

A Guide to Representation with HMRC



Clause 7 of The BIFA Standard Trading Conditions states “In all and any dealings with HMRC for and on behalf of the Customer and/or Owner, the Company (BIFA Member) is deemed to be appointed, and acts, as Direct Representative only.”

However, this can only apply where the customer is based within the UK. In the case of a Delivered Duty Paid (DDP) shipment being imported into the UK or an ex works (EXW) shipment leaving the UK, the customer is likely to be based outside of the UK (i.e. the overseas shipper or consignee respectively) and thus this Clause is unlikely to be applicable.

There are four converging factors that increase the likelihood that the forwarder will have to act as an Indirect representative more frequently than previously was the case: -

- 1 Modern trade patterns
- 2 Commercial power of large traders
- 3 Incoterms
- 4 Changes in customs legislation

Impact of the Union Customs Code Regulation (EU) 952/2013 dated 9th October 2013

The Union Customs Code (UCC) is subtly different from previous customs legislation. Under the UCC the role of the customs representative is restated and reinforced. Under previous legislation the focus was on the preparation and presentation of customs documentation to the authorities. Within the UCC this role is still to be fulfilled but, in particular where the trader is based outside the EU, the customs representative fulfils a wider role: namely as the trader’s representative in all dealings with Customs. This implies a much wider responsibility than was previously the case.

Article 18.1 commences by simply stating “Any person may appoint a customs representative.” This allows a non-EU based entity to appoint a customs representative to act on their behalf when dealing with Customs. Article 18.2 clearly states that a customs representative “shall be established within the customs territory of the Union.” Customs now have an EU established party to take responsibility for the customs activities even where the trader is not established in the EU.

Direct v. Indirect Representation

The UCC allows the representative to be appointed on either a Direct or Indirect basis. In reality when acting for a party established outside the EU, the Representation will be Indirect, whilst it may be Direct when appointed by an EU based entity.

BIFA has identified four main scenarios:-

- 1 Direct Representation when appointed by an EU/UK based entity
- 2 Indirect Representation when representing an EU/UK based entity
- 3 Indirect Representation when acting for an entity established outside the EU
- 4 Self-Representation

It is essential that the customs agent understands the fundamental difference between Direct and Indirect Representation and how this impacts on their responsibilities and liabilities.

Direct Representation, in this scenario the customs representative acts in the name of and on behalf of another party. The party being represented is the declarant and is obliged to meet all the obligations arising from the declaration. The declarant will be responsible for maintaining the records and also providing an audit trail. At this point it is important to deal with one myth that has developed: there is a view that a customs representative has no responsibility should they make an error. This is not necessarily the case. If the represented party has given clear and accurate instructions and the customs representative makes an error the latter will not be able to rely on the protection of Direct Representation. The view of HMRC is that they have failed to act in a competent manner and become jointly and severally liable for the debt.

Indirect Representation, in this case the customs representative acts on behalf of another person but acts in their own name. It is incumbent on the customs representative to maintain a full audit trail with regard to the customs declaration. The Indirect representative shall be jointly and severally liable for all customs liabilities arising from the customs related transactions.



Problems, when discovered post clearance, are likely to lead to the customs representative incurring considerable additional administrative costs and debt, which will have to be paid and subsequently recovered by them.

Liabilities when acting as customs representative for a non-EU based entity

In this scenario, the freight forwarder when acting as a customs representative must remember:-

- That when acting as a customs representative for a party based outside the EU, Customs are most likely to pursue the customs representative because there is no other EU based party to take action against.
- The customs agent should ensure that they have contractual arrangements in place to protect them from any non-compliance by their customer.

It is important not to under-estimate the customs representative's liability relative to non-compliance and the determination of Customs to pursue outstanding liabilities. The most common problems reported to BIFA involve: -

- Misdeclaration of the goods
- Under declaration of value
- Issues relative to origin rules
- Other valuation issues
- Anti-dumping duty infringements

Any of these problems, when discovered post clearance, are likely to lead to the customs representative incurring considerable additional administrative costs and debt, which will have to be paid and subsequently recovered by them.

Indirect representative when acting on behalf of an EU based entity

In this scenario, the customs representative is in a stronger position than in the previously described one, because there is another party based in the EU for Customs to pursue for the debt. From practical experience Customs often start by writing to both parties but very often the focus soon switches to the importer/exporter dependent on the activity undertaken.



Failure to obtain the correct empowerment will create a situation where the customs representative is self-representing with full liability for the customs declaration.

Empowerment

Once again it has always been the case that the customs agent has had to be empowered to act on a trader's behalf. However, enforcement has been lax but with Customs placing greater emphasis on compliance this will be an area that they will focus on.

The law is explicit, Article 19.1 of the UCC states "when dealing with the customs authorities, a customs representative shall state that he or she is acting on behalf of the person represented and shall state whether the Representation is Direct or Indirect." The Article continues that if a party "state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf." Having spoken to HMRC, Members must ensure that they obtain this in writing, which can be a completed form, letter or e-mail. This can include a written acceptance of BIFA's STC where under Article 7, the customer appoints the BIFA Member to act as a direct representative.

Customs representatives often overlook the need to obtain an authorisation to act as an Indirect representative. Failure to obtain the correct empowerment will create a situation where the customs representative is self-representing with full liability for the customs declaration.



Engagement should be in writing and this would include e-mails, traceable electronic messages and a formal signature on a document.

Documentary evidence of empowerment

Under the UCC the customs representative can be required by Customs to provide them with evidence of empowerment. Having discussed this point with Customs it is clear that they are looking for the trader to have given a positive engagement to the agent to act as their customs representative. When pressed, it was evident that the engagement should be in writing and this would include e-mails, traceable electronic messages and a formal signature on a document.

This empowerment can be open ended covering multiple shipments over an unspecified time frame or can be limited to a single shipment.

As previously stated, Clause 7 of the BIFA Standard Trading Conditions states that “In all and any dealings with HMRC for and on behalf of the Customer and/or Owner, the Company is deemed to be appointed, and acts as, Direct representative only.” Where the trader is a UK based customer of the BIFA Member this can probably be incorporated at the point that a trading account is set up for the customer by the forwarder. The key point is that the customer has to acknowledge acceptance of the BIFA Standard Trading Conditions as the contractual basis upon which business will be conducted.

However, most problems are likely to occur where there is a business interaction between the forwarder and another entity but no contract. One common example is for instance between a forwarder and an ex-works shipper. The shipper can appoint the forwarder to act as their representative relative to the customs Representation.

Appointment as a representative

When being appointed as a Direct representative, this is relatively simple, even if there is no contractual relationship. A simple declaration signed by the party for whom the forwarder is going to act should be sufficient.

When acting as an Indirect representative for a UK based company there are two aspects to consider:-

- The empowerment to act as a customs representative
- The contract detailing responsibilities, entitlements and penalties that will underpin the empowerment

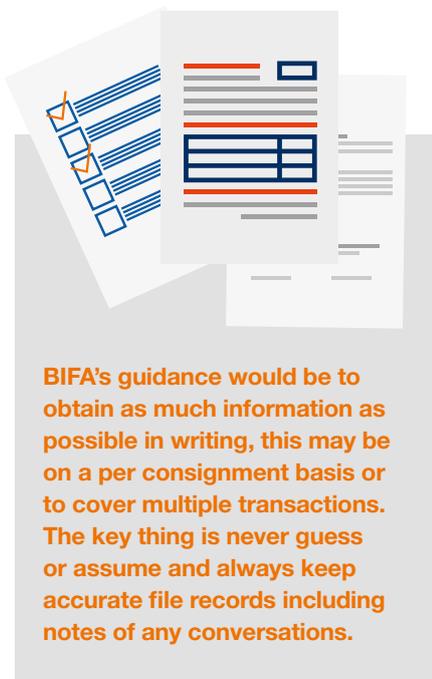
Due to the wide variations in how businesses conduct their commercial activity BIFA can only give generic guidance on the contractual aspects of any agreement. The BIFA Member should consider the following points:-

- Align any contractual arrangements as closely as possible with the BIFA Standard Trading Conditions, paying particular reference to Clauses 7, 17(A) (i) and 20(A)
- Clearly identify both parties to the contract and subsequent empowerment
- Specify the procedures to be followed: -
 - Specify instructions to be given to the customs representative
 - Include clauses to cover what the consequence will be of not following the process
 - Detail liabilities for both parties should information prove to be inaccurate
- Jurisdiction and dispute resolution clauses
- When handling DDP shipments from an office/agent abroad specific terms should be written into the agency agreement.

When acting for a party based outside the EU, as the exporter/seller's customs representative, the customs agent will be fully liable and thus self-representing.



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Instructions and the preparation of the customs declaration

It is often overlooked that when a customs representative submits a customs declaration that they are making a legal declaration to Customs. It is essential that this declaration is accurate in all aspects.

In order to ensure the necessary accuracy, consideration must be given to how to collect the required information and how the information is obtained and in what form. This information should include specific details relative to Tariff Headings, Customs Procedure Codes etc. It is very clear that Customs are placing increasing emphasis on compliance, which requires for an audit trail to be in place. BIFA's guidance would be to obtain as much information as possible in writing, this may be on a per consignment basis or to cover multiple transactions. The key thing is never guess or assume and always keep accurate file records including notes of any conversations.

The entry should then be prepared in line with the instructions provided in the current version of the tariff with the appropriate AI declaration in Box 44 showing the customs agent as Direct representative to the declarant, subject to the correct empowerment being in place.

Appointment of Sub Agent

If the agent delegates customs clearance to a sub-agent, the agreement between the agent and the principal must make an allowance for this. If it doesn't, the sub-agent won't be empowered to directly represent the principal and will be considered to be acting on their own behalf, and fully liable for any customs debt that arises.

Impact of Customs Regimes

When reading this document, it should be recalled that certain regimes and authorisations actually include specific requirements and restrictions relative to customs Representation. Currently the most frequently quoted example is where a freight forwarder holds an authorisation to operate the Entry in the Declarants Records simplification (formerly known as CFSP) in their own name. In this situation, the customs agent can only act as an Indirect Representative when making a declaration on their customer's behalf.

On Importer/Exporter Letterhead

**Authority for a Customs Clearance Agent
to act as a Direct representative**

I, (i)

Having authority to sign on behalf of

A (name).....(EORI no.).....(ii)

Hereby appoint

B (name)..... (EORI no.).....(iii)

to act on behalf of the entity named at A above in the capacity of a **Direct representative** in accordance with Articles 18 and 19 of Regulation (EU) No. 952/2013. This authorisation is applicable to all consignments arriving or departing from the UK.

This Appointment applies with effect from the date of signature until revoked by the entity named at A above.

The entity A named above authorises the customs agent named at B to delegate customs clearance to sub agents as a **Direct Representative** of the declarant in all dealings with HMRC where circumstances necessitate.

The entity named in A authorises their representative, the customs agent named at B, to declare goods to HMRC using

Deferment Approval Number:.....

VAT Number:.....

Note:

In accordance with the Union Customs Code, a Direct representative acts in the name of and on behalf of another person. In relation to import/export declarations, the importer/exporter will be liable for any customs debt arising from the declaration

Signed:

Position:

Dated:

Notes: (i) Name of person signing, who must have authority to sign on behalf of the importer or exporter.

(ii) Legal name & EORI Trader Identification No. of importer or exporter.

(iii) Legal name & EORI Trader Identification No. of representative or agent.

On Importer/Exporter Letterhead

**Authority for a Customs Clearance Agent
to act as an Indirect Representative**

I, (i)

Having authority to sign on behalf of

A (name).....(EORI no.).....(ii)

Hereby appoint

B (name)..... (EORI no.).....(iii)

to act on behalf of the entity named at A above in the capacity of an **Indirect Representative** in accordance with Articles 18 and 19 of Regulation (EU) No. 952/2013. This authorisation is applicable to all consignments arriving or departing from the UK.

This Appointment applies with effect from the date of signature until revoked by the entity named at A above.

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The entity named in A authorises their representative, the Customs agent named at B to declare goods to HMRC using

Deferment Approval Number:.....

VAT Number:.....

Note:

In accordance with the Customs Code, an Indirect representative acts in their name, but on behalf of the importer/exporter. The two parties are jointly and severally liable to Customs relative to all declarations that are covered by this empowerment.

Signed:

Position:

Dated:

- Notes: (i) Name of person signing, who must have authority to sign on behalf of the importer or exporter.
(ii) Legal name & EORI Trader Identification No. of importer or exporter.
(iii) Legal name & EORI Trader Identification No. of representative or agent

On Importer/Exporter Letterhead

Individual authorisation appointing a Customs Clearance Agent to act as a Direct Representative

I, (i)

Having authority to sign on behalf of

A (name).....(EORI no.).....(ii)

Hereby appoint

B (name)..... (EORI no.).....(iii)

to act on behalf of the entity named at A above in the capacity of a **Direct Representative** in accordance with Articles 18 and 19 of Regulation (EU) No. 952/2013. This authorisation is applicable to the specific consignment detailed below: -

The entity named in A authorises their representative, the customs agent named at B to declare goods to HMRC using

Deferment Approval Number:.....

VAT Number:.....

Note:

In accordance with the Union Customs Code, a direct representative acts in the name of and on behalf of another person. In relation to import/export declarations, the importer/exporter will be liable for any customs debt arising from the declaration

Signed:

Position:

Dated:

Notes:

- (i) Name of person signing, who must have authority to sign on behalf of the importer or exporter.
- (ii) Legal name & EORI Trader Identification No. of importer or exporter.
- (iii) Legal name & EORI Trader Identification No. of representative or agent

On Importer/Exporter Letterhead

Individual authorisation appointing a Customs Clearance Agent to act as an Indirect Representative

I, (i)

Having authority to sign on behalf of

A (name)..... (EORI no.).....(ii)

Hereby appoint

B (name)..... (EORI no.).....(iii)

to act on behalf of the entity named at A above in the capacity of an **Indirect representative** in accordance with Articles 18 and 19 of Regulation (EU) No. 952/2013. This authorisation is applicable to the specific consignment detailed below: -

The entity named in A authorises their representative, the customs agent named at B to declare goods to HMRC using

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Note:

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