Annex II

FREQUENTLY ASKED QUESTIONS

Lodgement of Exit Summary Declarations (EXS)

(Article 182 b CC)

Contents

1. BASIC PRINCIPLES

Q1.1 – Why are exit summary declarations EXS required?

The amended Community legislation requires, as a general principle that **all** goods brought out of the customs territory of the Community, regardless of their final destination, shall be subject to risk analysis and customs control, primarily for security and safety purposes, before departure or – in the case of containerized maritime shipments – before commencement of vessel loading. All such goods must therefore be covered by a declaration of some kind -- either a customs declaration, e.g. for export (i.e. the Customs treatment of Community goods that are taken out of the customs territory), re-export (i.e. the Customs treatment of non-Community goods that are taken out of the customs territory), transit etc., or, wherever any of the former is not required, an exit summary declaration (EXS).

The stated purpose of the new measure is to establish an improved control over exported goods, so that risk to the EU's trading partners is diminished, with a view to the possible relaxation of their own import controls in respect of EU goods and to the establishment of reciprocal agreements with those countries who adopt similar principles.

Such declarations will become mandatory of 1 January 2011.

Q1.2 – When is an exit summary declaration required?

Most goods leaving the customs territory of the Community will be covered by a customs declaration for export, re-export outward processing or transit (also for the inclusion of the EXS data is optional). EXS are only required, under Article 842a CCIP, for other goods -- that is all goods, with certain specified exemptions, which are to be brought out of the Community but for which a customs declaration is not required.

As Community legislation does not include a provision listing all the instances where an EXS would be required, instead instances where EXS would be required are identified below.

1. **Non-Community goods in temporary storage or in a control type I free zone at an EU port/airport loaded for re-export from the Community, where the period of storage has exceeded 14 working days**

   Non-Community goods being re-exported from temporary storage or from a control type I free zone do not require a re-export customs declaration, and therefore Article 824b CCIP requires an EXS to be lodged for such goods prior to commencement of vessel loading. There is, however, an exemption, under Article 841a, point (b) for non-Community goods previously covered by an ENS and transhipped at the place where they are unloaded, including where such goods are in 'short term' storage. 'Short term' storage has been defined, in guidelines, developed by the Commission in cooperation with the Member States, as not exceeding 14 working days.

   In summary, an EXS is required to be lodged for non-Community goods being re-exported, *unless* those goods have been covered by an ENS, are transhipped at the same place where they were unloaded, and have been in storage for less than 14 working days.

2. **Community goods to be moved between Member States via the territory of a country outside of the EU (including when carried between EU ports on vessels that call at non-EU ports in between).**

   These goods are not exports (or re-exports) and no customs declaration is therefore required. Article 824b therefore applies at the EU port of loading in the Community, and an EXS must be lodged there.

   It should be noted that the call at a port outside the EU means that the goods lose their Community status and must be covered by an ENS when re-imported into the Community; the Community status will also need to be proven, i.e. by the Customs document typically referred to as "T2L" or other appropriate means.

   For example, Community goods moved on a vessel from Spain to the U.K. will not require EXS filings if the vessel has no non-EU intermediary port calls. However, if the vessel calls in Morocco after leaving Spain before sailing to the U.K., an EXS would need to be filed with Spanish customs before vessel loading in Spain, and an ENS would need to be filed with U.K. customs two (2) hours before arrival at the UK port.

   This does not apply where goods are moved via Norway or Switzerland due to the agreements with these countries.

3. **Shipper owned empty containers**

   Shipper-owned empties that are being transported pursuant to a contract of carriage are to be treated in the same way as other cargo and must be covered by an EXS.

   Carrier repositioned empty containers would not, pursuant to Article 592a (e) and (g), need to be covered by an EXS. (See Q.1.12)

In all of the instances listed in 1-3 where an EXS is required, the ocean carrier may - for certainty of trade flow - decide to lodge the EXS itself. Alternatively, it could arrange for the lodgement of the EXS by another party as part of the contractual arrangement for the carriage of the shipment.

Q1.3 – Are there any exemptions to the requirement for an exit summary declaration?

Yes. The Community legislation lists several types of goods/traffic for which an EXS is not required. Most important among these for the liner shipping industry are the exemptions for carrier repositioned empty containers, intra Community cargo movements ('feeder' movements), and cargo ROB, including export cargo loaded in previous Community ports.

The regulations also provide for an exemption from EXS for short term storage and transhipments of non-Community goods.

Q1.4 - Where must the exit summary declaration be lodged?

The exit summary declaration must be lodged at the customs office of exit. For maritime traffic, this is the EU port of loading of the goods to the vessel that is to carry them out of the Community even if the vessel is to call at subsequent Community ports before finally leaving the customs territory of the Community. (See Q1.10).

Q1.5 - Who must lodge the exit summary declaration?

There is a key difference from imports and ENSs (ENS), in that no legal obligation is placed upon the ocean carrier, or any other particular party, to lodge the exit summary declaration.

The Community legislation requires that the EXS shall be lodged **either** *'...by the person who brings the goods, or who assumes responsibility for the carriage of the goods out of the customs territory of the Community*', i.e. the carrier, **or** *'...any person who is able to present the goods in question or to have them presented to the competent customs authority...'*, i.e. the exporter, a forwarder, a terminal operator, or anyone else with a commercial interest in the goods or a representative of any of these.

There is, therefore, no legal obligation placed upon the ocean carrier to lodge the EXS, or to ensure that it is lodged, within the time limit. Article 182d (3) CC provides for an option, not an obligation for any specific party. As a practical matter, however, the carrier will, as has always been the case, not be able to load, or remove, the goods without the permission of the customs authorities.

If an EXS is required but has not been lodged, then the customs authorities will not release the goods for exit (loading).

It is possible, that the exporter or forwarder will seek to be responsible for lodging the EXS, where required, as they control the timing of the movement to the border, as with goods under the export procedure. However, specifically in the maritime environment, it is probable that ocean carriers, in order to ensure that containers will be released for vessel loading, may choose to lodge the EXS themselves.

Arrangements for the control, release and loading of outbound goods will be governed, as now, by national, rather than Community, legislation. The requirement for export manifests practised in many Member States is an example of this. As it is the ocean carrier, who is primarily affected by those national rules, it may find it in its interest to have full control over compliance with the customs requirements at EU ports of loading.

In any event, ocean carriers must, as now, ensure that goods are not loaded or removed without proper release by the relevant customs authority.

Q1.6 - Must the person lodging the EXS have status as an Authorized Economic Operator (AEO)?

No. There is no requirement that an EXS declarant must be an AEO.

However, the person lodging the EXS ("the declarant") must have an Economic Operator Registration and Identification (EORI) number that must be included in the EXS. If the EORI number is not included, then the EXS is not complete, and it will be rejected.

Q1.7 - When must the EXS be lodged?

The Community legislation requires that the EXS for deep-sea containerized shipments on voyages from the EU whose duration is over 24 hours, must be lodged at least 24 hours **before commencement of loading** in the EU load port. Other deadlines apply for other shipping services and other modes of transport, e.g. 4 hours before departure for other non-containerized deep sea maritime sectors; for all short sea shipping sectors the dead line is 2 hours before departure from the EU load port.

Q1.8 – What must be declared in the EXS?

Annex 30A Table 1 CCIP sets out the data elements to be included in the EXS.

Whoever lodges the EXS, this person ("the declarant") is responsible for its content, accuracy and completeness. However, the declarant is only obligated to provide the information known to it at the time of the lodgement of the EXS. An ocean carrier would thus be able to rely on the information in its bill of lading to populate the data fields in the EXS.

Q1.9 - Can exit summary declarations be lodged at a customs office different from the office of exit?

Yes, provided that that a system is forwarding the EXS is available in the Member States concerned.

In any event, there seems to be little benefit for the ocean carrier in this. The Customs office of exit would still be responsible for the risk assessment and for release (or not) of the cargo for loading/exit, so an ocean carrier would want to be connected to that office in any case. The ocean carrier will for other reasons already have a close relationship with the Customs office of exit (manifest filing etc.), so establishing a connection to an office of lodgement (perhaps in an landlocked country in the EU) solely for the purpose of filing an EXS may not be a resource effective decision.

Q1.10 - Is the last EU port of call always the office of exit?

No. The last EU port of call is the customs office of exit only for goods loaded to the vessel in that port.

This is also the case for vessels with ports of call outside of the Community, i.e. the office of exit is the EU port of loading of the goods to the vessel that is to carry them out of the Community, *even if* the vessel is to call at subsequent Community ports before finally leaving the customs territory of the Community**.**

Q1.11 - **Must FREIGHT REMAINING ON BOARD (FROB) for carriage to other ports, inside or outside of the Community, be included in an EXS?**

No. The requirement for EXS lodgement applies only to cargo loaded at that EU port. FROB brought into the Community, and cargo loaded at previous Community ports, need not be declared on departure from any subsequent EU port or from the final EU port of call**.** (See the previous Q. 1.4 and Q1.10).

Q1.12 - Is an EXS required at the last Community port of call if no containers will be loaded there, e.g. a vessel calls only to unload containers?

No. The office of exit is the EU port at which the containers were loaded aboard the vessel. See previous Q1.10 & 1.11.

Q1.13 - Do EMPTY CONTAINERS have to be declared in an exit summary declaration?

Shipper-owned empty containers that are being transported pursuant to a contract of carriage shall be treated in the same way as other cargo and thus be covered by an EXS.

Carrier repositioned empty containers may continue to be reported to Customs as is done today at loading and are not to be covered by an EXS.

Q1.14 - Will shipment of EMPTY ROLL TRAILERS be considered the same as empty containers, i.e. only to be covered by an EXS if transported under a contract of carriage?

Yes. Roll trailers would fall under the category "means of road, rail, air, sea and inland waterway transport". Such means of transport will need to be covered by an EXS only if they are to be carried under a transport contract.

Q1.15 - How is TRANSHIPMENT CARGO to be handled?

This will depend on the type of transhipped cargo:

(1) Inward non-Community goods to be transhipped in a port in the EU will have been covered by an ENS (ENS) prior to arrival (prior to vessel loading for deep sea containerized maritime shipments) in the Community and will be in temporary storage.

Where such goods are loaded to another vessel, *for carriage to a destination outside of the customs territory of the Community, i.e. are to be re-exported from the Community,* at the same port within 14 working days after arrival, no exit summary declaration is required, provided that there has been no change to the supply chain information (e.g. consignee, destination) declared in the ENS. Local arrangements for request for release from temporary storage to/by the customs authorities will continue to apply.

If, however, the transhipped cargo for re-export "sits" for more than 14 days in the transhipment port, or the supply chain information has changed, an exit summary declaration (EXS) must be lodged for that cargo prior to loading.

Where such goods are loaded to another vessel for direct carriage to another EU port or ports, i.e. without any intervening call at a non-EU port, no exit summary declaration is required, whatever the length of time in temporary storage. Once again, local arrangements for request for release from temporary storage to/by the customs authorities will continue to apply.

(2) For outward goods (i.e. Community goods previously covered by an export declaration at the original EU load port from which they have been carried and are unloaded at another EU port for transhipment to the vessel which will carry them out of the Community), rhe exemption for goods re-exported within 14 working days applies, too.

Q1.16 – What happens if the vessel is to call at a control type I or free zone within the Community to load cargo? Do the same rules apply?

Yes. The present freedom from customs formalities, particularly for storage and transhipment, is seen by the Community as a 'security loophole', and the requirements for ENSs and exit summary declarations will apply to cargo brought directly into/out of free zones from/to ports outside of the customs territory of the Community. The same deadlines for lodging the EXS also apply.

As in other cases, goods leaving the Community covered by a customs declaration (full or simplified), via a free zone will not require an EXS. An EXS will, however, be required when goods not covered by a customs declaration are brought out of free zone, e.g. for goods transhipped in the free zone (i.e. direct re-export from free zone). The exemption for transhipment after short term storage (See Q1.15 (1) above) also applies to free zones.

Q1.17 - Will EXS replace the export manifest filing? If not, what about the relationship between EXS and export manifest?

The EXS will not replace the traditional export manifest filing in each load port common to many EU Member States.

However, a national Customs administration may waive the requirement to lodge an EXS provided that the export manifest for those shipments contains the relevant EXS data. Such a waiver would be pursuant to national Customs legislation.

A national Customs administration could instead, again pursuant to national legislation**,** require that the export manifest includes a reference to an EXS, where applicable, in order to establish the relationship between the manifest and the EXS. Such a reference could be the container number, but could also be Customs' registration number of the EXS or - - in the case of non Community goods in short term transhipments - the registration number (the so-called MRN) of the ENS.

Q1.18 - Are exit summary declarations and export manifests to be lodged electronically?

EXS must be submitted electronically, or may be replaced by a notification to the customs authorities and access to the declarants computer system, provided that the necessary information is included. How, i.e. to what system, EXS are to be lodged in each Member State is a matter for the individual customs authorities themselves. (See Q 1.19 below).

It is, as noted above, possible that some Member States may allow EXS to be lodged as part of an electronic export manifest, via port inventory systems. Export manifests are outside the Community legislation and are instead regulated by national legislation. Today, several Member States continue to use paper export manifests, but these Member States may at some point introduce legislation requiring the submission of manifests electronically.

Q1.19 - How is the ocean carrier's computer system to be connected to the customs office of exit -- through the internet or any other special connection? Is it necessary for the carrier's system to be connected to all Customs offices of exit in EU ports? Or will there be a single receiver for all EU EXS filings?

A single pan-European repository for the lodging of EXS does not exist. Instead, the EXS must be lodged electronically to the customs office of exit, via whatever system is established by the individual EU Member States.

There is a widely held – but incorrect - belief that the Export Control System (ECS) must be used for exit summary declarations (EXS) as well as for export declarations. However, further in Section 5 below, ECS is a message exchange system between Member States, not a data capturing system. Export declarations must be lodged with the individual Member States own export systems, and the data for any exchanges of messages then extracted from those systems using ECS. What is more, ECS need only be used where more than one Member State is involved. EXS, however, must be lodged to the office of exit, and while the ECS message system may be used to provide for the 'office of lodgement' facility, whereby it is lodged elsewhere and forwarded to the customs office of exit (See Q1.9), the lodgement of EXS is likely almost invariably to be direct to the customs office of exit – in particular if it is done by an ocean carrier. It is therefore highly probable that Member States with existing, well established declaration capture and processing systems will simply require EXS to be lodged to those systems, in accordance with national technical specifications, formats, connections, etc. It is immaterial to ocean carriers – for the purposes of lodging EXS - whether those national systems are part of the wider ECS system or are simply just national communication channels, such as the United Kingdom's CHIEF system.

Consequently, ocean carriers that are to take responsibility for lodging EXS will need to establish the necessary IT interfaces with those national Customs administrations that will be acting as the Customs office of exit on their vessel rotations. The interfaces with those systems will be laid down in national technical specifications, including the MIGs (Message Implementation Guides), setting forth how lodgement of EXS must be done in each Member State.

Economic operators are therefore encouraged to obtain the national technical specifications, MIGs and other supporting material for how Member States acting as customs offices of exit will require the lodgement of EXS to be done and in which format etc.

Q1.20 – Does the EXS system cover the act of presenting the goods to Customs and Customs' release of the goods?

Presentation of goods for export and the release of goods for exit are national Customs matters pursuant to national rules. These activities are not covered by the EXS requirements. Nor is the lodging of export manifests, which will also be pursuant to national Customs legislation. (See Q1.17 & 1.18 above)

Q1.21 - If the ocean carrier – for whatever reason - failed to lodge an EXS in time, what will the consequences be?

As is explained in Q1.5 above, there is no legal obligation on any particular party to lodge the EXS. The consequence will normally be that release for loading/exit will simply not be granted.

Article 842d (3) CCIP provides that: "*If the person lodges an exit summary declaration after the deadlines specified in Articles 592b and 592c, this shall not preclude the application of the penalties laid down in the national legislation*". Any such penalties would be imposed according to the national customs legislation of the Member State acting as the customs office of exit.

It should be noted, however, that Article 842d (3) also prescribes that the customs authorities may, in cases where goods for which an EXS is required are presented for export loading without an EXS having been lodged, require the ocean carrier to lodge one immediately.

Q1.22 – What happens if both the ocean carrier and a third party, e.g. the shipper or a freight forwarder, lodge an EXS for the same goods?

The lack of legal responsibility referred to in Q1.5 and Q1.21 above means, of course, that both the ocean carrier and a third party may file an EXS for the same shipment. This will be a national matter, for the customs authorities to deal with. If there is discrepancy between the two EXS, however, then the consequence may be that the goods will not be released for exit/loading.

2. LODGING OF EXS: DIFFERENT SCENARIOS

Q2.1 - The Community legislation requires that the EXS should be submitted at the office of exit, i.e., the last customs office before the goods leave the Community. What happens if the vessel calls at more than one Community port? Is it necessary to submit an EXS twice, to the port of loading and then a second time to the last port?

No. For maritime traffic, the office of exit is the EU port of loading of the goods to the vessel that is to carry them out of the Community *even if* the vessel is to call at subsequent Community ports. The last port of call in the Community is the office of exit only for goods loaded to the vessel there. (See Q1.10 &1.11 above).

The above also applies if the vessel calls at non-Community ports before calling at the subsequent Community ports. (See Q.2.2 below).

Q2.2. What if a vessel loads at a Community port (e.g. Stockholm), then calls at a non-EU port (e.g. St. Petersburg, Russia) and then calls to load again at another Community port (e.g. Rotterdam)? Is it necessary to submit a new EXS in Rotterdam for the cargo loaded in Stockholm? And/or St Petersburg?

No. Cargo remaining on board the vessel need not be covered by an EXS when the vessel leaves Rotterdam (See Q1.10 above). Any EXS need only be lodged for cargo to be loaded at Rotterdam that requires an EXS, i.e. which is not covered by other forms of customs declaration or benefits from the short term transhipment waiver facility (See Q. 1.15) *N.B. All the cargo on board the vessel will have been covered by an ENS prior to arrival in Rotterdam, as the voyage from St. Petersburg will constitute a new arrival in the Community. This ENS must include cargo loaded in both Stockholm and in St. Petersburg, whether or not for discharge in Rotterdam.*

Q2.3 - Must cargo, e.g., from Russia transported on a feeder vessel to Hamburg to be transhipped onto a vessel destined for Singapore, be covered by an EXS lodged with Hamburg Customs?

In principle, yes, but the short term transhipment waiver facility may apply. The basic rule is that all cargo loaded in Community ports, including in control type I free zone ports, to be brought out of the customs territory of the Community must be covered by a customs declaration, for risk analysis purposes. As this cargo is not EU export, an EXS will be required to be lodged with Hamburg Customs no later than 24 hours before commencement of loading of the cargo to the Singapore bound vessel. If, however, the goods are to be transhipped within 14 days of their arrival in Hamburg, the requirement for an EXS is waived. (See Q1.14 above).

3. Amendments to EXS

Q3.1 - What information change in the shipment requires a re-submission of the EXS data to the Customs office of exit?

The legal requirement is that the EXS must be complete and accurate.

There are a number of principles regarding what can be amended in the EXS and when the amendment can take place:

- The CC or the CCIP do not restrict what or when amendments can be lodged. However, the particulars concerning the person lodging the EXS, the representative and the customs office of exit should not be amended in order to avoid technical (systems) problems.
- The time limits for the lodging of the EXS do not start again after the amendment since it is the initial declaration that sets them.
- Risk analysis is performed on the basis of the exit summary declaration. Where an amendment is made, risk analysis is performed again with regard to the amended particulars. This will have an impact on the release of the goods only where the amendment is made so shortly before the departure (or – in the case of containerized maritime shipments – the commencement of loading) of the goods, that the customs authorities need additional time for their risk analysis.

Additionally, an amendment request cannot be accepted by Customs if one of the following conditions is met:

- The person lodging the original EXS has been informed that the customs office of exit intend to examine the goods;
- The customs authorities have established that the particulars in question are incorrect;
- The customs office of exit has allowed their removal.

Amendments may be lodged by the same person that lodged the original EXS or its representative. However, amendments cannot be lodged with an 'office of lodgement', only with the customs office of exit so the filer – or its representative – would need to be IT connected to that office.

4. Release messages

Q4.1 - How will Customs communicate permission to release for exit/load?

This will be up to each individual Customs administration to arrange pursuant to national rules. However, nothing is likely to change from existing practice, where Customs – based on the exit summary declaration, final loading list other export control mechanisms – may have targeted a shipment for inspection at exit and then, after inspection, allow release for exit from the Community.

Q4.2 - Are there DO NOT LOAD messages for maritime cargo covered by EXS?

The Community legislation only explicitly provides for the issuance of Do Not Load (DNL) messages for deep sea containerized cargo to be brought into the customs territory of the Community. If risk is identified by analysis of an EXS, then the customs authorities will advise

the person who lodged the EXS and, where different, the intended ocean carrier, that the goods are not to be released. How this is done will be a matter for each individual customs administration. In reality, a message that the goods cannot be released amounts to a DNL message. As such, the message should be communicated by the Customs office of exit as soon as possible and in no case later than 24 hours after the lodgement of the EXS.

5. Shipsupply

Q 5.1: Does a Spanish Shipsupplier in Algeciras, Spain who wants to deliver to a ship in Tanger, Morocco use electronic export declarations?
Yes, since shipsupply is considered as an export operation for which the ECS system must be used.

Q 5.2: Does a German Shipsupplier who wants to deliver to a vessel, docked in the port of Rotterdam, The Netherlands and heading for New York have to use electronic export declarations? Does the same apply for a Belgium shipsupplier in Antwerpen?
Yes, the delivery of goods on board of a vessel leaving the European Community is considered an export operation regardless in which Member States the Shipsupplier operates in.

Q 5.3: Shipsuppliers supply thousands of different goods, which are all covered by different CN/HS Codes. Do they have to indicate all the hundreds of different individual CN Codes for their export declaration?
Annex 30A, as included in the implementing provisions of the Customs code by Regulation 1875/061 provides that "a specific simplified goods nomenclature will be published by the Commission" in respect of Exit ship and aircraft supplies summary declarations.The Guidelines on Specific Commodity codes for air and ship supplies (21.09.2007 TAXUD/1401/2007 Final – EN) spells out that the following codes, as defined in Article 24 of Regulation 1917/2000, can be used:
– 99302400: goods from CN chapters 1 to 24;
– 99302700: goods from CN Chapter 27;
– 99309900: goods classified elsewhere.
However, use of these codes is not sufficient where export refunds and excise goods are involved.

Q 5.4: Do Shipsuppliers, in addition to the three CN Codes have to make a goods description?
Annex 30A, as included in the implementing provisions of the Customs code by Regulation 1875/061 provides that goods description for summary declarations is possible. It is "a plain language description that is precise enough for Customs services to be able to identify the goods. General terms (i.e. “consolidated”, “general cargo” or “parts”) cannot be accepted. A list of such general terms was published by the Commission providing guidelines on acceptable and unacceptable terms for the description of goods for exit and entry summary declarations as spelled out in the document TAXUD/1402/2007 Final-EN of the 21.09.2007. A loading list, giving a detailed description as such can fulfil this requirement.