

Decisions in relation to Customs matters - Right to be Heard Manual

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The “Right to be Heard” by a person who may be adversely affected by a decision in relation to Customs.

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1. Introduction

In its judgment in Case C-349/07 – “Sopropé” – delivered in December 2008, the European Court of Justice held that, where it is proposed to take a decision that will adversely affect a person (this includes a legal person), that person must be given an opportunity to express their point of view before the decision is taken.

Upholding the principle of the right to be heard, the Court stated:

Observance of the rights of the defence is a general principle of Community law which applies where the authorities are minded to adopt a measure which will adversely affect an individual.

Decisions adversely affecting the applicant are subject to the application of this right to be heard principle in accordance with Article 22(6) of the Union Customs Code (UCC).

It should be noted that this “right to be heard” principle arises *before* the decision is taken. The principle is in addition to the right of appeal (which can only arise *after* the decision has been taken).

2. Scope of customs decisions affected

Decisions pertaining to the application of customs legislation which will adversely affect the person concerned come within the scope of the right to be heard principle, with some exceptions as noted below.

In some instances, existing practices will already reflect this principle. For example, following a customs audit, where the findings/outcome of the audit is discussed with the person affected, consideration will be given to comments, if any, made by him or her. In such circumstances the right to be heard requirement has been met.

Article 22(6)(a)-(f) of the UCC sets out the circumstances where the right to be heard principle will not be applied before the decision is taken. The circumstances are as follows:

- Where it concerns a decision relating to Binding tariff information (BTI decisions) or binding origin information (BOI) in accordance with Article 33(1) of the UCC;
- Where the benefit of a tariff quota is refused (in cases where the specified tariff quota volume is reached) Article 56(4) UCC;
- Where a refusal is necessary as a result of the nature or the level of a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers;
- Where the decision aims at securing the implementation of another decision for which the right to be heard has been applied. This is without prejudice to the law of the EU Member State concerned;
- Where it would prejudice investigations initiated for the purpose of combating fraud;

- Where conditions for application for a decision are not fulfilled;
- Where the customs authorities notify the person, who lodged an entry summary declaration that the goods are not to be loaded in the case of containerised maritime traffic and of air traffic;
- Where the decision concerns notifying an applicant of a Commission decision as referred to in Article 116(3) of the UCC;
- Where an EORI number is to be invalidated.

3. Action to be taken

Where it is proposed to take a decision in relation to a customs issue that will adversely affect the applicant, the applicant must be advised of the grounds on which it is intended to base the decision and must be allowed to express his or her point of view within a prescribed period from the date he or she receives the communication or is deemed to have received it.

The period for the applicant to express his or her point of view before a decision which would adversely affect him or her is taken shall be 30 days. However, where the decision pertains to the results of the control of goods for which no summary declaration, temporary storage declaration, re-export declaration or customs declaration has been lodged, the person concerned may be required to express his point of view within 24 hours.

Depending on the circumstances in which the decision will be conveyed (e.g. if the intended recipient is present), communication of the advice may be made orally or by any other means and, if the person wishes, the person may express their point of view in the same way.

In circumstances where a person indicates that they wish to waive the right to be heard, this fact should be recorded and retained as evidence that the intended recipient was provided with the possibility to respond.

4. Failure to respect the right to be heard principle

In the “Sopropé” case the ECJ referred the issue back to the national court to decide the implications of the Court ruling. In any event, however, failing to allow the person the right to be heard could, at some future stage, allow the person the opportunity to successfully call into doubt the decision that was taken. This could result in the decision being overturned, or, as a minimum, require the decision to be re-visited.

5. Further information

If you require further information please contact:

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Treasury Building,

Dublin Castle,

Dublin 2.

Tel: (01) 6744316

External mail: customsappeals@revenue.ie