

## Customs and Humanitarian Aid

Any physical good crossing the national boundary or entering the incorporated territory of any country is obliged to go through at least some level of government control procedure and formalities. These formalities are colloquially known as “customs,” however there may be specific agency names for each country in question. Customs regulations in virtually all contexts will apply to all private individuals and legally defined entities within the legal remit of the respective country in question. These legal regulations can have far-reaching implications for violation or failure to comply, including impound and seizure of goods, fines, arrest and detention and full criminal prosecution. Every country will have its own standards and regulations pertaining to import or export of goods related to economic, judicial or cultural mores within the territories in question. Any person or entity operating in any country for any reason must be aware of these regulations and endeavour to be in full compliance with them at all times, even if compliance means following the proper exemption process.

Humanitarian organisations are sometimes at an advantage for the facilitation of customs clearance in emergencies; not only are registered non-profits frequently able to apply for some forms of tax or duty exemption in non-emergency settings, during emergency responses many import regulations on humanitarian responders are waived or loosened by the countries affected by disaster, or adjacent countries to the disaster. The United Nations often assumes the lead role in making appropriate arrangements with governments regarding quick access to emergency supplies as the physical flow of emergency relief supplies is essential in the early days of response. The United Nations through the Office for the Coordination of Humanitarian Affairs (OCHA) has also developed a “Model Agreement” (approved by the Permanent Technical Committee in 1996) with the World Customs Organisation (WCO). The Model Agreement can be adopted by any country, and lay the foundation for the process of exemptions, streamlining paperwork, pre-identification and expedited clearance of certain relief items, and overall smoothing of the import and export process. The Logistics Clusters on behalf of the UN Resident Coordinator (UNRC)/ UN Humanitarian Coordinator (UNHC) may try to leverage these advantages for all humanitarian organisations in an emergency.

Some of the problems encountered by humanitarian organisations during emergencies are:

- Complicated customs procedures causing delays resulting in congestion at port of entry (airports, road borders, seaports) that affect turn-around time for feeder vessels and railway wagons, so affecting the flow of goods.
- High volumes of emergency supplies flowing into a country causing a bottle neck to customs.
- Complex and non-transparent administrative requirements, often pertaining to documentation.
- High costs for processing trade information.
- High level of stress and large number of shipments in a short time, that can lead to errors in documentation and lack of understanding of import requirements.

## Role of Customs Authorities

Customs relates to both the import and export of material goods. Import and export were classically limited to the transmission of physical goods across a legally recognised international boundary, however advances in technology and changes to trade policy have also grown to include – in some cases – the electronic transmission of electronic information such as proprietary software and even intellectual property such as manufacturing processes. Import is the transport of physical goods into the incorporated territory country, state, autonomous

region, whereas export is the movement and shipment of goods out of said territory. To manage and oversee the legal and controlled import and export process, national authorities can and will identify and establish one or a limited few numbers of customs authorities which operate in the territory of the country in question and enforce national regulations. Depending on the country, customs authorities can have different names, and exercise different levels of both scrutiny and control.

An established customs authority or authorities are by definition the only government agencies mandated to take full control of trade imports and exports, however this distinction can be blurry or not fully respected in times of emergency or civil unrest. Agencies or persons operating attempting to import or export anything for any reason should be aware of who the relevant authorities are, and where responsibilities start and end.

As a direct extension of a national authority, a customs office through proactive enforcement:

- Protects the environment, and public safety, health and morality by barring international trade in illegal substances and materials e.g. narcotic substances, arms and ammunition, endangered animal species, hazardous wastes, and expired, counterfeit or sub-standard goods.
- Represents the political, economic and security interests of and takes legal direction from the central authority of the country, state or semi-autonomous region into and out of which goods flow.
- Generates revenue through collection and enforcement of trade tariffs.
- Liaises with other law enforcement agencies nationally and internationally to prevent trans-border crimes e.g. movement of drugs, stolen motor vehicles and smuggled goods.
- Enhances voluntary trader compliance through quality client service.
- Facilitates legitimate trade.

In its efforts to achieve, respond effectively and efficiently to the aforementioned challenges and reduce the gap between expected needs and limited resources, a given customs authority has to strategically train and inform customs authority employees, and collect and compile trade statistics and data. Customs administrations all over the world generally apply similar procedures and processes, and speed of clearance depends largely on what controls are required by legislation and the degree to which information and communication technology is applied.

## **Duties and Taxes Exemption**

In addition to enforcing national laws as regulated by the authorities of each country in question, customs authorities are also charged with the collection of duties and tariffs. The nature and types of these costs are variable from country to country, and are developed by national authorities to raise revenue off key economic activities, protect national industries, and even prevent spread of sensitive or security related items. Import and export duties are typically governed what are called "schedules"; duty/tariff schedules are typically accompanied by national legislation and are widely published and made available to commercial entities and transporters. These schedules are typically updated on a regular basis, and it is the duty of any agency or person importing or exporting anything to understand and adhere to these regulations.

Customs authorities may also collect certain fees and levies upon importation, based on agency basis, such as:

- Import declaration fees - on imported products.

- Revenue stamps - for certain transaction documents which, by law, require affixing of stamps.
- Petroleum development levy - on petroleum products.
- Registration fees - for first time importers.

The decision of exempting the goods imported into a country or territory for humanitarian purposes, from the payment of duties and other taxes, is entirely the decision of the country's authorities. At the on-set of an emergency, especially a rapid on-set emergency, there may be ad-hoc pieces of legislation from national authorities that impact the importation or duty process, ideally waiving duties or significantly easing the importation process. Because of their ad-hoc nature, these changes usually lack detailed instructions on the practical implementation. The absence of guidelines on how to apply ad-hoc legislation is due to the fact that most countries are not ready for emergencies in the specific area of customs.

Whether a specific donated item or commodities can be imported into a country without any tax payment depends on the local government's decisions about:

- National humanitarian aid import policy.
- Goods qualified under that policy.
- Actors granted with tax-free status.

It is essential that donors and decision-making organisations at origin are aware about the implication of taxes on operating costs as they develop their response strategies.

The customs authorities might not qualify every single entity as “of public interest” or “charitable” and grant the duty waived privilege associated with it. Humanitarian organisations dealing with local counterparts, must make sure that the local counterpart receiving the goods is a registered duty-free entity, and if local exemption is required, that their counterpart is the one taking care of the application for duty exemption and supplying all required documentation. For that purpose, the local counterpart must have the capacity to know the procedures, focal points and regulations within their administration, in order to lodge the application correctly. If they have not got this specific knowledge (what commodities are prohibited or restricted, quotas, etc.) or are just not familiarised with the requirements and paperwork, it is useful to ask advice at local ministries, other NGOs already operating, customs brokers, and tax experts. There are certain items globally that tend to cause more scrutiny than others, and may require special certification. Though regulations are country specific, exporters and importers should pay close attention to the following categories when planning response activities:

- Medicines and medical equipment – Countries tend to maintain an essential medicines list which denotes what may be restricted
- Vehicles and vehicle/machine parts – Regulations on vehicles may be used to protect local markets
- Communications equipment – Radios, satellite phones, VSAT, or even basic computers and smart phones
- Dual use items – Any item that could have perceived military uses, such as bullet proof vests or remote detection equipment
- Alcohol and tobacco products

There is a common misconception that exempted goods/materials are free from customs formalities. As any other type of cargo, all the relevant operations must be carried out by the persons concerned and by customs in order to comply with the customs law. Every shipment must be documented, and in the case of the exempted goods/material, this includes an additional requirement, which is the certification or proof of its status as exempted.

## Entities Involved

As goods flow out and into countries, there are a number of parties who may come into contact with or be involved with the handling and clearance process. A non-exhaustive list of parties who may be involved with customs import and export are:

**Shipper** – Any individual or legal entity who is coordinating, paying and/or legally acting as the owner of goods moved from one point to another.

**Consignee** – Any individual or legal entity who receiving a shipment. For international shipments, consignees must be legally registered in the country of reception, and are ultimately responsible for the paperwork, legality and reception of cargo. A consignee and a shipper can be the same entity. Cargo is legally in the name of the consignee, however depending on the contractual shipping arrangements, a third party may pay customs authorities directly for fees and duties, and may even pick up cargo at points of entry into a country.

**Notify Party** – Any individual or legal entity who is notified once an international shipment has arrived. Notify parties can be the consignee, or they can be identified third parties responsible for the clearance process. Notify parties don't need to be legally registered in any country, but should be in contacted with the consignee.

**Customs Brokers / Clearing Agents**– Clearing agents and brokers are individual or entities who facilitate the movement of goods through the customs process. Usually, they are private for-profit service providers who have some form of accreditation to facilitate customs in specific locations and contexts. Brokers and agents should be very familiar with customs procedures and spell out all paperwork needs. They also usually work on commission or for fees.

**Independent Inspection Companies** – Companies who conduct, visual, physical and even laboratory testing of incoming cargoes. Inspection companies are usually legally separate from the national authorities, and agencies undergoing clearance usually are expected to pay for inspection costs.

**Ground Handling Agents** – Companies or entities that are tasked with moving cargoes on and off vessels, and around customs facilities. Costs for ground handling may be built into contracts, or directly billed towards the clearance process.

**Freight Forwarders** – Depending on the terms of the transport contract, freight forwarders may be directly responsible for customs clearance, acting as clearing agent.

**Customs Authorities** – Agents and direct representatives of the respective customs authorities in question. Depending on the contexts, customs officials may be heavily involved with every step of the process, or may outsource the process to other third parties. Customs authorities will have ultimate say on the process and legality of imported and exported goods.

**Other respective governmental authorities and departments** – Many government agencies might play a part in the import and export process, depending on the item, the circumstance or the parties involved, these entities might include the Ministries of Health, Agriculture, Ministry of Foreign Affairs, Ministry of Finance, Disaster Mitigation unit/office, Ministry of Communication, Military and Civil defense, or other involved parties.