

## **Members raised concerns regarding the procedures followed by some customs agents when dealing with shipments moved under Common Transit.**

At a recent Member Meeting compliant Members highlighted that they were aware that in many cases, presumably either to gain time and thus a competitive advantage or because of lack of knowledge, that both the TAD MRN and also the Customs Declaration MRN for the same consignment were declared on the Goods Movement Reference. This guidance specifically relates to movements including a pre-logged customs declaration.

As a result, the imported goods were simultaneously in two customs regimes at the same time. Please see below the HMRC guidance, issued in May 2022, related to the subject:-

“We have become aware that some Goods Vehicle Service Users are entering either import declaration instead of or as well as the transit Movement Reference Number. Neither of these are in line with UK regulations.

- By not entering the transit Movement Reference Number the Office of Transit cannot be carried out in line with the Common Transit Convention and UK Regulations and may cause delays upon reaching the Office of Destination
- By entering the “import declaration” for those goods under the Transit movement this puts the goods into two customs regimes at the point of entry to the UK. This is against UK regulations

[The full text of the guidance can be viewed here.](#)

According to the above instructions HMRC is aware of the problem and are instructing traders not to enter both the TAD MRN and Customs Declaration MRN covering the same consignment on the same GMR reference. Anybody doing so is being non-compliant *BIFA has to remind BIFA Members, that they cannot legally enter both declaration references simultaneously on the GMR.*

When goods are in transit, only the TAD MRN should be entered into the GMR - the haulier will have to proceed to the relevant IBF or authorised premises in order to close the Transit movement. After this process is completed, the customs declaration to clear the goods can be submitted via CDS to HMRC and clearance obtained. Clearance “on wheels” linking a TAD MRN and a “arrived” CDS MRN is clearly a breach of UK regulations.

*It is important that all BIFA Members review their procedures against the documented Common Transit procedures to ensure that they are compliant.*

On behalf of its Members BIFA spoke to HMRC on certain additional points, and received the following additional information

- Traders can include references for multiple declaration types within one vehicle (e.g., Groupage loads) as long as there are no Transit and Import declaration references for the same consignment of goods
- One vehicle can have multiple Transit declarations within a single GMR
- One vehicle can hold only one GMR
- Transit movements can only be discharged at the relevant IBF or authorised premises

The first part of this advice has largely been based on HMRC guidance, the next part will focus on the relevant law, which is more complex but essential for the reader to understand. Focussing on GB arrivals and IBFs, the Customs (Cross-border Trade) Act 2018 (TCTA) clearly states that Transit is considered to be a 'Special Procedure'

Sch 1 para 17(7) states:

*Once goods are released to a special Customs procedure—*

*(a) the goods are subject to the provision made by or under Schedule 2, and*

***(b) the procedure continues to have effect until it is discharged in accordance with the provision made by or under that Schedule***

<https://www.legislation.gov.uk/ukpga/2018/22/schedule/1/enacted>

Para 18 states the following:

*(1) The fact that chargeable goods are declared for one Customs procedure does not prevent the goods from being subsequently declared for a different Customs procedure.*

***(2) Goods may not be released to a Customs procedure at any time if another Customs procedure has effect in relation to the goods at that time (but this is subject to paragraph 20(2) of Schedule 2***

<https://www.legislation.gov.uk/ukpga/2018/22/schedule/1/enacted>

Para 20 of Schedule 2 reads:

***(1) Despite the provision made by paragraph 18 or 19, a special Customs procedure in respect of any goods is not discharged if a liability to import duty is incurred in respect of the goods while the procedure has effect and—***

*(a) a guarantee has not been given in accordance with regulations under paragraph 6 of Schedule 6 that has effect in relation to the goods, or*

*(b) if no guarantee is given, the import duty has not been paid*

*(2) If a special Customs procedure in respect of any goods is prevented from being discharged as a result of sub-paragraph (1) (and only as a result of that sub-paragraph), that does not prevent the goods from also being released to another special Customs procedure.*

<https://www.legislation.gov.uk/ukpga/2018/22/schedule/2/enacted>

Sch 18(2) clarifies that goods can't be released to a customs procedure if another customs procedure is in effect unless 20(2) applies. Para 20(2) allows goods to be released to a second procedure at the same time *only if* release from the first procedure is prevented by 20(1), which happens if a liability for duty and tax has arisen in respect of the first procedure.

Based on the legislative information:

- goods that arrive *under transit* are not required to be presented to customs at the border. If goods were to move past the border, they haven't technically been presented

to customs yet so the declaration can't technically be accepted. Presentation happens as the goods are discharged from transit in the appropriate way at either an IBF or approved premises. This then means that chargeable goods have been presented and must be declared to an appropriate procedure or placed in Temporary Storage immediately.

- If trader used a pre-lodged declaration to clear a GVMS location, that doesn't discharge their transit obligations. *Traders still be subject to a transit enquiry and could become liable to a customs debt for transit irregularity.*

All Members should be aware of and follow these procedures for transit movements. In communication to BIFA, HMRC has clearly stated that if something were to go wrong, such as a driver not reporting to an IBF to discharge the transit movement; -

“A transit irregularity might be issued despite an earlier Free Circulation declaration being made and it is for the trader to confirm that the goods on the two declarations were the same. This could result in two amounts of duty being at stake not to mention civil penalties for either transit failures, improper free circulation declarations or both”.