

ANNEX A

DEFINITION OF "Exporter"

Article 1 (19) UCC DA

I. Article 1 (19) UCC DA

1. Cases

Article 1 (19) UCC DA defines exhaustively three possibilities for a person to qualify as an exporter.

In accordance with Article 1 (19) (a) UCC DA an exporter is a person who is:

- 1) established in the customs territory of the Union,
- 2) holds a contract with a consignee in third country, and
- 3) has the power for determining that the goods are to be brought to a destination outside the customs territory of the Union.

In accordance with Article 1 (19) (c) UCC DA an exporter could be a person in other cases where the first and the third conditions above are met.

In accordance with Article 1 (19) (b) of the UCC DA an exporter is a private individual who brings in his personal baggage goods outside the customs territory of the Union.

When a person qualifies to be an exporter his name, address and EORI number are to be put in Box 2 of the export customs declaration. If a person does not qualify to be an exporter then other contractual or business arrangements are needed in order to establish who is the person responsible for the exportation of the goods.

2. Commercial or non-commercial exports

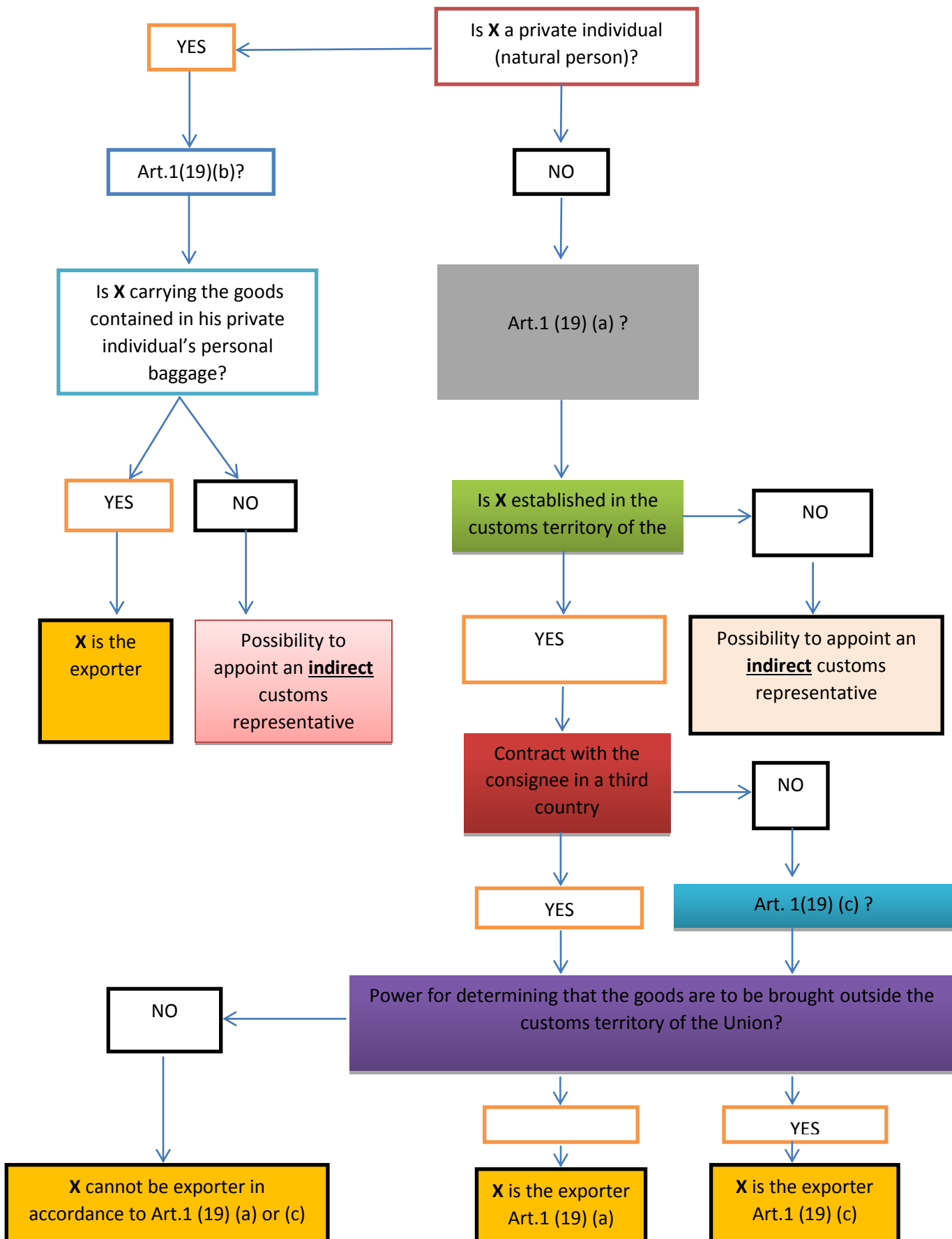
Article 1 (19) (b) UCC DA covers cases of **non-commercial** exports. Private individuals are not required to be established in the EU. "Personal baggage" means all goods carried by whatever means in relation to a journey by the private individual (Article 1 (5) UCC DA).

Letters (a) and (c) of Article 1 (19) UCC DA are about **commercial** exports. Where they both could potentially be applicable, Article 1 (19) (a) should prevail as Article 1 (19) (c) UCC DA refers to other cases. It has therefore a residual application.

For instance, Article 1(19) (c) UCC DA applies in case of a company established in the customs territory of the Union which does not hold an export sales contract for the goods. It provides manufacturing and logistical services to another company established in the customs territory of the Union and determines the time and place of the delivery of the goods to consignees in third countries. Article 1 (19) (a) UCC DA, however, shall apply where that company holds a contract with the consignee in a third country.

The diagram below illustrates the sequence in which these conditions should be examined.

X is to bring goods out of the customs territory of the Union



3. The meaning of "established in the customs territory of the Union"

The concept "established in the customs territory of the Union" is defined in Article 5 (31) read together with Article 5 (32) UCC. It means that the exporter is a person or an association of persons and it has in the EU:

- a registered office,
- headquarters, or
- a permanent business establishment, *i.e.* a fixed place of business where:
 - technical and human resources are permanently present and
 - through which person's customs related operations are wholly or partially carried out.

A person who is not established in the customs territory of the Union cannot be an exporter and his name cannot appear in Box 2 of the export declaration.

Other contractual or business arrangements are needed in order to establish who is the person responsible for the exportation of the goods.

During the transitional period Box 2 may provide data about the consignor/exporter. That means that if a customs representation is used the name, address and EORI number of the person on whose behalf the export declaration is made should be put in Box 2 and the name, address and EORI number of his customs representative should be put in Box 14. When the person on whose behalf the export declaration is made is not established in the customs territory of the Union only indirect customs representation is possible.

4. The meaning of "power of determining that the goods are to be brought outside the customs territory of the Union".

The power of determining that the goods are to be brought outside the customs territory of the Union must follow unequivocally from the acts of the parties to the transaction on the basis of which the goods leave the customs territory of the Union.

Examples:

- where there is a direct sale from a company established in the customs territory of the Union to a buyer established outside the customs territory of the Union, or
- where the price of an export sale is payable only upon exchange of bill of lading drawn by the seller for carriage outside the customs territory of the Union.

5. Customs representation

In case where the person who disposes of the export goods or otherwise motivates the exportation does not qualify as an exporter the parties involved in the export transaction should establish other contractual or business arrangements in order to determine the person who is responsible for the export of the goods outside of the customs territory of the Union.

One of these possibilities is the appointment of a customs representative.

Any person could be a customs representative provided that he complies with the conditions under Article 18 and 19 UCC, including the conditions that Member States may lay down pursuant to Article 18 (3) UCC.

In case where:

- the person exporting the goods is established in the customs territory of the Union, or
- he is not so established but Article 170 (3) UCC applies

a free choice of direct or indirect representation is possible.

In cases where:

- that person who is not established in the customs territory of the Union, and
- provided that Article 170 (3) UCC does not apply

an indirect customs representative established in the customs territory of the Union who can be a declarant and an exporter should be appointed.

In this case the indirect customs representative acting as declarant may become a holder of the export procedure pursuant to the first part of Article 5 (35) (a) UCC. The owner of the goods or the person who motivates the export transaction and appoints the indirect customs representative may also be a holder of the export procedure pursuant to the second part of Article 5(35) (a) UCC. The empowerment to act as customs representative should make it clear who is holder of the export procedure.

The name of the indirect customs representative should be put in the data field of Box 14 of the export declaration.

In case of non-compliance with these rules and/or with rules governing customs debt, prohibitions and restrictions or other requirements imposed under the Union legislation, penalties and enforcement measures could be addressed to a person or entity established in the Union customs territory of the EU. In case where an indirect customs representative has been appointed these measures should be addressed to the indirect customs representative.

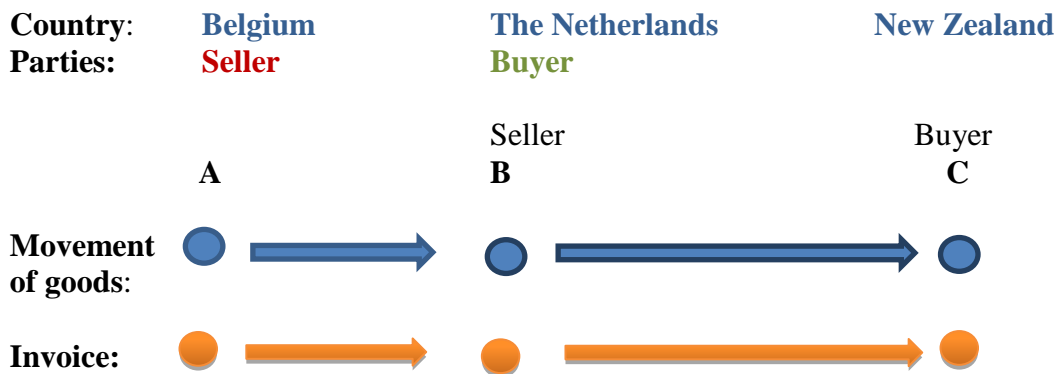
II. Scenarios

The following scenarios illustrate the application of the rules laid down to define who can be an exporter in the meaning of Article 1 (19) UCC DA:

Scenario 1

A sells the goods to **B**. **B** sells the goods to **C**. The goods are transported from **B** to **C**.

An invoice is issued by **A** to **B** and then by **B** to **C**.



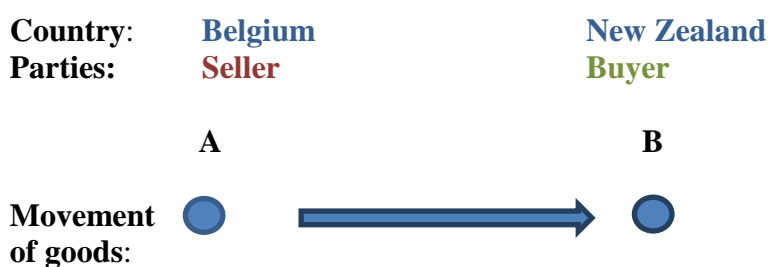
A has no power for determining that goods are brought to a destination outside of the customs territory of the Union. **A** only keeps the goods at the disposal of **B** and dispatches in accordance with the terms of the sale contract that it has with **B**. **A** is not an exporter as neither letter (a) nor letter (c) is applicable. **A**, however, can become an exporter if it is empowered by **B** to determine the destination of the exportation of the goods.

B is the exporter pursuant to Article 1 (19) (a) UCC DA. Therefore the name and address of **B** must be indicated in Box 2 of the export declaration. It is sufficient to prove the transfer of the ownership of the goods in order to prove its power to determine that goods are to be brought to a destination outside the Union customs territory.

The situation, however, would be different if the sales documentation between **A** and **B** points out that **B** must sell the goods to a certain geographical area. In such a case **A** has the power of determining that the goods are to be brought to a destination outside the customs territory of the Union. In which case **A** could be the exporter under Article 1 (19) (c) UCC DA.

Scenario 2

Ex Works



In classical terms an "Ex Works" contract implies that it is considered that the seller (**A**) delivers the goods once they are placed at the disposal of the buyer (**B**) at the seller's premises or at another place named by the seller (*i.e.* works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle nor does he need to clear the goods for export, should such clearance be applicable.

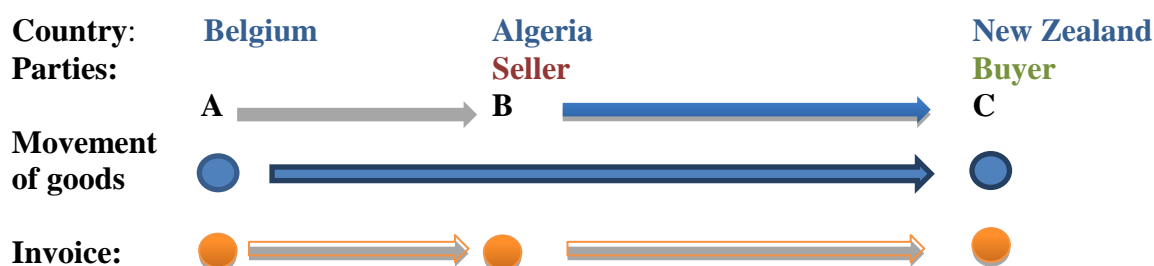
B is required to take, deliver and pay for the goods. At this moment he also bears the risk for loss and damage of the goods.

B has to arrange for the collection of the goods at a point of delivery and is required to comply with customs formalities both in the country of export (Belgium) and in the country of import (New Zealand). **B** has also to comply with customs formalities in the country of transit, if goods are put under internal transit before they reach the customs office of exit.

Therefore, **A** does not have the power to determine that goods are to be taken to a destination outside the customs territory of the Union and cannot be an exporter neither under Article 1(19) (a), nor under Article 1(19) (c) UCC DA. **B** is not established in the Union customs territory and cannot be an exporter neither under Article 1 (19) (a) nor Article 1 (19) (c) UCC DA.

If **B** is to be consignor and his name is to be put in Box 2, **B** must appoint an indirect customs representative. Another possible solution is that **B** appoints **A** as a person in charge with customs requirements at export.

Scenario 3

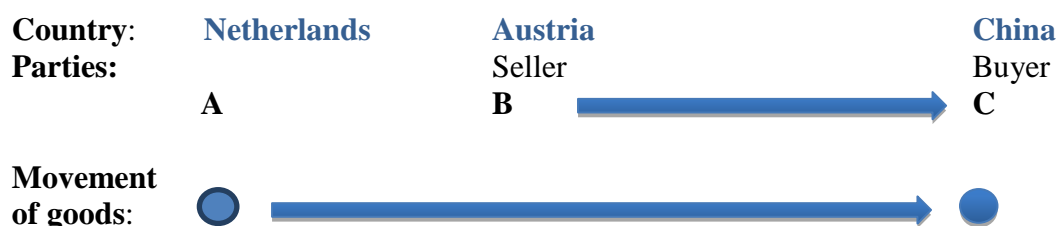


The goods are sold from Belgium to Algeria and subsequently resold to New Zealand. The physical movement of the goods is direct from Belgium to New Zealand on behalf of **B**. **A** does not have a contract with **C**. **B** is not established in the Union. An invoice will be issued from **A** to **B** and from **B** to **C**.

A is not an exporter because Article 1 (19) (a) UCC DA is not applicable unless sale documentation points out that **A** is involved in the export procedure and has the power of determining that goods are to be exported from to a destination outside the EU (see Scenario 1).

B cannot be an exporter of the goods in accordance with Article 1 (19) (c) UCC DA unless he has an indirect customs representative who is established in the EU. In this case the indirect customs representative has to be mentioned in Box 14 of the export declaration and **B** has to be mentioned in Box 2 of the export declaration.

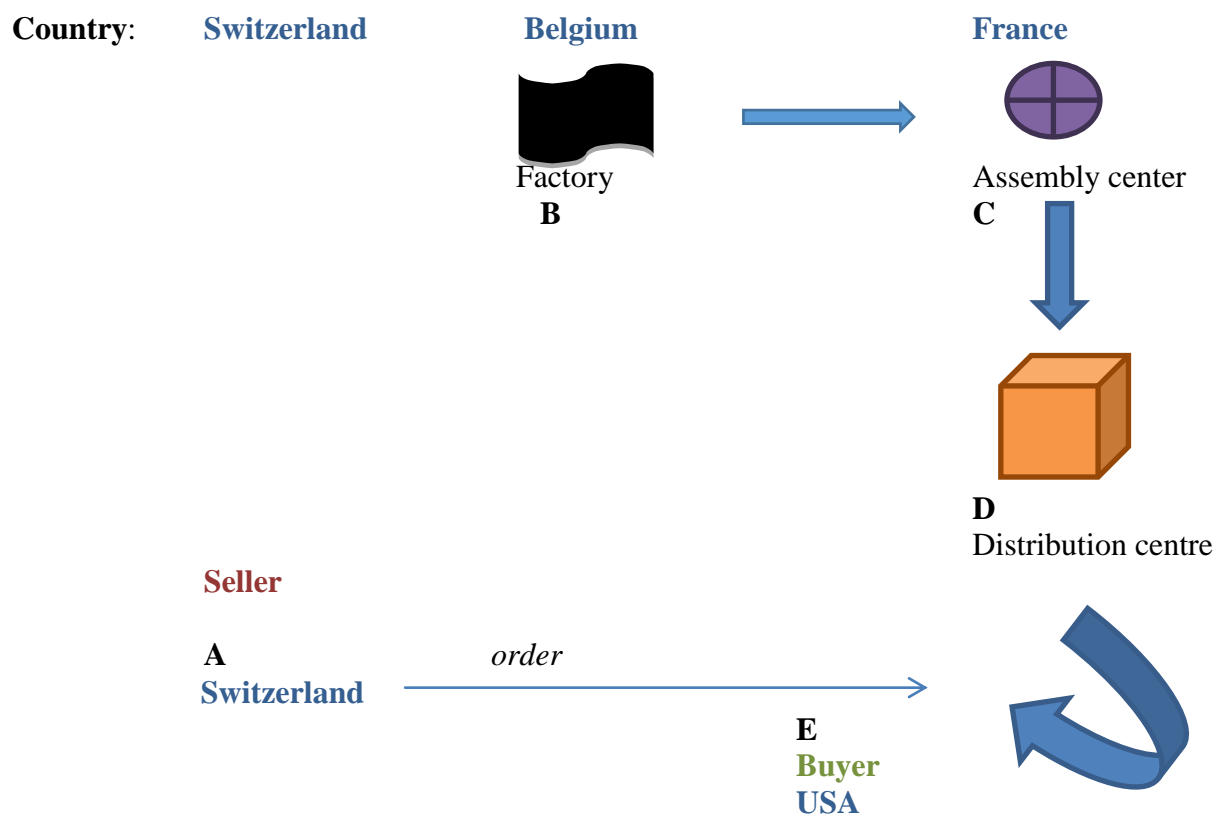
Scenario 4



The goods are sold from the Netherlands to Austria and subsequently resold to China. The physical movement of the goods is direct from the Netherlands to China on behalf of **B**. **A** does not have a contract with **C**. **B** is established in the Union. An invoice will be issued from **A** to **B** and from **B** to **C**.

B has provided instructions to **A** to bring the goods direct to **C** (via the port of Rotterdam). **A** is the exporter because Article 1 (19) (c) UCC DA is applicable. By means of the instructions from **B** to **A** that the goods should be transported directly from the Netherlands to China company **A** becomes the exporter.

Scenario 5



A is the seller of the goods and is situated in Switzerland.

A uses a factory in Belgium. **A** owns the goods.

B is the operator of the factory.

A uses an assembly centre in France. **A** remains the owner of the goods.

C is the operator of the assembly centre.

B and **C** do not issue sale invoices. They are only responsible for production and delivery of the goods.

A uses a distribution centre in France.

D is the operator of the distribution centre.

E is the buyer of the goods. **E** is in the US.

A sells goods produced in the factory in Belgium and its assembly centre in France and distributes them to buyers such as **E** in the US. When an order is received, the sales department of **A** makes an entry in the accounting records and sends the order to the distribution centre which manages its inventory on just-in time basis. The transport is organized by **A**.

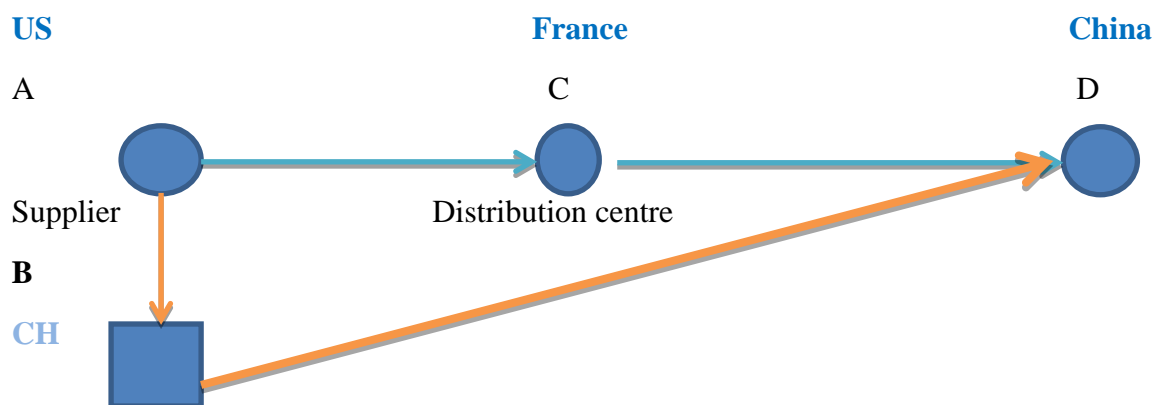
The invoice is issued from **A** to **E**.

A does not have a permanent business establishment in the EU. **A** does not have a registered office in the EU. **A**'s headquarters are not the EU. Therefore **A** is not established in the customs territory of the Union and does not qualify as an exporter under Article 1 (19) (a) or (c) UCC DA.

In case where **A** does not wish to make its trading partners established in the EU aware of its intention to export the goods it may have the export declaration lodged on its behalf by an indirect representative.

The situation may change if **B**, **C** or **D** is a branch or subsidiary of **A** where **A** is the principal. In such a case **A** disposes of permanent business establishment in the EU in the meaning of Article 5(32) UCC. **A** is an exporter whose details are to be put in Box 2. It should be ensured that one of the branches of **A** appear in the data filed corresponding to box 44 of the export declaration. As EORI number is unique for each economic operator, **B** and/or **C**, and/or **D**, depending on the terms of empowerment will have the same EORI number as **A**. The EORI number, however, will be the one assigned by the company established in Switzerland.

Scenario 6



A is an US company that supplies materials for manufacturing of final products. **A** has a subsidiary in Switzerland (**B**). **A** sells the materials to **B**. **A** imports these materials into France where they are stored in a distribution centre. When stored in France the goods are owned by **B**.

From France the goods are exported to the manufacturer **D** in China.

Invoices are sent from **A** to **B** and from **B** to **D**.

A is not established in the customs territory of the Union and cannot be an exporter unless it has appointed an indirect customs representative and who complies with the conditions under Article 1 (19) (c) UCC DA.

B is not established in the EU and cannot be the exporter whose name is to be placed in Box 2 of the export declaration. **B** could authorize an indirect customs representative. In this case **B**'s name and address should be mentioned in Box 2. The name and address of the indirect customs representative are to be put in Box 14 of the export declaration.

C is the owner of the distribution centre. **C** does not wish to act as a **B**'s representative.

Scenario 7

A is a private individual who buys an antiquity in France and brings it to Switzerland in his personal luggage. **A** is a French resident. **A** is an exporter under Article 1 (19) (b) UCC DA and must make an export declaration.

A can also appoint a custom representative. **A** could choose between a direct and an indirect customs representative.

Data about **A** is filled in Box 2.

Scenario 8

A is a private individual resident of Switzerland who goods in France. These goods do not fall under the definition of goods in personal luggage. Therefore Article 1 (19) (b) does not apply. **A** should appoint an indirect customs representative who should be indicated in Box 14.