

**IIT 2010/11 ASSOCIATE EXAMINATION  
PAPER II CUSTOMS ROUTE – POTENTIAL SOLUTION**

**Question 1**

- 1 Alcohol – spirits, wine or made wine with a strength of 30% or more contained in bottles of 35 centilitres or more
- 2 There are two types of duty stamp
  - A Free standing – which must have a unique number which identifies the product type or
  - B Incorporated into the label of the product
- 3 Spirits, mixture of spirit or liquors of any description with a strength of 1.2% or greater  
  
Wine, any liquor obtained by fermentation of grapes etc and whether or not fortified by spirits or flavoured with a strength exceeding 1.2%
- 4 Method 3 value based on similar goods imported into the EU  
  
Method 4 Deductive method based on sales value less prescribed post importation costs / profit
- 5 Any five from  
  
Under the code:  
  
Sorting, separating, packing or repacking and such other operations as are necessary for preservation, sale, shipment or disposal of the goods,  
  
- rectifying and compounding of spirits,  
  
- rendering sparkling of wine and made wine,  
  
- the mixing of a fermented liquor or a liquor derived from a fermented liquor with any other liquor or substance so as to produce made wine,  
  
- the mixing of lime or lemon juice with spirits for shipment as stores or for exportation,  
  
- denaturing, reducing, marrying and blending  
  
[HMRC by public notice also allow]

cask rinsing,  
colouring,  
filtering,  
sweetening,  
priming of beer.

6 €150 - approx £120

7 Alcohol, perfumes and tobacco

8 Six

9 Method 3 value based on similar goods imported into the EU

Method 4 Deductive method based on sales value less prescribed post importation costs / profit

10 Customs duties – advalorem specific  
anti dumping duty  
CAP Levies  
VAT

11 Excise duty

12 Two:

A general storage and distribution warehouse; and  
A trade facility excise warehouse.

13 Reg.14 & sch. SI 1988/809

14 Any five from:

Sorting, separating, packing or repacking and such other operations as are necessary for preservation, sale, shipment or disposal of the goods,

rectifying and compounding of spirits,

rendering sparkling of wine and made wine,

the mixing of a fermented liquor or a liquor derived from a fermented liquor with any other liquor or substance so as to produce made wine,

the mixing of lime or lemon juice with spirits for shipment as stores or for

exportation,  
denaturing, reducing, marrying and blending  
cask rinsing,  
colouring,  
filtering,  
sweetening,  
priming of beer

- 15 Defines the type of goods being imported and provides the duty and any levies or quotas applicable
- 16 General duty valuation declaration – in majority of cases when requested by HMRC
- 17 Imports of low commercial value (€10,000 – approx £6,500) and in the majority of imports under business brief 16/2008
- 18 A declaration for goods of no commercial value imported from the same seller - 109A for method 1 and 109B for methods 2-6
- 19 No
20. Any 4 from:
- crane grab machines and laser machines;
  - children's rides;
  - table football games;
  - snooker and pool tables;
  - bar billiards;
  - two-penny machines
  - gaming machines with a maximum stake of 10p and a maximum cash prize of £5
  - juke boxes and vending machines.

## Question 2

### British Fininshers Ltd

It transpires that British Finishers' Norwegian customer has diverted IPR goods to The Netherlands after BF had sent them to Harwich.

- a) **Has a customs debt arisen?** The BF IPR authorisation requires that the goods be re-exported from the EU under customs control. Irrespective of whether the goods were ever exported from The Netherlands, customs control of the shipment has been lost once they are not entered for IPR export at Harwich. For that reason alone, a customs debt arises under Article 203 of the

Community Customs Code [regulation (EEC) 2913/92]. It is also a condition of the IPR regime that the goods should be exported rather than diverted, and if diverted, that a diversion entry be made. This has not happened, so to that extent a customs debt also arises under Article 204 of the Code. An implication to be drawn from the FG Wilson/Caterpillar ECJ cases is that where there is both an unauthorised removal from customs control (Article 203) and a failure to meet an obligation or condition of the relief (article 204), the Article 203 unauthorised removal takes primacy. (In Terex/FG Wilson/Caterpillar, the ECJ found that as there had been an Article 203 customs debt, it was unnecessary to consider whether an Article 204 debt also arose).

- b) **Who is liable for the customs debt?** Under Article 203 of the Code, there are four sub-provisions determining the debtor. These are:
- I. The person who removed them from supervision;
  - II. People who participated in the removal (if they were aware [or should have been aware] that the goods were being improperly removed);
  - III. People acquiring or holding the goods (if they were aware [or should have been aware] that the goods were being improperly removed);
  - IV. Where appropriate, the person required to fulfil the obligations of the IPR procedure

In this case, the person who removed the goods from supervision was the Norwegian entity acting through its UK clearance agent. As that entity is not established in the UK, it is worth examining the other provisions to see whether a UK entity can be liable.

It is worth noting that the clearance agent will likely claim it was acting in a Direct Agency capacity under standard BIFA terms & conditions, in which case it might well argue it could not be liable (as it acted in the name of, and on behalf of, Treynrek ASA) under the 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> sub-provision. This is open to question, as they clearly did participate in the improper removal, and did hold the goods for a short period after such removal. However, there is considerable uncertainty how that point might play out in court, so any reasoned answer on this point should be respected.

British Finishers may well be responsible for the debt under the 4<sup>th</sup> sub-provision as the party required to fulfil the obligations of the IPR procedure. In this context, the word “appropriate” is the only potential barrier to a C.18. It would seem reasonable to use sub-provision 4 as a last resort. This would certainly apply where the other sub-provisions have failed to find a customs debtor; it is open to question whether it would apply when the first sub-provision identified a customs debtor that was established in the EU, but not in the UK. However, it is clear that any party identified under any of the sub-provisions is jointly and severally liable for the debt.

- c) Can any debt be recovered back to 2005?** Under Article 221(3) of the Code, no amount by way of a customs debt may be communicated to the debtor after a period of three years from the inception of the debt. A debt under Article 203 is incurred at the moment the goods are removed from supervision, so for debts uncovered in October 2010 it is possible to collect back to October 2007 in the ordinary course of events. However, Section 136(1A) of CEMA 1979 makes it a criminal offence incorrectly to claim any amount by way of remission of duty, even if unknowingly. Article 221(4) permits HMRC to recover duties further back than three years in such cases – though as a matter of policy HMRC tends not to do so. So in theory, there is no time bar on recovery back to 2005; in practice, it would be inconsistent of HMRC to recover beyond October 2007 in this case.
- d) The ECJ decisions on Terex/F.G. Wilson and Caterpillar.** Terex established that there was an Article 203 improper removal from control when HMRC was misled into believing that exported goods were in Free Circulation when in fact they were not. However, it was open to Customs under Article 78 to amend a customs declaration where such a technical error has occurred. In this case, there was no customs declaration to amend, as the goods were despatched to The Netherlands. In such circumstances, it is necessary to regularise the T2 despatch to The Netherlands by imposing a post-clearance customs debt in the UK. That being so, any export from The Netherlands was a bona fide export and not a mistakenly-labelled re-export, so the Terex case should not have any effect on this matter.

### Question 3

#### Nationwide Supermarkets

1. The Channel Islands are part of the customs territory of the European Union but are not part of the fiscal territory. As a result exports of goods on which excise duty has been paid may be the subject of a drawback claim in respect of that duty. However, as the goods are remaining within the EU customs territory when sent to the Channel Islands they must remain in free circulation. Customs duty may therefore not be reclaimed, unlike excise duty.

Directive 2008/118 Article 5 (2) (d) and Council Regulation 2913/92 Article 3 refer.

2. A claim to drawback may only be made in respect of eligible goods. For goods to be treated as eligible they must be:

- Exported, or destroyed in conformity with drawback regulations;
- Have had excise duty paid on them which has not previously repaid or remitted.

As Nationwide Supermarkets intend to export goods to the Channel Islands on which they have previously paid duty the goods will be eligible. Excise Goods (Drawback) Regulations 1995 Regulation 5.

A claim for drawback may only be made by an eligible claimant. For nationwide Supermarkets to be considered an eligible claimant they must:

- Be a revenue trader;
- Export the goods in the course of their business.

As Nationwide Supermarkets fulfil these criteria they will be an eligible claimant. Excise Goods (Drawback) Regulations 1995 Regulation 6.

3. Prior to shipment of the goods the exporter must:

- Send the Commissioners a Notice of Intention to claim drawback, including their name and address, details of the goods, the export destination, the amount of duty to be claimed, and where the goods may be inspected.
- Ensure that the goods are available for inspection for two clear business days prior to exportation;
- In the case of the Channel Islands, ensure that a single administrative document is prepared.

Excise Goods (Drawback) Regulations 1995 Regulation 8.

4. After exportation Nationwide Supermarkets must submit a claim to the Commissioners within 3 years of the exportation of any goods. The claim must be accompanied by the following documents:

- Copy 3 of the single administrative document, the evidence of export;
- Evidence that the goods have had duty paid on them. Given the nature of the Nationwide Supermarkets business, this may take the form of a copy of an import entry advice (C88), a return made by a Registered Consignee (REDS100 or REDS110), a W5D for ex-warehouse transactions, and duty deferment statements;
- For goods the company has purchased duty paid in the UK, the company must ask their suppliers to provide evidence of excise duty payment or details of the documents on which excise duty was paid. If the supplier can confirm how they pay excise duty, but cannot provide specific details for each sale to the claimant, they must provide the claimant with a statement to this effect which the latter must produce to HMRC as alternative evidence.
- No claim may be made in respect of goods purchased duty paid unless the claimant receives specific evidence of duty payment from the supplier or obtains agreement from the Commissioners to produce alternative evidence.

Excise Goods (Drawback) Regulations 1995 Regulations 7 (4), 11, and 12(1), as implemented in Notice 207, Excise Duty: Drawback sections 8.5 and 8.6.

5. There are two provisions that the Commissioners may use in relation to the imposition of conditions.

The Commissioners may vary the regulatory conditions imposed in regulations using the powers in the Excise Goods (Drawback) Regulations 1995 Regulation 7 (1) (a) General conditions. This requires eligible claimants to comply with the conditions

imposed in regulations 8 to 11, save as the Commissioners may otherwise allow. In effect the Commissioners may allow a variation in the conditions in relation to drawback claims made by any individual claimant.

The Commissioners may impose additional conditions to the standard conditions imposed in regulations 8 to 11 on any individual claimant using the powers in the Excise Goods (Drawback) Regulations 1995 Regulation 7 (2) General conditions. This power may be used where necessary to protect the revenue, and any claimant must be advised in writing of such impositions.

#### **Question 4**

##### **Scanwise plc**

Briefing Note for the Scanwise Board

The company's Auditors have suggested four possible avenues of investigation by which Scanwise plc might avoid the new Anti Dumping Duty on Chinese freight scanners. Each is considered below.

**Perform final assembly outside China.** On its own, this will not be an effective strategy. The origin of the goods for ADD purposes is determined by the EU's non-preferential origin rules. It is a fundamental provision of those rules that mere assembly of a product cannot confer origin in the country of assembly. Equally, the recently-codified ADD Regulation 1225/09 provides that ADDs may be extended to cover imports of like products or parts from third countries.

- e) **Import the scanner in parts, and assemble those parts at the customer's premises.** If the ADD regulation imposing ADD on the Chinese freight scanners does not extend its scope to cover parts, this approach may be effective – at least initially. However, it must be done with great care. Regulation 1225/09 broadly treats such EU assembly of products normally covered by ADD as circumvention, in which case the ADD could be extended to the imported parts. To eliminate this possibility, the value added in the EU by the assembly operation should exceed 25% of the manufacturing cost of the parts.
- f) **Apply for a Tariff Suspension to eliminate the duty liability.** While a tariff suspension might be warranted where EU suppliers are unable to meet demand, it is not a realistic option for the elimination of the ADD in this case. This is partly because suspensions are not provided for finished products, partly because it takes at least 18 months to be implemented (always assuming that there are no valid objections to it from other EU importers) but primarily because Tariff Suspensions do not suspend ADD.

g) **Product differentiation.** This option is the most likely to succeed in the long term, as it is not susceptible to changing market conditions and cost considerations in the way that option b) is. ADD is imposed where goods are sold to the EU at less than the price those could fetch in the Chinese market. As Scanwise will sell to its EU parent at an acceptable transfer price, it is likely that they will not be “dumped” – i.e. that the transfer price will exceed the domestic market price. In such circumstances, it should be possible to apply to the EU for an exemption in the case of Scanwise’s exports from China – a New Exporter Review. Until the EU can legislate for the exception, it may be possible to provide an undertaking not to dump, on the basis of which the EU may be prepared to refund any ADD collected at the port.

## Question 5

### Preference

#### Question 1

In simple terms, **products that are entitled to benefit from preferential origin status will be subject to a lower rate of import duty than is the case with a product without preference.** For instance, in the case of Israel the rate is 0% for EU origin goods, whereas imported without preference would pay a rate of 12% + 0.32 ILS/kg (but not more than 112% of the consignment value).

#### Question 2

Non-preferential origin is applied to products that are either “wholly obtained” (**Article 23 Reg 2913/92**) from a particular country or where the finished product underwent its “last, substantial, economically justified transformation” (**Article 24 Reg 2913/92**).

(a) **The term “wholly obtained” is conferred on those products that are either:**

- (i) **obtained in their natural state from the country concerned; or**
- (ii) **produced in that country from goods falling within (i) above.**

(b) **The term “last, substantial, economically, justified transformation” in the case of a biscuit, generally means where finished product has a different ( four figure) tariff heading to that of the of its constituent parts – i.e. flour is in Chapter 11, sugar Chapter 16 and currants Chapter 8, but biscuits fall in Chapter 19**

#### Question 3

Each importing country will have their own requirements in terms of documents that need to be provided to support the import of product and the associated origin of those goods. This could be driven by customs requirements at the point of entry quotas for a particular class of goods or by commercial considerations, such as the requirement of a Letter of Credit.

In some case, **exporters may only be required to state the origin on the export invoice.** However, many countries will require a **certificate of origin**, authenticated by a **local Chamber of Commerce**. **Specific details relating to the issue and format of the certificate of origin are laid out in Articles 47-54 Reg 2454/93..**

#### Question 4

**The EU has a number of reciprocal arrangements in place with third countries** around the world through separately negotiated preferential agreements that allow EU manufactured goods to be imported into their territories at a nil or reduced rate of duty, provided the goods meet the specific origin rules covering the product in question.

In the case of biscuits exported to both Egypt and Israel, the biscuits must either be **“wholly obtained” within the meaning of Article 99 Reg 2454/93** or **sufficiently worked or processed according to the conditions set out in Articles 100-108 and Annex 15 Reg 2453/93**. Annex 15 sets out the conditions of the preferential arrangements with other countries and are reflected in the Customs Notices 828 and 829.

In this case, **biscuits are deemed to have originating status provided the manufacturing process of baking the biscuit took place in the EU and one of the constituent ingredients – flour – had EU originating status**. All other materials used in the product such as the sugar and the currants, may be non-originating.

**Finally Article 107 Regulation 2454/93 stipulates that the goods are transported directly from the EU to the importing countries of Egypt and Israel. Presentation of a single transport document will normally be required.**

#### Question 5

The customs authorities of the importing country will want assurance that any claim to preferential origin is correct. For exports to preference giving countries this will take the form of either:

- (i) **A completed EUR1 movement certificate** which is obtainable for the Customs authorities but is usually authenticated by a local Chamber of Commerce (**Article 90a (1)(a) and Annex 21 Reg 2454/93**); or .
- (ii) **An invoice declaration, either:**
  - a. **A “no value limit” declaration** issued by an approved exporter who makes regular exports, and has satisfied UK Customs that the goods satisfy the relevant origin rules; or
  - b. **Low value exports where the value of the consignment does not exceed EUR 6,000. (Articles 80-90 Reg 2454/93 applies.)**

#### Question 6

First of all, in order to be classed as originating for preference purposes in either Israel or Egypt, the biscuit must be made of flour that was wholly obtained within the EU. Clearly, **if your client switches to a US supplier to take advantage of a difference between the world price and Community price, the resultant exported product would not meet the criteria for an EU originating biscuit.** Therefore, your client would need to **consider whether the savings achieved on sugar and flour ingredients would outweigh the additional duty costs incurred on import into Egypt and Israel.**

Secondly, it has been established that **Israel will not allow EU preference to be claimed if an EU exporter has claimed export relief.** Therefore, even if the client chooses to **only use IPR for sugar, he will not benefit from any reduced preferential rate on import into Israel.** As above, the client would need to review **whether the saving generated on using IPR sugar outweighs the non-preferential duty that would otherwise be paid on import into Israel.** However, **preference would be available on a UK manufactured biscuit that contained IPR sugar and was imported into Egypt.**

#### Question 7

**Before issuing a preference document the Biscuit Manufacturer must hold evidence that the exported biscuits meet the relevant rules of origin.** In this case, the product may be manufactured from any non-originating materials other than those of Chapter 11 – **this includes flour , which must be wholly obtained within the EU.** Therefore, **the client must seek a declaration from its flour supplier in the appropriate format. (Articles 1-5 Reg 1207/2001 applies.)**