

**IIT 2009/10 ASSOCIATE EXAMINATION
PAPER II CUSTOMS ROUTE – POTENTIAL SOLUTION**

Question 1

- 1 Reg Customs Code 2454/93 Art 38, 40 & 59
- 2 Any two or more of valuation declaration, invoice, certificate of origin, licence.
- 3 When they act as an indirect representative
- 4 Advalorem is based on a percentage of value and specific is based on a unit of measurement e.g. per litre
- 5 Anti dumping duty, CA levies, excise duty, VAT – any two or more for a mark.
- 6 Form REDS 115 for the overpayment and separate notification for the underpayment – cannot be netted off
- 7 AAD
- 8 It guarantees payment of the excise duty if goods go missing in transit and can be provided by either the supplier or the recipient or the REDS.
- 9 Non commercial
Simplified
Full UK
Single
Specific
Integrated
- 10 Repair carried out free under the warranty - No for both duty and VAT

Repair carried out for payment - Yes for duty and VAT – on cost of repair plus freight and insurance

Replaced - No duty payable but VAT is payable
- 11 Implementing Regulation 2454/93 art 291-300 and Statutory Instrument SI 1977/2042 – End Use Regulations
- 12
 - C1317 - UK only imports on a regular basis
 - C100 - occasional importer
 - Integrated authorisation - Where required and linked to other reliefs
- 13 Community goods that have been exported
Re-imported within three years
Re-imported in the same state in which they were exported]
- 14 Yes to both
- 15 [Any four of the 17 listed]
- 16 Art 918 – 83 Reg 2913/92

- 17 Simplified Declaration Procedure – May only be used by an authorised trader. Allows the authorised exporter to declare export by submitting a simplified electronic pre-shipment declaration to CHIEF. Using minimal information An electronic supplementary declaration is made within 14 days of the date of shipment, which provides more details about the shipment.
- 18 Art 130-136 of 2913/92 and Art 551-552 of 2545/93
- 19 Allows good which would be at a higher duty rate to be imported free of duty and when incorporated into final product duty is paid (at a lower rate)
- 20 Established in the EU
Processed Goods identifiable in final product
Not capable of being restated
Not to circumvent quantitative restrictions
Economic Condition – not harm EU producers

Question 2

Common Agricultural Policy

1. The CAP is designed to provide a system of common prices within the EU through market support, to secure supplies for a wide range of agricultural products. Its purpose is to ensure that the EU is protected from world price fluctuations and that the level of prices for agricultural products within the Community provides a reasonable return for Community producers, thereby ensuring an on-going supply from Community resources.
2. The products covered by the CAP are described in Article 38 of the Treaty of Rome (“the Treaty”) as “products of the soil, of stock farming and fisheries and products of first-stage processing directly related to these products” and are listed in Annex 1 of the Treaty.
3. Non-Annex 1 products are processed goods like biscuits, chocolate and jam that are manufactured from ingredients listed in Annex 1 of the Treaty – e.g. wheat, milk and sugar.
4. The Rural Payments Agency (RPA)
5. A CAP import licence allows a business to import a defined quantity of goods within a set period. It is used by the EU as a tool for monitoring and limiting the import of goods, irrespective of the amount of duty paid, whereas a Tariff Quota allows an importer to claim a reduced rate of duty.
6.
 - An export licence with advance fixing of refund for Annex 1 goods, sometimes known as WTO licence.
 - A refund certificate for processed goods (Non-Annex 1 goods)
 - A mandatory export licence, normally required for sugar, cereals and rice.
 - A tender licence when a CAP exporter is asked to quote or tender to supply goods for the military or public authorities outside the EU and may need to supply the goods at short notice
7. Exports refunds are paid on qualifying cap products to reflect the difference between the world price and the community price, so that exporters can compete on a level playing field. In respect of processed goods, exporters are entitled to claim export refunds on the quantity of qualifying ingredients contained with the finished product. In order to claim refund, the exporter has four potential options:

- Some processed goods are considered to have certain levels basic ingredients and in that case a standard-recipe code should be used. The relevant standard recipe code will need to be quoted in the NES entry, together with an appropriate CPC code.
 - Where that does not apply, most exporters will register a recipe with the RPA, providing details of the quantity of qualifying ingredients in the exported product. In that instance, the exporter will need to quote their RPA registration number, recipe number, 14 digit commodity code and the appropriate CPC code on the customs entry.
 - An exporter can detail the quantity of qualifying ingredients on a single consignment declaration basis.
 - For a range of specified products, the exporter may request that a chemical analysis is carried out. The exporter will need to pay for this to be done and refund will only be paid once the results are available.
8. The T5 document is used in conjunction with Community Transit goods where export refunds are being claimed and the goods are moving to or through an EFTA country. The T5 is a control document that travels with the goods, is stamped at the customs office of exit from the EU and is returned to the RPA via HMRC as evidence of proof of departure from the Community.
9. Differentiated refunds are dependant upon the non-EU destination of the goods. Some countries receive a higher rate of refund for receipt of certain imported CAP products. Proof of import into those countries will need to be provided before the differentiated element is paid to the exporter.
- 10.
- CAP goods imported under a quota that attracts a nil or reduced rate of duty.
 - Goods eligible for a favourable rate because of their end-use.
 - Goods exported from the EU and re-imported, under returned goods relief.
 - Goods re-imported into the EU under Outward Processing Relief.
 - Goods imported under temporary importation arrangements.
 - Processing under Customs Control
11. An application to use IPR for CAP goods requires that an economic test is carried out and the exporter will need to provide evidence of why Community produced goods cannot be used, as set out below:
- I. The goods are unavailable within the Community in either the required quantity or at the time the required. The goods must be of the same quality and technical characteristics and the same 8 digit CN Code as the imported goods. Article 502(2)(a) 2464/93 applies.
 - II. EC goods of the same kind are produced in the EU but cannot be used because their price makes the product economically unviable. Article 502(2)(b) 2464/93 applies.
 - III. EC goods do not conform to the expressly stated requirements of the customer or cannot be used in order to comply with provisions concerning industrial or commercial property rights. Article 502(2)(a) 2464/93 applies.
- Additionally, IPR may also be used for CAP products in the following circumstances:
- IV. A job-processing contract – where there is a contractual requirement to use a specific non-EU CAP ingredient. Article 539(2)(a) (ii) 2464/93 applies
 - V. Further processing of a product that has been obtained by processing under a previous authorisation, the granting of which was subject to an examination of the economic conditions. For instance, raw sugar cane that has been refined by a sugar refiner with an IPR authorisation, who has subsequently sold refined sugar to a manufacturer of exported confectionery. Article 539 (a)(iii) 2464/93 applies

- VI. The processing of durum wheat falling within CN code 1001 10 00 to produce pasta falling within CN codes 1902 11 00 and 1902 19. Article 539(2)(a)(vi) 2464/93 applies.
- VII. The aggregate value for the imported CAP product, per calendar year, for each eight-digit commodity code, does not exceed €150,000. Article 539(2)(b) 2464/93 applies
- VIII. The importer presents a document issued by the RPA permitting an importer to import goods under IPR up to a certain quantity – sometimes known as facilitated IPR or the supply balance under Council Reg 3448/93 Article 11. Article 539(2)(c) 2464/93 applies.

Question 3

Delman and Fils

Based on the information provided by Mr. Delman, the two regimes that could provide the financial benefits he is looking for are Registered Excise Dealer and Shippers (REDS), as a REDS principal, and Excise Warehousing. The REDS scheme may only be used for imports from the EU of free circulation goods. Excise warehousing may be used for goods received from both EU and non-EU sources.

REDS

In order to obtain registration under the REDS scheme Delman and Fils Limited will need to fulfil the following requirements when applying:

- The company must be VAT registered in the United Kingdom.
- The company must have a duty deferment account with HM Revenue and Customs if it is to act as a REDS Principal.
- The company may use a REDS agent but if it does it will only obtain the cash-flow benefit required by obtaining and using its own deferment account.
- The company must also reveal any unspent convictions or acceptance of any compounded penalties within the previous 3 years.

In order to act as a REDS Principal the company will need to be able to:

- Set up and maintain a duty account and enter duty liabilities in it when goods pass the specified excise duty point, i.e. receipt of goods.
- Render a return to the REDS accounting centre within the critical period, i.e. within a four-day consecutive period of business days following the end of a calendar month, three days if one of the four is not a business day.
- Comply with the duty deferment regulations.
- Keep all records relating to the REDS business for at least six years.
- Provide a receipt on any accompanying documents with received duty suspended goods from EU consignors and return it within the time specified in regulations.
- Comply with any other condition or requirement that HMRC may impose in connection with the registration.

Legislation:

Customs and Excise Management Act 1979, sections 101G and 101H.

Excise Duties (Deferred Payment) Regulations 1992.

Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992.

Revenue Traders (Accounts and Records) Regulations 1992.

Excise warehousing

In order to be able to operate an excise warehouse Delman and Fils Limited will have to apply to HMRC to:

- Obtain authorisation as an excise warehousekeeper.

- Obtain approval of the proposed warehouse premises.

When applying for authorisation as an excise warehousekeeper the applicant company must satisfy the following criteria:

- the legal entity or any of its key employees have not been involved in revenue non-compliance or fraud.
- the application is complete and accurate.
- the legal entity/key employees must have no unspent convictions.
- the legal entity/key employees do not have links to known non-compliant or fraudulent businesses.
- the business is commercially viable.
- the applicant can demonstrate the business is genuine.
- the applicant have no outstanding HMRC debts.
- the applicant is able to provide adequate financial security as required by HMRC.
- the applicant has an accounting system that satisfies HMRC.

When applying for approval of the warehouse premises the applicant company must satisfy the following criteria:

- The company must satisfy HMRC that the proposed premises are secure.
- Three copies of warehouse site plan must be submitted with any application.
- The potential excise duty on warehoused goods must meet the requirement of £2,000,000 throughput in 1 year or an average stockholding of £500,000 per month.
- The company must provide a financial guarantee in respect of excise duty suspended on goods in the warehouse.
- The company will have to have satisfactory systems in place for both warehouse and duty management. If these are electronic, details must accompany the application as HMRC will need to approve their use.
- Arrangements must be put in place for a minimum stock take period of once per year.
- Procedures must be written and introduced to control goods to protect the revenue to the satisfaction of HMRC.
- The company must ensure that proper management and supervisory checks of warehouse transactions are in place to ensure compliance with HMRC requirements, including internal and external audit of the procedures.
- The company must provide details of the types of excise goods that it intends to warehouse in duty suspension.

Relevant legislation:

Customs and Excise Management Act 1979, section 92.

Warehousekeepers and Owners of Warehoused Goods Regulations 1999.

Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992.

Excise Warehousing (Etc.) Regulations 1988

Question 4

Swift Oils

Briefing Note on Swift Oils Plc – Oils producer's premises

Introduction - Excise duty requirements and procedures

Swift oils plc ("Swift") is an oil refinery and distributor of oils subject to excise duty. This paper briefly examines the relevant EU and UK law, requirements and procedures in connection with the production and warehousing of oil.

The main UK provisions for the production and processing of oils products are as follows:

1. Production of oil

Although Swift is clearly an oil refinery, there is no definition of "refining" of oil for the purposes of excise duty*. The legal definition of "production of oil" includes obtaining oil from any substance or natural source, obtaining one description of oil from another and subjecting oil to any process of purification or blending (Hydrocarbon Oil Duties Act 1979 (HODA s2 (4))).

*Under HODA section 27 (interpretation), a "refinery" means "any premises which - (a) are approved by the Commissioners (of HMRC) for the treatment of hydrocarbon oil..." The term "refinery" is also used several times in connection with the Hydrocarbon Oil Regulations 1973. However, "refining" of oil is not defined.

2. Control of the production of oil – entry of premises

HMRC does not approve oils production premises as a refinery. Instead, HMRC requires only that the premises used for refining/production of oil is entered. The making of entry, although archaic, is fundamental to how HMRC controls refineries/production premises.

The requirement for making of entry is set out in the Hydrocarbon Oil Regulations 1973 ("HOR") Regn 3, which states: *(1) No person shall begin production of oil until he has made entry of the premises and of every building, and all plant, ... on those premises which he intends to use for that purpose.*

The "form and manner" of the entry is set out with the Customs and Excise Management Act 1979 (CEMA) section 108.

The forms to be used for making entry are:

- *Form Ex103 - if you are a sole trader or partnership;*
- *Form Ex103A - if you are an incorporated company.*
-

An entry is simply a list of the premises and all the buildings and plant that are to be used in the production of oil, but it must be made in order to comply with HOR regn 3.

NB It will be seen that Swift is a class B producer of oil (see below). Swift's entry (EX103A) should therefore contain a description of the plant and vessels used in the **production and processing** of the oil. The entry should identify all buildings and places (including a laboratory) in which duty-suspended oil is handled.

3. Classification of premises

HMRC has two classes of oil premises:

- **Class A activities:** *production (including refining) of descriptions of oil for which a mineral oils warehouse is not required... (and)*
- **Class B activities:** *production (including refining) of descriptions of oil for which a mineral oils warehouse is required*

Since Swift is a producer of oil, part of the entered premises needs to be approved as an excise warehouse so that the oil produced on those premises can be warehoused in

accordance with HOR regn 3(3). This means Swift will be classified by HMRC as a Class B producer.

4. Approval of oils warehouses

CEMA s92 confers upon HMRC the power to approve *all* excise warehouses, including oils premises.

The specific powers for HMRC to approve and control excise warehouses are set out in the Excise Warehousing (Etc) Regulations 1988 (“EWR”). Under EWR regn 3 (application) “except as provided for under the Hydrocarbon Oils Duties Act 1979” parts I-IV of those regulations apply to all excise goods.

Most of the differences between oils products and other excise goods in relation to warehoused goods concern the method and means of measurement of oils product (HOR regns 14, 46 and 51) and requirement for preparation of delivery notes by the warehousekeeper of oils products issued to consignees (HOR regn 12).

It is noted that, for “oils warehouses” only, HOR regn 9(1) requires the occupier of the warehouse not to “use any place or plant unless the same has been approved by the Commissioners (of HMRC) and bears conspicuous distinguishing marks. Under HOR regn 9(2) no alteration can be made to such approved premises or plant (including demolition) unless the warehousekeeper (occupier) has give two days’ previous notice to HMRC. HMRC grants approval by letter that provides a schedule of the vessels and places that are approved.

The powers to determine approval criteria and terms and conditions of approval are further delegated to the Commissioners of HMR by means of written directions, including directions given by, or within, a public notice (EWR regn 7(1)). These notices include Notice 179 and, where applicable to oils products, Notices 196 (Excise Goods: Authorisation of warehousekeepers, Approval of Premises) and 197 (Excise Goods: receipt into and removal from an excise warehouse of excise goods). CEMA s92 further provides HMRC with the powers to direct what type or class of goods may be deposited in particular types of warehouse and what part of the warehouse.

It is also noted that for certain movements of oil, HOR regn 4 applies the provisions of the Excise Warehousing (Etc) 1988 regulations 16, 16 and 17 to entered premises as though the entered premises were also warehouses approved under CEMA s92.

5. WOWGR and tax warehouse approval

As an operator of an excise warehouse, Swift has to be approved and registered as an excise warehousekeeper under the Warehousekeeper and Owners of Warehoused Goods Regulations 1999 (“WOWGR”) regn 3.

The approval of the excise warehouse implements the EU legal requirements for the authorities of Member States to approve places of receipt and storage of excise goods (as tax warehouses). Directive 92/12/EEC (“The Directive”) deals with the Production, Processing and Holding of excise goods. The main provisions for the Production and processing of oils (and other excise) products in tax warehouse are set out in Article 4.

Under The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, regn 2 (Interpretation) “tax warehouse” means “an excise warehouse” but there is no specific UK law to approve premises as “tax warehouses”, nor is there any need.

6. Financial security

In relation to the entered premises, HOR regn 3(2) states: “Every person who makes entry of any premises pursuant to paragraph (1) of this Regulation shall, if so required by the Commissioners, give security by bond or otherwise to the satisfaction of the Commissioners for the payment of duty on oil produced or stored on the entered premises.” HMRC does not appear to require such security for entered premises.

In relation to the excise warehouse associated with the entered premises, a condition of approval is that guarantee is required as security for the goods in the warehouse. The legal powers to impose guarantees and other security “for the observance of any condition in connection with (customs and) excise” is contained in CEMA s157.

HMRC’s security requirements for excise warehouses are set out in N196, which requires a maximum of £1 million security for potential duty on month-end stock-holding of more than £100 million. However, discounts are offered and, from the client file, since Swift has had no call upon its guarantee, it is entitled to a nil guarantee (allowed by HMRC for 4 years consecutive years of a good compliance record and no call upon the guarantee).

Question 5

Tout Suite Limited

Sub-question a)

Tout Suite has elected to enter the goods to the Export procedure using LCP, so this limits their options. Without this, the company could have removed the goods to Shannon under the auspices of the IPR customs procedure [2454/93 Article 512], in which case the risk of loss en route would have been covered under the guarantee for, and the provisions of, the IPR authorisation. However, as the goods have been entered to Export, they have to travel under the External Community Transit procedure as T1 goods, with a separate guarantee. This will involve using the computerised NCTS under which the movement is tracked electronically. However, a barcoded Transit Accompanying Document (TAD) has to be printed off and accompany the goods, and this has to be shown to the Office of Transit at Aghalane as well as the Office of Exit at Shannon. If the load contains more than one item, each must be listed on a List of Items.

- Anticipated Arrival record (AAR)
- Anticipated Transit Record (ATR)
- Notification of Crossing Frontier (NCF)
- Arrival Advice Message (AAM)
- Movement Reference Number (MRN)
- Control results Message (CRM)
- Export Control System (ECS)

Sub-question b)

As Tout Suite cannot use either LCP or the auspices of IPR to move these T1 goods to another member state for re-export, its options are:

- A full export declaration at the UK frontier, using the National Export System (NES)
- External Community Transit using NCTS. This is technically not permitted under the Code, but the matter is sufficiently opaque (and badly explained in guidance) that it can be included here as an option.

Using the Full Declaration under NES, the goods travel to Aghalane under the IPR arrangements. There, they are declared for export using NES.

Under the procedure that applies until 1 July 2009 (or before the ECS phase 2 implementation date), the UK is not set up to act as the Office of Export for indirect exports or re-exports. As a result, it generally requires the use of the External Community Transit procedure to get the goods from Aghalane to Shannon under NCTS which mirrors the process under ECS. A guarantee will be required for the movement.

The export procedure is initiated in NES (terminating IPR), but this is then terminated by the entry to CT under NCTS. To effect that entry, an electronic application/declaration is made using NCTS at the port. The system generates a unique Movement Reference Number and transmits an electronic Anticipated Arrival Record message to Shannon. NCTS prints a

Transit Accompanying Document, which physically accompanies the goods to Shannon. A List of Items in the specified format is also printed. The goods are then released for Transit.

On arrival at Shannon, the Irish officials will enter the Movement Reference Number into their Transit system, and this will automatically bring up the AAR sent earlier, triggering an Arrival Advice message to Aghalane. Any controls will be based on a risk assessment conducted on the basis of this document, and the outcome of the controls (if any) are notified to Aghalane using a Control Results Message.

From 1 July 2009, with the implementation in the UK of the second phase of the EU's Export Control System, it will no longer be necessary or desirable to then place the goods under Community Transit, as the electronic Export Accompanying Document, and electronic messages between the Member States involved, will mirror that of the Transit Accompanying Document and electronic messaging under NCTS but without the need for an additional movement guarantee.

So from 1 July 2009, assuming that the implementation goes ahead as planned, Aghalane will act as the EC Office of Export. In this capacity, the NES element of Chief will send an electronic message to Ireland, informing it of the impending arrival of the goods at Shannon – which has to be identified in Box 29 of the NES declaration. NES will also print a barcoded Export Accompanying Document, which serves the same function as the old SAD Copy 3 (travelling copy). If there is more than one item in the export consignment, there must also be a List of Items in the specified format. Assuming that CHIEF accepts the documentation, the goods will be released to travel on to Shannon.

On arrival at Shannon, the EAD barcode is scanned by Customs, and this triggers an electronic confirmation of re-export from Ireland to the UK.

On receipt of the Control Results Message, the transit movement is discharged and the guarantee released.