs authority.

Therefore, the process of goods entering the EU customs territory is started with an **entry summary declaration**<sup>31</sup>, in virtue of which the customs authorities are informed in advance that the goods are entering the EU.

### Recommended reading

For more information on customs management guidelines relating to declarations, see Royal Decree 335/2010 of 19 March.

<sup>(31)</sup>Arts. 127 and 131 of the UCC.

Generally, the declaration is submitted electronically. Only under exceptional circumstances are summary declarations accepted when submitted on paper, and only if the same level of risk management is applied as for electronic submissions. The customs authorities can accept the summary declaration with a notification and access the details of the declaration on the economic operator's computer system.

The goods included must be **moved immediately to the customs offices** designated by the customs authorities, or to any other authorised place, or to a free zone (article 135 UCC). After they have entered the area, the goods will be checked and may be subject to customs controls<sup>32</sup>: examining the goods, taking samples, verifying the details in the declarations and the existence and authenticity of the documents, revising the accounts of the economic operators and any other records, inspecting the means of transport and the goods and equipment used, etc.

<sup>(32)</sup>Arts. 46, 50 and 134 of the UCC.

Next, a **customs declaration** should be made, defined in article 5.12 of the UCC as a document through which a person expresses, in the established way, their desire for the goods to be subjected to a specified customs procedure. The declarant will have the option of choosing the customs procedure to which the goods will be subjected, as long as it meets their requirements. If the customs declaration is submitted within the stipulated deadline for submitting the entry summary declaration, the summary declaration is no longer required.

The customs declaration and the supporting documents should be submitted, in general, **electronically**<sup>33</sup>, although the customs authorities may accept an entry made in the accounts of the declarant instead of a declaration, as long as the authorities have access to the declarant's computer system, and can exchange data with other customs offices.

<sup>(33)</sup>Arts. 6, 158, 160, 161 and 182 to 184 of the UCC.

Once the declaration has been accepted, the customs authorities can check the documentation, and examine the goods and take samples thereof (art. 188 of the UCC). They can also adopt the necessary measures to verify the identification of the goods<sup>34</sup>.

<sup>(34)</sup>Art. 192 of the UCC.

Next, the customs authorities must **calculate** the customs duties as soon as possible, notifying the debtor of the amount due. Customs debt cannot be notified more than three years after it was incurred. This period is suspended<sup>35</sup> if any appeals are made against the calculated amount, and is extended to ten years if the debt was caused by a criminal act.

<sup>(35)</sup>Art. 103 of the UCC.

The **payment** must be made, in general, within a maximum of ten days from the debtor being notified of the amount to be paid. However, there is the possibility of deferring payment and other payment terms, subject to providing guarantees and paying interest (arts. 108 to 112 of the UCC). When the debt

<sup>(36)</sup>Arts. 5.26 and 195 of the UCC.

has been paid or guaranteed<sup>36</sup>, the customs authorities will proceed to **release** the goods, making them available for the purposes stipulated in the customs procedure they are subject to.

Within fourteen days following the release of the goods, the debt must have been entered into accounts<sup>37</sup>, meaning that the duties are noted in the EU tax records (arts. 104 and 105 of the UCC). After granting the release of the goods, the customs authorities can review the exact information contained in the summary declaration and the customs declaration.

<sup>(37)</sup>Art. 48 of the UCC.

## Activities

### Case studies

1. A Spanish business is engaged in wholesaling and importing the following goods, to be sold later in Spain:

- a) The business buys common dentex fish meal, fit for human consumption, from Peru, at a value of 100,000 euros.
- b) The business buys grand pianos in Belarus at a value of 50,000 euros.
- c) The business buys original sculptures from artists in Australia at a value of 35,000 euros.

Using the information available on the internet, provide the business with the following information related to the operations detailed above:

- The nomenclature for these products on the Integrated Tariff (TARIC).
- The applicable tariff.

2. Mr. Méndez has set up a business manufacturing beach umbrellas, with a production centre in Vietnam; the products will be sold in Valencia. To make the products more attractive, he has acquired a license from a well-known sports clothing brand based in the United States, so that he can add the logo to the beach umbrellas.

In a few months, he manages to set up the factory in Vietnam, and as there are currently no orders, he decides that the parent company based in Valencia will buy the first batch of beach umbrellas, so that the factory in Vietnam can start production.

When the first batch of beach umbrellas is already on the way from Valencia, he manages to sell some to a beach bar in Tarifa. These umbrellas will be released for free circulation in Valencia with the rest of the umbrellas, and then transported from Valencia to Tarifa by lorry.

The price stated in the sales invoice issued by the Vietnamese subsidiary is 25 euros/beach umbrella (they are high-quality umbrellas). The invoice price includes all the costs to make the beach umbrella available for sale, and the sales price is the same to the parent company or to a third party (this means the price also includes the transport costs and the insurance for the journey from Valencia to Tarifa).

In order to carry out the necessary customs procedures, which is basically submitting the declarations, Mr. Méndez hires a transport company, which charges him a commission for each imported umbrella, at 0.01 euros/beach umbrella, rather than charging for each declaration.

The parent company pays 1 euro/beach umbrella for the sports clothing brand license.

Transport from Vietnam to Valencia: 0.5 euros/beach umbrella.

Transport from Valencia to Tarifa: 0.1 euros/beach umbrella.

Cargo insurance from Vietnam to Barcelona: 0.03 euros/beach umbrella.

Cargo insurance from Barcelona to Tarifa: 0.02 euros/beach umbrella.

The invoice includes all the transport costs and the insurance from Vietnam to Valencia, but it does not include the costs for Barcelona to Tarifa. The beach umbrellas arrive at the port of Barcelona on 30 May 2012, and they are brought to the customs offices on the same day.

What is the unit value for the imported umbrellas at the customs offices?

## Self-evaluation

1. The customs representative...

- a) is a customs office agent who should inform the customs authorities whether he/she acts on their own behalf, or on behalf of someone else.
- b) is an agent who is not permitted by the modernised customs code.
- c) cannot act on his/her own behalf, as this would mean he/she would no longer be a representative, but rather an economic operator or an importer of goods.

2. The following are special customs procedures:

- a) External transit and internal transit.
- b) Free zones.
- c) Both answers are correct.

3. Which customs procedure includes non-EU goods to be introduced in the EU market, or for private consumption in the EU?

- a) Transport.
- b) Transit.
- c) Release for free circulation.

4. When any given goods subject to import duty are removed from customs supervision, a customs debt is incurred, and the debtors are those who...

- a) ...removed the goods from customs supervision, but only when they were aware they were removing goods under supervision.
- b) ...acquired the goods, whether they knew goods were removed from customs supervision or whether they could reasonably assume that was the case.
- c) Both answers are incorrect.

5. The following is part of the EU customs territory...

- a) Ceuta.
- b) The Canary Islands.
- c) Melilla.

6. For the purposes of customs duties, in order for any given goods to be released for consumption...

- a) the only requirement is a customs destination request.
- b) the only requirement is the goods being released.
- c) All of the above and, in addition, all of the indirect taxes must be paid.

7. Mrs. Sánchez has imported some furniture from Morocco. The goods were brought into Spain under inward processing procedures, and the furniture was later exported to Egypt. In terms of customs duties, what is the status of the import duty for this furniture?

- a) It is subject to customs relief.
- b) It is not subject to customs relief.
- c) It is not subject to import duty.

8. A company is importing vehicles from the United States, which arrive at the free zone in Barcelona. In terms of customs duties...

- a) the vehicles have arrived at a customs destination.
- b) the vehicles are subject to a customs procedure.
- c) the vehicles are subject to an internal transit procedure.

9. The following can be subject to total or partial customs relief:

- a) Import duties.
- b) Tariff quotas.
- c) Both answers are correct.

10. At what moment are export fees incurred?

- a) When the declaration for the goods being exported is accepted at the customs office.
- b) The moment undeclared goods effectively leave.
- c) Both answers are correct.

## Answer key

### Practical examples

1. TARIC nomenclatures can be found on different websites, showing the tariff that applies in each case. You can search by code or area from the homepage. Under the 'Goods code' tab you can search using the exact code for the goods, or you can look up different sections and chapters by clicking on 'Browse'. Once you have entered the required information, you can see the applicable tariff by adding the relevant information for 'Country of origin/destination'. Using this information you can calculate the customs duties.

With all of these tools available, you can find the nomenclature and tariff that apply to each of the products:

a) Geographical area: Peru.

Section I: Live animals; animal products.

Chapter 3: Fish and crustaceans, molluscs and other aquatic invertebrates.

0305: Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meal and pellets of fish, fit for human consumption.

030510: Flours, meals and pellets of fish, fit for human consumption.

0305100030: Sea bream.

Goods code: 0305100030

- Customs tariff: charge for third countries: 13%
- Tariff to pay in this case:  $100,000 \times 13\% = 13,000$  euros

b) Geographical area: Belarus.

Section XVIII: Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof.

Chapter 92: Musical instruments; parts and accessories of such articles.

9201: Pianos, including automatic pianos; harpsichords and other keyboard stringed instruments.

920120: Grand pianos.

Goods code: 9201200000

- Customs tariff: charge for third countries: 4%
- Tariff to pay in this case:  $50,000 \times 4\% = 2,000$  euros

c) Section XXI: Works of art, collectors' pieces and antiques.

Chapter 97: Works of art, collectors' pieces and antiques.

9703: Original sculptures and statuary, in any material.

Goods code: 9703000000

- Customs tariff: charge for third countries: 0%
- Tariff to pay in this case:  $35,000 \times 0\% = 0$  euros

2. In order to calculate the customs value per unit for the imported beach umbrellas, articles 69 to 72 of the UCC should be applied.

The sales invoice price as issued by the subsidiary is 25 euros/beach umbrella, which includes all the transport costs and insurance, which means it also includes the transport and insurance from Valencia to Tarifa.

According to the provisions of article 72.a of the UCC, the transport costs (and insurance) are not included in the customs value after the goods arrive at the entrance to the EU customs territory. On the other hand, in accordance with article 71.1.e of the UCC, the transport

and insurance costs for the goods up to the point of arrival in the EU customs territory are included in the customs value.

So at first it might seem as though the transport and insurance costs from Valencia to Tarifa can be deducted when calculating the customs value. However, article 72.a of the UCC stipulates that the transport (and insurance) costs should not be included in the customs value, as long as they differ from the amount paid or still to pay, once the goods have arrived at the entrance to the EU customs territory. In this case, the transport and insurance costs from Valencia to Tarifa should be included in the amount paid or to pay, as they are not included in the invoice but are included in the unit price.

This means the transport costs do not change the unit price of 25 euros/beach umbrella. It is important to keep in mind that, regardless of whether the transport costs (0.5 euros/beach umbrella) and insurance (0.03 euros/beach umbrella) are detailed in the invoice for the journey from Vietnam to Valencia, they are already included in the unit price of 25 euros/beach umbrella, which means they do not need to be added in order to calculate the customs value.

The commission paid to the freight forwarding company per imported umbrella is included in the customs value, which should be added to the unit price of the umbrellas, as article 71.1.a.i of the UCC states that commissions and brokerage fees should be included in the customs value. In this regard, the commission is not a sales commission, as paragraph 4 of the aforementioned provision defines sales commissions as those paid by the buyer to the agent for the 'service of representing him when purchasing the goods'; it should be noted that this commission of 0.01 euros/beach umbrella is for customs procedures, rather than for buying the umbrellas.

The license per umbrella of 1 euro/beach umbrella, paid by the parent company, must be added to the customs value, as article 71.1.c of the UCC states that the customs value includes "royalties and license fees related to goods being valued that the buyer must pay directly or indirectly, insofar as [...] they are not included in the amount paid or to pay". This means that, even though the amount of 1 euro/beach umbrella does not have to be paid to the subsidiary, but rather to the American company, because it is an indirect payment that the buyer must make, it is still included in the customs value. In this sense, this is not the "copyright" referred to in article 72.d of the UCC, as the company is not paying for a license to make the umbrellas, but rather to put the brand logo on the umbrellas.

In conclusion the customs value is 26.1 euros/beach umbrella.

### **Self-evaluation**

1. a
2. c
3. c
4. b
5. b
6. c
7. a
8. a
9. c
10. c