EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Policy, Legislation, Tariff
Customs Legislation

Brussels, 29 June 2026

TAXUD/A2/SPE (2026)

TAXUD/A2/SPE/2016/001-Rev 26-EN
Original EN

SPECIAL PROCEDURES – Title VII UCC/ "Guidance for MSs and Trade"

A Customs 2020 Project Group was set up to draft guidance related to the UCC and its related Commission acts. The content of this document reflects the outcome of the discussions with Member States and Trade.

Disclaimer: *"It must be stressed that this document does not constitute a legally binding act and is of an explanatory nature. Legal provisions of customs legislation take precedence over the contents of this document and should always be consulted. The authentic texts of the EU legal instruments are those published in the Official Journal of the European Union. There may also exist national instructions or explanatory notes in addition to this document."*

Table of Contents

STRUCTURE OF UCC FOR SPECIAL PROCEDURES OTHER THAN TRANSIT - SUMMARY- 3

REFERENCES 5

ABBREVIATIONS 5

INTRODUCTION 6

TRANSITIONAL PERIODS (IT AND LEGAL) 6

GUIDANCE 8

TITLE VII - SPECIAL PROCEDURES 8

CHAPTER 1 – General provisions 8

Article 210 UCC **Scope** 8

Article 211 UCC **Authorisation** 8

Article 214 UCC **Records** 30

Article 215 UCC **Discharge of a special procedure** 30

Article 218 UCC **Transfer of rights and obligations** 41

Article 219 UCC **Movement of goods** 42

Article 220 UCC **Usual forms of handling** 42

Article 223 UCC **Equivalent goods** 44

CHAPTER 3 – Storage 48

Section 1 – Common provisions 48

Article 237 UCC **Scope** 48

Article 238 UCC **Duration of a storage procedure** 48

Section 2 - Customs warehousing 48

Article 240 UCC **Storage in customs warehouses** 48

Article 241 UCC **Processing** 50

Article 242 UCC **Responsibilities of the holder of the authorisation or procedure** 50

Section 3 - Free Zones 53

Article 245 UCC **Presentation of goods and their placing under the procedure** 53

CHAPTER 4 – Specific use 55

Section 1 – Temporary admission 55

Article 250 UCC **Scope** 55

Article 251 UCC **Period during which goods may remain under the temporary admission procedure** 62

Article 252 UCC **Amount of import duty in case of temporary admission with partial relief from import duty** 64

Section 2 – End-use 65

Article 254 UCC **End-use procedure** 65

CHAPTER 5 - Processing 68

Section 1- General provisions 68
Article 255 UCC **Rate of yield** 68
Section 2 – Inward processing 69
Article 256 UCC **Scope** 69
Article 257 UCC **Period of discharge** 70
Article 258 UCC **Temporary re-export for further processing** 71
Section 3 – Outward processing 75
Article 259 UCC **Scope** 75
Article 260 UCC **Goods repaired free of charge** 79
Article 260a UCC **Goods repaired or altered in the context of international agreements** 79
Article 261 UCC **Standard exchange system** 84
Article 262 UCC **Prior import of replacement products** 84
ANNEX I 85
Examples 85
ANNEX II 88
Flowchart on application for inward processing 88
Flowchart on application on outward processing 90
ANNEX III 91
TORO – Transfer of rights and obligations 91
Full TORO in accordance with Article 218 UCC 101
ANNEX IV 103
Movement of goods 103
Additional considerations on movement of goods 106
Movement of goods – Examples 107
ANNEX V 110
TORO and movement of goods 110
ANNEX VI 118
Inward Processing 118
ANNEX VII 123
Illustrative list of goods that may be placed under temporary admission covered by Articles 219 et seq. UCC-DA. 123
Annex VIII 129
Inward Processing in the sugar sector 129

STRUCTURE OF UCC FOR SPECIAL PROCEDURES OTHER THAN TRANSIT - SUMMARY-

(the page number refers to the consolidated version, dated 1 January 2020, of the page of the OJ UCC Regulation text - L269, 10 October 2013)

TITLE VII SPECIAL PROCEDURES p.111

CHAPTER 1 General provisions p.111
Art. 210 Scope p.111
Art. 211 Authorisation p.112
Art. 212 Delegation of power (*) p.113
Art. 213 Conferral of implementing powers (*) p.114
Art. 214 Records p.114
Art. 215 Discharge of a special procedure p.114
Art. 216 Delegation of power (*) p.115
Art. 217 Conferral of implementing powers (*) p.115
Art. 218 Transfer of rights and obligations p.115
Art. 219 Movement of goods p.115
Art. 220 Usual form of handling p.115
Art. 221 Delegation of power (*) p.115
Art. 222 Conferral of implementing powers (*) p.116
Art. 223 Equivalent goods p.116
Art. 224 Delegation of power (*) p.117
Art 225 Conferral of implementing powers (*) p.118

CHAPTER 3 Storage p.122
Section 1 Common provisions p.122
Art. 237 Scope p.122
Art. 238 Duration of a storage procedure p.123
Art. 239 Conferral of implementing powers (*) p.123

Section 2 Customs warehousing p.123
Art. 240 Storage in customs warehouses p.124
Art. 241 Processing p.124
Art. 242 Responsibilities of the holder of the authorisation or procedure p.124

Section 3 Free zones p.124
Art. 243 Designation of free zones p.124
Art. 244 Buildings and activities in free zones p.125
Art. 245 Presentation of goods and their placing under the procedure p.125
Art. 246 Union goods in free zones p.125
Art. 247 Non-Union goods in free zones p.126

* Articles of empowerment are not covered by this guidance as they are not relevant to Customs Authorities

Art. 248 Taking goods out of a free zone p.126
Art. 249 Customs status p.126

CHAPTER 4 Specific use p.127

Section 1 Temporary admission p.127
Art. 250 Scope p.127
Art. 251 Period during which goods may remain under the temporary admission procedure p.127
Art. 252 Amount of important duty in case of temporary admission with partial relief from import duty p.127
Art. 253 Delegation of power (*) p.128

Section 2 End-use p.128
Art. 254 End-use procedure p.128

CHAPTER 5 Processing p.129

Section 1 General provisions p.129
Art. 255 Rate of yield p.129

Section 2 Inward processing p.130
Art. 256 Scope p.130
Art. 257 Period of discharge p.130
Art. 258 Temporary re-export for further processing p.131

Section 3 Outward processing p.131
Art. 259 Scope p.131
Art. 260 Goods repaired free of charge p.132
Art. 260a Goods repaired or altered in the context of international agreements p.132
Art. 261 Standard exchange system p.133
Art. 262 Prior import of replacement products p.133

REFERENCES

- UCC Union Customs Code. Regulation (EU) No 952/2013
- IA Implementing act. Commission Implementing Regulation (EU) 2015/2447
- DA Delegated act. Commission Delegated Regulation (EU) 2015/2446
-TDA Transitional delegated act. Commission Delegated Regulation (EU) 2016/341

ABBREVIATIONS

- AEOC Authorised Economic Operator Customs Simplification
- AEOS Authorised Economic Operator –Safety and Security-
- CCC Community Customs Code (Regulation EC 2913/92)
- CCIP Customs Code Implementation Provisions (Regulation EC 2454/93)
- Commission European Commission
- CPEI Customs Procedures with Economic Impact
- FTA Free Trade Agreement
- IP Inward Processing
- IP suspension system Inward Processing suspension system
- MRN Master Reference Number
- EIDR Entry Into the Declarant's Records
- PCC Processing under Customs Control
- SPE Special Procedures
- TORO Transfer Of Rights and Obligations

INTRODUCTION

UCC – DA/IA

The Union Customs Code (Regulation (EU) No 952/2013 of the European Parliament and of the Council) entered into force on 9 October 2013 and is entirely applicable as from 1 May 2016. The related Commission acts, delegated and implementing acts, which replace the Customs Code Implementing Provisions, and allow a full application of the Code, were published on 29 December 2015 (Official Journal of the European Union, L 343, 29 December 2015). Both the delegated and implementing acts establish provisions to allow a smooth transition from the Customs Code and its Implementing Provisions to the UCC and its related acts. These rules can be found in Title IX of DA and IA.

Nevertheless, many provisions require adaptation or new electronic exchange of information between customs, trade and the Commission. Therefore a UCC (IT) Work Programme (Commission Implementing Decision 2014/255/EU) has been set up to draw up the development and deployment of the electronic systems.

In parallel, a delegated act regarding transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational (TDA) was published on 15 March 2016 (Commission Delegated Regulation (EU) 2016/341).

TRANSITIONAL PERIODS (IT AND LEGAL)

- The administrative transition (Title IX DA and IA) encompasses the period of progressive conformity of all the customs authorisations/decisions with the new rules.

- titles IX DA/IAcover the transitional measures and the validity of each type of customs decisions/authorisations;
- for authorisations without a limited period of validity, the latest date is 1 May 2019 (Article 345IA), however it can be earlier depending on the type and conditions of the respective authorisation;

This administrative transition is related to the reassessment of the conditions and criteria, the use of new forms, if applicable, and of IT tools for the granting phase.

- The IT transition concerns transitional measures to apply where the electronic systems which are necessary for the application of the provisions of the Code are not yet operational.

- The transitional measures are split between the Transitional Delegated Act, Delegated Act and the Implementing Act.

- The application period of these measures is linked with the deadlines for the deployment or upgrading of the relevant IT systems, as referred to in the UCC Work Programme. The ultimate deadline is December 2020, according to Article 278 UCC.

Certain systems might be ready before that and respectively the transitional periods depend on each system concerned.

While the MS adapt the current IT solutions during the transitional period, they will ensure that the benefits of the simplifications, adapted to the UCC, remain. Therefore, most of the transitional measures maintain the current solutions.

GUIDANCE

TITLE VII - SPECIAL PROCEDURES

CHAPTER 1 – General provisions

Article 210 UCC
Scope

Customs procedures with economic impact (CPEI) are named as "Special Procedures".

- Storage;
- Specific use;
- Processing.

The former PCC and IP suspension system have been merged under "Inward Processing" (IP).

The former IP drawback system is abolished but business activities may continue under the IP rules.

End-use and free zones have become special procedures under the UCC.

Article 211 UCC
Authorisation

Article 211 (1)(a) UCC

Authorisation is a favourable decision as referred to in Article 22 and 5(39) UCC. Except authorisations that are granted based on a customs declaration and authorisations for the operation of storage facilities for the customs warehousing of goods, the maximum period of validity of the authorisation for inward or outward processing, temporary admission or end-use has been extended to 5 years.

For goods which are covered by Annex 71-02-DA (mainly sensitive agricultural goods) the maximum period of validity of the authorisation has been extended to 3 years.

As today the period of validity of authorisation and the period of discharge of the SPE are not the same. In addition, the periods of 3 or 5 years are not relevant to the authorisations which have been granted by release of goods for the relevant customs procedure (Article 163 DA).

For those "individual" authorisations the period of validity is limited to one logical second and they can only be used for one customs declaration.

With reference to the second subparagraph of Article 211(1) UCC, where an economic operator intends to use more than one special procedure, it is advised to submit separate applications for each procedure to customs. This will allow the holder of the authorisation to clearly identify which rights and obligations apply for each procedure. Moreover, the current UCC related Commission acts do not support the possibility to apply for more than one procedure per individual application.

Authorisations for temporary admission shall be granted on the condition that the state of the goods placed under the procedure remains the same. However, repair, etc. is admissible (see text on Article 250 UCC of this document).

The application for an authorisation for the temporary admission procedure maybe done by the sole act of crossing the border in certain cases. If so, the authorisation shall be granted by release of goods for temporary admission (see Article 262 UCC-IA). It should be noted that the conveying of the goods, the presenting of the goods to customs, the acceptance of the customs declaration and the release of the goods by the customs authorities shall be deemed to have been carried out by the sole act of crossing the border (see Article 218 UCC-IA).

ATA and CPD carnets

ATA and CPD carnets shall be considered applications for authorisations for temporary admission if they fulfil certain conditions (see Article 163(5) UCC-DA). Furthermore, ATA and CPD carnets are customs declarations for placing the goods under temporary admission and for discharging the temporary admission procedure in case of re-export. ATA carnets may be issued by a Chamber of Commerce of a Member State for non-Union goods intended to be placed under temporary admission in the Union.
Digital ATA carnet (eATA carnet)

As from 1 June 2026, all formalities necessary for implementing the provisions of the Istanbul Convention shall be carried out by using the digital eATA carnet system as deployed by the International Chamber of Commerce (ICC). Based on further analysis and practical/operational considerations as well as feedback from Customs, Chambers and Holders, the World Customs Organization recommends to exercise flexibility in the transition phase to ensure a smooth shift of ATA Carnet procedure from paper to digital. For that reason, customs administrations are encouraged to accept paper ATA carnets until the end of the transition phase, i.e. 31 December 2027, when digital declaration, i.e. QR code, would not be available.

Article 21(a) of the Istanbul Convention and Article 270 UCC-IA provide the legal basis for the implementation and use of the eATA carnet.

The digital eATA carnet system has been deployed by the ICC. Documents publicly available can be found in the ICC web page: eATA Carnet - ICC - International Chamber of Commerce.

Additional information for customs users, including ATA Carnet Customs guides, can be found in ATA Carnet System's support platform: https://support.atacarnet.iccwbo.org/ (registration with a professional email is required). The access to the support platform can also be done through the Help section under Links in ATA Carnet Customs module.

Article 211(1)(b) UCC

Authorisations for the operation of storage facilities for the customs warehousing of goods may be granted also in case where the intended usual forms of handling would predominate over the storage of the goods.

Outward processing IM/EX

Regarding outward processing IM/EX as mentioned in Article 242(1) DA, the period within which the Union goods must be placed under outward processing IM/EX is not a 'period for discharge' as defined in Article 1(23) DA. This indicates that outward processing IM/EX is a special case which has following consequences:

- Regarding the period of validity of the authorisation, the authorisation for outward processing IM/EX must be valid on the date of acceptance of the customs declaration for release for free circulation relating to the processed products obtained from the corresponding equivalent goods.

- If Union goods are declared for outward processing IM/EX within the specified period as referred to in Article 242(1) DA, the authorisation for outward processing does not need to be valid anymore.

Competent customs authority

The competent customs authority (competent Member State) is the one where the applicant´s main accounts for customs purposes are held or accessible, and where at least part of the activities to be covered by the decision are carried out (see third subparagraph of Article 22(1) UCC). If the competent customs authority cannot be determined according to Article 22(1) UCC, it is the one where the applicant's main accounts for customs purposes are held or accessible (see Article 12 UCC-DA).

N.B. The following examples are also applicable to the other special procedures, except where otherwise provided (e.g. in temporary admission procedure).

Example 1:

An economic operator wants to apply for an authorisation for inward processing. Its main accounts for customs purposes are held in Member State A and accessible in Member State B. The activities to be covered by the decision are carried out in Member State B. Therefore, the competent customs authority is the one of Member State B.

Example 2:

An economic operator wants to apply for an authorisation for inward processing. Its main accounts for customs purposes are held in Member State A and accessible in Member State B. The activities to be covered by the decision are carried out in Member State C. Therefore, the competent customs authority is the one of Member State A or B. It is the economic operator´s choice to submit the application either in Member State A or B.

Example 3:

An economic operator wants to apply for an authorisation for inward processing. Its main accounts for customs purposes are held in a third country and accessible in Member State A. The activities to be covered by the decision are carried out in Member State B. Therefore, the competent customs authority is the one of Member State A.

Example 4:

An economic operator seeks to apply for a customs warehouse authorisation for premises in Member States A, B and C. Its main accounts for customs purposes are held in Member State A. Therefore, the competent Customs Authority is the one of Member State A. In such cases a single customs warehouse authorisation covering multiple customs warehouses may be issued.

The term "activities to be covered by the decision" as stated in Article 22(1) UCC encompasses every action to be carried out by the economic operator regarding the authorisation to be granted, from placing the goods under the special procedure until its discharge. This entails, among others, storage, processing or movement of goods. Lodging a re-export or a customs declaration is considered as an 'activity to be covered by the decision', in the sense of the third subparagraph of Article 22(1) UCC, provided that the declaration is covered by the decision.

The economic operator has to indicate in the application which are the main account for the purposes of Article 22(1) UCC as there is only one "main accounts for customs purposes" related to the specific application submitted by the economic operator. The competent customs authority may accept or refuse the information concerning the main accounts for customs purposes in the application submitted by the economic operator.

For all authorisations where more than one Member State is involved in the granting of an authorisation, to ensure the adequate supervision of the authorisation, the competent Customs Authority shall consult and may request that the Member State where the special procedure is being carried out provide to them specific information or data, such as:

- the records concerning the entry and exit of goods for the specific procedure held by the economic operator, their representatives, or other sub-contractors;
- verification of the identity of the goods under the special procedure;
- results arising from a physical inspection of the goods and the relevant premises and the authorised activities carried out.

The Member States involved may also consider whether it would be prudent to draft an instrument of control (e.g. a 'control plan'), during the consultation procedure as described in Article 260 UCC IA, further elaborating on the specific controls to be carried out by the

respective customs authorities. The Member States involved may not agree to participate with the draft control plan, however, the control plan may be utilised by the customs authority competent to take the decision, or for the other participating customs authorities for their own purposes. It should be noted that whether a control plan exists or not, the competent Customs Authority and the Member State where the special procedure is carried out may implement whatever controls deemed necessary to ensure the correct implementation of the special procedure authorisation.

Such a control plan is mentioned in the case of authorisations for centralised clearance (Article 229(2)(b) UCC IA). It may however be considered as an aid to enable the co-operative supervision of a special procedure authorisation outside of centralised clearance, but this is for the relevant Member States to agree.

Authorisation with retroactive effect (Article 211(2) UCC)

General aspects (Article 211(2)(a) UCC)

An authorisation can be granted with retroactive effect when the conditions of Article 211(2) UCC are met. However, an authorisation cannot be granted again with retroactive effect if an authorisation with retroactive effect has been granted for the same special procedure under the scope of Article 211 UCC within the 3 previous years (see Article 211(2)(e) UCC). An amendment of an existing authorisation according to Article 22(4) UCC, even if such amendment has retroactive effect, is not deemed to be an authorisation with retroactive effect in the sense of Article 211(2)(e) UCC.

Example:

The competent customs authorities grant an authorisation for inward processing. The holder of the authorisation asks the customs authority to add a CN code to the authorisation for goods which were previously declared for release for free circulation. Customs authorities amend the authorisation as applied by the holder of the authorisation. This amendment is not deemed to be an authorisation with retroactive effect in the sense of Article 211(2)(e) UCC.

An authorisation has a retroactive effect if the period of validity starts before the date on which the authorisation was issued.

Authorisations granted with retroactive effect (Article 211 (2)(b) UCC)

Example 1:

An economic operator imports non-Union goods for processing and knows that they will be re-exported after transformation. Instead of placing the goods under inward processing, he releases them for free circulation and asks for a retroactive authorisation when some of the goods have been manufactured. If it can be established that the operator knew that he would have re-exported the products, there can be deception. The purpose of the deception was to escape the obligations (request, records...) concerning the special regime.

Example 2:

An economic operator has been granted a retroactive end-use authorisation. He asks for a retroactive renewal of that authorisation. This will not be possible but if he had asked for a retroactive authorisation for inward processing, that authorisation could have been granted.

Example 3:

A company requests a renewal of inward processing authorisation which validity ended on 29 April 2017. This request was received by customs on 30 May 2017. Customs issue an authorisation on 10 August 2017. Such authorisation is a favourable decision with retroactive effect and can be only issued once within 3 years (see Article 211(2)(h)UCC). In order to avoid that the business activities cannot be carried out under inward processing because the IP authorisation is not valid anymore, it is suggested that the holder of the authorisation submits the request for renewal at least 3 months before the end of period of validity of the existing authorisation. This information should be provided in the authorisation as a good practice.

Article 163 (1)(e) and (f) of the DA as *lex specialis* may be applied more than once within the 3 years period[1]. This rule may cover authorisation based on a customs declaration and also authorisation issued in accordance with Annex 12 to TDA or electronically issued in accordance with Annex A to DA.

With regard to Article 172(3) DA the retroactive effect is limited to 3 years because of Article 211(2)(h) UCC.

If the replacement products are to be released for free circulation using the standard exchange system and an authorisation for OP has not been issued, such authorisation may be issued with retroactive effect only in the standard form but not based on the customs declaration (see Article 163(1)(e) DA).

Note: Authorisation with retroactive effect can be issued also for the time period before 1st May 2016 for which the rules of Community Customs Code apply. (Article 172 (2) DA)

Conditions for granting an authorisation (Article 211(3) UCC)

Establishment in the customs territory of the Union (Article 211(3)(a) UCC)

Authorisations may be granted to person established in the customs territory of the Union. However, it is possible under certain conditions to grant an authorisation for IP and end-use to a person who is established outside the Territory (see Article 161 DA). As this article is a derogation from the principle, the interpretation regarding the scope of this provision should be restricted.

[1] Article 163 (1)(e) of the DA covers both situations, namely with or without prior importation of replacement products.

The following examples indicate the scope of this provision.

Example 1:

An airline which is established outside the customs territory of the Union applies for an end-use authorisation so that it can import goods for repairing of civil aircraft and parts thereof. In this case the use of end-use is not incidental. For that reason, the applicant should be established inside the EU and consequently the application should be rejected.

Example 2:

A natural person, resident in a third country, operating his own aircraft, may apply for an authorisation for end-use so that a replacement engine can be imported under the end-use procedure.
The authorisation should be granted in this case.

Articles 161 and 162 DA may apply for applications electronically submitted in accordance with Annex A to DA and applications based on a customs declaration.

Example: Applicant established outside EU

A tourist established in Switzerland has bought a lawn mower during a shopping visit a MS. Back in Switzerland he notices that the machine does not work properly. He returns to the MS in order to claim repair based on a contractual obligation arising from a guarantee. At the border he applies for inward processing by lodging a standard customs declaration according to Article 163 (1) c) DA. The authorisation is granted by the MS's customs because the case does not have an economic relevance.

Necessary assurance of the proper conduct of the operations (Article 211(3)(b) UCC)

AEOC is deemed to provide the necessary assurance of the proper conduct of the operations, unless information is available to the contrary without further check. For non AEOC, customs will need to check background records of applicants regarding their activities in the field of customs and taxation.

For the purpose of the application of Article 211(3)(b) UCC, Article 39 UCC (paragraphs a, b and d) may be taken into account if the applicant is not an AEOC. Article 211(3)(b) UCC has to be applied on a case-by-case basis. If the applicant has been established for less than three years, the customs authority has to check the fufillment of the condition requested with the information available and Article 23(5) UCC applies.

Provision of a guarantee (Article 211(3)(c) UCC)

The provision of a guarantee is compulsory. However, exceptions are described/listed under "final provisions".

The purpose of the guarantee is to cover a potential customs debt, which may be incurred for goods that have been placed under a special procedure. However, it need not to be provided in the following circumstances:

- ✓ the erga omnes import duty rate for the goods to be placed under the special procedure is zero (i.e. there is no potential debt of import duty), and
- ✓ regarding the potential debt of other charges, namely VAT, there is waiver of providing a guarantee in accordance with the provisions governing such charges,

Additionally, a guarantee shall not be required in the following cases:

- inward Processing EX/IM;
- certain cases of temporary admission, namely when the customs declaration is made orally or by any other act;
- outward Processing EX/IM.

In the cases where the provision of a guarantee is not required, the special procedure authorisation must state as follows (see Annex A of UCC-DA and of UCC-IA): code '0 – Guarantee not required' in D.E. 8/6 (Guarantee); the D.E. 8/7 (Guarantee amount) should be filled in with '0' (zero). In all the other cases, a guarantee is required and the special procedure authorisation should state as follows: code '1 – Guarantee required' in D.E. 8/6 (Guarantee) and the reference amount in question should be indicated in D.E. 8/7 (Guarantee amount).

Even when a guarantee is required, customs authorities may grant an authorisation to use a comprehensive guarantee including a guarantee waiver according to Article 84(3) UCC-DA (see COM UCC Guidance on Guarantees for Customs Debts).

In the case where a guarantee is required and provided, a guarantee reference number should be provided at the latest at the time the customs declaration for placing the goods under a special procedure is lodged. Otherwise the customs declaration for end-use, inward processing and temporary admission will not be accepted (see Data Elements 8/2 and 8/3 for columns H1, H3 and H4 on Annex B of UCC-DA).

Consequently, Article 211(3)(c) UCC must be understood as introducing the requirement of the provision of a guarantee (in applicable cases) by a person applying for an authorisation as referred to in Article 211(1) UCC. Article 195(1) the third sub-paragraph UCC should be interpreted as indicating the latest moment when the requirement mentioned above must be fulfilled (before the first SPE customs declaration is lodged). It is linked with the rule whereby a person may choose between a comprehensive and an individual guarantee to be provided, even for the purposes of the authorisation for a special procedure covering more than one operation. Different forms of Guarantee may be authorised by customs.

In the case of the use of a comprehensive guarantee, the SPE authorisation has to be modified, namely the guarantee reference number has to be indicated. In the case of a one-off transaction (which means no other transactions are carried out) regarding the use of a special procedure on a customs declaration, an individual guarantee may be provided. A comprehensive guarantee may be used in the case of a one-off transaction under the condition that, when establishing

and monitoring the reference amount of this comprehensive guarantee, the customs authorities take into account the amount corresponding to the one-off transaction covered by this comprehensive guarantee. If an individual guarantee is provided, it is not possible to apply for reduction or waiver because that flexibility is possible only for comprehensive guarantee. This means that 100% of the individual guarantee has to be provided even if the person concerned has an AEOC status.

Apart from the cases mentioned above in which a guarantee is not required, a guarantee must be provided in all other cases related to special procedures other than transit, unless Article 89(9) UCC is applied. If the erga omnes import duty for the goods to be placed under the special procedure is zero, then no guarantee is required.

The reference amount should be equal to the amount of the import duty and other charges (e.g. VAT and excise duties) that may come due for the goods which are under a special procedure at a certain moment in time.

When the guarantee is not used outside one Member State the reference amount should cover at least the amount of the import duty.

An example is available in the **Annex I** of this Document.

Regarding the use of customs warehousing procedure, a guarantee is not required for placing goods under the procedure because only the operation of storage facility for customs warehousing of goods requires a guarantee. The holder of the customs warehousing authorisation has to provide a guarantee. However, the customs authorities may permit the guarantee to be provided by the holder of the procedure or by a third person (see second sentence of Article 89(3) UCC).

The holder of the authorisation for the operation of storage facilities of customs warehouse Type II has provided a guarantee. In case the holder of the procedure (person other than the holder of the authorisation) does not fulfil the obligations required in the customs legislation, a customs debt incurs and he is the debtor in accordance with Article 79(3)(a). In case the holder of the procedure does not pay the import duty, the guarantee provided by the holder of the authorisation will be taken.

It is suggested that a guarantee is provided before an authorisation for the operation of storage facilities for the customs warehousing of goods is granted. If so, a 'guarantee-check' is not required at the time of submitting a customs declaration for customs warehousing.

Using the goods or arranging for their use in the case of the temporary admission or carrying out processing operations on the goods or arranging for them to be carried out in the case of IP procedure (Article 211(3)(d) UCC)

Ownership of goods to be processed, goods to be used or the processed products is not a factor to be taken into consideration for the application of IP and for TA with the exception of Articles 212(3)(a), 223, 224, 226, 227, 229, 230 and 234(2) UCC-DA.

The holder of the authorisation for outward processing does not need to arrange for the processing operations that are to be undertaken outside of the Union. In addition, this person does not need to be the exporter of the goods which will be taken out of the customs territory of the Union under outward processing. Nevertheless, the export formalities must be respected (see Article 269 (2) and (3) UCC).

The applicant of an authorisation for outward processing must indicate the countries/territories where the processing operations will be carried out (data element 4/9 in Annex A UCC-DA). If such operations take or have taken place in a country/territory different from the one(s) mentioned in the authorisation for outward processing, this does not have an impact on the use of the authorisation if it is amended with retroactive effect.

Example:

An applicant indicates in his authorisation for outward processing that tyres are going to be processed in third country A or B (data element 4/9 in Annex A UCC-DA). The authorisation is granted on 1 April 2020. On 1 May 2020, tyres covered by this authorisation are processed in third country C and the holder of the authorisation indicates this fact to the competent customs authorities on 5 May 2020. The competent customs authorities may, upon request, amend the authorisation for outward processing on 6 May 2020 taking effect from 1 May 2020 provided that they indicate in the decision this date as the moment from which the decision takes effect (see Article 22(4) UCC). Article 211(2)(e) UCC does not apply in this case because this cannot be considered as an authorisation granted with retroactive effect.

Economic conditions (Article 211(4), (5) and (6) UCC)

The calculation method

The calculation method may have an impact on the requirement to examine economic conditions. Therefore, the calculation method has to be mentioned in the application for the authorisation. The calculation method must be stipulated in the authorisation. In case of incurrence of a customs debt the calculation of the amount of import duty must be made in accordance with the method as stipulated in the authorisation. If the calculation method has no impact on the requirements to examine the economic conditions, it is suggested to provide for flexibility for the holder of the authorisation/declarant regarding the calculation method.

This means that where goods intended to be placed under the inward processing procedure would not be subject to an agricultural or a commercial policy measure, a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation, the authorisation may stipulate a calculation method to be applied either in accordance with Article 85 (1) or 86(3) UCC. Therefore, the applicant may apply in data element 8/13 for the calculation of method to be made in accordance with Article 86(3) UCC and indicate in the data field 'Additional information' that the calculation may be made also in accordance with Article~~.~~ 85 UCC. As an alternative, if the applicant does not apply for the calculation method to be made in accordance with Article 86(3) UCC (which means the application of Article 85 UCC), he may indicate in the data field 'Additional information' that

the calculation may be also made in accordance with Article 86(3) UCC at the request of the declarant.

Examination of the economic conditions

To decide whether the economic conditions have to be examined or not, see flowchart in **Annex II** In order to use the flowchart effectively regarding the answer to the question whether evidence exists that the essential interests of Union producers are likely to be adversely affected, the following is suggested:

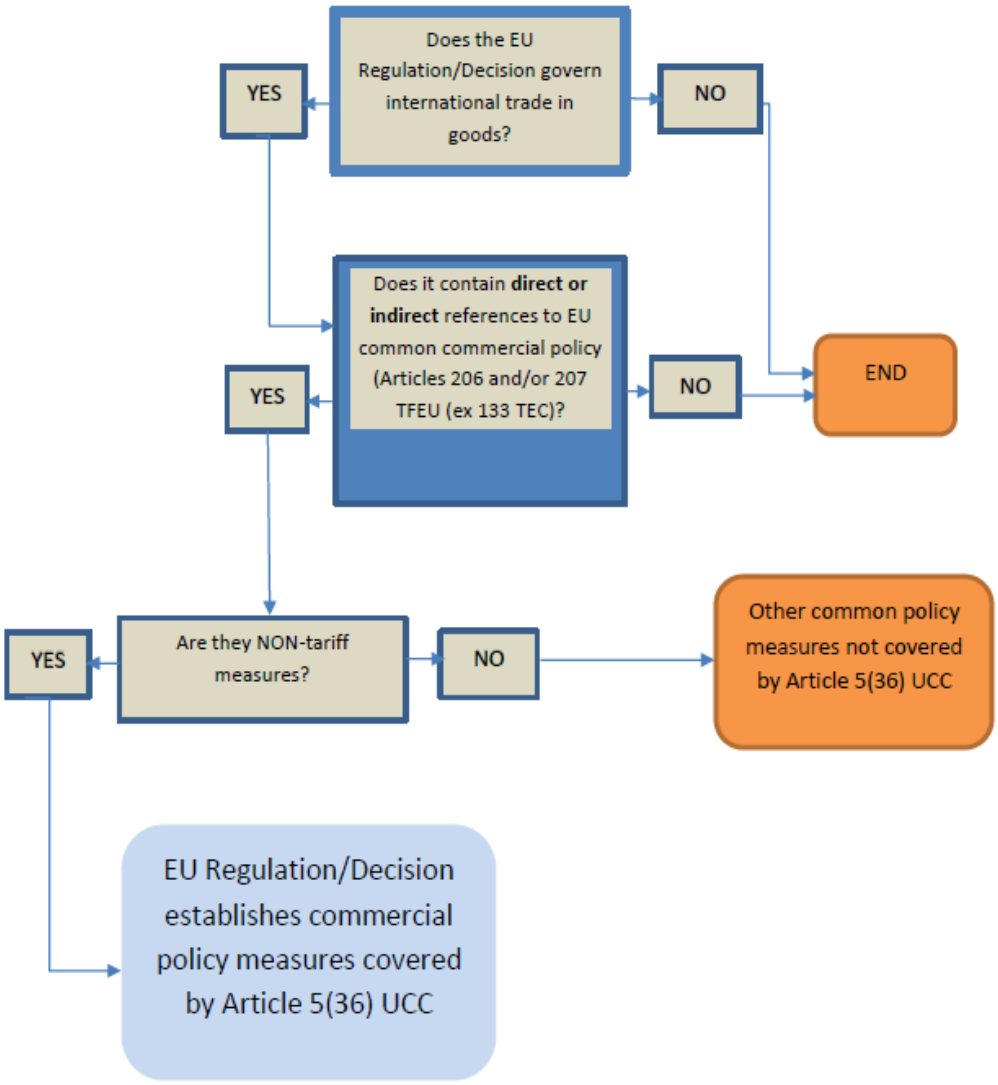
If a stakeholder has submitted information to the customs authorities which may be considered as such evidence, it should be forwarded to the Commission and will be shared with other members of the CEG. A non-confidential version of this information will be made available on TAXUD's website if the CEG has advised the competent customs authorities that the stakeholder's information is an evidence that the essential interests of Union producers are likely to be adversely affected.

'Evidence' in this context is not a 'proof' that the essential interests are negatively affected, but evidence is substantiated information e.g. statistics that can be used in order to conclude whether the essential interests are actually negatively affected or not. This conclusion has to be drawn after the economic conditions were examined.

Commercial policy measures

Common commercial policy, as referred to in Articles 206 and 207 TFEU (ex 133 TEC) includes tariff and non-tariff measures. Tariff measures are not included within the scope of Article 5(36) UCC.

According to Article 166(1) UCC-DA, subparagraphs b) and c), it is necessary to examine the economic conditions if goods placed under inward processing are subject to commercial policy measures. Such measures are defined in Article 5(36) UCC. To determine whether EU provisions governing international trade in goods have to be considered as commercial policy measures for customs purposes or not, the following flowchart may be used:



The following non-exhaustive list gives examples of Union provisions that fall under the scope of "commercial policy measures" as defined in Article 5(36) UCC:

CPMs	EU Regulations	Subjects	Reference direct or indirect to the Common Policy Measures of the Union
Health certificates	Commission Implementing Regulation (EU) No 884/2014 of 13 August 2014 which refers to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002	884/2014 - imposing special conditions governing the import of certain feed and food from certain third countries due to contamination risk by aflatoxins and repealing Regulation (EC) No 1152/2009 178/2002 - laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety	Ex Article 133 TEC
Surveillance document	Commission Implementing	Introduction prior Union surveillance of imports of certain aluminium	2018/640 refers to Reg. (EU) 2015/478 of the

	Regulation (EU) 2018/640 of 25 April 2018	products originating in certain third countries	European Parliament and of the Council of 11 March 2015 that refers to Article 207(2) TFEU and to Reg. (EU) 2015/755
Surveillance document	Commission Implementing Regulation (EU) No.2016/670 of 28 April 2016	Introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries	2016/670 refers to Reg. (EU) 2015/478 of the European parliament and of the Council of 11 March 2015 that refers to Article 207(2) TFEU and to Reg. (EU) 2015/755
Licence (Partnership Agreements)	Council Regulation (EC) No. 2173/2005 of 20 December 2005	The establishment of a FLEGT licensing scheme for imports of timber into the European Community	Ex Article 133 of the Treaty establishing the European Community (TEC)
Import autorisations for textile products (subject to quantitative quotas)	Regulation (EU) 2015/936 of the European Parliament and of the Council of 9 June 2015	Common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Union import rules (Annual quantitative limits managed by import authorization)	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof.

Examination of the economic conditions at the Union level

All the examinations of the economic conditions must be carried out at the Union level.
Where, after the issuing of an authorisation for inward processing anti-dumping measures are imposed on the goods placed under the IP procedure, an examination of the economic conditions may be required in accordance with Article 259 (2) or (3) IA. Such examination is possible only where evidence exists that the essential interests of the Union producers are likely to be adversely affected by the use of the authorisation.

'Evidence' could mean for instance, a substantiated complaint including concrete elements lodged by associations which explain why the use of the inward processing has affected the essential interests of the Union producers.

Standardised exchange of information

The standardised exchange of information entails the use of INF, but Article 176 UCC-DA also allows the possibility to use “other means of electronic exchange of information”.

"Other means of electronic exchange of information" in relation with Article 176(1)(a) DA can be used either for the outward processing or the inward processing procedure. They may include data files (i.e. Excel sheet, Concurrent Versions System (CVS), etc.) but must provide

all data elements which are required under Annex 71-05 DA. Data files may be provided under the conditions that the information about the "balance" is available to the competent customs office by the time of release of the goods. This enables the competent customs authority to decide which quantity of processed products can be released for free circulation after outward processing.

The obligations established in Article 176 UCC-DA are independent from the ones established in Article 175 UCC-DA. From practical point of view, Article 176 UCC-DA applies before Article 175 UCC-DA.

The INF system should be used where there are several different customs offices involved.

The competent customs office(s) may decide to use other means of electronic exchange of information, in accordance with Article 176(1)(a) UCC-DA, if all the necessary data for the application of the customs legislation can be available by other means of electronic exchange.

Section B of the INF system should be used where Article 86(3) UCC applies and there are subsequent SPE authorisations involved, such as in the following example:

a) goods are placed under IP in EU Member State A and Article 86(3) UCC applies,
b) the IP procedure is discharged in EU Member State A by placing the goods under transit with office of destination located in EU Member State B,
c) goods are placed under IP in EU Member State B, and
d) the goods are released for free circulation in EU Member State B.

Final Provisions

The use of the authorisations in force on 1 May 2016 issued under the CCC and CCIP is allowed. However, the UCC and its related Commission acts must be respected (Table of correspondence referred to Article 254 of the DA (Annex 90 of the DA)). This means that, for example, procedure codes 41 and 91 cannot be used in the first subdivision of box 37 of the customs declaration for placement of goods under these procedures but they may be used in the second subdivision of box 37 of the customs declaration for indicating the previous procedures in the context of discharge of these procedures.

The use of authorisations already in force on 1 May 2016 issued under the CCC and CCIP is allowed without any amendment.

Example:

The PCC authorisations may be used without any amendment under the UCC rules of the IP.

An amendment under UCC conditions of an existing authorisation is possible. It is not required to issue a new UCC authorisation to replace the existing one. However, if there is a request for a significant amendment which would affect the customs supervision of the authorisation, it is suggested to carry out re-assessment of the authorisation for the operation of storage facilities for customs warehousing of goods.

Example:

PCC authorisations may be amended under the UCC conditions. It would be allowed to add in box 7 additional goods, which can be placed under procedure if no examination of economic conditions is necessary.

Where the existing authorisations have been issued without provision of a guarantee or with partial guarantee, the authorisations may be used nevertheless without obligation to provide additional guarantee.

The use of an existing authorisation issued without an examination of economic conditions is permitted even where the UCC requires an examination of the economic conditions before an authorisation is issued. However, as foreseen by the UCC, a future examination of these economic conditions is not precluded.

The use of an existing authorisation issued with an examination of economic conditions is permitted even without a second examination under the UCC conditions.

T5 and INF sheets, which have been used for transactions started before 1 May 2016 and not completed on that date, may be used on or after 1 May 2016. Where applicable, the document may be used also for the purposes of discharging the procedure for the goods placed under the relevant procedure before 1 May 2016.

Authorisation for inward processing suspension system with prior exportation issued before the 1 May 2016 which covers import goods subjected to antidumping duties may be used on or after 1 May 2016. There is no necessity to amend the authorisation in such cases if the solutions as indicated in Annex VI are used. Under the UCC provisions it is not possible to use equivalent goods if the non-Union goods were subject to antidumping duties (see Article 169 DA). More information is provided in **Annex VI** to this document.

Re-assessment of authorisations for the operation of storage facilities for the customs warehousing of goods shall be carried out by 1 May 2019 by customs according to their national work plan. The request of the holder of the authorisation for re-assessment is not required. Before customs authorities re-assess an authorisation, it is suggested to ask holders of the authorisations whether they wish to continue to use the authorisation or they intend to submit a new application for authorisation. If there is no expression of interest to continue using the authorisation within the set time limit, or no intention to submit an application, the authorisation should be re-assessed.

After re-assessment, the existing authorisation must be revoked in any case. Where the person concerned has provided all required additional information, the new authorisation must be issued in line with the UCC terminology and the UCC provisions. In cases where the holder of the authorisation has submitted a new application for an authorisation before re-assessment, such re-assessment by customs is not required (see Article 345(1) and 349 IA, and Article 250 DA).

The PCC authorisations which remain valid after 1 May 2016 may be used as IP authorisations (see Annex 90 DA) under the conditions that the calculation of import duty with regard to processed products or goods in an unaltered state or semi processed products is made in accordance with Article 85 UCC.

For the inward processing authorisation granted before 1 May 2016, the calculation of the amount of import duty for the processed products declared for release for free circulation should be made in accordance of Article 86(3) UCC. In those cases, where for an IPR authorisation granted before 1 May 2016 the holder of the authorisation has applied for application of Article 122 (c) CC, calculation of import duties may not take place on the basis of Article 85(1) UCC because such case is not mentioned in Annex 90 point 15 DA.

Example 1:

The import goods were placed under the inward processing suspension system procedure before 30.04.2016.
Part of them in the form of main processed products was re-exported.
After the 01.05.2016 the second part of import goods is declared for release for free circulation in the following forms:

- *main processed products,*
- *waste (secondary processed products),*
- *goods in unaltered state.*

Calculation of the amount of import duty:

- *for the main processed products must be made in accordance with Article 86 (3) UCC unless the case is covered by Article 167(1) (h) (i) (m) (p) (r) or (s) DA;*
- *for waste (secondary processed products) must be made in accordance with Article 85 UCC, unless a request was made to apply Article 86(3) UCC;*
- *for goods in unaltered state must be made in accordance with Article 85 (1) UCC.*

Example 2:

The import goods were placed under PCC procedure before 30.04.2016.
After the 01.05.2016 the import goods are declared for release for free circulation in the following forms:

- *main processed products,*
- *waste (secondary processed products),*
- *goods in unaltered state.*

Calculation of the amount of import duty:

- *for the main processed products must be made in accordance with Article 85 (1) UCC;*
- *for waste (secondary processed products) must be made in accordance with Article 85 UCC, unless a request was made to apply Article 86(3) UCC;*
- *for goods in unaltered state must be made in accordance with Article 85 (1) UCC*

Additional guidance on the use of an SPE authorisation which has been issued under Article 211 UCC

Declarant for a special procedure

Only the holder of the authorisation for Inward Processing, Outward Processing, End-Use, Temporary Admission, and private Customs Warehousing has the right to declare goods for the relevant special procedure (see 2nd subpar. of Article 170(1) UCC).

The holder of the authorisation may be represented (see Article 18 UCC). If so, only direct representation is possible (see below Rights and obligations).

The holder of the authorisation for the operation of storage facilities for the public customs warehousing of goods or any other person may declare goods for the public customs warehousing. These persons may be represented directly or indirectly.

Holder of the procedure

The person who has lodged the customs declaration (declarant), or on whose behalf that declaration is lodged is the holder of the procedure, if the goods have been released for the relevant special procedure (see Article 5(35) UCC).

The holder of the procedure may also be a person to whom the rights and obligations have been transferred (TORO).

Rights and obligations

The holder of the authorisation for Inward Processing, Outward Processing, End-Use, Temporary Admission, and private Customs Warehousing has rights and obligations as laid down in the authorisation which was issued in accordance with Article 211 UCC. Therefore the holder of the procedure and the holder of the authorisation has to be the same person.

This follows from the second subparagraph of Article 170(1) UCC which states that "where acceptance of a customs declaration imposes particular obligations on a specific person, that declaration shall be lodged by this person or his representative". A declaration for these special procedures imposes obligations on the person who has been granted an authorisation for the use of IP, OP, TA or end-use. Therefore, only the holder of the authorisation for IP, OP (IM/EX and EX/IM), TA or end-use may lodge the declaration. However, in case of IP EX/IM where TORO takes place, the transferee may lodge the declaration. In this case the distinction between the two types of holder loses some relevance, since the same person is responsible for all obligations anyway. However, it is still necessary to identify which obligations arise from which role, since transfer of rights and obligations is only possible for the rights and obligations of the holder of the procedure.

If indirect representation was possible, the holder of the authorisation and the holder of the procedure would not be the same person. It would mean that the holder of the procedure has rights and obligations which were laid down for the holder of the authorisation, meaning for

another person. For that reason, indirect representation is not possible regarding the declaration for the above mentioned special procedures.

The holder of the authorisation for operating storage facilities which are used for public Customs Warehousing has rights and obligations as laid down in the authorisation which was issued in accordance with Article 211(1)(b) UCC. However, in contrast to the previous paragraph, the holder of the procedure and the holder of the authorisation do not have to be the same person. The use of the public customs warehousing procedure does not require an authorisation, only the operation of storage facility. For that reason, any person may declare goods for public Customs Warehousing. Consequently, indirect representation is also possible because in the end it is a commercial issue of economic operators.

Revocation of an authorisation

A favourable decision must be revoked without delay if one or more of the conditions for taking that decision were not or are no longer fulfilled (see Article 28(1)(a) UCC). The effect of the revocation may be postponed in exceptional cases where the legitimate interests of the holder of the decision so require (see Article 28(4) UCC). This period of grace may not go beyond the end date of the period of validity of the authorisation to be revoked. However, this period of grace may not last for more than one year from the day following the date on which the decision on the revocation is received by the holder of the authorisation (see Articles 28(4) UCC and 259(6) UCC-IA). The date in which revocation takes place must be indicated in the decision on revocation.

Example 1:

An authorisation on inward processing is valid until 1 October 2020. One of the conditions for this authorisation is not met anymore and hence a decision on revocation was taken on 1 May 2018, with effect on 1 April 2019 in accordance with Article 28(4) UCC (i.e. a period of grace of 11 months has been granted). Therefore, goods may still be placed under inward processing by using this authorisation until 31 March 2019 (i.e. the authorisation remains valid until 31 March 2019 and revocation takes effect from one day after). The period for discharge is 6 months. Therefore, the discharge of the inward processing procedure concerning this authorisation may not take place beyond 30 September 2019.

The same principle applies in the case where economic conditions are not fulfilled anymore (see Article 259(6) UCC-IA).

Example 2:

An authorisation on inward processing is valid until 1 October 2018. One of the conditions, namely economic conditions, for this authorisation is not met anymore and hence a decision on revocation is taken without delay on 1 May 2018. A period of grace is granted by the competent customs authority. However, the latest day on which the decision on revocation has to take effect is 2 October 2018.

Application for renewal of SPE authorisations granted under the Community Customs Code provisions

Current customs legislation

Apart from the vast changes in the legislation concerning special procedures other than transit (which, unlike former customs legislation, currently includes end-use as special procedure), as well as the transitional rules in Article 349 UCC-IA concerning the discharge of procedures which do not exist in the UCC, it has to be stressed that the main provision concerning customs decisions on special procedures is not the CCC anymore, but Article 211 UCC, which means the following:

a) Every application for renewal of any authorisation has to be treated under the UCC provisions. It should be noted that renewal of an authorization means that all information, conditions and references to customs rules are unchanged. Only the period of validity of the authorization is different from the previous authorization. Taking into account that the UCC and its related COM acts are very different from the CCC and its Implementing Regulation, the 'old' authorisation cannot be renewed. Therefore an application for renewal of an Inward Processing or Processing under Customs Control authorisation granted before 1st May 2016 has to be rejected. The person concerned (holder of the expired 'old' authorization) must submit a new application for an authorization.

b) The condition laid down in Article 211(2)(e) UCC for granting authorisations with retroactive effect only refers to authorisations granted after 30 April 2016 (i.e. under the UCC provisions). Therefore, the 3-year period established in Article 211(2)(e) UCC does not cover authorisations with retroactive effect which were granted before 1 May 2016. This means that Article 172(3) UCC-DA applies only in the case of applications for renewal of authorisations which were granted according to the UCC. Hence, Article 172(3) UCC-DA does not apply in the case of renewal of authorisations which were granted before 1st May 2016.

c) If an application for renewal of an authorisation for a special procedure other than transit granted before 1st May 2016 is submitted, the customs authorities have to reject such application for the reasons mentioned under point a) above. The person concerned has to submit a new application for an authorization. If the economic conditions need to be examined according to the UCC (only applicable for applications for processing procedures), the file has to be sent to the Commission, even in cases where the 'old' authorization was granted after the Customs Code Committee concluded that the economic conditions were met and/or the economic situation in the sector concerned has not changed in the last years. The reason of this is because former customs legislation established different rules in order to determine whether economic conditions were fulfilled or not. It has to be stressed, for example, that the condition to "help create or maintain a processing activity" in Article 133(e) CCC does not exist anymore in the current customs legislation; it can also be stressed that there are many differences between Article 167 UCC-DA and Annex 70 CCIP.

Example 1: Application for renewal of an authorisation for the use of a customs procedure with economic impact granted under the CCC

An economic operator is the holder of an authorisation for Processing under Customs Control (PCC) granted in 2015 and requests a renewal in 2018. The request for renewal of this authorisation has to be rejected.

Example 2: Retroactive effect 3-year period

A Union producer is the holder of an authorisation for Inward Processing (IP, suspension system) granted with retroactive effect in 2015. This producer applies for a different IP authorisation in 2017 with retroactive effect. In this case, the condition required in Article 211(2)(e) UCC is deemed to be fulfilled because the IP authorisation with retroactive effect was granted in 2015 under the CCC provisions, even though the 3-year time-limit required is not finished yet. Therefore, if the other applicable requirements are met, the authorisation should be granted.

Example 3: Examination of economic conditions

An economic operator is the holder of an authorisation for Processing under Customs Control granted in 2015 for three years after examination of the economic conditions by the Customs Code Committee. This operator applies for a renewal of the 'old' authorisation in 2018. The request for renewal must rejected by the customs authorities. The person concerned submits an application for an authorisation for the use of inward processing. He claims that the economic conditions were already examined in 2015 and the economic situation has not changed since 2015. According to the current customs legislation the economic conditions have to be examined. In this case, the file has to be sent to the Commission even though the economic conditions were already examined in 2015.

Amendment of a SPE authorisation after the end of the period of validity

The amendment of a SPE authorisation may be made in accordance with Article 28 UCC. However, this action is possible under the condition that:

a) the SPE authorisation is still valid according to Article 173 UCC-DA or,

b) if the validity period mentioned in Article 173 UCC-DA has expired, under the condition that the amendment is exclusively linked to goods already placed under the procedure and the discharge of that procedure for those goods has not taken place yet. as long as this amendment allows the holder of the authorisation to comply with the conditions estabilished in this authorisation.

In case a), the normal procedure for amendment of the IP authorization would apply.

In case b), the competent customs authorities may take instead a separate favorable decision according to Article 22 UCC (e.g. change of customs office of discharge, extension of time limit for discharge or change of place of processing).

Non-Union aircrafts, spare parts and accessories taken to the EU for repair of aircrafts

In the case of aircrafts, spare parts and accessories thereof transported to the customs territory of the Union for repair operations, they can be declared for any of the following customs procedures:

a) Temporary admission,
b) Inward processing,
c) End-use,
d) Free zone/customs warehousing, and
e) Release for free circulation.

Whether the repairs are planned in advance or not is not a decisive factor to determine the customs procedure for which the goods can be declared, but this is a relevant aspect to determine the most efficient and less cumbersome way to declare them allowing economic operators to comply with the obligations set out in the UCC.

In the case of a company that carries out or arranges for repair or maintenance of aircrafts to be carried out in the EU using non-Union spare parts or accessories, it would be recommendable to obtain a previously granted authorisation for end-use, inward processing and temporary admission to cover all the possible operations to be carried out, unless the company considers that one or two of those procedures already covers all its possible business cases. This would let the company apply the most suitable procedure for each case. Customs warehousing is possible not for repair, but to store spare parts and accessories to be used for repair at a later stage.

According to that, these are the possible customs procedures to be applied.

A) Temporary admission

Despite in principle temporary admission is only admissible when the goods are not intended to undergo any change, except normal depreciation due to the normal use of them (see Article 250(2) UCC), Article 204 UCC-DA develops Article 211(1)(a) UCC and includes the possibility of applying the temporary admission procedure for repair and maintenance operations to the aircraft, as well as its spare parts and accessories.

This customs procedure could be used for urgent repair of aircrafts placed under temporary admission. Lodging a standard customs declaration would not be the only possible option for the economic operators involved.

Aircrafts, spare parts and accessories thereof can be declared by means of an oral declaration for temporary admission and re-export or by any other act in accordance with Articles 136(1)(a), 139(1) and 141(1) UCC-DA.

Total relief from import duty would apply to the aircraft, as well as its spare parts and accessories, provided that the conditions set out in Articles 212 or 213 UCC-DA, depending on the case, are met.

B) Inward processing

This customs procedure can be applied for any processing operation, including repair or maintenance, as well as for any upgrade of the aircraft. It can be considered by default as the procedure to be applied for repair or maintenance operations. The facilitation set out in Article 324(1)(c) UCC-IA could also be applicable if the relevant conditions are met.

Usual forms of handling as referred to in Article 220 UCC can also be carried out in this case.

C) End-use

This procedure can only apply when the goods taken to the customs territory of the Union are eligible for that procedure according to the commodity code applicable to the specific goods. As the goods are released for free circulation, this procedure may be useful for repair or maintenance of aircrafts that have Union status, as well as for any upgrade of the aircraft.

Article 254(6) UCC on waste and scrap may apply to any defective parts removed from the aircraft.

Among others, the following provisions apply:

a) Point B, Section II of Annex I of Regulation (EEC) 2658/87, and
b) Regulation (EC) 3050/95.

D) Free zone/customs warehousing

Even though those procedures could not be applied when the aircraft spare parts or accessories are used for repair or maintenance, it may be useful to use those procedures to store the aircrafts that are to be repaired or maintained until the operation takes place and use them for repair or maintenances of aircrafts to be done at a later stage.

Usual forms of handling as referred to in Article 220 UCC can also be carried out in this case.

E) Release for free circulation

This customs procedure is always possible and it may entail the payment of import duty or benefiting from any duty relief.

Aircrafts, spare parts or accessories thereof that have been previously exported can benefit from total relief from import duty as returned goods according to Article 203 UCC.
According to Articles 138(1)(c) and 141(1) UCC-DA, those goods can be released for free circulation by means of an oral declaration or any other act if they benefit from relief from import duty as returned goods in accordance with Article 203 UCC, upon request from the declarant.

The EASA Form 1 can be used to benefit from relief for import duty for the aircraft spare parts and accessories that are eligible for that purpose when declared for release for free circulation.

Release for free circulation can also be useful for any upgrade of the aircraft.

Non-Union defective parts

When non-Union defective parts are taken out of the non-Union aircraft subject to repair or maintenance, and without prejudice to other possible options to discharge the customs procedure (e.g. destruction), they have to be declared for a subsequent customs procedure.

Article 214 UCC
Records

Records for temporary admission must be kept only at the request of the customs authorities[2].

AEOC automatically complies with the obligation to keep records in the appropriate form as required by customs authorities, if customs authorities have verified that the conditions on which the authorisations are issued are sufficient to fulfil the requirements of this article (see Article 214(2) UCC).

Article 215 UCC
Discharge of a special procedure

General aspects

The terminology used in Article 215(1) UCC and in Article 89(1) CC is different, but the rules of discharge of special procedure are the same, meaning no change in the substance. However, the discharge of special procedure is also possible by destruction of goods with no waste remaining.

When goods are held under a special procedure, the assignment of those goods to another customs procedure or to re-export needs not be made by the holder of the authorisation for the original procedure.

Calculation of the amount of import duty

When the discharge of temporary admission with total relief from import duty takes place by release for free circulation, the calculation of the amount of import duty must be done according to Article 85(1) UCC. The value of the goods at themoment in which they were placed under the temporary admission procedure is not the basis for the calculation of the import duty, as it was under the CCC.

Where the discharge of the IP takes place by release for free circulation, import duty must be paid. Regarding the calculation of the amount of the import duty, the rate that has to be applied must be the rate that is valid on the date the customs debt is incurred. Where applicable, import

[2] See Article 178 (4) of the DA

duty rate includes antidumping, countervailing duty, etc. This calculation method applies both for calculation on the basis of Article 85(1) and of Article 86(3) UCC.

Where the calculation takes place in accordance with Article 86(3) UCC for processed products as defined in Article 5(30) UCC, the customs value including the exchange rate and the other elements mentioned in this article are those that apply on the date on which the customs declaration was accepted for the goods which were placed under inward processing and processed.

The calculation method as specified in the IP authorisation has to be applied also in cases where customs debt is incurred after the use of a subsequent special procedure. For that reason, any subsequent customs declaration has to contain the indication as referred to in Article 241(1) DA.

In case of a customs debt incurred for processed products obtained from successive processing operations under IP, the amount of import duty has to be calculated according to the calculation method established in the first IP authorisation, provided the method established in such authorisation is the one stated in Article 86(3) UCC. The calculation method established in the succesive IP authorisations are overruled by the one established in the first authorisation, according to the purpose of Article 86(3) UCC, which is to exclude the value of Union goods and/or the added value resulting from the processing operations undergone in the customs territory of the Union from the calculation of the import duty.

The general rules are explained below:

a) Successive IP authorisations where only Article 86(3) UCC calculation method is established in the first one: in case of customs debt incurred after the second or successive IP procedure, Article 86(3) UCC will apply and Article 85 UCC is excluded.

b) Successive IP authorisations where only Article 85 UCC calculation method is established in the first one: in case of customs debt incurred after the second or successive IP procedure, Article 85 UCC will apply unless the declarant requested Article 86(3) UCC to be applied.

c) Successive IP authorisations where both Articles 85 and 86(3) UCC calculation methods are allowed in the first one: in case of customs debt incurred after the second or successive IP procedure, Article 85 UCC will apply unless the declarant requested Article 86(3) UCC to be applied.

The customs declaration for the subsequent customs procedure must contain the indication “IP” as stated in Article 241 UCC-DA.

In cases where the amount of import duty is calculated on the basis of Article 86(3) UCC, costs for UFH don’t have an impact on the amount of import duty to be paid because of Article 86(1) UCC cannot be applied. This provision can only be applied where the amount of import duty is calculated on the basis of Article 85 UCC.

Example 1:

Goods subject to anti-dumping duties (if they were declared for release for free circulation) are placed under inward processing covered by an authorisation which stipulates that the calculation of the amount of import duty must be made in accordance with Article 86(3) UCC. These goods are processed into processed products. Subsequently the products are moved under external transit to a customs warehouse. When the goods are released for free circulation after the customs warehousing procedure, calculation of import duty for the processed products still has to be made on the bases of Article 86(3) UCC because the obligation to apply this calculation method still exists even if the inward processing procedure was discharged.

The discharge of the inward processing does not have any impact on the calculation method to be applied if the customs debt incurs after such discharge, because inward processing was used under the condition that the stipulated calculation method has to be applied in case of a customs debt.

However, if at the moment of acceptance of the customs declaration for release for free circulation of processed products obtained from goods placed under the inward processing and those goods are not covered by ADD measures anymore, anti-dumping duties must not be paid.

Example 2:

Inward processing can be discharged and followed by subsequent inward processing (code 5151).

Example 3:

Temporary admission can be discharged and followed by a subsequent temporary admission. If there is a need for movement of goods, such movement may take place under Article 179(1) DA. It is similar to the examples given in Annex 1/Article 215 and Article 219 UCC.

Example 4:

Non-Union goods are placed under the Inward Processing procedure. The authorisation establishes that the customs debt must be calculated applying the provisions of Article 86(3) UCC. Subsequently, processed products resulting from these goods are placed under the Customs Warehousing procedure and undergo Usual Forms of Handling and they are packed using Union and non-Union packages. In case of release for free circulation the cost of the packages would not be included in the customs value of the declaration because Article 86(3) UCC refers to the data of the goods placed under Inward Processing at the time of the acceptance of the customs declaration relating to those goods. Therefore, Article 86(1) UCC can only be applied together with Article 85 UCC, but not with Article 86(3) UCC.

NB: As regards the calculation of the amount of import duty according to Article 86(3) UCC, Article 76 UCC-DA states that this method of calculation applies to ‘processed products’

under certain conditions. The concept ‘processed products’ mentioned in Article 76 UCC-DA includes within its scope ‘secondary processed products’, as defined in Article 1(9) UCC-IA.

Examples of destruction

Goods are placed under a special procedure. During the use of the special procedure there is a necessity to destroy either the goods placed under the procedure or/and the products obtained under IP on request by the holder of the procedure. Destruction should be done under Inward Processing.

Option 1- Economic Operator has already a previously issued standard authorisation for Inward Processing.

In this case, the scope of the Authorisation could be amended by adding 'Destruction' as an authorised processing operation unless the destruct at the time the authorisation for IP was already authorised.

Option 2 – Economic operator does not have a previously issued standard authorisation for Inward Processing.

In this case, the economic operator could lodge an application for an authorisation based on the customs declaration as simplest solution. If this is not possible (e.g. goods are covered by Annex 71-02 DA), the economic operator may apply for a standard authorisation for Inward Processing.

Regarding the application of commercial policy measures as referred to in Article 202(3) UCC, the mention to “those goods” in Article 202(3) UCC refers to “processed products”.

Therefore, if goods are placed under the IP procedure and such goods undergo processing operations, then the processed products which are released for free circulation will be subject to the commercial policy measures applicable to those processed products, but only if the same commercial policy measures are also applicable to the goods placed under the IP procedure.

Examples where no destruction takes place

Example 1:

Apples are placed under inward processing. The main processed products are peeled apples. The peels are a secondary processed product and they are not waste because their economic value is not considered to be low (see Article 1(41)(b) UCC-DA). These peels may be processed under another inward processing authorisation (e.g. to make compost). In this case, no destruction has taken place by the processing activity that leads to compost.

Example 2:

Fish is placed under inward processing. The main processed products are fish fillets. The fish bones are a secondary processed product and they are not waste because their economic value is not considered to be low (see Article 1(41)(b) UCC-DA). The fish bones are burned and the

steam resulting of this operation is used to produce electricity. If the steam would not be used to produce electricity, but simply released to the air, this operation would be considered as a destruction of fish bones with no waste remaining.

Common elements to take into consideration to consider the destruction of goods as a processing operation

1) The purpose of the holder of the IP authorization

If the goods placed under the IP procedure are, or have become, unfit for their intended use, the holder of authorisation may decide to destroy those goods to minimize the costs of storing or processing goods that cannot be sold.

In this case, unless the main purpose to place the goods under IP was destruction (e.g. an economic operator who places non-Union scrap under IP to destroy it with no waste remaining), the main purpose of the holder of the IP authorisation would change. Such purpose is no longer, for instance, to process the goods to obtain processed products and sell them, but to destroy them in order to minimize costs. In this case, there are no main processed products because the purpose of the processing operation is to destroy the goods as established in Article 5(37)(c) UCC, i.e. to process them to obtain 'nothing'. If the destruction process produces secondary products, the IP procedure must be discharged for these secondary processed products.

NB: Destruction can be included in the IP authorisation as a processing operation in the sense of Article 5(37)(c) UCC if the purpose of the holder of the authorisation is exclusively to destroy the goods. If the purpose of the holder of the IP authorisation is to destroy the goods and obtain processed products out of this procedure (e.g. electrical energy or flour), then the processing operation to include in the IP authorisation would be the 'processing of goods' in the sense of Article 5(37)(b) UCC, unless the destruction is not a usual operation in the business model of the economic operator concerned. Therefore, if the processing operation is not a usual operation according to the business model of the economic operator concerned, the processing operation to include in the IP authorisation would be 'destruction' in the sense of Article 5(37)(c) UCC. This can be explained with the following three examples:

Example 1:

An economic operator places goods under IP and, after placing the goods under IP, (s)he finds out that the goods cannot be sold and the less costly solution is to destroy them. In this case, if the only purpose is to destroy the goods (e.g. once the goods are destroyed the economic operator is not getting any economic advantage by selling the secondary processed products remaining from the destruction), and taking into account that destroying goods is not a usual operation in the business model of this economic operator, then destruction can be included in the IP authorisation as a processing operation in the sense of Article 5(37)(c) UCC.

Example 2:

The holder of an IP authorisation places goods under IP and, after placing the goods under IP, (s)he finds out that the goods or processed products obtained therefrom cannot be sold and the less costly solution is to destroy them. In this case, (s)he considers the idea of sending them to a plant where the goods are destroyed and a product is obtained from this destruction; this product is sold and the economic operator gets a part of the sale price. Destruction can be included in the IP authorisation as a processing operation in the sense of Article 5(37)(c) UCC as long as the only purpose of the operation is to destroy the goods (regardless whether an economic compensation is obtained from it or not) and that destroying goods is not a usual operation in the business model of this economic operator.

Example 3:

An economic operator places goods under the customs warehousing procedure and, after placing the goods under customs warehousing, (s)he finds out that the goods or processed products obtained therefrom cannot be sold and the less costly solution is to destroy them. In this case, (s)he sends them to a plant where the goods are destroyed in exchange of a fee, which is the product obtained from this destruction (e.g. electrical energy) or the payment of a certain amount of money, or a combination of both. The economic operator can apply for an IP authorisation to destroy the goods and destruction can be included in the IP authorisation as a processing operation in the sense of Article 5(37)(c) UCC, provided that the only purpose of the operation is to destroy the goods and that destroying goods is not a usual operation in the business model of this economic operator.

2) Economic reason

As previously mentioned, when non-Union goods are in TS or placed under IP or any other special procedure, if there is a purpose to destroy the goods there has to be an economic reason, e.g. the goods cannot be sold in the EU because they do not comply with a certain Regulation, and the economic operator must destroy them to minimize costs as it is more expensive for him/her to re-export them. No economic operator has an economic reason to import goods with the sole purpose of destroy them, unless he/she is paid to do that service. Therefore, there has to be an economic reason to destroy the goods placed under IP.

3) Customs formalities

Once the economic operator decides to destroy the non-Union goods, there are two possibilities:

1. If the economic operator is not the holder of the IP authorisation (e.g. the non-Union goods were previously placed under the customs warehousing procedure), (s)he may submit an application for an authorisation, which may include the following processing operations:

    a. Destruction, which would be the only processing operation if all the non-Union goods have to be destroyed (provided that the only purpose of the holder of the applicant of the IP authorisation is to destroy the goods as mentioned in common element 1), and

b. Other processing operations if a part of the goods can be further processed (e.g. those goods cannot be sold in the EU as such, but they can be processed to a processed product that can be sold in the EU).

2. If the economic operator is already the holder of the IP authorisation, (s)he can request the amendment of this IP authorisation to add 'destruction' as processing operation.

In case of destruction, as the only purpose is to destroy the goods, there cannot be main processed products. Only secondary products can result from the process of destruction. Those secondary processed products should undergo customs formalities to discharge the IP procedure, e.g. be placed under a customs procedure or re-exported.

4) Main and secondary processed products

Article 1(2)(7) IA defines 'main processed products' as *'the processed products for which the authorisation for inward processing has been granted'*. Article 1(2)(9) IA defines 'secondary processed products' as *'processed products which are a necessary by-product of the processing operation other than the main processed products'*. In the case of destruction, as mentioned above, there are no main processed products and there can only be secondary processed products. As main processed products are the ones *for 'which the authorisation for inward processing has been granted'* and the secondary processed products are '*other than the main processed products',* we cannot consider that the IP authorisation was granted for the secondary processed products.

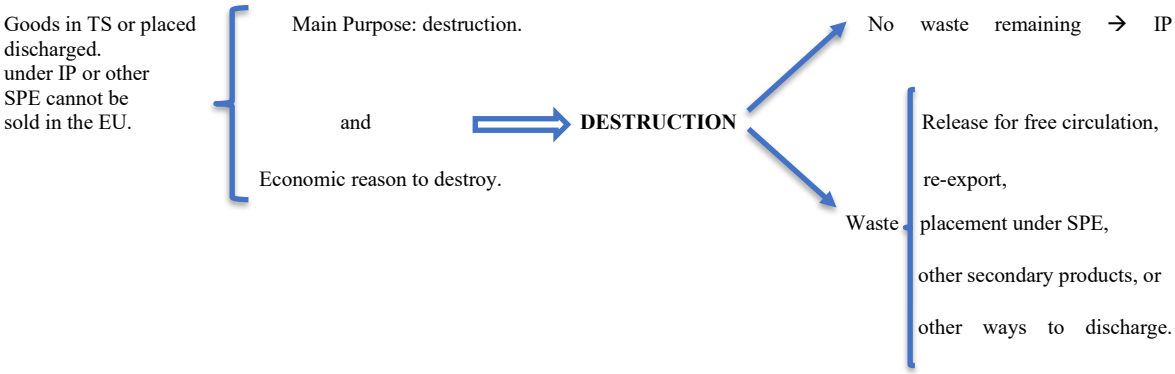
Criteria to apply regarding the destruction of goods as a processing operation

1. When the destruction of goods is the sole purpose for the holder of the authorisation because (s)he has an economic reason (e.g. to minimize costs), Article 76(2) UCC-DA does not apply to cases of destruction of goods placed under the IP. This is because Article 167(1)(p) UCC-DA applies. Therefore, Article 85(1) UCC would apply in this case.

2. If the destruction process produces secondary processed products, the IP procedure has to be discharged for those products, which can be done, for instance, by releasing them for free circulation in accordance with Article 85(1) UCC. According to Article 76(2) UCC-DA, Article 86(3) UCC does not apply because Article 167(1)(p) UCC-DA applies, unless the applicant requests for the application of Article 86(3) UCC.

3. If there is no waste remaining from the destruction process, the IP procedure is discharged (see Article 215 UCC).

This diagram shows the procedure mentioned above:



If the secondary processed products cannot be destroyed due to environmental reasons, the disposal of such goods would entail that they are deemed to be re-exported provided that the conditions established in the relevant provisions are fulfilled (see Article 324(1)(f) UCC-IA).

Natural loss

If goods placed under a special procedure are affected by a natural loss, this natural loss must not be considered as a non-compliance with the obligations laid down in the customs legislation in the sense of Article 79 UCC. Therefore, a customs debt does not incur in this case.

Example 1:

100 tons of non-roasted coffee beans are placed under customs warehouse procedure. After several months, the whole consignment is declared for release for free circulation. Due to natural loss of water from the coffee beans, the consignment has a weight of only 99.5 tons. These 99.5 tons are covered by Article 77 UCC and the other 0.5 tons cannot be covered neither by Article 77 UCC, nor by Article 79 UCC because there has not been a non-compliance with the obligations.

Example 2:

100 litres of whiskey in oak barrels are placed under customs warehouse procedure. The authorisation for customs warehousing granted by the competent customs authorities allows a tolerance rate of 1 % of natural losses. After several months, the whole consignment is declared for release for free circulation. Due to natural loss, the consignment has an amount of only 98.5 litres (i.e. losses worth 1.5 %). After consultation with the concerned trader, the customs authorities may face 2 scenarios:

a) *The losses higher than 1% are due to technical reasons which are duly explained to the satisfaction of the customs authorities. These 98.5 litres are covered by Article 77 UCC and the other 1.5 litres cannot be covered neither by Article 77 UCC, nor by Article 79 UCC because there has not been a non-compliance with the obligations. Therefore, there is no customs debt for the missing 1.5 litres. The concerned trader*

may apply for an amendment of the authorisation for customs warehousing to adapt the tolerance rate of natural loss if needed.

b) *The losses higher than 1% are due to reasons which are not duly explained to the satisfaction of the customs authorities. These 98.5 litres are covered by Article 77 UCC. 1 litre is covered by the 1 % rate of tolerance established in the authorisation. The other 0.5 litres cannot be covered by Article 77 UCC, but they are covered by Article 79 UCC because there has been a non-compliance with the obligations established in the authorisation for customs warehousing. Therefore, a customs debt incurs for the missing 0.5 litres.*

Loss in the case of usual forms of handling

In several cases of usual forms of handling, such as the one stated in paragraph 10 of Annex 71-03 UCC-DA, the weight losses due to the implementation of usual forms of handling (not natural losses) should not trigger a customs debt to incur.

Example:

100 tons of fruits under the customs warehousing procedure are dehydrated (usual form of handling). After the dehyration, the fruits' consignment has a weight of only 95 tons. These 95 tons are covered by Article 77 UCC and the other 5 tons cannot be covered neither by Article 77 UCC, nor by Article 79 UCC because there has not been a non-compliance with the obligations

Waste in the case of usual forms of handling

Goods placed under the customs warehousing procedure undergo usual forms of handling. Such operation leads to waste as a byproduct which has a commercial value for any person. The waste remains under the customs warehousing procedure. Hence, a customs debt would incur if the byproduct is declared for release for free circulation.

Example of discharge of the IP procedure and application of Article 78 UCC

A business established in the customs territory of the Union imports 10 000 kilograms of cotton yarn (CN-code 5205, tariff rate ad valorem 4%, origin China) at a total customs value of EUR 20 000. This business places the goods under the inward processing procedure, being the import declaration accepted on 28 April 2017.

This business has an IP authorisation to process this cotton and obtain, in a first transformation, 40 000 square metres of woven fabric of cotton (CN-code 5210, tariff rate ad valorem 8%). Finally, in a final transformation of the woven fabric of cotton, the business obtains men´s and women´s shirts (CN-code 6205 and 6206, tariff rate ad valorem 12%), obtaining on average 1 shirt for every 2 square metres of woven fabric of cotton.

Hence, 20 000 shirts are obtained at a customs value of 8 euros per shirt on average (i.e. total customs value is EUR 160 000).

a) Scenario 1:

These 20 000 shirts are released for free circulation on 28 August 2017 and they are exported to Switzerland on 28 September 2017.

Solution

- Unless otherwise requested, Article 85 UCC applies. Therefore, on 28 August 2017 a customs debt incurs. In this case, the import duty is 160 000 * 12% = EUR 19 200.
- If Article 86(3) UCC is requested (and thus Article 72 DA applies), on 28 August 2017 a customs debt incurs. In this case, the import duty is 20 000 * 4% = EUR 800.
- In Case 1, the non-drawback rule is simply fulfilled as goods have been released for free circulation and there is no re-export declaration as required in Article 78 UCC.
- The economic operator can benefit from the EU-CH Free Trade Agreement if a proof of origin is issued and the other applicable requirements are met.

b) Scenario 2:

- The 20 000 shirts mentioned above are re-exported to Swtizerland. A proof of origin is issued in the framework of the EU-CH Free Trade Agreement (PEM Convention on rules of origin with a non-drawback provision) and the re-export declaration is accepted on 28 September 2017.

Solution

- If the non-originating goods were released for free circulation at the time of the re-exportation of the processed products (i.e. on 28 Septemeber 2017), the import duty would be 20 000 * 4% = EUR 800.
- Therefore, according to Article 78(2) UCC a customs debt worth EUR 800 is incurred on 28 September 2017. This Article refers to the amount of import duty to be determined under the same conditions as of a customs debt resulting from the acceptance, on the same date, of the customs declaration for release for free circulation of the non-originating goods used in the manufacture of the processed products in order to end the IP procedure.
- If the amount of import duty to be paid for the processed products were lower than the one that corresponds to the non-originating goods, nothing prevents the economic operator from releasing the processed products for free circulation before exporting them, as seen in case 1.
- According to Article 223(3)(b) UCC, the use of equivalent goods cannot be authorized in this case.

Discharge of a special procedure other than transit by a person established outside the customs territory of the Union

To discharge the procedure, the person concerned may, inter alia, lodge a customs declaration or a re-export declaration. If the declarant is established outside the customs territory of the

Union, this economic operator may lodge a customs declaration or a re-export declaration if one of the derogations established in Article 170(3) UCC applies (see Article 270(2) UCC for re-export declaration).

If none of these derogations apply, in case of discharge by re-export of the goods, or of the processed products, the declarant must be a customs representative established within the customs territory of the Union and act in his/her own name and on behalf of the person concerned (i.e. indirect representation). This also applies in case of discharge by release for free circulation. The declarant may also be another person who fulfills the conditions to be a declarant, as laid down in Article 170 UCC. In case of re-export, the declarant does not have to comply with the definition of exporter (see Article 1(19) UCC-DA). If the discharge takes place by placing the goods, or the processed products, under a subsequent special procedure, then indirect representation is not possible.

Guarantee in the case established in Article 170 UCC-DA

According to Articles 170 UCC-DA and 325 UCC-IA, customs authorities may authorise the holder of an authorization for IP (IM/EX) to let the time limit for discharge expire without this being considered as a non-compliance pursuant to Article 79 UCC. In this case, the processed products or goods that have not been placed under a subsequent customs procedure or re-exported on expiry of the period for discharge will be considered as released for free circulation, i.e. a customs declaration will be deemed to be lodged and accepted and clearance as being given.

In this case, the debt incurred is due to Article 77 UCC and it is covered by the guarantee for the IP authorisation.

Discharge of customs warehousing procedure with goods having different origin

In cases where goods with different (non-)preferential origin are placed under the customs warehousing procedure, the use of the procedure does not change the origin of each unit of such goods. This rule must be applied when the customs warehousing procedure is discharged by placing the goods under a subsequent customs procedure.

Discharge of the special procedure referring to different previous customs declarations

Goods placed under a special procedure by means of different customs declarations of placement can be discharged at the same time by means of one customs declaration referring to all those previous customs declarations of placement. The limit of previous customs declarations for that purpose is set out in data element 12 01 000 000 in Annex B of the UCC-IA.

Example:

Goods are placed under the customs warehousing procedure by means of 50 different customs declarations. The customs warehousing procedure is discharged for all those goods by means of a customs declaration placing them under a subsequent customs procedure and referring to all those 50 previous customs declarations.

Article 218 UCC

Transfer of rights and obligations

T5 control copy cannot be used for the transfer of rights and obligations with regards to transactions which start after 30 April 2016.

The conditions under which the transfer of rights and obligations is permitted should be laid down in the relevant authorisation.

The TORO does not require any use of a subsequent customs authorisation for a special procedure because the rights and obligations which may be transferred to another person have been established in accordance with the authorisation under which goods have been placed under a special procedure. In addition, TORO does not require any subsequent customs declaration for the same procedure.

Regarding public customs warehousing, TORO can in principle be authorised. However, it should be taken in account that the holder of the authorisation and the holder of the procedure are not necessarily the same person. As TORO only concerns the holder of the procedure and not the holder of the authorisation it is important that the conditions under which TORO may take place ensure a proper customs supervision. As an efficient alternative to TORO, it is possible to discharge a public customs warehouse procedure by placing the relevant goods again under this procedure. The person who lodges the subsequent customs declaration is the new holder of the procedure (procedural code 71-71).

As a general rule, the TORO authorisation must take effect as of the date on which the decision was received or was deemed to be received by the applicant (see Article 22(4) UCC). It is possible to derogate from this general rule, provided that the date on which the TORO authorisation takes effect is after the date on which the applicant receives the decision or is deemed to have received it (see Article 14 UCC-DA). A TORO authorisation can also be granted or amended with retroactive effect, provided that the retroactive date of validity is specified in the decision (see Article 22(4) UCC).

The transferee becomes holder of the procedure, which means that he/she can ask for an extension of the period for discharge for the goods subject to TORO on a case-by-case basis, even after the period of discharge for such goods has expired. The time limit for discharge established in the authorisation for special procedures other than transit does not need to be amended.

‘The transfer of rights and obligations for the inward processing procedure (EX/IM) does not follow the TORO standard procedure as referred to in Annexes III and V to this document’. For exporting the processed products obtained from equivalent goods the procedure which is used is the export procedure (see Article 269 UCC). The goods brought to the customs territory of the Union may be declared by a person different from the holder of the authorisation. This person may refer to the INF5 in the customs declaration for placing goods under inward processing (code 51.11) with the agreement of the holder of the authorisation as stated on the INF5.

More information is provided in **Annexes III and V** to this document.

Article 219 UCC
Movement of goods

Article 219 UCC allows movement within the scope of one special procedure authorisation as well as between two authorisations holders. Information about movement must be provided in the records. Additional customs formalities regarding the movement of goods are not required.

Examples are available in the **Annexes I, IVand V** to this Document.

The Article 219 UCC is complemented by Article 179 DA and Article 267 IA.

With reference to Article 179(3) and (4) DA, the time limits are provided for the movement under customs warehousing because for the customs warehousing procedure a period of discharge does not exist.

With reference to Article 179(3) DA there is a time limit for physical movement of goods under customs warehousing, namely 30 days after goods have been removed from the storage facilities for the customs warehousing of goods.
With reference to Article 179(4) DA, there is an obligation to provide information about the exit of goods within 100 days after goods have been removed from the storage facilities for the customs warehouse.

"[…] shall provide information about the exit of the goods" means that information must be available in the records which are kept by the holder of the authorisation or where applicable, by the holder of the procedure. It does not mean that this information must be sent to the supervising customs office, unless it has been requested by this office.

Goods under the customs warehousing procedure may be moved between two customs warehouses. The goods may be moved directly to the designated or approved place(s) mentioned in the EIDR authorisation used to declare the goods for the subsequent customs procedure. At these designated or approved places the goods may be presented to customs.

Article 220 UCC
Usual forms of handling

Usual forms of handling do not need to be authorised by customs.

Denaturing as usual form of handling

Annex 71-03 establishes the following general rule:
Unless otherwise specified, none of the following forms of handling may give rise to a different eight-digit CN code.

Paragraph 21 of Annex 71-03 UCC-DA establishes a derogation to this general rule. Therefore, this paragraph should be interpreted in a strict way, in the sense that denaturing takes place if the result into a different eight-digit CN code is accepted as usual form of handling, as long as the goods remain the same ones and only denaturing took place on them.

Example: ethyl alcohol

According to point 60 of Case Law C-503/10, 'denaturing is a process designed to render alcohol toxic through the addition of certain substances so that it cannot be re-converted for use in food products'.

The following examples illustrate what is and what is not considered as usual form of handling:

Example 1:

Denaturing to ethyl alcohol should be accepted as usual form of handling if the CN code change consists, for instance, in switching from:

2207 10 00 Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher to
2207 20 00 Ethyl alcohol and other spirits, denatured, of any strength
Example 2:

Denaturing to ethyl alcohol should not be accepted as usual form of handling, but as a processing operation in the sense of Article 5(37) UCC, if the CN code change consists, for instance, in switching from:

2207 10 00 Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher to
3820 00 00 Anti-freezing preparations and prepared de-icing fluids

The difference between both examples is that in the case of example 1 the goods remain ethyl alcohol, after the denaturing takes place, whereas in the case of example 2 the goods have changed after denaturing, which means that the operations done to the undenatured ethyl alcohol went beyond denaturing and therefore they should not be accepted as usual forms of handling.

Denaturing, to be considered as a usual form of handling, has to be carried out according to the relevant customs legislation. In the case of ethyl alcohol, additional note 12 of Chapter 22 of Annex I to Council Regulation (EEC) No 2658/87 and other relevant provisions (if applicable) have to be respected.

Article 223 UCC
Equivalent goods

Scope

The scope of the use of equivalent goods has been enlarged. The use of equivalent goods is now also permitted for customs warehousing, end-use, temporary admission and outward processing. However, some restrictions exist regarding the use of equivalent goods (see Article 169 DA), for example:

- the use of equivalent goods is not authorised for goods or products that have been genetically modified or contain elements that have undergone genetic modification (Article 169(5) DA);

- under customs warehousing, inward and outward processing it is not permitted to replace organic goods by conventionally produced goods, and conventionally produced goods by organic goods;

- where it would lead to an unjustified import duty advantage. The cases where there could be an unjustified duty advantage concerning the use of equivalent goods are covered by paragraphs 2, 3 and partially 7 (see rules in Annex 71-04 UCC-DA) of Article 169 UCC-DA. Additional cases do not exist.

Outward Processing IM/EX when declaring equivalent goods

Until the deployment of new relevant national IT-system, goods declared for release for free circulation in the context of the outward processing IM/EX should be declared with procedure code 48 and subcode B07. INF OP IM/EX, or any other electronic means of standardised exchange of information, cannot be used because it does not exist in the transitional period. Guarantee must be provided in this business case (see Article 242(2) DA).

The following example is given regarding Outward Processing IM/EX.

Example:

A passenger car was manufactured in a third country under OP IM/EX and is declared for release for free circulation in MS A. In the manufacturing process an engine was used as equivalent goods. The customs value of the passenger car is 50.000 EUR. The statistical value of engine is 10.000 EUR. The amount of import duty for the car is 5.000 EUR. The amount of import duty after OP IM/EX is 4.000 EUR. The guarantee to be provided in accordance with Article 242 DA is 1.000 EUR. This guarantee may be released if a Union engine was exported under Outward processing IM/EX, for instance from MS B. In order to allow the calculation of the amount of guarantee, the commercial documents that are provided with the customs declaration for release for free circulation should provide information about the statistical value of the engine.

General rules

Under any customs warehousing type the use of equivalent goods is permitted, unless the goods which are to be replaced by equivalent goods are covered by Annex 71-02 DA.

The use of equivalent goods shall not be authorised in case of prohibition of duty drawback (see Article 223(3)(b) UCC).

Concerning those restrictions and according to Article 223(3)(b) and Article 78 UCC, economic operators are nevertheless allowed to re-export under a proof of origin the main processed products manufactured with non-originating goods if the customs duties on those non-originating goods have been paid.

When an FTA does not contain a no-drawback rule, the use of equivalent goods is permitted and a proof of origin can be issued, or made out, for processed products without payment of import duty.

The concept of accounting segregation has been extended and it can be used also in the context of the use of equivalent goods (see Article 268(2) IA). However, some restrictions exist regarding the use of equivalent goods (see Article 223(3) UCC and Article 169 DA).

Equivalent goods may be stored together with other Union goods or non-Union goods. Accounting segregation is allowed to identify each type of goods (see Article 268(2) IA).

The use of equivalent goods is allowed under customs warehousing and may be combined with inward processing or end-use. If so, accounting segregation is required with regard to the customs warehousing procedure, unless the different types of goods can be physically separated.

Equivalent goods may be at a more advanced stage of manufacture than the non-Union goods they replace (Article 169(6)(a) DA). The authorisation for IP must indicate that such equivalent goods may be used.

Example 1:

Company A has an IP authorisation to process steel bars (goods placed under the procedure) into steel chairs (main processed products). There are two intermediate stages of processing. The steel bars are first flattened into plates of steel, the steel plates are then cut into strips and finally the strips are made into chairs. In each of the steps some of the steel is lost as scrap.

100 kg of bars à 90 kg of flattened steel à 80 kg of steel strips à 70 kg of steel chairs.

Company A has an authorisation that allows the use of equivalent goods.

Question 1:
Which goods may be considered goods in a more advanced stage of manufacture?

Answer:

The flattened steel and the steel strips. Equivalent goods are goods that are processed instead of non-Union goods. The flattened steel and the steel strips are processed. The steel chairs are not processed further and therefore cannot be considered as equivalent goods.

Question 2:
Can IP EX/IM be used for the steel chairs obtained from equivalent goods and if so how much steel may be placed under the IP procedure?

Answer:
The steel chairs can be exported under the IP EX/IM procedure. If 70 kg of chairs were exported this gives the right to place 100 kg of steel bars under the procedure (which customs status changes immediately upon placement.

Example 2: use of equivalent goods in customs warehouse

MS A customs administration has authorised a private customs warehouse to company X. The authorisation involves more than one MS with a storage location in MS A and a storage location in MS B. The use of equivalent goods is allowed.

On 1 May 1000 non-Union tyres arrive at the location in MS A and are placed under the customs warehousing procedure.

On 20 April 100 equivalent tyres arrived at MS B location and were entered into the records.

On 5 May 500 additional equivalent tyres arrived at MS B location and were also entered into the records. Finally on 10 May 400 non-Union tyres arrived at MS B location and are placed under the customs warehousing procedure.

On 1 June Company X gets an order to deliver 1000 tyres to a third country.
These tyres are delivered from MS B location. The 400 non-Union tyres are declared for re-export and the 600 equivalent tyres are declared for export on 5 June and leave the customs territory of the Union at 18:00 on the same day. 600 of non-Union tyres which were placed under the customs warehousing procedure in the MS A's location became Union goods at exactly the same time at the time when the equivalent goods have left the customs territory of the Union.

Example 3: the use of equivalent goods in free zone (Article 269 IA, 249 UCC)

15 items of non-Union goods are placed under the free zone procedure. 15 items of equivalent goods have entered in the free zone. 15 items of non-Union goods were brought into another part of the customs territory of Union. For those non-Union goods, the customs status of Union goods have been proven in the record. The quantity of the non-Union goods remains the same because the goods are interchangeable. This was possible because of the use of equivalent goods. This means that still 15 items of non-Union goods are under the free zone procedure.

Repair and equivalent goods in the case of inward processing

Example 1:

The holder of an inward processing authorisation receives a non-Union engine for repair that is placed under the inward processing procedure. Then a new Union engine is reexported instead of the non-Union broken engine, which is not repaired. The inward processing procedure should be discharged with regard to the non-Union damaged engine left in the customs territory of the Union.

Example 2:

The holder of an inward processing authorisation declares for inward processing a non-Union engine for repair. Individual damaged components are removed in the course of the repair and replaced by undamaged Union components. The repaired engine is reexported. The inward processing procedure should be discharged with regard to the non-Union individual damaged components left in the customs territory of the Union.

Conclusion:
Examples 1 and 2 cannot be treated as cases where equivalent goods are used because:
a) In example 1, the non-Union engine is just replaced by a new Union engine.
b) In example 2, the goods placed under inward processing were not the damaged components. Only the whole engine was declared for inward processing. Therefore, undamaged Union components cannot be treated as equivalent goods.

Example 3:

The holder of an inward processing authorisation declares for inward processing non-Union engines for repair. Non-Union individual components of the engines are also placed under the inward processing procedure. The contract between the holder of the inward processing authorisation and the owner of the engines states that if the components delivered cannot be used for repair, then the holder of the inward processing authorisation can use undamaged Union components instead of non-Union components delivered by the owner of the engines. The holder of the inward processing authorisation concludes that the non-Union components declared for inward processing are not suitable to repair the engine. Therefore, (s)he uses undamaged Union components during the repair of the engines. The repaired engines are reexported. The delivered non-Union components obtain status of Union goods.

Conclusion:
Example 3 can be treated as a case where Union equivalent goods were used according to Article 169(6)(b) UCC-DA.

CHAPTER 3 – Storage

Section 1 – Common provisions

Article 237 UCC
Scope

There are no changes in this article.

Article 238 UCC
Duration of a storage procedure

There are no changes in this article.

Section 2 - Customs warehousing

Article 240 UCC
Storage in customs warehouses

Concept, types and records

Under the customs warehousing procedure non-Union goods may be stored in premises or any other location. Such premises or locations may be approved as more than one type of customs warehouse at the same time (for instance, public and private customs warehousing even if operated by different holders of the authorisations), as long as customs supervision is ensured. Article 211 (3)(b) UCC and Article 211(4)(a) UCC must be respected.

Note: Such premises or locations may be simultaneously used as customs warehouses and as temporary storage facilities or as places referred to in Article 115(1) UCC-DA and in Article 115(2) UCC-DA as long as customs supervision is ensured. Articles 148(2)(b), 148(3) and 211(3)(b) UCC must be respected.

The names of the two categories of customs warehouses, public and private, have been renamed (see Annex 90 DA points 17, 18 to 22), but the transaction value may be determined in accordance with Art 128(1) IA. Customs warehouse type D is deleted.

<u>Type of customs warehouses</u>

Public customs warehouses are identified as follow:
a) type I when the responsibility lies with the holder of the authorisation and with the holder of the procedure;
b) type II when the responsibility lies with the holder of the procedure (ex type B);
c) type III when the warehouse is operated by the customs authority.

Private customs warehouses, where the responsibility lies with the holder of the authorisation who is also the holder of the procedure but not necessarily owner of the goods, are identified as follow:
d) private customs warehouses where the arrangements apply although the goods need not be stored in a place but in any other location approved as a customs warehouse (ex type E);
e) private customs warehouses where the above situation does not apply (ex type C).

Records kept in customs wharehouses

In customs warehouses mentioned in a), records should be kept by either the holder of the authorisation or the holder of the procedure. This has to be decided by the customs authorities in agreement with the persons concerned.
In customs warehouses mentioned in d) and e), the holder of the authorisation has to keep records.

The records shall at all times show the current stock of goods which are under the customs warehousing procedure. Information on the temporary removal of goods shall appear in the records too. Goods may be temporarily removed for a period which has to be established in the authorisation for the removal.

Where goods are entered for the customs warehouse mentioned in d), the entry in the records shall take place when they arrive at the holder's storage facilities or other approved or designated places where the goods may be located at the time the declaration is lodged (e.g. port or airport location where goods arrived in the customs territory of the Union).

Records have to contain information that is updated immediately concerning any movements of goods (e.g. in the context of temporary removal or to the customs office of exit or to the customs office of discharge), and at the latest when goods have left the premises of the customs warehouse.

Authorisations granted for customs warehousing

Authorisations which involve more than one Member State may be granted also for public customs warehouse.

Authorisations shall not be granted if the premises of the customs warehouse or the storage facilities are used for the purpose of retail sale. An authorisation may, however, be granted, where goods are retailed remotely (see Article 201 DA), including via the Internet, mail or phone and are delivered to the buyer or consignee at a location other than the customs warehouse.

For the use of the accounting segregation related to special procedures (Article 177 DA) no separate authorisation is necessary because it must be set out in the authorisation for the Special Procedure. For the use of accounting segregation on the basis of Article 58 DA (origin of goods) a separate authorisation is necessary.

Costs to identify the goods according to Article 177 UCC-DA

Granting an authorisation for storage facilities for the customs warehousing of goods entails the non-subjection to import duty of the non-Union goods that are placed under this procedure, i.e. the suspension of the measures applicable to goods that are released for free circulation. Therefore, this kind of authorisations entails the application of special rules, which are to be interpreted strictly according to their terms, as stated in several decisions of the European Court of Justice (e.g. C-247/97).

Accounting segregation for customs warehousing (Article 177 UCC-DA) is allowed only:

a) for types of goods that are stored together and where physical separation is not easily possible (impossible), or
b) for those types of goods which will be inevitably mixed when they are stored together (e.g. goods in bulk stored in tanks or silos).

The assessment of whether the costs are disproportionately high, both for the applicant and for the competent customs authority to exercise customs supervision (see Article 211(4)(a) UCC), must be done on a case-by-case basis and considering the costs that are strictly necessary to physically identify the goods.

Article 241 UCC
Processing

Processing may take place under the end-use procedure in a customs warehouse and not just under the inward processing procedure.

Article 242 UCC
Responsibilities of the holder of the authorisation or procedure

General aspects

There are no changes regarding the responsibilities of the holder of the authorisation or procedure. However, information should be provided regarding the type of responsibilities (see Article 242(2) UCC).

Article 242(2) UCC is not related to the authorisation which was issued in accordance with Article 211(1)(b) UCC which means that the 'responsibilities' are not 'obligations' as laid down in the authorisation. The responsibilities mentioned here are related directly to storage of goods meaning the use of the public customs warehousing procedure, namely:

- Not to alter the state of the goods placed under the procedure other than allowed by the UFH
- Not to remove temporarily goods from customs warehouse without prior authorisation by customs except in case of 'force majeure'
- To keep records (including information about discharge of customs warehousing) (Article 214 UCC)

- To inform the competent customs authority/supervising customs authorities about any customs related irregularities
- To respect the rules about movement of goods under customs warehousing procedure
- To respect the rules on common storage and the use of equivalent goods

Article 242(3) UCC covers all the obligations related to the declaration of placement of goods under the customs warehousing procedure.

For customs warehouse Type II, the **form** of the records to be kept by the holder of the procedure can be approved in the authorisation for the operation of storage facilities. If such form is approved, the holder of the authorisation has to ensure that his client (holder of the procedure) keeps the records in the **form** approved by the customs authorities (see Article 242(1) UCC). Alternatively, individual checks/approvals of the **form**s of records to be kept by each holder of the procedure are required.

Regarding the data elements referred to in Article 178 UCC-DA, under Customs Warehouse type II, the holder of the procedure is responsible for such data elements. However, the combined provision of such data elements by the holder of the authorisation and the holder of the procedure is possible by means of a commercial agreement between both holders.

Responsibilities and obligations of the holder of the authorisation or the procedure

General

The distinction between holder of the authorisation and holder of the procedure is mainly relevant for public customs warehouses, since legislation clearly allows for a situation where the holder of the authorisation is another person than the holder of the procedure. For private customs warehouses only the holder of the authorisation can store goods and is therefore the holder of the procedure (Article 240 UCC).

Customs warehousing procedure

For most of the special procedures other than transit responsibilities are not mentioned in the UCC. Only for customs warehousing there is an article that specifically describes the responsibilities for both the holder of the procedure and the holder of the authorisation (Article 242 (1) UCC). The first question that needs to be answered is “which are the responsibilities of the holder of the authorisation or the holder of the procedure?”

Both holders have just two responsibilities:

- to ensure that goods under the customs warehousing procedure are not removed (without approval) from customs supervision
  and
- to fulfil the obligations arising from the storage of goods covered by the customs warehousing procedure.

The second responsibility leads to the second question that needs to be answered, namely “what are the obligations arising from the storage of goods covered by the customs

warehousing procedure?". There is no article in UCC, DA or IA which simply lists all obligations. The obligations can be found in the various articles dealing with the storage of goods. These obligations are, for instance:

- keeping records;
- complying with rules for common storage;
- complying with rules for the use of equivalent goods;
- complying with rules for movement of goods;
- complying with rules for transfer of rights and obligations (as laid down in the authorisation);
- carry out only those types of usual forms of handling mentioned in the authorisation.

The list mentioned above is not an exhaustive list of obligations, or conditions, which have to be complied with. Some obligations/conditions, such as providing a guarantee, have to be met by only the holder of the authorisation (Article 211(3)(c) UCC). Others, such as the obligations arising from placing the goods under the customs warehousing procedure, only have to be met by the holder of the procedure (Article 242(3) UCC). If the obligations established in the customs legislation are not met by the holder of the procedure, a customs debt will incur and the holder of the procedure will be the debtor (see Article 79(3)(a) UCC). If he does not pay the amount of import duty, the guarantee mentioned above will be taken.

Customs authorities must request a guarantee to be provided by the holder of the authorisation for customs warehousing facilities. However, if a person other than the holder of the authorisation (e.g. the holder of the procedure) is willing to provide a guarantee, customs authorities may permit this guarantee to be provided (see Article 89(3) UCC).

Are the holder of the authorisation and the holder of the procedure always responsible for the responsibilities (including the obligations) mentioned in Article 242(1) UCC? The answer to this question can be found in Article 242(2) UCC. Under public customs warehousing it is possible that the responsibilities stemming from Article 242(1) UCC devolve exclusively upon the holder of the procedure. This could mean, for instance, that only the holder of the procedure needs to keep records.

<u>Other special procedures</u>

For the other special procedures (other than transit) legislation does not distinguish between responsibilities and obligations. Even though the holder of the authorisation and the holder of the procedure are the same person, it is still necessary to distinguish between the obligations arising from the role as holder of the authorisation and those arising from the role as holder of the procedure. This because TORO is only possible for the latter obligations.

Article 245 UCC
Presentation of goods and their placing under the procedure

The term 'prescribed customs formalities' established in Article 245(1) UCC

The term 'prescribed customs formalities' established in Article 245(1) UCC refers to the formalities applicable to the procedure under which the goods are placed before they enter a free zone. Therefore, such formalities vary, depending on the procedure under which the goods are placed before they enter the free zone.

Example 1:

Goods are placed under the external transit procedure and the economic operator wants to end the transit procedure when the goods enter a free zone. The goods are presented to customs according to Article 5(33) UCC to end the transit procedure (see Article 245(1)(b) UCC). As goods are under customs supervision while they are under external transit (see Article 134 UCC), the customs authorities may examine the goods, take samples or check the relevant documents. Such goods are deemed to be placed under the free zone procedure once they have entered the free zone (see Article 245(3)(b) UCC).

Example 2:

Goods are placed under the external transit procedure and the economic operator does not want to end the transit procedure when the goods have entered the area of a free zone. In this case, the goods do not have to be presented to customs (see Article 245(2) UCC). Such goods are still under the external transit procedure even after they have entered the free zone (see Article 245(3)(a) UCC).

Example 3:

Goods are placed under the inward processing procedure and the economic operator wants to discharge this procedure when the goods enter a free zone. Such discharge takes places by placing the goods under a subsequent customs procedure (see Article 215 UCC). The goods are presented to customs according to Article 5(33) UCC to discharge the inward processing procedure (see Article 245(1)(b) UCC). As goods are under customs supervision while they are under inward processing (see Article 134 UCC), the customs authorities may examine the goods, take samples or check the documents. Such goods are deemed to be placed under the free zone procedure once they have entered the free zone (see Article 245(3)(b) UCC).

Example 4:

Goods are placed under the inward processing procedure and the economic operator does not want to discharge this procedure when the goods enter a free zone. In this case, the goods do not have to be presented to customs (see Article 245(2) UCC). Such goods are still under the inward processing procedure even after they have entered the free zone (see Article 245(3)(a) UCC).

Goods abandoned to the State, seized or confiscated

According to Article 198(2) UCC, goods abandoned to the State, seized or confiscated are deemed to be placed under the customs warehousing procedure. These goods must be entered in the records of the concerned economic operator or of the customs authorities. Due to the lack of customs declaration for placing goods under the customs warehousing procedure, the records of the place where the goods are located (being this place not necessarily a customs warehouse facilities) or by the customs authorities must show that the goods are under this procedure.

Once the procedure is discharged (e.g. because the goods are sold in an auction and declared for release for free circulation by the new owner), then the records must show the way the procedure has been discharged in accordance with Article 215 UCC. If the discharge entails a customs declaration or a re-export declaration, this declaration should be included in the records. This declaration must include code 71 as previous customs procedure (e.g. if the goods are released for free circulation, the codes to be indicated may be 40 71). This declaration may indicate as 'previous document' (data element 2/1 according to Annex B UCC-IA) the code 'ZZZ', i.e. 'other', as the goods were not placed under the customs warehousing procedure by means of a customs declaration.

CHAPTER 4 – Specific use

Section 1 – Temporary admission

Article 250 UCC
Scope

General aspects

"Internal traffic" as referred to Article 555(1)(c) CCIP is not a restriction anymore for the use of temporary admission but the rules in the field of transportation must be respected. If the holder of the authorisation for temporary admission does not respect the rules in the field of transportation, a customs debt does not incur in accordance with Article 79 UCC.

According to Articles 207 to 236 seq. UCC-DA, certain goods can benefit from total relief from import duty when they are placed under the temporary admission procedure.

A non-exhaustive list shown in Annex VII establishes examples of goods that can be placed under temporary admission within the scope of Articles 219, 220 and 223 to 227 UCC-DA (this list is taken from the Istanbul Convention and some examples have been added or amended from the original list).

The supporting document presented in Annex 71-01 DA must be presented where a customs declaration is made orally (see Article 165 DA).

Means of transport placed under temporary admission

Means of transport can be placed under temporary admission by any of the acts deemed to be a customs declaration established in Article 141(1) UCC-DA (see Articles 139 and 136(1)(a) UCC-DA). Therefore, according to Article 218(a) UCC-IA, the formalities established in Articles 135 and 139 UCC (i.e. conveyance and presentation of goods) are deemed to be fulfilled in the case of means of transport.

Relevant elements of the term 'means of transport' are the following ones:

1) Definition of the term 'means of transport' in the Istanbul Convention: the term 'means of transport' means:

   Any vessel (including lighters and barges, whether or not shipborne, and hydrofoils), hovercraft, aircraft, motor road vehicles (including cycles with engines, trailers, semi-trailers and combinations of vehicles) and railway rolling stock; together with their normal spare parts, accessories and equipment carried on board means of transport (including special equipment for the loading, unloading, handling and protection of cargo).

2) The relevant timing for deciding whether the goods are means of transport or not is the moment of the presentation of goods to customs (Article 139 UCC).

3) The main purpose of the means of transport is the transport of persons and/or goods. If a certain good is actually used, or it is intended to be used, for this purpose at the moment of presentation to customs, then it is considered as a means of transport.

4) Registration may be used as a relevant element if there is an obligation to register the means of transport.

Establishment of the holder of the procedure for temporary admission

As a general rule, Article 211(3)(a) UCC establishes that the holder of the authorisation has to be established in the customs territory of the Union. However, according to Article 250(2)(c) UCC the holder of the procedure for temporary admission has to be established outside the customs territory of the Union and derogations from this are mentioned explicitly. In case of temporary admission the holder of the authorisation and procedure are the same person. Consequently, the holder of the temporary admission authorisation can be established outside the customs territory of the Union.

Section 1, Chapter 4, Title VII of the UCC-DA

The temporary admission procedure is allowed if one of the Articles in Section 1, Chapter 4, Title VII of the UCC-DA may be applied.

Example:

Article 212(3) UCC-DA: a means of transport registered outside the customs territory of the Union is placed under temporary admission. Once the means of transport has been placed under the temporary admission procedure, the following operations are allowed under Article 204 UCC-DA: repair and maintenance, including overhaul and adjustments, or measures to preserve the goods or to ensure their compliance with the technical requirements for their use under the procedure are admissible. The following operations, for instance, are considered to be under the scope of Article 204 UCC-DA:

- *Repair and/or maintenance of the means of transport by replacing the batteries, brakes, oil, wipers or tyres or the sport exhaust system of a car.*
- *Service, guarantee or courtesy work, maintenance of the air conditioning system.*
- *Repair and/or maintenance of the means of transport by replacing the turbines of an aircraft or of a boat.*

However, if the operations mentioned above lead to permanent change of the means of transport (e.g. installation of an air conditioning system which was not installed before), permanent increase in performance or considerable added value (e.g. completely repainting the means of transport), then the operations may not be carried out under the rules of the temporary admission procedure. However, these operations may be done under the inward processing procedure.

Temporary admission or inward processing for means of transport in case of repair

Article 204 UCC-DA allows temporary admission on the condition that the state of goods placed under temporary admission remains the same. In case of placement of such goods under temporary admission, repair and maintenance are allowed.

In the case of means of transport, such repair is admissible if the means of transport can be used for its main purpose (i.e. transportation of goods or people) when it is placed under the temporary admission procedure, if the conditions laid down in Article 204 UCC-DA are met.

Example 1:

A car that is driven into the customs territory of the Union to be repaired can be placed under temporary admission because it can be used as a means of transport.

Example 2:

A defective car which cannot be used to transport neither goods nor persons brought by a trailer into the customs trritory of the Union to be repaired cannot be placed under temporary admission because it cannot be used as a means of transport at the moment it is placed under temporary admission. Such car can be placed under inward processing instead.

Example 3:

Means of transport A, which is not defective and hence can be used as a means of transport, is transported by means of transport B (e.g. a car carried on a ferry or a motorbike/boat carried on a trailer) and it is brought into the customs territory of the Union. Means of transport A can be placed under temporary admission as a means of transport because it is intended to be used as such even if it is going to be repaired according to Article 204 UCC-DA. This means that the means of transport placed under temporary admission does not necessarily need to be an active means of transport at the moment it crosses the frontier.

Means of transport covered by either Articles 212 to 218 UCC-DA or by relevant Articles included between 219 to 236 UCC-DA

Means of transport can benefit from total relief from import duty if they fulfil the conditions established in Articles 212 to 218 UCC-DA. The term “means of transport” falls under the scope of temporary admission if they are used or intended to be used for the purpose of transporting either goods or people. Otherwise, these goods may fall under the scope of Articles 219, 220, 221, 222, 223, 224, 225, 226, 227, 231, 232, 233, 234 or 236 UCC-DA.

Example 1:

A plane which is used, or intended to be used, to take aerial pictures and it is neither used nor intended to be used to transport goods or persons cannot be placed under temporary admission as a means of transport according to Article 212 UCC-DA. It may be possible to place this plane under temporary admission on the basis of article 236 UCC-DA.
Example 2:

A plane used, or intended to be used, for firefighting purposes cannot be declared for temporary admission as a means of transport according to Article 212 UCC-DA. It may be possible to place this plane under temporary admission if it is used for disaster relief (Article 221 UCC-DA) so that Article 136(1)(h) UCC-DA may apply in this case.

Example 3:

An aircraft is declared for temporary admission. While flying within the customs territory of the Union, one of the engines of the aircraft breaks and a new engine has to be brought from a third country to repair the aircraft. Two scenarios are possible in this case:

a) *The aircraft was placed under temporary admission as a means of transport: in this case, Article 213 UCC-DA can be applied to the engine and therefore the engine is considered as a part of the means of transport.*
b) *The aircraft was placed under temporary admission, but not as a means of transport: in this case, Article 235 UCC-DA can be applied to the engine and therefore the engine is not considered as a part of the means of transport, but as a part of goods placed under temporary admission.*

Example 4:

Drones can be considered means of transport if they are used, or intended to be used, for transporting either goods or people.

Example 5:

Vehicles which are transported onto a vessel and they are intended to be used by their owners within the customs territory of the Union for their own transportation are considered as means of transport.

Example 6:

Vehicles transported by a vessel are brought in the customs territory of the Union. These vehicles will be exhibited and/or sold in an event. These vehicles may be placed under temporary admission according to Article 234 UCC-DA, but not as a means of transport because they are not intended to be used as means of transport. Therefore, these vehicles cannot be declared "by any other act" according to Article 141(1) UCC-DA.

Example 7:

Means of transport A is transported by means of transport B (e.g. a car carried on a ferry or a motorbike/boat carried on a trailer) and it is brought into the customs territory of the Union. Means of transport A will be subject to tests. Therefore, means of transport A may be placed under temporary admission according to Article 231 UCC-DA, but not as a means of transport because it is not intended to be used as a means of transport. Therefore, means of transport A cannot be declared "by any other act" according to Article 141(1) UCC-DA. Means of transport B may be placed under temporary admission by "any other act" because it is used as a means of transport.

Means of transport which are temporarily used as such can be considered as means of transport according to Articles 212 to 218 the UCC-DA. These means of transport fall under the scope of Articles 212 to 218 UCC-DA even if they are temporarily not used as such (e.g. boats located in a shipyard during winter period).

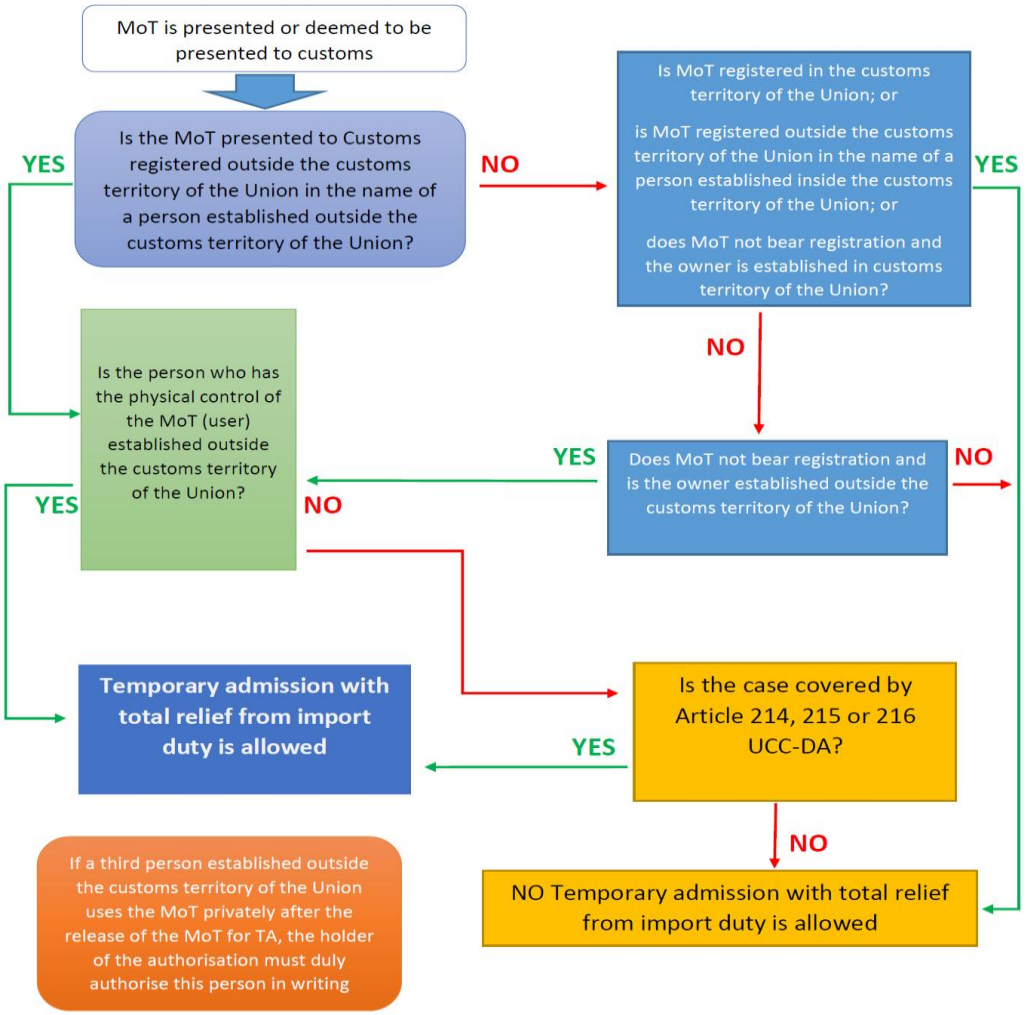
Interpretation of the terms 'used' as referred to in Articles 212(3) and 'use' as referred to in Article 215 UCC-DA

Firstly, it is relevant to assess whether the conditions for benefiting from total relief from import duty established in points a) and b) of Article 212(3) UCC-DA are met.

Secondly, the holder of the authorisation must be determined according to Article 212(2) UCC-DA (i.e. the person who has physical control of the means of transport when the means of transport are released for temporary admission, unless that person acts on behalf of another person).

In order to follow this procedure, the competent customs authorities may use the following flowchart:

Flowchart explaining whether temporary admission with total relief from import duty is allowed (or not) for means of transport (MoT) when they are declared for temporary admission orally in accordance with Article 136(1) UCC DA or by another act in accordance with Article 139(1) UCC DA, in conjunction with Article 141(1) UCC DA)



Example 1:

The owner of a yacht, established outside the customs territory of the Union, hires a crew and a skipper, who are also established outside that territory. The owner of the yacht is on board when the yacht enters temporarily the EU customs territory. The skipper has the physical control of the yacht at the moment of entry of the yacht into that territory.
The purpose is to transport persons not for remuneration (see Article 207 UCC-DA). Therefore, this is a case of private use of means of transport. The authorisation should be granted to the owner of the yacht, because the skipper is acting on behalf of the owner (see Articles 212(2) and 163(1)(4)(c) UCC-DA).
In this case, the user of the yacht is the owner (Article 212(3)(b) UCC-DA) despite the fact that the skipper has the physical control of the yacht at the moment in which the yacht enters the customs territory of the Union.

Example 2:

The owner of a yacht, established outside the customs territory of the Union, makes available his vessel to a crew and a skipper, who are also established outside the customs territory of the Union. The owner orders the crew and the skipper to bring the yacht from a third country to the customs territory of the Union for the summer season. The owner is not on board during the travel from the third country to the customs territory of the Union because he will travel by plane to the place in the customs territory of the Union where the yacht is temporarily used during the summer season.
The purpose is to transport persons not for remuneration (see Article 207 UCC-DA). Therefore this is a case of private use of means of transport. The authorisation should be granted to the owner of the yacht, because the skipper is acting on behalf of the owner (see Articles 212(2) and 163(1)(4)(c) UCC-DA).
In this case, the user of the yacht is the owner (Article 212(3)(b) UCC-DA) despite the fact that the skipper has the physical control of the yacht at the moment in which the yacht enters the customs territory of the Union.

Example 3:

The owner of a yacht, established outside the customs territory of the Union, rents out his vessel with a crew and a skipper, who are also established outside that territory. The yacht enters temporarily the customs territory of the Union.
The purpose is to transport persons for remuneration (see Article 207 UCC-DA), Therefore this is a case of commercial use of means of transport. The authorisation should be granted to the skipper because he has the physical control of the yacht at the moment in which the yacht enters the customs territory of the Union and is not acting on behalf of the owner (see Articles 212(2) and 163(1)(4)(c) UCC-DA).
In this case, the user of the yacht is the skipper (Article 212(3)(b) UCC-DA).

Musical instruments carried by travellers

Musical instruments carried by travellers, whether for professional or personal use, can be declared for temporary admission by simply going through the green or 'nothing to declare' channel once they arrive in the customs territory of the Union from a third country/territory. In the case of accessories such as an amplifier or a microphone, as these items would be required to make the instrument produce a sound, they would be eligible for temporary admission as 'musical instruments', provided such accessories are carried by the traveller together with the musical instrument.

There is no definition in the UCC of what 'professional purposes' or 'professional equipment' is. In any case, musicians can declare the musical instruments, either considered as professional equipment or not, carried in their luggage for temporary admission by going through the green or 'nothing to declare' channel once they arrive in the EU (Article 141(1)(a) DA). They can do the same for the re-export of the instruments back to a third country/territory, i.e. they do not need to lodge a standard customs declaration (not even an oral declaration). In the case of non-professional equipment, Article 135 UCC, in combination with Articles 136(1)(b), 139(1) and (2) and 141(1)(d)(i) and (ii) UCC-DA, applies as these instruments are personal effects carried by travellers. In the case of musical instruments considered as professional equipment, the relevant provisions applicable in the EU are Articles 136(1)(i), 139(1) and (2) and 141(1) UCC-DA.

Note: in the case of musicians established in the customs territory of the Union who travel to third countries with their musical instruments, the UCC only applies when they leave and come back to the customs territory of the Union with their musical instruments. These musical instruments can also be declared by any other act for export (see Articles 137(2), 140(1)(a) and 141(1)(d)(iii) UCC-DA) and when they are brought back to the customs territory of the Union (see Articles 138(d), 141(1)(d)(i) UCC-DA and 135(5) UCC).

Transfer of possession or ownership of goods placed under temporary admission

As there is no prohibition to sell, hire or lend the goods while they are placed under temporary admission, in case of transfer of possession or ownership of goods placed under temporary admission, the Holder of the Temporary Admission authorisation remains responsible of the proper conduct of operations (see Article 211(3)(c) UCC) until the customs procedure is discharged according to Article 215 UCC, unless a TORO authorisation has been granted to reflect a transfer of that responsibility.

Article 251 UCC

Period during which goods may remain under the temporary admission procedure

Article 251(1) UCC

The customs authorities have to determine the period within which goods may remain under temporary admission.

For animals referred to in Article 223 UCC-DA, the time-limit for discharge shall not be shorter than 12 months from the time the animals are placed under the temporary admission procedure (see Article 237(2) UCC-DA). In this case the discharge may take place after a period shorter than 12 months from the moment where the animals where placed under temporary admission.

Article 251(2) UCC

Except where otherwise provided, the maximum period during which goods may remain under the temporary admission procedure for the same purpose and under the responsibility of the same authorisation holder shall be 24 months, even where the procedure was discharged by placing the goods under another special procedure and subsequently placing them under the temporary admission procedure again.The maximum period during which the goods may remain under temporary admission for the same authorisation holder and for the same purpose cannot exceed 24 months in total. If the holders of the authorisations for temporary admission are different persons, then paragraph 2 of Article 251 UCC is not applicable (paragraph 4 would apply in this case instead). This means that when goods are placed under temporary admission, the procedure is discharged by placing the goods, for instance, under customs warehousing and after that the goods are placed again under temporary admission, only the time under temporary admission (both the first and the second period) is taken into account within the 24-month time-limit.

Example:

Works of art are placed under customs warehousing and, with the purpose of selling them at an exhibition, these goods are placed under temporary admission and remain under this procedure for 1 month. The goods are not sold and hence they are placed again under customs warehousing. Three months later they are placed again under temporary admission and remain under this procedure for two months in order to be sold at another exhibition. The goods are again not sold and they are placed under customs warehousing. The authorisations for temporary admission were granted to the same person.
In this case, the total amount of time in which the goods have remained under temporary admission is three months. The time during which the goods have been placed under customs warehousing does not count for the 24-month time limit established in Article 251(2) UCC.

Article 251(3) UCC

Where, in exceptional circumstances, the authorised use cannot be achieved within the period referred to in paragraphs 1 and 2, the customs authorities may grant an extension, of reasonable duration of that period, upon justified application by the holder of the authorisation.

According to the ECJ ruling in Malmö Motorrenovering AB v. Allmänna ombudet hos Tullverket (C-781/23), "exceptional circumstances" in article 251(3) UCC is only necessary when an extension of the period of discharge is granted, and the total period of discharge then would be longer than 24 months after the extension. Therefore, an extension that does not extend the overall period of discharge beyond 24 months may be granted without the existence of "exceptional circumstances" but still must be justified.

Example 1:

A car is brought into Union under a temporary admission authorization on 21 February 2020 in order to participate in a series of races. According to the authorization, the period of discharge is 12 months. In January 2021, the holder of the authorization applies for an extension of the period of discharge since they intend to participate in a couple more races. According to the application, they want the period of discharge to be extended by 6 months.
Granting such an application for extension of the period of discharge would not mean the overall period of discharge is more than 24 months. Therefore, the Customs Administration may grant the application without examining whether or not there are "exceptional circumstances".

Example 2:

A car is brought into Union under a temporary admission authorization on 21 February 2020 in order to participate in a series of races. According to the authorization, the period of discharge is 12 months. In January 2021, the holder of the authorization applies for an extension of the period of discharge since they intend to participate in several more races. According to the application, they want the period of discharge to be extended by 14 months.
Granting such an application for extension of the period of discharge would mean that the overall period of discharge is 26 months. Therefore, the Customs Administration may only grant the application if there are "exceptional circumstances" present for the two months which exceeds the 24 months period.

Article 251(4) UCC

Goods may remain under temporary admission in the Union up to 10 years.

The period of discharge is 24 months but it can be reasonably extended in case of exceptional circumstances. The total period of discharge cannot exceed 10 years.

The total period for discharge has to be set in accordance with the 'old' Customs Code if the procedure starts before 1 May 2016.

Example 1 :

Works of art are placed under customs warehousing and, with the purpose of selling them at an exhibition, these goods are placed under temporary admission and remain under this procedure for 1 month. The goods are not sold and hence they are placed again under customs warehousing. Three months later they are placed again under temporary admission and remain under this procedure for two months in order to be sold at another exhibition. The goods are again not sold and they are placed under customs warehousing. The authorisations for temporary admission were granted to different persons.
In this case, Article 251(2) UCC is not applicable. However, the total amount of time in which the goods can remain under temporary admission is 10 years (see Article 251(4) UCC). In this case the goods have remained under temporary admission for three months. This 3-month period counts regarding the 10-year time-limit. The time during which the goods have been placed under customs warehousing does not count for the 10-year time limit established in Article 251(4) UCC.

Example 2 :

Goods used to carry out tests were placed under the temporary admission procedure with total relief from import duty under Article 231(c) UCC-DA. The time limit requested by the economic operator for the temporary admission procedure was 4 months. As the economic operator was unable to achieve the purpose of the temporary admission procedure, the economic operator requested an extension of the time limit for discharge of 12 months.

According to the authorization, the period of discharge is 4 months, as requested by the economic operator. After the request of extension, a 2 month extension may be granted (total period of 6 months as specified in Article 237(1) UCC-DA). In this case, the 24 months period set out in Article 251(2) UCC is not applicable. However, an additional extension (e.g. until 12 months) may also be granted according to Article 251(3) UCC, in exceptional circumstances and upon justified application by the holder of the authorisation. This extension should be of a reasonable duration, within the limit of Article 251(4) UCC (i.e. 10 years).

Article 252 UCC

Amount of import duty in case of temporary admission with partial relief from import duty

There are no changes in this article.

Article 254 UCC
End-use procedure

General aspects

The assignment of the goods to the prescribed end-use must take place within the customs territory of the Union because assignment outside of the Union would require an export of goods.

The export (physical exit) of goods discharges the end-use procedure (Articles 215 and 254 UCC). From business perspective, where such "assignment" outside the Union is envisaged, it is suggested that the goods should not be placed under the end-use procedure.

They may be placed, for instance, under customs warehousing procedure or remain under T.S. and subsequently be re-exported.

Goods to be incorporated in ships or vessels may be placed under the end-use procedure in accordance with the CN Special Provisions (Section II - Part A). These goods must be used for construction, maintenance, repair or conversion within the customs territory of the Union so that the end-use procedure is discharged by assignment of goods to the prescribed end-use (see Article 254(4)(a) UCC).

Goods taken out of the customs territory of the Union destroyed or abandoned to the state (Article 254(4)(b) UCC)

The end use procedure may be discharged by taking goods out of the customs territory of the Union which have not been assigned to the end-use prescribed by the Tariff. Such export should be approved by customs in accordance with Article 124 (1)(i) UCC.

Where goods are destroyed within the period for discharge, the customs supervision has ended and the customs debt is not incurred.

End use is subject to a bill of discharge. For instance, all the placements under the procedure for which the period of discharge ends during the calendar month, may be covered by one single bill of discharge which has to be submitted to the supervising customs office on the last day of the given calendar month. However, the supervising customs office may waive the obligation to present the bill of discharge where it considers it unnecessary.

Example:

An end-use holder imports fish with either a reduced or zero customs duty rate. The fish is transformed into ready meals. During the processing operations, fish bones, scales and fins appear. They are considered as waste and scrap assigned to the prescribed end-use. The economic operator may use them freely (processing into glue or pet meals for instance).

Waste and scrap resulting from the destruction of goods placed under the end-use procedure (Article 254(7) UCC)

Where goods are destroyed under the end-use procedure and waste and scrap are obtained, such goods are deemed to be placed under customs warehousing procedure without a customs declaration. Waste and scrap have non-Union status (see Article 154(c) UCC). The holders of end use authorisations have to keep records for customs warehousing, because they are still responsible for the goods which are under customs warehousing. An authorisation for operation of storage facilities is not needed. For the discharge there is no time limit to the length of the customs warehousing (see Article 238(1) UCC).

Waste and scrap may be re-exported, placed under inward processing or released for free circulation with payment of amount of import duty as established in accordance with Art 85 UCC. Destruction does not require a customs authorisation.

Example:

An economic operator imports under regulation 3050/95 aluminium sheets. He needs an end-use authorisation. When receiving the goods, he notes that the aluminium sheets are defective. He can neither forward them back to his customer nor use them or sell them to another end-use holder. He destroys them and filings and aluminium ships appear. Those filings and ships are considered as waste and scraps which lose their community status and are deemed to be under customs warehouse. There are not deemed to have been assigned to their prescribed end-use and a customs debt is liable to incur.

Interpretation of Article 73 UCC-DA

According to Article 73 UCC-DA, when calculating the customs debt on processed products resulting from IP based on the goods placed under IP pursuant to Article 86(3) UCC, if the goods placed under IP would have benefited from the end-use procedure, then the reduced duty rate applicable to the end-use procedure must apply upon request from the applicant of the IP authorisation, provided that all the conditions for the goods placed under IP to benefit from end-use would have been met when they were declared for IP. This entails the fulfilment of all the conditions applicable to those goods if they would have been placed under the end-use procedure, namely:

A) an end-use authorisation could have been granted for those goods had an application for that purpose been submitted, and
B) the goods placed under IP would have benefited from a reduced duty rate in account of their end use at the time of acceptance of the IP declaration.

Therefore, the economic operator does not need a separate end-use authorisation, but must be able to show that the conditions for it to be granted should have been fulfilled. Similarly, the goods do not need to be actually declared for the end-use procedure. Even though the end-use duty rate applies, the guarantee for the IP authorisation can be used for that purpose. The processing operations must correspond to the prescribed end use, i.e. the processed products obtained from the goods placed under IP must correspond to the ones referred to in the end-use relevant provisions.

The following example shows how this provision applies:

1) *On 1 February 2024, car parts with TARIC code 7009 10 00 90 are declared for IP (the same goods would have been declared with TARIC code 7009 10 00 60 if they were declared for end-use).*
2) *On 15 June 2024, processed products stemming from those car parts, namely the cars, are released for free circulation.*
3) *If:*
    a. *the declarant and holder of the IP authorisation would have met all the conditions to obtain an end-use authorisation for those car parts on 1 February 2024, and*
    b. *those car parts would have benefited from a reduced duty rate as if they would have been declared using TARIC code 7009 10 00 60, i.e. they are actually assembled to a car, and*
    c. *according to the IP authorisation, the method of calculation of the customs debt set out in Article 86(3) UCC applies, then*
    d. *the calculation of the customs debt must consider the reduced duty rate applicable to TARIC code 7009 10 00 60 on 15 June 2024.*

CHAPTER 5 - Processing

Section 1- General provisions

Article 255 UCC
Rate of yield

Standard rates of yield are no longer provided for customs legislation. However, where standard rates of yield are provided for example in agricultural legislation, those rates have to be applied by Customs and cannot be adjusted in accordance with Art 28 UCC. Other rates may be adjusted in accordance with this article.

Business case: rate of yield established in an authorisation on a processing procedure different from the actual rate of yield

It is possible that the rate of yield established in an authorisation on a processing procedure is different from the actual rate of yield.

In this case, Article 23(2) UCC establishes that the holder of the IP authorisation must inform the customs authorities immediately about this factor (i.e. the rate of yield in the IP authorisation is not correct). Article 23(3) UCC allows the customs authorities to annul, amend or revoke an authorisation where it does not conform to the customs legislation. In the case of the rate of yield, Article 255 UCC establishes that the rate of yield may be adjusted in accordance with Article 28 UCC.

In principle the amendment of the rate of yield will take effect from the date on which the holder of the authorisation receives the corresponding notification from the customs authorities, or is deemed to have received it (see Articles 28(4) and 22(4) UCC).

However, Article 255 UCC says that the rate of yield must be determined on the basis of the actual circumstances in which the processing operation is carried out. Therefore, an adjustment of such rate may have a retroactive effect.

Example:

The holder of an IP authorisation granted on 20 January 2020 is importing goods A from that date onwards in order to obtain processed product B. The rate of yield established in the authorisation is 97 %. After an audit, the customs authorities find out on 6 September 2021 that the rate of yield is actually 99 %. The customs authorities notify this fact to the holder of the authorisation on 8 September 2021 and the holder of the authorisation receives the notification the same day.

As a result of the above, the discharge of the procedure taking place as of 8 September 2021 must comply with the rate of yield of 99 % and also for the processed product obtained from goods placed under IP before this date. If the audit done by the customs authorities demonstrates that the rate of yield of 99 % should have been applied from a certain date

before 8 September 2021, e.g. 1 March 2020, then this rate of yield should apply since this date.

Section 2 – Inward processing

Article 256 UCC
Scope

The holder of the authorisation for inward processing does not need to have the intention to re-export the processed products.

Inward processing in case of destruction (Article 256(2) UCC)

In cases of repair and destruction, the goods placed under inward processing do not need to be identified in the processed product.
The destruction in the context of disposal of goods (Articles 197 and 198 UCC) is not a processing operation as defined in Article 5(37)(c) UCC. Consequently, customs authorities cannot require that the operator has to apply for an IP authorisation.

The holder of the goods may inform the customs authorities that he is of the opinion the goods in question should be destroyed – for example for environmental reasons. In this case, if the customs authorities agree, they may require the goods to be destroyed in accordance with Article 197 UCC. This provision does not allow the holder of the goods to request the customs authorities to take a decision on the destruction of the goods.

The destruction under IP is only carried out when there is an economic need on the side of an economic operator.

Example of destruction

Raisins in temporary storage are to be released for free circulation. Based on a sample taken during verification, it becomes clear that the raisins can only be released into free circulation after they undergo a special treatment. The economic operator has three options:

- *Re-export;*
- *Treat the goods*
- *Destroy them*

Options 1 and 2 are too expensive. Economically the only viable option is to destroy the goods. In that case, the operator can apply for an IP authorisation and to destroy the goods under IP. Customs authorities have not decided that the goods must be destroyed in this case.

Example of destruction under Article 198 UCC (not under IP):

Medicines under temporary storage have been seized by customs authorities. These goods are deemed to be placed under customs warehousing (see Article 198(2) UCC). Company A is specialised for destruction of sensitive and toxic goods. Company A destroys the goods at the

request of the customs authority. The goods are moved to Company A for the purpose of destruction. The costs of destruction are borne by the importer or any person concerned (see Article 198(3)(a) UCC).

Inward processing procedure used for goods which must be in compliance with technical requirement (Article 256(3) UCC)

Inward processing procedure may also be used for goods which have to be in compliance with technical requirement for their release for free circulation. Nevertheless, such goods may also be re-exported.

Article 257 UCC
Period of discharge

General aspects

There are no major changes, however

- Specific periods for discharge for agricultural goods (procedure IM/ EX and EX/IM) do not exist anymore.

- Globalisation period for discharge is now extended to 6 months. This does not mean that the period for discharge should be limited to 6 months because such period has to be specified taking account of the time required to carry out the processing operations and to discharge the procedure.

In addition to the existing cases inward processing may be discharged by the delivery of main processed products for which the erga omnes import duty rate is ‘free’ or for which an airworthiness certificate as referred to in Article 1 of Regulation (EC) No 1147/2002 has been issued (see Article 324 (1)(e) IA).

Customs authorities should establish precisely in the authorisation in close cooperation with the applicant at which moment non-Union goods have been used for the first time because at this moment the inward processing procedure is discharged (see Article 324(5) IA).

Period of discharge of inward processing EX-IM

The period within which the non-Union goods must be declared for the inward processing procedure EX-IM is not 'period for discharge' as defined in Article 1(23) DA. This indicates that inward processing EX-IM is a special case which has following consequences:

- Regarding the period of validity of the authorisation, the authorisation for inward processing EX-IM must be valid on the date of acceptance of the export declaration relating to the processed products obtained from the corresponding equivalent goods.

- If non-Union goods are declared for the procedure within the specified period as referred to in Article 257(3) 1st subparagraph UCC, the authorisation for inward processing does not need to be valid anymore.

Extension of the period within which the non-Union goods shall be declared for the inward processing procedure (Article 257(4) UCC)

The period of six months referred to in Article 257(3) UCC can be extended at the request of the holder of the authorisation. Unlike in the case mentioned in paragraphs 1 and 2 of Article 257 UCC, such request does not have to be justified.

The customs authorities will not grant the extension mentioned in the previous paragraph if one of the conditions established in the customs legislation is not met.

Article 258 UCC
Temporary re-export for further processing

Article 258 of the Union Customs Code was designed to provide more flexibility for carrying out further processing operations outside the EU on goods placed under the Inward Processing (IP) procedure. If all the conditions set for the OP are met, those goods may be brought outside the customs territory of the Union, in accordance with the conditions laid down for the outward processing procedure. This authorisation may be granted as a single IP authorisation or in the form of two decisions: the IP authorisation and a separated decision authorising the application of Article 258 UCC.

In a first stage, the goods which are placed under IP are re-exported for undergoing processing operations abroad, while **the IP procedure is temporarily 'suspended' and not yet discharged**. The goods which are temporarily re-exported for further processing are not placed under OP. The time limit for discharge will not be affected while the concerned goods are undergoing processing operations outside the customs territory of the Union.

Example 1:

An economic operator applies for an IP authorisation requesting the application of Article 258 UCC. The time limit for discharge is 3 months from the placement of the goods (i.e. time limit for discharging the IP procedure). The authorisation is granted on 1 May 2020. The holder of the authorisation places the goods under IP on 2 May 2020 and, after processing them, he re-exports the intermediate/processed products temporarily to a third country for further processing. The holder of the authorisation may re-import the intermediate/processed products and discharge the procedure by placing them under a subsequent customs procedure or by re-exporting them. He may also discharge the IP procedure by amending the declaration for temporary re-export to a declaration for permanent re-export of the intermediate/processed products while they are in the third country. The IP procedure must be discharged before 2 August 2020 (i.e. time limit for discharging the IP procedure). In case of customs debt stemming from the processing done in the third country, it must be calculated according to Article 86(5) UCC.

Articles 261 and 262 UCC cannot apply in the case mentioned in Article 258 UCC. Goods placed under IP must undergo processing operations in the customs territory of the Union either before and/or after they are brought to a third country/territory according to Article 258 UCC.

If the final products return into the customs territory of the Union and are released for free circulation, import duty is levied according to Article 86(3) for IP and according to Article 86(5) UCC for OP.

To benefit from Article 258 UCC, the economic operator has to submit an application that shall refer to the IP authorisation granted in accordance with Article 211 UCC.

Example 2:

The customs authority of a Member State (MS) grants an IP authorisation to an economic operator who performs the following operations:

1) The economic operator brings one metric ton of rolled steel sheets with a customs value of EUR 600 from a third country A to a Member State (MS) where the goods are placed under the IP procedure.
2) After processing in the MS, the rolled steel sheets with a value of EUR 720 (20% or EUR 120 increase in value) are temporary re-exported to a third country B for further processing. If Article 258 UCC applies, the IP procedure is not discharged yet, but temporarily suspended.
3) Upon finalization of the processing operations carried out in third country B, the processed products brought back to the MS with a new value of EUR 1 080 (50% or EUR 360 increase in value) to the MS, where they are all released for free circulation.

These are the possible scenarios:

Scenario 2a: The economic operator is authorised to benefit from Article 258 UCC and Article 86(3) UCC applies for calculation of the amount of import duty on IP. It has to be stressed that, while goods are outside the customs territory of the Union, they are not placed under OP, despite a part of the total customs debt is calculated according to Article 86(5) UCC.

In this case, the total amount of import duty will be calculated by adding the amount of import duty based on Article 86(3) UCC and the one based on Article 86(5) UCC as follows:

*- IP Duty base **600** (value of goods placed under IP) * 25 % = **EUR 150***
*- OP Duty base **360** (added value of further processing made under the OP conditions as established in Article 258) * 25 % = **EUR 90***
*Total amount of import duty due: **EUR 240***

Scenario 2b: The economic operator is NOT authorised to benefit from Article 258 UCC and Article 86(3) UCC applies for calculation of import duty on IP.

In this case, there is no customs debt stemming from IP because IP is discharged by re-export of the products processed. This means that such products are not placed under OP (i.e. no customs debt is stemming from Article 86(5) UCC). If the final processed products brought back to the MS and they are all released for free circulation, the amount of import duty will be calculated on the basis of Article 85(1) UCC:

*- Duty base **1 080** (value of final processed products brought from third country B and released for free circulation) * 25 % = **EUR 270***
*Amount of import duty due in scenario 1a: **EUR 240***
*Import duty advantage if Article 258 UCC applies: **EUR 30***

It has to be stressed that, if the IP authorisation establishes the application of Article 85(1) UCC for the calculation of import duty, the calculation of import duty in both scenarios will be done as follows:

a) *With application of Article 258 UCC:*

*- IP Duty base **1 080** (value of goods placed under IP) * 25 % = **EUR 270***
*- OP Duty base **360** (added value of further processing made under the OP conditions as established in Article 258) * 25 % = **EUR 90***
*Total amount of import duty due: **EUR 360***
*However, as the total amount of import duty with no application of Article 258 UCC is EUR 270 (see example b) below), then the total amount of import duty due in this case will be: **EUR 270.** If there is no duty advantage, customs authorities should not authorise the application of Article 258 UCC. However, if the customs authorities have authorised the application of Article 258 UCC, then the amount of import duty to be paid is EUR 360.*

b) *Without application of Article 258 UCC:*

*- Duty base **1 080** (value of final processed products brought from third country B and released for free circulation in MS) * 25 % = **EUR 270***
*Import duty due in scenario a): **EUR 270***
*Amount of import duty due in scenario a: **EUR 270***
*Import duty advantage if Article 258 UCC applies: **EUR 0***

Example 3:

Let us consider example 2 with the following variation:

- Upon finalization of the processing operations carried out in third country B, the processed products brought back to the MS with a new value of EUR 1 080 (50% or EUR 360 increase in value) to the MS, where they undergo further processing operations under the IP procedure (which we will name IP 2).

- After processing in the MS, the further processed products with a customs value worth EUR 1 620 (50% or EUR 540 increase in value) are finally released for free circulation.

These are the possible scenarios:

Scenario 3a: The economic operator is authorised to benefit from Article 258 UCC and Article 86(3) UCC applies for calculation of import duty on IP.
In this case, the import duty will be calculated adding the import duty on Article 86(3) UCC and the one on Article 86(5) UCC as follows:

*- IP + IP2 Duty base **600** (value of goods placed under IP) * 25 % = **EUR 150***
*- OP Duty base **360** (added value of further processing made under the OP conditions as established in Article 258) * 25 % = **90***
*Total amount of import duty due: **EUR 240***

Scenario 3b: The economic operator is NOT authorised to benefit from Article 258 UCC and Article 86(3) UCC applies for calculation of import duty on IP.

In this case, there is no customs debt stemming from IP because IP is discharged by re-export of the products processed in MS. This means that such products are not placed under OP (i.e. no customs debt is stemming from Article 86(5) UCC). Therefore, the import duty will be calculated on the basis of the import duty on IP2 referring to the goods placed under IP2:

*- IP2 Duty base **1 080** (value of final processed product released for free circulation under IP) * 25 % = **EUR 270***
*Total amount of import duty due in scenario 2a: **EUR 240***
Import duty advantage if Article 258 UCC applies = EUR 30

Example 4:

Let us consider example 3 adding one difference: in this case, the IP authorisation establishes the application of Article 85(1) UCC.

These are the possible scenarios:

Scenario 4a: The economic operator is authorised to benefit from Article 258 and Article 85(1) applies for calculation of import duty on IP.

In this case, the import duty will be calculated adding the import duty on Article 85(1) UCC and the one on Article 86(5) UCC as follows:

*- IP1 + IP2 Duty base **1 620** (value of final processed product released for free circulation under IP) * 25 % = **EUR 405***
*- OP Duty base **360** (added value of further processing made under the OP conditions as established in Article 258) * 25 % = **EUR 90***
*Total amount of import duty due: **EUR 495***

However, as the total amount of import duty without application of Article 258 UCC is EUR 405 (see example b) below), then the total amount of import duty due in this case will be: ***EUR 405.*** *If there is no duty advantage, customs authorities should not authorise the application of Article 258 UCC. However, if the customs authorities have authorised the application of Article 258 UCC, then the amount of import duty to be paid is EUR 495.*

Scenario 4b: The economic operator is NOT authorised to benefit from Article 258 UCC and Article 85(1) UCC applies for calculation of import duty on IP.

In this case, there is no customs debt stemming from IP because IP is discharged by re-export of the products processed in MS. This means that the goods are not placed under OP (i.e. no customs debt is stemming from Article 86(5) UCC). The import duty will be calculated on the basis of the import duty on IP2 referring to the final processed product:

- IP2 Duty base ***1 620*** *(value of final processed product released for free circulation under IP)* ***** 25 % = EUR 405***
Total amount of import duty due in scenario 4a: ***EUR 405***
Import duty advantage if Article 258 UCC applies = EUR 0

Section 3 – Outward processing

Article 259 UCC

Scope

Goods re-imported by a third person who has obtained the consent of the holder of the authorisation

Regardless of the fact whether the holder of the authorisation for outward processing has arranged for the processing of the operations to be undertaken or not, goods may be re-imported by a third person who has obtained the consent of the holder of the authorisation.

Example:

Union tyres are exported under outward processing by company A, which is the holder of the OP authorisation. The tyres and the software developed in the customs territory of the Union (the value of this software is not included in the basis to calculate import duty because it is not included in the cost of processing operation mentioned in Article 86(5) UCC) are used by a non-EU car manufacturer, and the cars are subsequently imported into the Union by company B. Reference is made by company B to the OP authorisation in the c~~C~~ustoms declaration for free circulation. Company B can benefit from outward processing because it has obtained the consent of the company A. This information should be available, for instance, in the relevant INF OP EX/IM (during the transitional period INF2) or in the relevant authorisation.

Calculation of the import duty based on the cost of the processing operations

The holder of the authorisation for outward processing does not need to arrange for the processing operations that are to be undertaken outside of the Union.

The calculation of the amount of import duty is based on the cost of the processing operations, undertaken outside the customs territory of the Union.

Where a specific import duty is to be applied in relation to processed products resulting from the outward processing procedure or replacement products, the cost of the processing operations undertaken outside the customs territory of the Union referred to in Article 86(5) UCC must be calculated as follows:

- Cost of processing operations = the customs value of the processed products at the time of acceptance of the customs declaration for release for free circulation minus the statistical value of the corresponding temporary export goods at the time when they were placed under outward processing (see Article 75 UCC-DA).

In cases other than the ones mentioned in the previous paragraph, the cost of processing operations can also be calculated by the method referred to in Article 75 UCC-DA.

For further details on the application of Article 86(5) UCC, please consult the Guidances on Customs Value and Customs Debt. In any case, the following principles apply:

1) Where a specific import duty is to be applied in relation to processed products resulting from the outward processing procedure or replacement products, the customs value of the processed products imported in the customs territory of the Union must be the starting point of the calculation of the cost of processing operations, which is obtained by deducting to this customs value the statistical value of the goods temporarily exported to undergo the processing operations.

2) To calculate the customs value of the processed products imported in the customs territory of the Union, the rules established in Articles 70 onwards UCC (and the corresponding provisions in the UCC-DA and IA) are applicable. The fact that the goods are not sold for export from the third country, but taken to this country for processing and then brought back to the EU as processed goods, is not an impediment for the application of the transaction method as refferred to in Articles 70 onwards UCC (see points 44 to 51 of case law C-116/12).

3) The previous point entails that the value of the goods or services mentioned in Article 71(1)(b) UCC (assists) are also included in the customs value of the processed products when all the conditions defined in that Article are met. When it comes to the consideration of value of the assists in the cost of processing operations of the processed products, their value is also included in such cost, as long as:

    a. those assists are incorporated into the processed products or they are used to carry out the processing operations outside the customs territory of the Union, and, and
    b. the value of those assists is not included in the statistical value of the goods temporarily exported.

4) The cost of transport and insurance of the processed products from the third country to the place where the goods are brought into the customs territory of the Union is included in the cost of processing operations (see Article 71(1)(e) UCC).

5) On the costs of transport of the goods temporarily exported to undergo the processing operations, as they are not included in Article 71 UCC, they should not be included in the cost of processing operations (see Article 71(3) UCC).

Example regarding application of Article 86 (5) UCC:

- *Customs value of the process product (cars) 50.000 €*
- *Statistical value of the temporary export goods (tyres) + commercial value of software 5.000€*
- *Cost of processing operation undertaking outside customs territories of the EU 45.000 €*
- *Amount of import duty (import duty rate 10%) 4.500 €*

However, for goods subjected to specific import duties on the processed products the following procedure shall apply (Article 75 DA):

Example 1 regarding application of Article 75 DA:

- *Customs value of sugar (processed product) 400 euro per ton*
- *Statistical value of corresponding temporary export goods 200 euro*
- *amount of import duty applicable to processed products 420 euro/per ton*

Amount of import duty shall be calculated: (400euro – 200euro) x 420euro / 400euro = 210 euro per ton.

Example 2:

1 ton of Union goods (starch under CN code 3505 10 90) with statistical value of 100€ is exported under OP from MS A to the US.
50 € per ton is added in services and the processed product (net weight 1 ton) is imported into MS A.
At import after OP, the customs value of the processed product would be 150€.
The import duty rate is 9% (ad valorem duty) plus 17.7€ per 100kg (specific duty).

The calculation of the amount of import duty after OP is the following:
150 € minus100€ = 50€ (customs value of processed products minus statistical value of temporary export goods)
multiplied by 190,50€ (the amount of import duty applicable to the processed product
[(150 € multiplied by 9% = 13,50€) plus (17,7€ x(1000kg/100kg) = 177€) = 190,50€] = 9525€
divided by 150€ (customs value of the processed products) = 63,50€

Business case on outward processing

Mares are brought from the customs territory of the Union to a third country to be covered by a stallion with the objective of getting a foal for economic purposes. The mares return pregnant to the customs territory of the Union. The horses may be pure-bred breeders (CN 01 01 21 00) or normal horses (CN 01 01 29 90). The coverage is paid when the foal is born and viable.

In this case, the mares can be declared following two possible options:

a) The mares are declared for outward processing, being the costs of the services, i.e. of the processing operation, the basis for the calculation of the import duty (see Article 86(5) UCC),
b) the mares are declared for temporary export when they are brought to the third country and then they are released for free circulation when they are brought back to the customs territory of the Union.

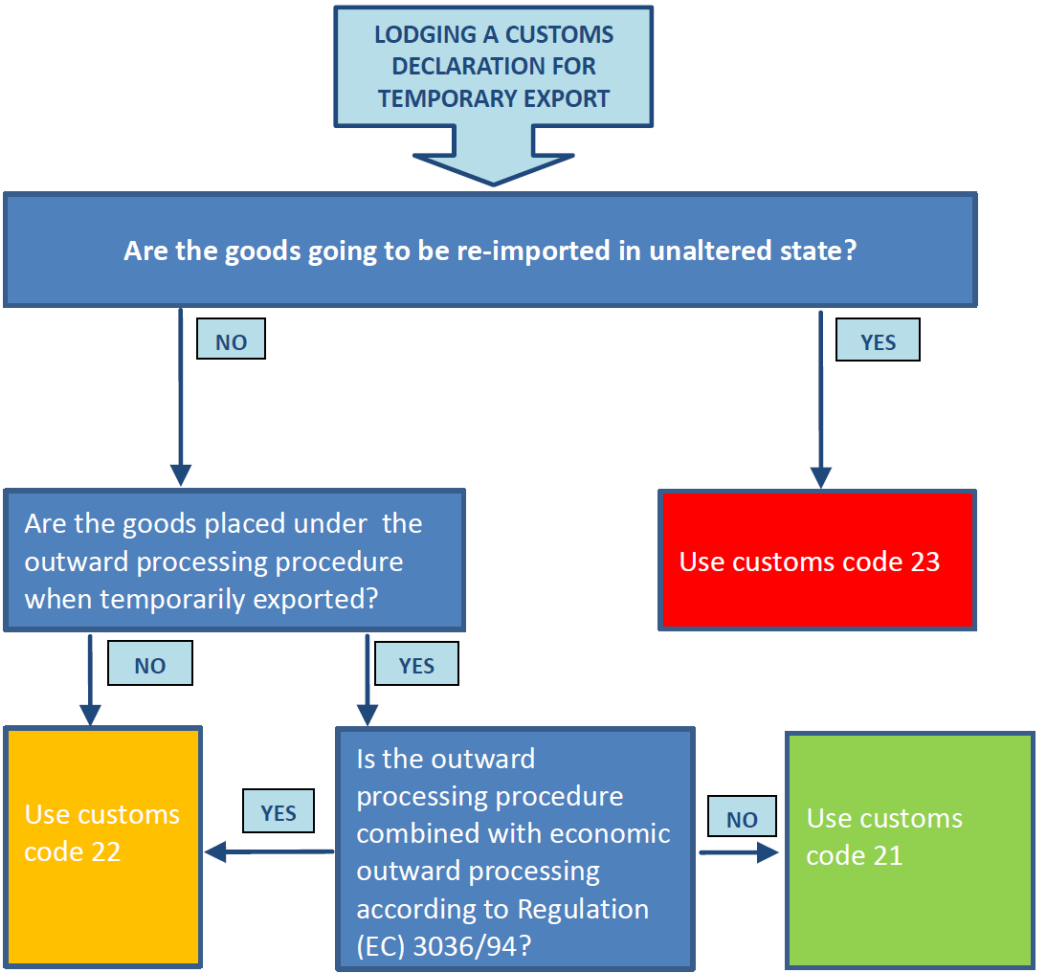
On option a), from legal point of view the business case describes a processing operation because the purpose of the service provided in the third country is to get a foal for economic purpose, i.e. to increase the value of the goods as in any other processing operation. Therefore, the goods are processed in the sense of Article 5(37) UCC. As they are processed in a third country, Article 259 UCC may apply, which means that the goods can be declared for outward processing. This is just an option, as outward processing is not a mandatory procedure for exported Union goods, even if they are exported to be processed in a third country and even if the processed products obtained therefrom are brought back to the customs territory of the Union.

On option b), the mares can be simply declared for temporary export when they are brought to a third country and then released for free circulation when they are brought back to the customs territory of the Union. This raises the question of whether such mares may benefit from relief from import duty as returned goods. As the mares come back to the EU pregnant, it cannot be said that they come in the same state as when they were exported. Therefore, this business case does not fulfill the condition established in Article 203(5) UCC and therefore the mares cannot be considered as returned goods.

Therefore, both options, a) and b), are possible and the economic operators concerned are free to choose any of them according to their needs and to other factors (e.g. possible preferential origin or the fact that pure-bred breeders with CN code 01 01 21 00 are free from import duty).

Use of customs codes for temporary export and the need of an outward processing authorisation

Taking into account the current definition of customs codes 21, 22 and 23, as regards data element ‘11 09 000 000 Procedure’ (box 37), the right use of each one of those codes will be based on the following circumstances:



Article 260 UCC

Goods repaired free of charge

The declarant has to indicate in the customs declaration for release for free circulation (data element 2/2 in Annex A UCC-DA) whether Article 260 UCC or Article 260a UCC should apply.

Article 260a UCC

Goods repaired or altered in the context of international agreements

This Article has been introduced to establish in the EU customs legislation a provision allowing a reciprocal duty exemption on processed products re-entered in the customs territory of the Union resulting from goods temporarily exported to the other country/territory with which the Union has concluded an international agreement for repair or alteration.

When these goods are temporarily imported to one country/territory from the other country/territory for repair or alteration, the goods must benefit from total relief from import duty. A new Article for inward processing was not added because the provisions already

establish that goods placed under inward processing are not subject to import duty (see Article 256(1) UCC).

The conditions mentioned in Article 260 UCC (e.g. contractural or statutory obligation arising from a guarantee) are not applicable for Article 260a UCC. The latter only applies to goods repaired or altered in a third country or territory with which the European Union has concluded an international agreement providing a relief for the processed goods that have been declared after such repair or alteration. In this case, what matters is that the processing operation fulfils the conditions provided for in the Free Trade Agreement applicable in every case, and not whether it is considered as a repair or as an alteration.

Example:

A Union car complying with environmental standard EURO 5 is exported to a third country/territory to make it comply with environmental standard EURO 6.

After the operations in the third country/territory, with which the European Union has concluded an international agreement providing a relief for the processed goods that have been declared after such repair/alteration, the declarant may ask for the application of Article 260a UCC. The reason why Article 260a UCC may apply is because the car is brought from this country/territory, regardless of its (non-) preferential origin.

The declarant has to indicate in the customs declaration for release for free circulation (data element 2/2 in Annex B UCC-DA) whether Article 260 UCC or Article 260a UCC should apply. If the economic operator prefers the application of Article 260a UCC, then he will have to refer to the Free Trade Agreement which applies to his concrete case at the time in which the declaration was lodged.

The table below shows the International Agreements that currently include the relief established in Article 260a UCC:

International Agreement (date of application) **Provision**	**Duty relief**	**Conditions for the duty relief**	
		Operations included	**Operations excluded**
Agreements in force			
Comprehensive and Economic Trade Agreement (CETA) between the EU and Canada (21.09.2017) Article 2.10	**2.** Except as provided in footnote 1, a Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the	**1.** For the purposes of this Article, repair or alteration means **any processing operation undertaken on goods** to **remedy**	…but **does not include an operation or process that**: (a) destroys the essential characteristics of a good or creates a new or

Goods re-entered after repair or alteration	good was exported for repair or alteration. **3.** Paragraph 2 does not apply to a good imported in bond, into free trade zones, or in similar status, that is then exported for repair and is not re-imported in bond, into free trade zones, or in similar status. (1). For the following goods of HS Chapter 89, regardless of their origin, that re-enter the territory of Canada from the territory of the European Union, and are registered under the Canada Shipping Act, 2001, Canada may apply to the value of repair or alteration of such goods, the rate of customs duty for such goods in accordance with its Schedule included in Annex 2-A (Tariff Elimination): 8901.10.10, 8901.10.90, 8901.30.00, 8901.90.10, 8901.90.91, 8901.90.99, 8904.00.00, 8905.20.19, 8905.20.20, 8905.90.19, 8905.90.90, 8906.90.19, 8906.90.91, 8906.90.99.	**operating defects or material damage and entailing there-establishment of goods to their original function** or to **ensure their compliance with technical requirements for their use**, without which the goods could no longer be used in the normal way for the purposes for which they were intended. Repair or alteration of goods includes **restoration and maintenance**…	commercially different good; (b) transforms an unfinished good into a finished good; or (c) is used to substantially change the function of a good.
Economic Partnership Agreement (EPA) between the EU and Japan (1.02.2019) Article 2.9 **Goods re-entered after repair and alteration**	**1.** A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its customs territory after having been temporarily exported from its customs territory to the customs territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the customs territory of the former Party, provided that the good concerned re-enters the customs territory of that former Party within the period as specified in its laws and regulations. **2.** Paragraph 1 does not apply to a good in the customs territory of a Party under customs control without payment of import duties and taxes that is exported for repair or alteration and that does not re-enter the customs territory under customs control without payment of import duties and taxes.	**4.** For the purposes of this Article, "repair" or "alteration" means **any operation or process undertaken on a good** to **remedy operational defects or material damage and entailing the re-establishment of the good to its original function**, or to **ensure its compliance with technical requirements for its use**. Repair or alteration of a good includes **restoring and maintenance**	but **does not include an operation or process that**: (a) destroys a good's essential characteristics or creates a new or commercially different good; (b) transforms an unfinished good into a finished good; or (c) changes the function of a good.

		regardless of a possible increase in the value of the good.	
Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam (12.06.2020) Article 2.10 **Repaired Goods**	**1.** A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its territory after the good has been temporarily exported from its territory to the territory of the other Party for repair, regardless of whether such repair could be performed in the territory of the Party from which the good was temporarily exported. **2.** Paragraph 1 does not apply to a good imported in bond, into a free trade zone, or in similar status, that is exported for repair and is not re-imported in bond, into a free trade zone, or in similar status. **3.** A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair.	4. For the purposes of this Article, the term "repair" means **any processing operation which is undertaken on a good** to **remedy operating defects or material damage and entailing the re-establishment of a good to its original function**, or **to ensure its compliance with technical requirements for its use**, without which the good could no longer be used in the normal way for the purposes for which it was intended. Repair of a good **includes restoring and maintenance**.	It **shall not include an operation or process that**: (a) destroys the essential characteristics of the good or creates a new or commercially different good; (b) transforms an unfinished good into a finished good; or (c) is used to improve or upgrade the technical performance of a good.
Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (TCA)	Article 24 **1.** A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from its territory to the territory of the other Party for repair. **2.** Paragraph 1 does not apply to a good imported in bond, into free trade zones, or in similar status, that is then exported for repair and is not re-imported in bond, into free trade zones, or in similar status. **3.** A Party shall not apply a customs duty to a good, regardless of its origin,	Article 17(h) "Repair" means **any processing operation undertaken on a good** to **remedy operating defects or material damage and entailing the reestablishment of the good to its original function** or **to ensure**	… but **does not include an operation or process that**: (i) destroys the essential characteristics of a good, or creates a new or commercially different good; (ii) transforms an unfinished good into a finished good; or

(1.05.2021) Article 24 **Repaired goods** Article 17(h) **Definition of "repair"**	imported temporarily from the territory of the other Party for repair.	**compliance with technical requirements for its use**. Repair of a good includes **restoration and maintenance, with a possible increase in the value of the good** from restoring the original functionality of that good,…	(iii) is used to improve or upgrade the technical performance of a good.
Free Trade Agreement between the European Union and New Zealand (FTA) (1.05.2024) Article 2.9 **Repaired or altered goods** Article 2.3(f) **Definition of "repair" or "alteration"**	Article 2.9 **1.** A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration. **2.** Paragraph 1 does not apply to a good imported in bond, into free trade zones, or in similar status, that is then exported for repair or alteration and is not reimported in bond, into free trade zones, or in similar status. **3.** A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.	Article 2.3(f) "Repair" or "alteration" means **any processing operation undertaken on a good, regardless of any increase in the value of the good,** to **remedy operating defects or material damage and entailing the re-establishment of the good to its original function** or to **ensure compliance with technical requirements for its use**, without which the good could no longer be used in the normal way for the purposes for which it was intended; repair or alteration of a good **includes restoration and maintenance**,…	but **does not include an operation or process that**: (i) destroys the essential characteristics of a good, or creates a new or commercially different good; (ii) transforms an unfinished good into a finished good; or (iii) is used to substantially change the function of a good.

Article 261 UCC

Standard exchange system

There are no changes in this article.

Article 262 UCC

Prior import of replacement products

There are no changes in this article. However, it should be clarified that:

The period within which the defective Union goods must be exported is not a 'period for discharge' as defined in Article 1(23) DA. This indicates that prior import of replacement products is a special case which has following consequences:

- Regarding the period of validity of the authorisation, the authorisation for outward processing must be valid on the date of acceptance of the customs declaration for release for free circulation of the replacement products.

- If the defective Union goods are declared for export according to Article 262(2) UCC, the authorisation for outward processing does not need to be valid anymore.

ANNEX I

Examples

Art. 211 UCC

Authorisation

a) An example on Inward Processing of how the reference amount for the guarantee may be calculated is as follows:

- Total value of Goods which may be placed under Inward Processing during 5 years
  (see data field 7 of the authorisation)
  €600,000
- Duty Rate
  10%
- VAT rate
  20%[3]
- Period of Discharge
  6 months
- Maximum value of goods which may be under inward processing at a given point in time according to business activities
  €50,000
- Calculation of the reference amount regarding import duty
  €50,000 x 10% = €5,000

  The other charges are calculated as follows
  €55,000 x 20% = €11,000
- Guarantee reference amount is determined as
  €16,000.

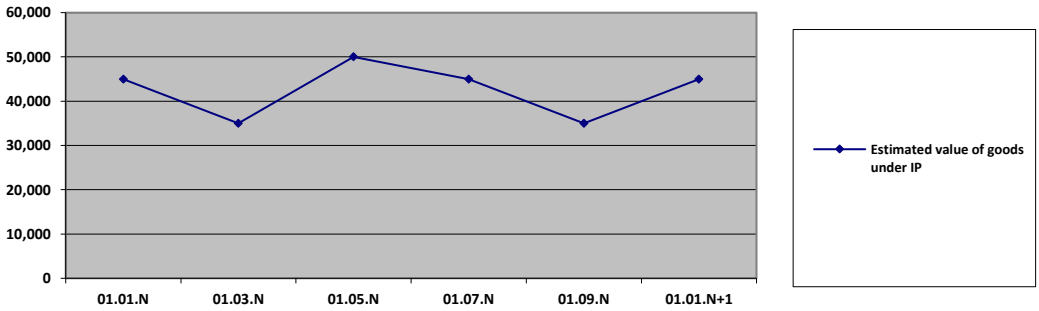
The above example illustrates that the guarantee must be provided only for those goods that can be actually under the inward processing procedure and not for those which could be placed theoretically under the procedure.

This means that the factual situation must be taken into account, i.e. the estimated value of goods corresponding to customs declarations for inward processing and the estimated

[3] Highest VAT rate of Member States involved.

value corresponding to the transactions by which the IP procedures are discharged (see 215(1) UCC), and their evolution during the period of reference. These data elements correspond to the estimate of the volume of intended operations as shown by the commercial documentation and accounts of the person requested to provide a guarantee (Article 155 (4) IA)

The maximum value of goods under IP (i.e. corresponding to the reference amount which is the maximum amount at stake) should also take into account historical data regarding inward processing operations during the previous 12 months.



The 10% duty rate may reflect the average import duty rate if more than one type of goods is concerned. In this case, the calculation of the reference amount is not based on the period of validity of the authorisation or on the period of discharge.

b) An example on customs warehousing of how the reference amount for the guarantee is calculated is as follows:

- Total value of goods which may be placed under customs warehousing is estimated to be per year €5,000,000
- Value of goods which may have been placed under customs warehousing at a given point in time according to the storage capacity of the holder of the authorisation €1,000,000
- Duty Rate 10%[4]
- Average length of time goods remain under customs warehousing 6 months
- VAT rate 20%[5]
- Calculation of the reference amount regarding import duty
  €1,000,000 x 10% = €100,000

  The other charges are calculated as follows
  €1,100,000 x 20% = €220,000

[4] The 10% duty rate as determined in accordance with Art. 155(3) IA .
[5] Highest VAT rate of Member States involved.

- Guarantee reference amount is determined as €320,000.

Art. 218 UCC

Transfer of rights and obligations

Art. 215 and 219 UCC

Discharge of a special procedure and movement of goods

Company A, located in MS-1, imports aluminium ingots under its inward processing authorisation and processes it into aluminium sheets. Those aluminium sheets are forwarded to company B, holder of its own inward processing authorisation and located in MS-2, which transforms them into cans.

Company A is the holder of an IP authorisation involving more than one MS. The customs office of placement and the customs office of discharge are not the same, and therefore no prior consultation of MS-2 is necessary (see Art. 261(1)(c) IA). However the central contact point of MS-1 should send a copy of Company's A IP authorisation to the central contact point of MS-2, which would forward this copy to the customs office of discharge. The customs office of discharge of the authorisation of Company A has to be the customs office of placement of the authorisation of Company B.

The goods are moved under the inward processing procedure without any customs formalities (Art. 179 DA), but company A has to provide information on the movement in its records.

The discharge of the first IP procedure will be made by the placement of the goods under the second IP procedure (Art. 215 UCC). If the second holder:

- uses his simplified procedure, he sends a confirmation of receipt to the first holder stating the date when he placed the goods under its own procedure. Company A keeps the confirmation of the receipt in its records and his liability is discharged – MRN (Master Reference Number) or the internal reference number which was used for the EIDR (Entry Into the Declarant's Records);

- uses a standard customs declaration, he sends information about MRN and the date of placement under subsequent customs procedure to company A which has to enter this information in its records.

The practice described above cannot be applied for the end-use procedure.

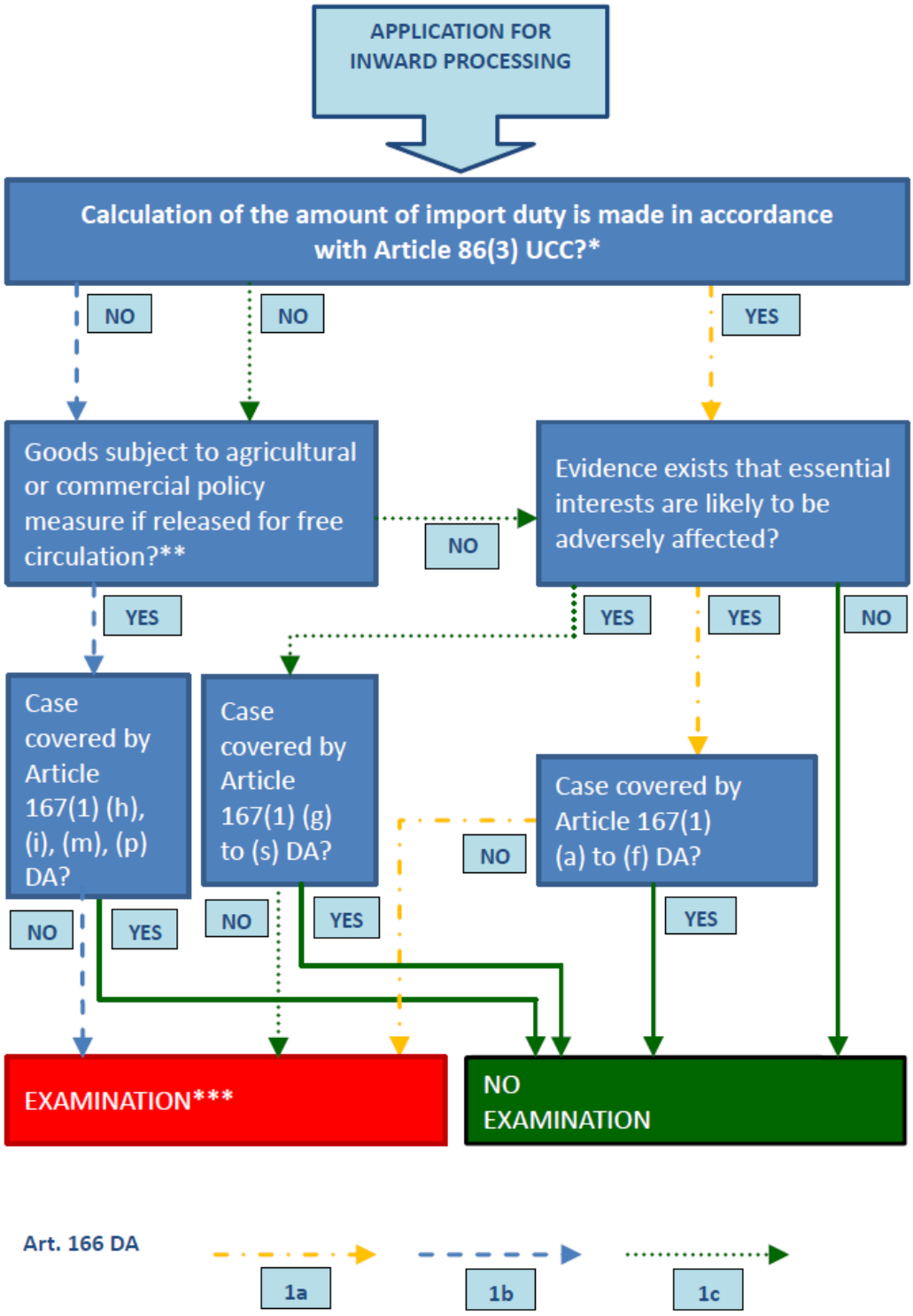
As goods released for free circulation under end-use have obtained the Union status, such goods cannot be declared for a subsequent customs procedure. For instance, end-use goods cannot be declared again or released for free circulation or for the export procedure.
A practical solution is a movement of goods to a location where goods are assigned to a prescribed end-use by a person who is not the holder of the end-use authorisation. In this case the holder of the end-use authorisation is responsible until the end-use procedure is discharged.

Example: Company A imports parts of cars to be assembled industrially. In the authorisation of company A, company B is mentioned as the place where the parts are assembled and

assigned the prescribed end-use. Company A remains responsible. Goods are moved to company B (Art 219 UCC). There is no TORO in this example.

ANNEX II

Flowchart on application for inward processing

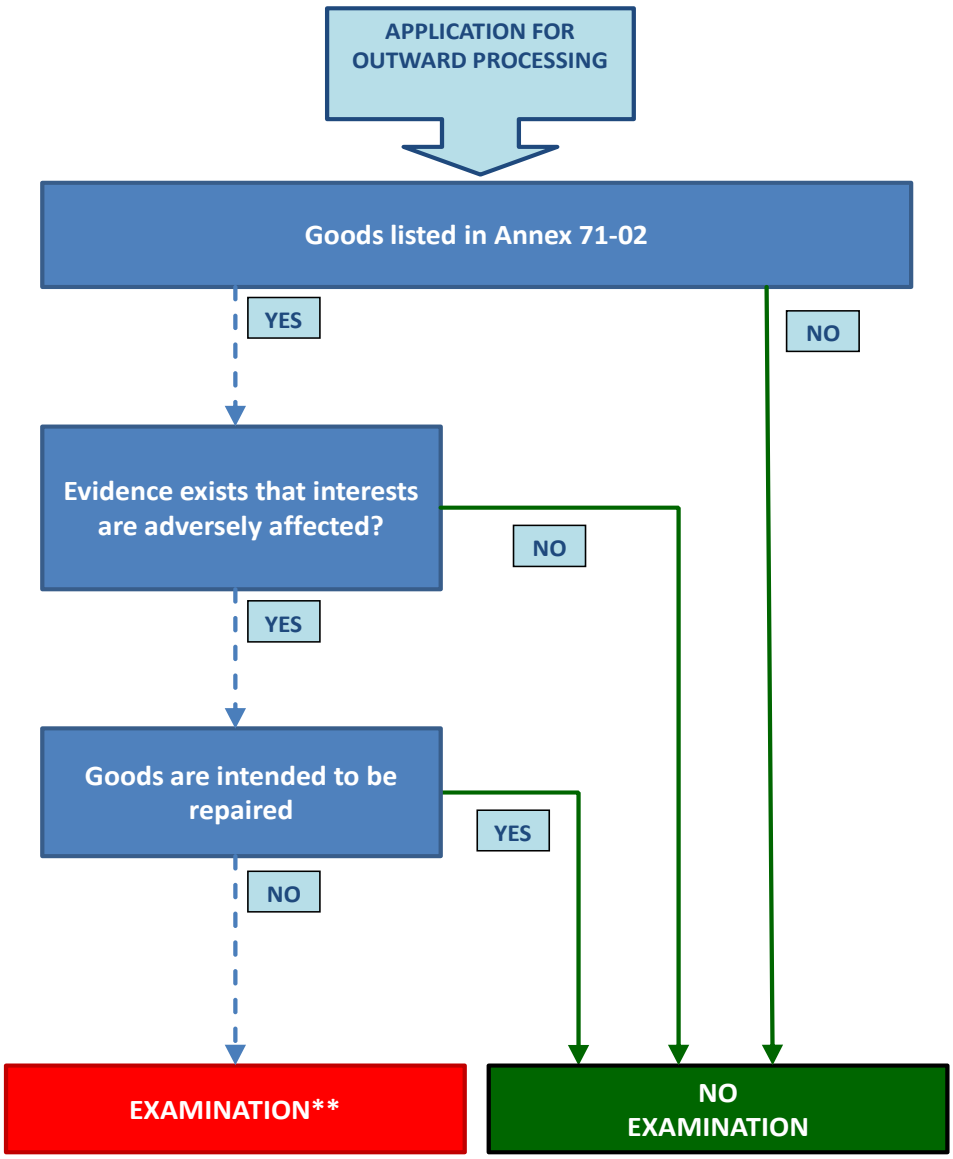


* According to Article 76(2) UCC-DA, Article 86(3) UCC will be mandatory if the goods placed under the inward processing procedure would have been subject, at the time of the acceptance of the first customs declaration for placing the goods under the inward processing procedure, to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation, and the case is not covered by Article 167(1)(h), (i), (m) or (p) UCC-DA.

** If Article 86(3) UCC does not apply, the goods are subject to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions and the case is covered by Article 167(1)(h), (i), (m) or (p) UCC-DA, the examination of economic conditions is not required.

*** In case where an examination is required, the file must be sent to the Commission, unless the conclusion was drawn already on a similar case.

Flowchart on application on outward processing



Note:
'Goods' listed in Annex 71-02 means goods intended to be placed under the outward processing procedure

** In case where an examination is required, the file must be sent to the Commission, unless the conclusion was drawn already on a similar case

ANNEX III

TORO – Transfer of rights and obligations

Reflection on the legal scope of Article 218 UCC - Transfer of rights and obligations (TORO)

A clear differentiation between "holder of the procedure" and "holder of the authorisation" should be made in order to have a full understanding of the procedure.

Procedure	Holder of the authorisation	Holder of the procedure	Competent Customs authority for TORO application	Comments/examples
Inward processing	Trader A	Trader A	Issuing customs authority	Issuing customs authority means the Customs office that issued the authorisation
Outward processing	Trader A	Trader A	Issuing customs authority	The person re-importing the goods (current INF2 procedures) would become the holder of the procedure under Articles 218 and 259(1) UCC
Temporary admission	Trader A	Trader A	Issuing customs authority	If a means of transport was placed under TA by any other act, the authorisation holder and the holder of the procedure would be the driver. If a 3rd person (established outside the EU) met the conditions to use the means of transport, he would become the holder of the procedure under Article 218 UCC. However, such TORO requires a customs authorisation. Museum A imports an old statue from Egypt

				for exhibition. An authorisation for TA is granted to museum A based on Art 234(1) DA. Museum A is the holder of the authorisation and the holder of the procedure. Before the period of discharge is over, museum B wishes to borrow the statue to show it at an exhibition. There is a TORO from museum A to museum B which becomes the holder of the procedure. The statue remains under the same TA authorisation but the holder of the procedure has changed.
Customs Warehousing **Public Type I** **1st example**	Trader A	Trader B	Customs office of placement	
Customs Warehousing **Public Type I** **2nd example**	Trader A	Trader A	Issuing customs authority	
Customs warehousing **Public Type II** **1st example**	Trader A	Trader B	Customs office of placement	
Customs warehousing **Public Type II** **2nd example**	Trader A	Trader A	Issuing customs authority	
Customs	Established	Trader A	Customs	

warehousing **Public Type III**	through national legislation		office of placement	
Customs warehousing **Private**	Trader A	Trader A	Issuing customs authority	
End-use	Trader A	Trader A	Issuing customs authority	

One operator could fulfill both functions, sometimes two or more operators could be involved in any particular chain but there cannot be more than one authorisation holder or more than one holder of the procedure at any specific time.

General Information

TORO does not require the transferee to have a SPE authorisation. In principle two different procedures can be used for TORO:

(1) TORO from the holder of a SPE authorisation (who has also a TORO authorisation) to a transferee who does not have any authorisation; or

(2) TORO from the holder of a SPE authorisation (who has also a TORO authorisation) to a transferee who has a TORO authorisation.

(1) TORO from the holder of a SPE authorisation to a transferee who does not have any authorisation

The transferee does not have any authorisation relating to TORO. In this case the holder of the SPE authorisation needs to provide information about the discharge of the procedure in his bill of discharge. This requires in many cases exchange of commercially sensitive information between the (subsequent) transferee(s) and the holder of the SPE authorisation. The transferee does not have an obligation to provide information about the discharge of the procedure to customs.

This type of TORO can be used both for partial and full TORO

(2) TORO from the holder of a SPE authorisation to a transferee who has a TORO authorisation.

The transferee needs to be granted a TORO authorisation before any transfer of rights and obligations can take place.

In this case the holder of a SPE authorisation needs to provide information on the TORO in his bill of discharge, if it is required, and/or in his records. He does not have to provide information on the actual discharge to customs. There is no need to exchange (sensitive) information between the transferee(s) and the holder of a SPE authorisation. The transferee must provide information on the discharge or on a subsequent TORO to his supervising customs office. The transferee should provide information on the discharge or on a subsequent TORO to this supervising customs office within 30 days after the expiry of the time-limit for discharge or, in case of customs warehousing, within 30 days after the day on which TORO took place.

1. The transferor's responsibility for the goods subject to TORO can cease completely at the time of transfer based on the conditions of the transfer. Thus, a holder of an end-use or inward processing authorisation should provide information in the bill of discharge about a full TORO which means that the transferee became the holder of the procedure. Consequently the holder of the end-use or inward processing authorisation does not have any rights and obligations after the transfer regarding the goods which were released for the end-use or inward processing procedure under coverage of his end-use or inward processing authorisation.

2. Where TORO involves more than one Member State a prior consultation of the Member States concerned is necessary. However, it should be noted that in case of end-use the consultation may be replaced by a notification (see case 1 in Annex V).

3. The obligations that are transferred include the obligation to discharge the procedure within the period for discharge (not relevant for customs warehousing). The information about the discharge or another TORO must be submitted by the transferee to his supervising customs office.

4. If an end-use or inward processing authorisation includes a rate of yield, then the rate of yield may be adjusted (see paragraph two of Article 255 UCC).

This type of TORO can only be used for a full TORO.

Additional considerations on Transfer of rights and obligations (TORO)

Do both parties to the TORO need to hold a SPE authorisation?

No, a full or partial TORO does not require the transferee (recipient) of the goods to hold a SPE authorisation. The transferee must abide by the transferred rights and obligations (including the need to provide a guarantee in case of full TORO). Due to the fact that the transferee does not have or use a SPE authorisation with regard to the goods for which TORO is intended, the customs authorities must lay down explicitly which rights and obligations are transferred from the transferor to the transferee. The rights and obligations are always related to goods which have been placed under the special procedure. Some 'personal' rights and obligations cannot be transferred, such as 'AEO status' or 'providing the necessary assurance of the proper conduct of the operations' (see Article 211(3)(b) UCC). As said above a SPE authorisation is not required but in the case that the second TORO procedure is used, the transferee must have a TORO authorisation before any TORO may take place.

If no authorisation is held by the second party, how can customs approve the transfer?

Where an application for TORO is received, it is the responsibility of the customs authority to confirm that the transferee (recipient) is able to meet and maintain the rights and obligations being transferred.

Do customs have the right to decide where a TORO can apply and where a more formal movement/discharge must take place?

Customs authorities cannot, as a matter of policy, decide that they will not allow TORO on a blanket basis. There must be an economic need but, beyond that, each application must be treated on its own merits.

Can a TORO be allowed in reverse?

Yes. For example, if a processor asks for and is authorised to make a TORO to a 3rd party, once processing is finalised, there can be a TORO back to the original authorisation holder for them to dispose of the processed products.

Can a TORO be the subject of a further TORO?

Yes. If the authorisation holder cannot process goods and passes them onto a 3rd party under a TORO and that person (for whatever reason) cannot process the goods, a further TORO is possible.

How do guarantees operate within TORO?

The guarantee to be used after TORO takes place must cover the potential customs debt(s) that may incur once the TORO authorisation is granted. If this condition is not met, customs authorities must not grant a TORO authorisation.
Where there is a full or partial TORO intended and the transferee does not have a TORO authorisation, the transferee may provide a guarantee based on Art. 266 IA. This should be agreed between transferor and transferee and it is dependent on the approval of Customs. If the transferee has provided a guarantee, based on Art. 266 IA, it can be called upon in case a customs debt arises.

If the transferee does not provide a guarantee, the guarantee provided by the holder of the authorisation must remain in place in case of partial TORO, as long as it covers customs debt(s) that may incur from TORO. The decision for TORO (Article 266 IA) has to indicate which guarantee is taken (see Article 89(3) UCC).

It should be noted that for the use of a public customs warehousing procedure, the transferee may not provide a guarantee because the holder of the authorisation provided a guarantee for the operation of storage facilities for the public customs warehousing of goods.

Taking into account that a bill of discharge must be submitted by the holder of the authorisation for inward processing and for end-use and not by the transferee, it is suggested that the guarantee provided by the holder of the authorisation should remain in place.

However, the transferee must provide a guarantee if the second TORO procedure is used (see also Annex V, Case 1 – Fish under end-use involving more than one Member State).

The above described practice(s) should be applied also in case of successive TOROs.

Which customs authority is competent for an application for TORO? (see column 4 in the table above)

Under private CW, IP, OP, E-U and TA, the holder of the procedure and the holder of the authorisation are the same person. Therefore, an application for TORO should be submitted to the customs authority which issued the authorisation for private CW or the use of IP, OP, E-U and TA.

Under public customs warehousing the operators are normally more disconnected and therefore the holder of the procedure will not necessarily know where the issuing customs authority (or even the supervising office) is situated. In those cases, the competent customs authority would be the customs office of placement.

If a transferee wants to use a TORO authorisation, the customs authorities responsible for his place of establishment should be the competent customs authorities.to grant this authorisation.

How would TORO work with inward processing EX/IM and the INF5 procedures?

It was generally acknowledged that there could be difficulties with this concept because of the timing of the operation.

The holder of the procedure is also the holder of the authorisation (Trader A). As such, Trader A has the right to declare (the import) goods to IP but there are no obligations to pay duty due to the change of customs status. The right to import goods "duty free" can be transferred to Trader B. The INF5 is completed and certified by the customs authorities. Trader B can then declare goods to IP and put these goods on the EU market without payment of duty. The fact that the transfer takes place before the goods are declared for IP was not considered to impact upon the principle of TORO. It was agreed that the holder of the authorisation (Trader A) must apply for TORO before the processed products are exported under IP EX/IM.

It is fairly common to find that the importer of the replaced goods in an INF5 process changes. If this arises, a subsequent TORO is required. Trader B would request a TORO to Trader C from the issuing customs office. The INF5 would be modified. Trader A's authorisation would also require amendment to reflect the changes (including any change in the customs office of placement).

Is it possible to have a TORO between (for example) customs warehousing and inward processing?

Such a transfer is not possible.

Who has to submit the bill of discharge after TORO?

The holder of the End-Use or Inward Processing authorisation. Depending on the case, the holder of this authorisation has to provide information in the bill of discharge on the discharge of the procedure or on the TORO.

If the transferee has a TORO authorisation, he has to provide information on the discharge of the procedure or on a subsequent TORO to his supervising office.

Is information about the simplified discharge required in the bill of discharge if processed products or goods are deemed to be released for free circulation?

The information about the simplified discharge in Art 175(4) DA is not required in case of TORO if the competent customs authority is of the opinion that the transferee should also benefit from this simplification. The TORO authorisation should provide information about the applicability of Art 170(1) DA.

Which rights and obligations of the holder of the end-use procedure may be transferred under TORO?

Rights of the holder of the procedure:

- to use the goods;
- to move the goods;

- to export and benefit from the extinguishment of the customs debt (see Art.124(1) UCC)

Example: good A has a normal import rate of 10% and a reduced rate of 4%. If the good is not used for the prescribed end-use, a customs debt is incurred for the difference between the reduced and the normal import rate. However if the goods are exported with the approval of the customs authorities, the debt is extinguished.

Obligations of the holder of the procedure:

- to assign the goods to the prescribed end-use within the period of discharge;
- to keep records;
- to keep the goods available for customs supervision;
- to pay the import duty in case of customs debt incurred based on Art.79 UCC.

Conditions of TORO:

- need for customs approval/favourable decision either in the end-use authorisation Annex A DA/data element 8/8 or in a separate decision where the request for TORO was made after granting the end-use authorisation by release of goods for the procedure (Art 262 IA);
- the transferor has to inform the transferee about goods involved by the TORO and the following data element are suggested to be provided, for instance on commercial documents, as a best practice:
  - EORI number, or name and address of the transferor and the transferee;
  - Number of the end-use authorisation and the indication of 'end use TORO';
  - Packages and description of goods;
  - Marks and numbers of goods;
  - Taric Code;
  - Gross mass;
  - Net mass;
  - MRN of the end-use customs declaration;
  - Supplementary Units;
  - SCO (supervising customs office) and, if required, any other competent customs office;
- the transferor has to inform the transferee about the date by which the procedure must be discharged.
- the transferor and the transferee have to provide information about the date and time of TORO in their records.
- If the first TORO procedure is used, the transferee should provide information about the discharge of the procedure to the transferor. The period within which such information has to be provided must be set by the competent customs

authority taking into account that the bill of discharge must be presented to the supervising customs office within 30 days after the expiry of the period for discharge.

- However, if the transferee has a TORO authorisation, he does not have to provide information about the discharge to the transferor but to his supervising customs office. The transferee should provide information on the discharge or on a subsequent TORO to this supervising customs office within 30 days after the expiry of the time-limit for discharge or, in case of customs warehousing, within 30 days after the day on which TORO took place.

  See Annex V, Case 1 – Fish under end-use involving more than one Member State.

Is a consultation procedure necessary when more than one Member State is involved?

Yes. The Member State where the transferee is located must be able to verify if the transferee only uses the goods in accordance with the specific end use and to levy import duty in case of non-compliance. However, it should be noted that in case of end-use the consultation may be replaced by a notification in case of TORO procedure 2. See Annex V, Case 1 – Fish under end-use involving more than one Member State).

Is there an obligation for the transferor to check whether the potential transferee has already a TORO authorisation?

Yes, for TORO procedure 2,

Can equivalent goods used under end use be subject to TORO?

No, because only goods which have been placed under end use may be subject to TORO.

Additional guidance

As regards the consultation procedure, Art. 260 IA should be applied *mutatis mutandis*.

Is there an alternative to TORO in case of end-use?

Regarding the case of economic operators who import goods to sell them to the customers, an alternative to TORO could be to keep the goods under temporary storage or placing them first under the customs warehousing procedure with subsequent placement of goods under the end-use procedure.

Is there an alternative to TORO in case of special procedure other than end-use?

Yes, there is no need to use TORO if goods are placed under a subsequent special procedure other than transit because goods placed under special procedures other than end-use or

outward processing are non-Union goods which are not in free circulation within the Union. Therefore, for these goods it is possible to lodge another/subsequent customs declaration for the same or for another special procedure other than transit.

Is there any form/model which may be used for TORO?

Yes, for the purposes of TORO the following model may be used.

Transfer of rights and obligations (TORO) in accordance with Article 218 UCC

(Form to be used)

Notes:

The layout of the model is not binding. However, if the model is used, the order numbers and the appropriate text should not be changed.

The model should be made out electronically.

The model may be used only if the competent Customs authorities have authorised TORO in accordance with Art.266 IA.

The model should be used threefold. The transferee should send copy 1 to the transferor and copy 2 to his supervising customs office after he has completed box 20. Copy 3 is to be kept by the transferee for at least a three years period beginning from the date on which TORO took place.

If the supervising customs office does not consider it necessary for customs supervision to get a copy of the form, only two copies need to be used.

Full TORO in accordance with Article 218 UCC

(Form to be used for full TORO)

Boxes 14, 16-18 in [ ] must not be completed if the second TORO procedure is used (see above general information)

1	**Customs Authorities have authorised full TORO on** **Indicate the relevant decision number(s)**	

Persons and supervising customs office(s) concerned

2	**EORI-number or name and address of the transferor**	
3	**EORI-number or name and address of the transferee**	
4	**Supervising Customs Office of the transferor**	
5	**Supervising Customs Office of the transferee**	

Details of the goods which are subject to TORO

6	**MRN of the customs declaration placing the goods under the special procedure**	
7	**Taric Code**	
8	**Packages and description of goods**	
9	**Marks and numbers of goods**	

10	**Gross mass**	
11	**Net mass**	
12	**Supplementary Units, if applicable**	
13	**Date by which the special procedure must be discharged**	
[14	**Period within which the transferee has to provide information to the transferor about the discharge of the special procedure.]**	
15	**Date and time of TORO**	
[16	**Date on which the special procedure was discharged.]**	
[17	**Date on which the transferor was informed about the discharge of the special procedure.]**	
[18	**Confirmation of the transferee that transferor was informed about the discharge of the special procedure.**	**Place and date Signature or electronic authentication of the transferee]**
19	**Where applicable, additional information (e.g. guarantee, rate of yield)**	
20	**Confirmation that the provided information is correct**	**Place and date Signature or electronic authentication of the transferor** **Place and date Signature or electronic authentication of the transferee**

ANNEX IV

Movement of goods

Reflection on the legal scope of Article 219 UCC and its relevant COM acts

Article 219 UCC – Movement of goods

Under Article 219 UCC, there must be a physical movement of goods, meaning a movement of goods between different places in the customs territory of the Union. This is not necessarily the case when a transfer of rights and obligations is permitted. The overall aim of Article 219 UCC is to reduce, as far as possible, the use of the external transit procedure.

Scope of Article 179(1) UCC-DA

The reference to **Article 178(1)(e) DA** (Records) was vitally important to the movement procedure. Without accurate records, in particular details of the "location and particulars of any movement of goods", the envisaged movement procedure could not work. The reference to "without any additional customs formalities" was also important as this effectively defined the procedure.

Movement of goods under Temporary Admission

All movements of TA goods could be carried out under **Article 179(1) DA**. Records must be kept only, if required by the customs authorities.

Scope of Article 179(2) DA

Goods must have been declared to OP in order for a movement (within the scope of this article) to take place. For processed products and goods re-imported in the state in which they were exported under outward processing, movement should not be possible under Article 219 UCC but external transit procedure may be used.

Outward processing goods moving from the office of placement to the office of exit

Article 269(2) (a) UCC specifically says that OP goods are not under the export procedure. According to **Article 267 (2) IA** goods could be moved under OP while being in line with export formalities but not under the export procedure.

Movements of goods other than end-use and OP goods from the office of placement to the office of exit.

Articles 158 to 195 UCC would apply (as per **Article 179(2) DA**). Outward processing according to **Article 259(1) UCC** is not possible for non-Union goods, but in case of temporary re-export referred to **Article 258 UCC** it can be done. Temporary re-export for further processing is possible under customs procedure code 2151 and authorization for outward processing is not needed.

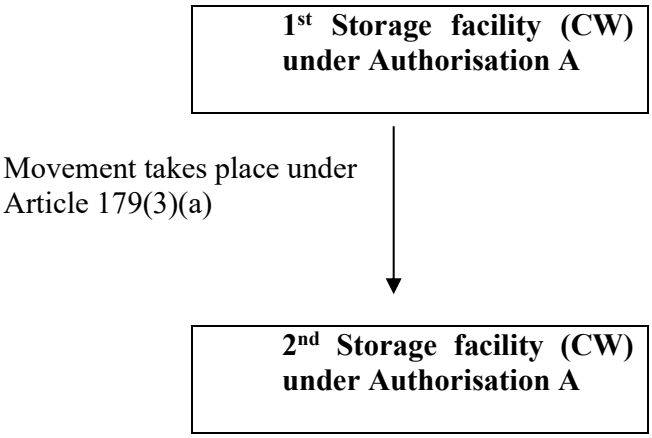
Scope of Article 179(3) DA

To assist in the understanding of the text, the following examples were prepared demonstrating the movement procedure.

Example 1 – Article 179(3)(a) DA

Movement between different storage facilities designated in the same authorisation (customs warehousing)

The following example was agreed:

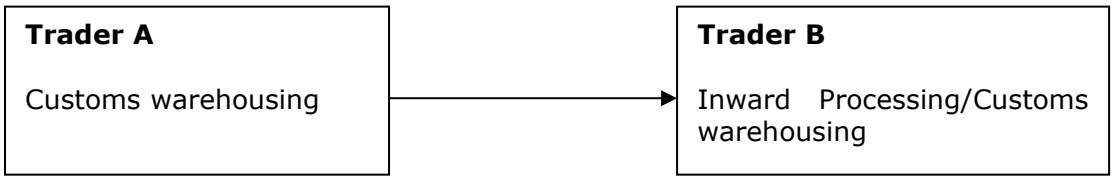


A 30-days time limit for completing the movement was inserted to ensure certainty. If the movement was not completed within that time, a customs debt would be incurred in accordance with Article 79 UCC. The records must clearly show the precise location of the goods (Article 178(1)(e) DA refers).

Example 2 – Article 179(3)(c) DA

(c) from the storage faciliti

es to the customs office of exit or any customs office indicated in the authorisation for a special procedure as referred to in Article 211(1) of the Code, empowered to release goods to a subsequent customs procedure or to receive the re-export declaration for the purposes of discharging the special procedures.



Where the movement was intended to result in a discharge of the procedure, the customs office of discharge must be stated in the authorisation. The customs office of discharge must also be the customs office of placement as indicated in Trader B's authorisation. Trader B may use EIDR as a form of customs declaration for the subsequent inward processing or customs warehousing procedure. In this case the goods may be moved directly to the places mentioned in the EIDR authorisation of Trader B where the goods may be presented to customs at a designated or approved place.

Movement of goods under ex "Type E" customs warehousing

Although "type E" warehouses are not provided for under the UCC, **Article 240(1) UCC** permits the storage of non-Union goods in "any other location".

Export of end-use goods

How should export of end-use goods be handled when (1) end-use had already been discharged by putting the goods to their prescribed use and (2) where they had not been discharged.

It was agreed that for situation (1) and provided that the correct discharge procedures had been followed, the goods were in free circulation without conditions and that the normal export rules would apply. The important tool would be the bill of discharge; specifically the documents/information relating to discharge and stating that goods have been assigned to their prescribed end-use (Article 175(3) DA refers).

For situation (2), the end use procedure may be discharged by taking goods out of the customs territory of the Union before their assignation to the end-use prescribed by the Tariff. Such export should be approved by customs in accordance with Art.124 (1)(i) UCC.

Article 179(1) DA allows the goods to travel to the customs office of exit without formalities but with record keeping requirements in place. A customs declaration for export according to Article 269(3) UCC has to be submitted, but goods are not placed under export procedure; they remain under end-use procedure until the exit from the customs territory of the Union has been confirmed (see Article 267(5) IA).

Additional considerations on movement of goods

(a) Records of the movement

Movements to CW Type II from a CW Type I (to B from A under ex CCIP) would be possible because **Article 214(1) UCC** allows records to be required from any person involved in customs activities – that would include the holder of the procedure if they were carrying out the movement. In addition, **Article 242 UCC** clearly stats the responsibilities of the holder of the authorisation and the holder of the procedure.

(b) Movement of goods within centralised clearance

Normally, goods are physically presented and all documentation lodged at the same place. Under centralised clearance, a declaration could be made in Brussels while the goods are physically presented in Antwerp where they are released (for example) to inward processing. In such circumstances, the goods can move to the place of processing without customs formalities but the movement must be reflected in the trader's records. Article 179(1) DA refers.

(c) Movement of goods following an authorisation being obtained based on a customs declaration (Article 163 DA and Article 262 IA refer)

It was confirmed that where such an authorisation is obtained, the goods can move to the place of processing or use under Article 179(1) DA – without customs formalities but reflected in the records. Regarding TA, records must be kept only, if required by the customs authorities. This would not impact on authorisations involving more than one Member State as this method cannot be used to obtain such authorisations. An Annex 12 TDA or Annex A DA based application/authorisation is always required with the exception of TA (Article 163(2)(d) DA refers).

The following scenario was discussed.

Goods move from a customs warehouse in The Netherlands to an office of exit in Germany. The goods travel **Article 179(3)** DA – the re-export declaration having been lodged in The Netherlands. The goods do not leave the Union within 30 days.

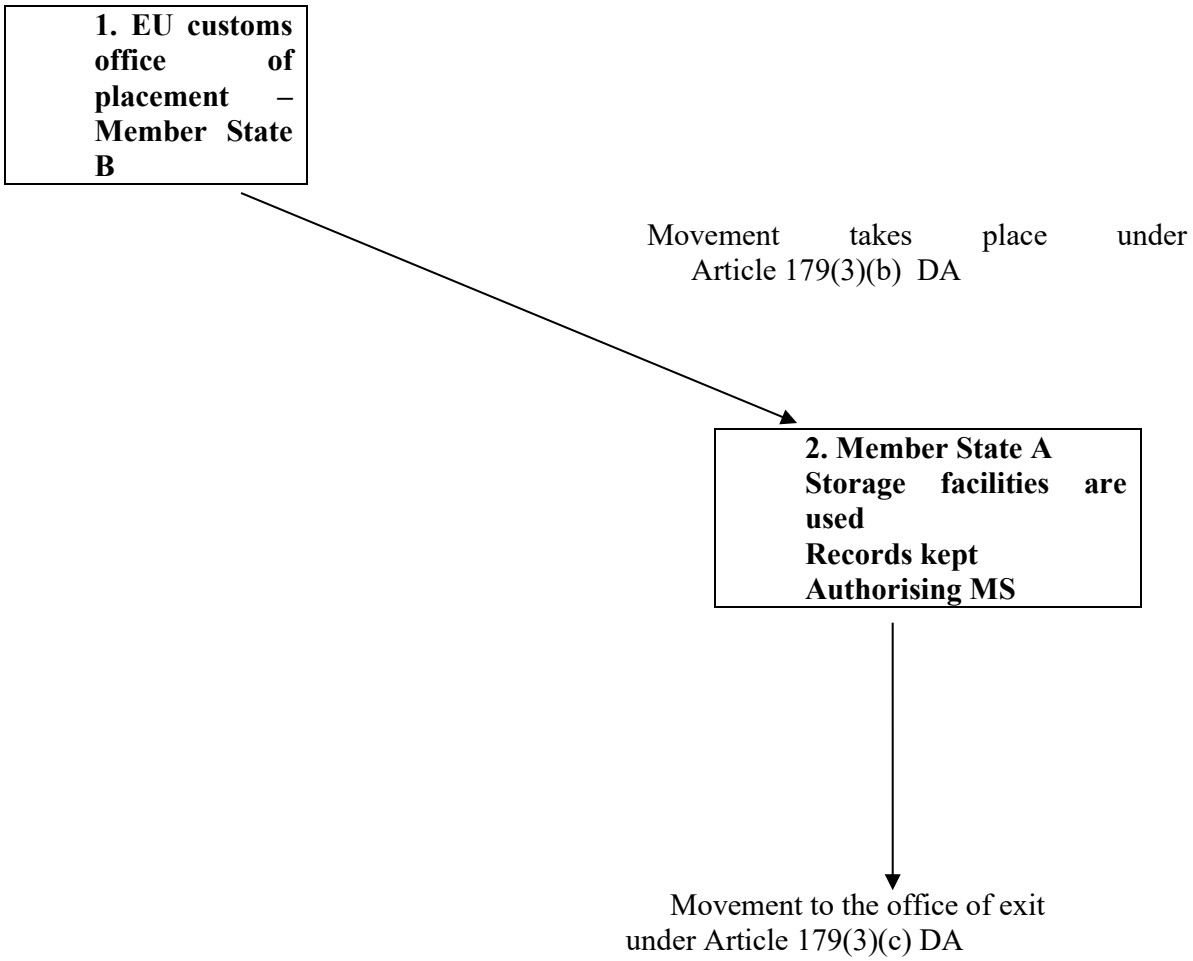
A customs debt is incurred (Article 79 UCC) under **Article 87(1) UCC** at the place where the re-export declaration was lodged.

Discussions established that Article 219 UCC did not allow the movement of goods between different free zones, only within the specific free zone which the goods were placed in. Therefore, transit was the only option.

Movement of goods – Examples

Example 1 - Authorisation which involves more than one Member State with no prior consultation

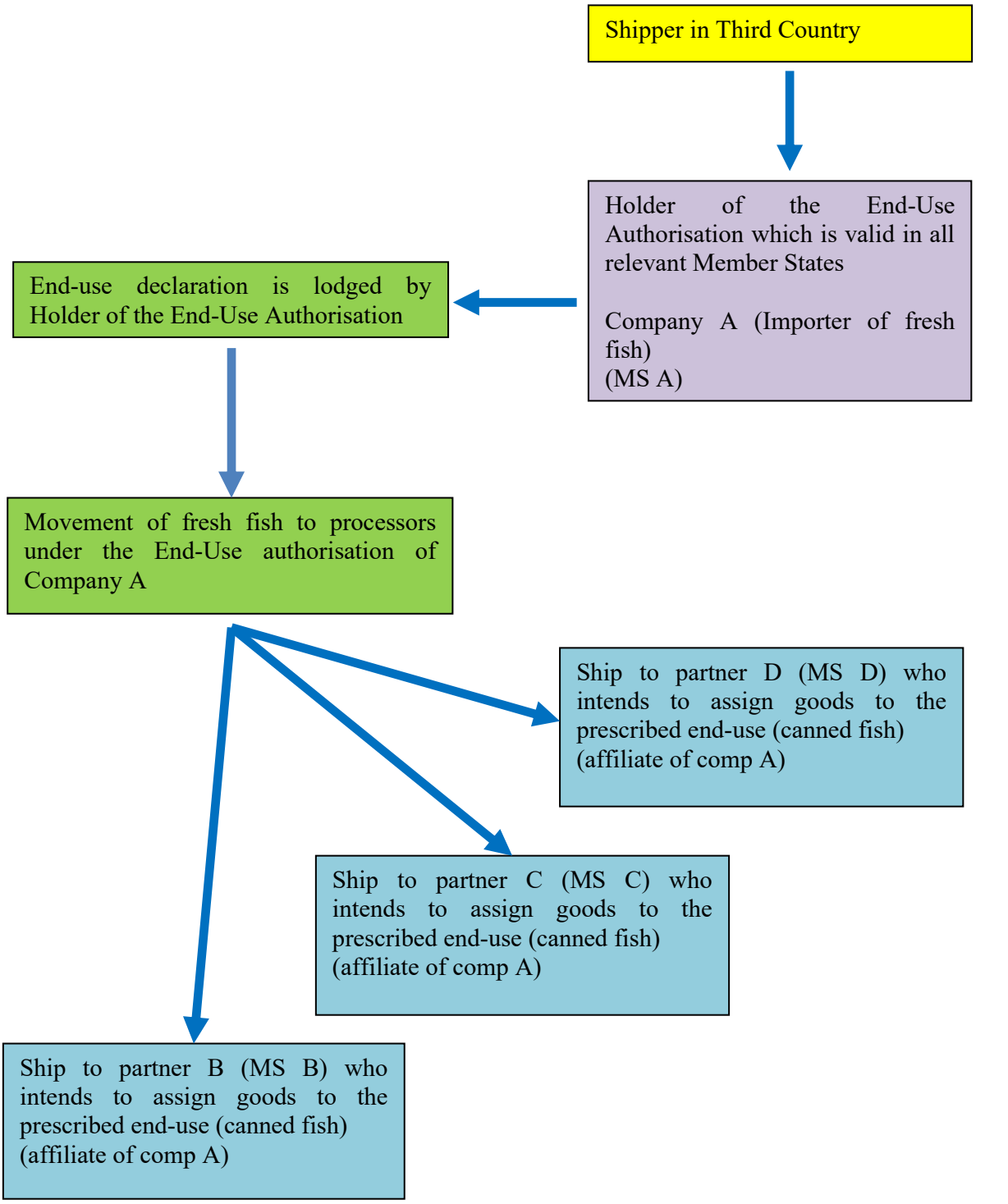
The following example was discussed and agreed:



Authorisation which involves more than one Member State - need for consultation

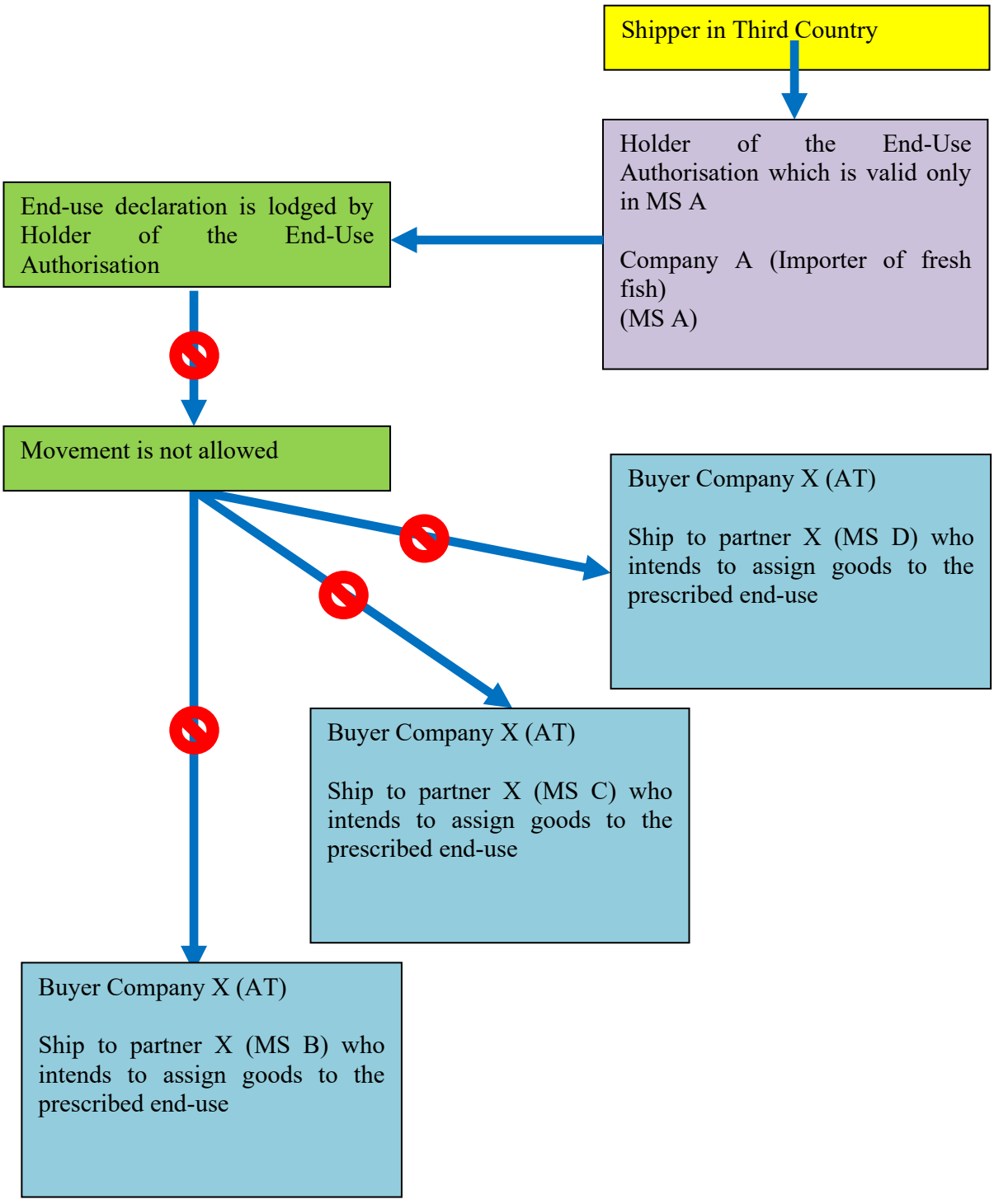
The consultation was dependent upon the circumstances. For example, if there was an authorisation involving storage in both MS, then consultation would be necessary. However, if only the movement of goods were involved, no prior consultation was necessary although it was always advisable to ensure that the customs authorities in other MS were aware of what was happening to prevent difficulties arising.

Example 2: End-Use movement without customs formalities: A multinational company has several affiliates in several MS



This is not a TORO but a movement of goods under an End-Use authorisation valid in several Member States. No customs formalities are required except providing information in the records about the location of goods and other details of such movement (see art. 178 (1) (e) DA). Customs supervision is carried out by one single Customs office according to the details of the authorisation. Company A remains responsible for the end-use procedure.

Example 3: End-Use movement with or without customs formalities – no linked companies in several Member States



Due to fact that goods intended to be assigned in MS B, C and D, End-use authorisation which is valid in more MS is required. Company s A authorisation is valid only in MS A. Consequently, movement of goods to partners in MS B, C and D are not permitted.
However, if end-use authorisation of company A is amended and become valid in MS B, C and D, movements are allowed, as described in example no. 1. Company A remains responsible for the end-use procedure.

ANNEX V

TORO and movement of goods

Practical cases which may occur regarding transfer of rights and obligations and movement of goods

Case 1 - Fish under end-use involving more than one Member State

The holder of the end-use authorisation is an importer of fish. On 1 September 2017 he declares 10 tons of fish for release for free circulation with end-use because he wants to benefit from an Autonomous Tariff Quota. A guarantee for the 10 tons of fish is available to cover the potential customs debt, namely EUR 40 000. The fish is placed under the end-use procedure on 1 September 2017. The period for discharge is two weeks (15 September 2017). The importer does not intend to carry out the processing himself but wants to sell the fish to a processor who cans the fish. Therefore, the importer applied for a full TORO authorisation which was granted to him on 5 April 2017. This can be done as part of his End-Use application/authorisation which means that the favourable TORO decision (see Articles 22 UCC and 266 UCC-IA) may be integrated in the End-Use authorisation (see Article 211(1) UCC). In the TORO authorisation it is established that the end-use goods may only be delivered to transferee(s) mentioned in the TORO authorisation. The TORO form as illustrated below has to be used by the transferor and transferee.

On 2 September 2017 the importer sells the fish to a processor who applied for a full TORO authorisation on 10 April 2017 which was granted to him on the same day (see below details of the full TORO authorisation). The transferor's TORO authorisation is amended to include the transferee's TORO authorisation. The processor (i.e. transferee) provided a comprehensive guarantee, namely EUR 40 000. The fish is delivered (movement under Article 179(1) DA) to the processor, who is established in another Member State, on 2 September 2017. A full TORO takes place on that date at 14:00 o'clock. The TORO was possible without an individual consultation because the Member State concerned generally accepted TORO under the condition that the TORO form as illustrated below is used or its data elements are provided by the transferor and transferee and the transferee has provided a sufficient guarantee.

It is the obligation of the transferee that the received fish is covered by the comprehensive guarantee, namely EUR 40 000. The 10 tons of fish are processed on 15 September 2017 into canned fish.

Additional information regarding case 1:

The importer's responsibilities for the end-use goods cease on 2 September 2017 at 14:00 o'clock. However, the importer must provide information about the full TORO in the bill of discharge. He did comply with this obligation on 10 October 2017. Afterwards his guarantee may be released unless it is used for other transactions. It should be noted that the end of the importer's responsibilities is not a discharge in accordance with Article 215 UCC.

The records to be kept by the transferor and transferee have to contain the particulars of TORO (Article 178(1)(p) UCC-DA).

The relevant information about the discharge of the end-use procedure or another TORO should be submitted by the processor to his supervising customs office within 30 days after the expiry of the time-limit for discharge. The period starts on 16 September 2017.

If an end-use authorisation, which previously included no TORO, involves afterwards more than one Member State because of a TORO, the Member State that granted the authorisation must inform all the Member States concerned via notification about the names and EORI numbers of the transferor and transferees, as well as the number of the TORO authorisations of transferor and transferee involved in the TORO procedure before TORO may take place. This notification also has to be available for the Member States involved if there are consecutive TOROs. The customs authority that issued the relevant TORO authorisation has to notify this TORO authorisation to the involved Member States, namely the Member States in which the transferee(s) is(are) established. The notification mentioned above is not needed if there was a prior consultation concerning the draft end-use authorisation including TORO.

Example:
Transferor A transfers to transferee B the rights and obligations of the holder of the procedure for goods placed under end-use. B transfers rights and obligations of the holder of the procedure for such goods placed under end-use to C and to D. The customs authority of the Member State where B (now as transferor) is established has to notify the TORO particulars to the customs authorities of the Member States where C and D are established. The customs authorities of the Member State where A is established do not have to be notified as regards the last TORO authorisations.

Transfer of rights and obligations (TORO) in accordance with Article 218 UCC (Form to be used)

Notes:
The layout of the model is not binding. However if the model is used, the order numbers and the appropriate text should not be changed.
The model may be made out electronically.
The model may be used only if the competent Customs authorities have authorised TORO in accordance with Art. 266 IA.
The model should be used threefold. The transferee should send copy 1 to the transferor and copy 2 to his supervising customs office after he has completed box 20.
Copy 3 is to be kept by the transferee for at least a three years period beginning from the date on which TORO took place.
If the supervising customs office does not consider it necessary for customs supervision to get a copy of the form, only two copies need to be used".

Full TORO in accordance with Article 218 UCC

(Form to be used for full TORO)

1	**Customs Authorities have authorised full TORO on**	5 April 2017 (to transferor) 10 April 2017 (to transferee)
	Indicate the relevant decision number(s)	Xyz no of Member State A's decision Xyz no of Member State B's decision

Persons and supervising customs office(s) concerned

2	**EORI-number or name and address of the transferor**	*Details of the importer were provided*
3	**EORI-number or name and address of the transferee**	*Details of the processor were provided*
4	**Supervising Customs Office of the transferor**	*Details of the Customs office located in Member State A were provided*
5	**Supervising Customs Office of the transferee**	*Details of the Customs office located in Member State B were provided*

Details of end-use goods which are subject to TORO

6	**MRN of the customs declaration placing the goods under the end-use procedure**	*Customs declaration submitted by the importer on 1 September 2017*
7	**Taric Code**	*Details were provided*

8	**Packages and description of goods**	*Details were provided* Fresh fish
9	**Marks and numbers of goods**	*Details were provided*
10	**Gross mass**	11 tons
11	**Net mass**	10 tons
12	**Supplementary Units, if applicable**	
13	**Date by which the end-use procedure must be discharged**	15 September 2017
[14	**Period within which the transferee has to provide information to the transferor about the discharge of the special procedure.]**	*Not applicable*
15	**Date and time of TORO**	2 September 2017 at 14:00 o'clock
[16	**Date on which the special procedure was discharged.]**	*Not applicable*
[17	**Date on which the transferor was informed about the discharge of the special procedure.]**	*Not applicable*

[18	**Confirmation of the transferee that transferor was informed about the discharge of the special procedure.]**	*Not applicable* **Place and date Signature or electronic authentication of the transferee**
19	**Where applicable, additional information (e.g. guarantee, rate of yield)**	Transferee provided guarantee which covers the potential amount of import duty and other charges regarding the end-use goods subject to this TORO The rate of yield shall be determined in accordance with paragraph 2 of Article 255 UCC
20	**Confirmation that the provided information is correct**	*Details were provided* **Place and date Signature or electronic authentication of the transferor** *Details were provided* **Place and date Signature or electronic authentication of the transferee**

Full TORO authorisation in accordance with Article 266 UCC-IA

MODEL

Full TORO authorisation in accordance with Article 266 UCC-IA

IE – Xyz no of Member State B's decision

(Authorisation number)

1 Holder of the full TORO authorisation: name/address EORI number of the processor of fish

Issuing authority: *Details were provided*

2 This decision refers to your application

of 10 April 2017

Ref. no.: *Details were provided*

3 Customs procedure concerned: End-use

4 Place and kind of accounts/records to be kept: *Details were provided*

5 Period of validity of the full TORO authorisation

Begin: 10 April 2017

End: 10 April 2020

6 Goods which may be subject to TORO:

CN code: Any CN code of heading 0302

Description: Fresh or chilled fish

Quantity and value: The quantity and value of received fish must be covered by the comprehensive guarantee, i.e. EUR 60 000

7 Processed products: Any product according to the condition under which fish was placed under the end-use procedure

CN code: Any CN code which is sufficient for the assignment of goods to their prescribed end-use

Description: not relevant (see above)

8 Rate of yield: The rate of yield shall be determined in accordance with Article 255(2) UCC

9 Supervising office: *Details were provided*

10 Period for discharge: The date by which fish must be assigned to the prescribed end-use is indicated in box 13 of the TORO form.

11 Additional information/conditions (e.g. guarantee requirements)

It is the obligation of the holder of the full TORO authorisation that the received fish is covered by the comprehensive guarantee, namely EUR 60 000. In case of a delivery to a transferee the period for discharge must be respected. The holder of the full TORO authorisation may request an extension of this period before its expiry.

The holder of the full TORO authorisation has to provide information on the discharge or on a subsequent TORO to his supervising customs office within 30 days after the expiry of the time-limit for discharge.

The TORO form must be used for each consignment to be received or to be transferred (see attachment). The holder of the TORO authorisation must send copy 1 to the transferor and copy 2 to the supervising customs office as indicated above after box 20 was completed.

Copy 3 is to be kept by the holder of the TORO authorisation for at least a three years period beginning from the date on which TORO took place.

Note: If the supervising customs office does not consider it necessary for customs supervision to get a copy of the TORO form, only two copies need to be used.

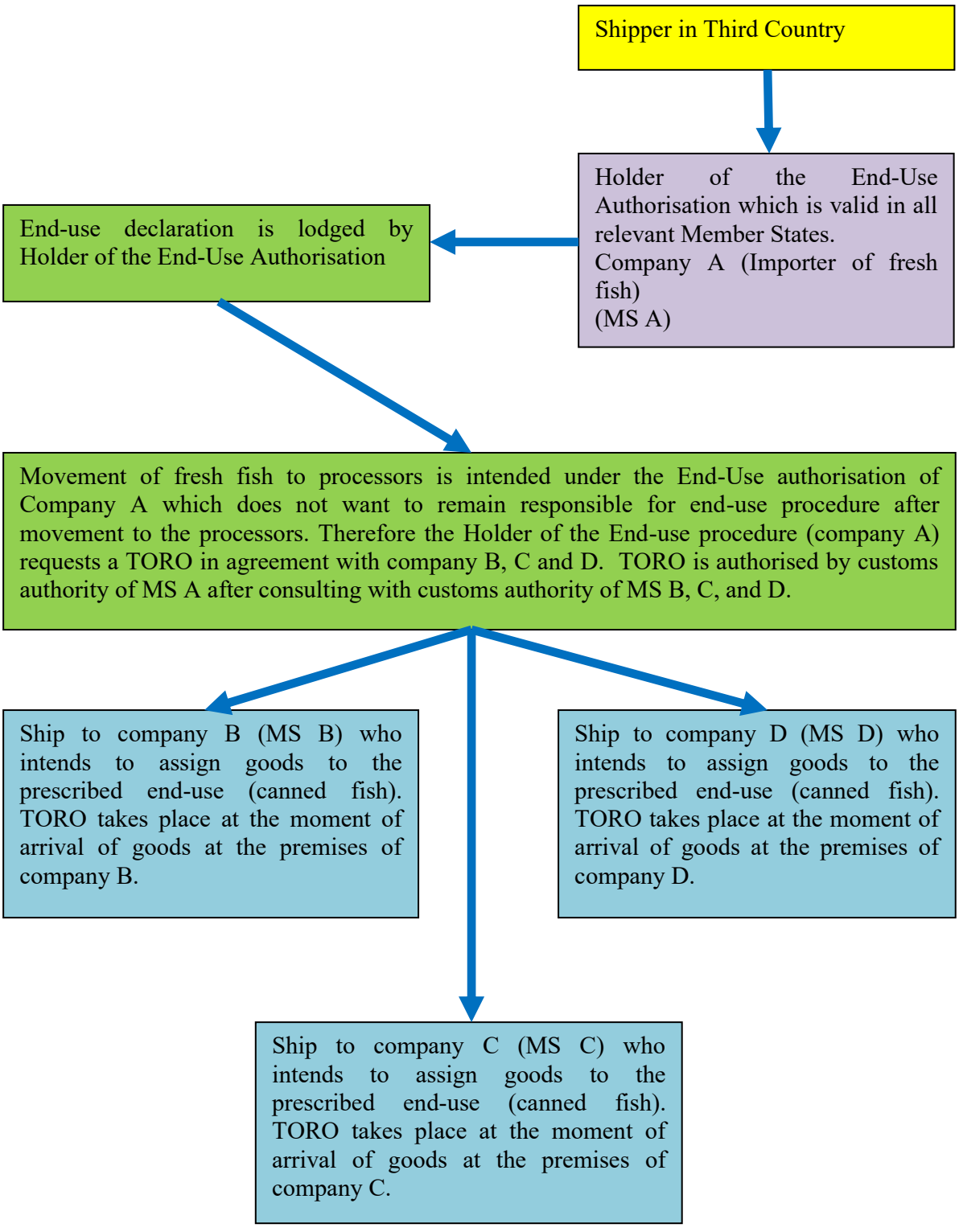
12

Date Signature Stamp 10 April 2017

Name

(attachment: *sample of TORO form*)

Case 2: End-Use movement without customs formalities combined with TORO



This is a combination of movement of goods accordance with Art 219 UCC and TORO in accordance with Art. 218 UCC. For the purpose of TORO, company A may use the model laid down in Annex III to this guidance.
In this example the TORO takes place when the goods arrived at the premises of the processor. However, it is also possible, that TORO takes place at an earlier stage, e.g. when company A passes on fresh fish to the processors at the premises of company A.

ANNEX VI

[ex TAXUD/A2/SPE/2015/016 REV1-EN]

Inward Processing

Use of equivalent goods under the Union Customs Code

Purpose of this document and background

A law firm asked the Commission to give guidance on the use of equivalent goods under the Union Customs Code. The law firm considered the new rules as problematic and requested a modification of the UCC related COM acts so that certain business activities may be carried out as it is possible under current legislation.

The focus was mainly on Article 169(2) DA:

Article 169

Authorisation for the use of equivalent goods

(Articles 223(1) and (2) and 223(3)(c) of the Code)

2. The use of equivalent goods as referred to in the first subparagraph of Article 223(1) of the Code shall not be authorised where the goods placed under the special procedure would be subject to a provisional or definitive anti-dumping, countervailing, safeguard duty or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation.

Article 223 UCC

Equivalent goods

1. Equivalent goods shall consist in Union goods which are stored, used or processed instead of the goods placed under a special procedure.

Under the outward processing procedure, equivalent goods shall consist in non-Union goods which are processed instead of Union goods placed under the outward processing procedure.

Except where otherwise provided, equivalent goods shall have the same eight-digit Combined Nomenclature code, the same commercial quality and the same technical characteristics as the goods which they are replacing.

It was argued that Article 169(2) DA would have a negative impact on business activities in the EU because it was no longer allowed anymore to export EU raw materials used as equivalent goods in the form of processed products and to import the corresponding quantity of non-Union raw materials duty-free into the EU.

Legal aspects and reasoning behind the new restriction

Status of equivalent goods

(Article 223 of the Code)

2. *In case of inward processing, the equivalent goods and the processed products obtained therefrom shall become non-Union goods and the goods which they are replacing shall become Union goods at the time of their release for the subsequent customs procedure discharging the procedure or at the time when the processed products have left the customs territory of the Union.*

   However, where the goods placed under the inward processing procedure are put on the market before the procedure is discharged, their status shall change at the time when they are put on the market. In exceptional cases, where the equivalent goods are expected not to be available at the time when the goods are put on the market, the customs authorities may allow, at the request of the holder of the procedure, the equivalent goods to be available at a later time within a reasonable period to be determined by them.

3. *In case of prior export of processed products under inward processing, the equivalent goods and the processed products obtained therefrom shall become non-Union goods with retroactive effect at the time of their release for the export procedure if the goods to be imported are placed under that procedure.*

   Where the goods to be imported are placed under inward processing, they shall at the same time become Union goods.

The reasoning behind the restriction as laid down in Article 169(2) DA is to ensure the effectiveness of the EU trade defence instruments (European Union anti-dumping, anti-subsidy, or safeguard measures).

Example:

One ton of Union goods A (equivalent goods) are processed into two tons of processed product B which are exported under inward processing EX/IM.
Subsequently one ton of non-Union goods A are imported and placed under inward processing. At the moment of placement of such goods under inward processing they become Union goods (second subparagraph of Article 269(3) IA). Consequently, goods A are in free circulation and not subject to customs supervision anymore.
Non-Union goods A were put on the EU market without payment of any amount of import duty.

Regarding *erga omnes* import duty the "non-payment" is not problematic because the use of the inward processing procedure should stimulate export activities in the EU so that processed products may be sold at a more competitive price on the world market.
However, where non-Union goods A intended to be placed under inward processing would be subject to a provisional or definitive anti-dumping, countervailing, safeguard duty or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation, the non-payment of such duties is problematic. The effectiveness of the EU

trade defence instruments is not ensured. That is the reason why Article 169(2) DA does not allow the use of equivalent goods in such situations.

Article 86(3) UCC refers to origin of goods:

Article 86 UCC

3. Where a customs debt is incurred for processed products resulting from the inward processing procedure, the amount of import duty corresponding to such debt shall, at the request of the declarant, be determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure at the time of acceptance of the customs declaration relating to those goods.

The following two examples illustrate how business activities could be carried out under inward processing without the use of equivalent goods:

1. 30 tons of raw materials A which would only be subject to erga omnes import duty (if they were declared for release for free circulation) and 70 tons of EU raw materials A are stored in bulk. The two types of raw materials (Union and non-Union subject to erga omnes import duty) are stored in a silo which is used as a storage facility for the customs warehousing of goods.
Accounting segregation is carried out in accordance with Article 177 DA with regard to the two types of raw materials A.

Article 177 DA

Storage of Union goods together with non-Union goods in a storage facility (Article 211(1) of the Code)

1. Where Union goods are stored together with non-Union goods in a storage facility for customs warehousing and it is impossible or would only be possible at a disproportionate cost to identify at all times each type of goods (common storage), the authorisation as referred to in Article 211(1)(b) of the Code shall establish that accounting segregation shall be carried out with regard to each type of goods, customs status and, where appropriate, origin of goods.
2. Union goods stored together with non-Union goods in a storage facility as referred to in paragraph 1 shall share the same eight-digit CN code, the same commercial quality and the same technical characteristics.
3. For the purposes of paragraph 2, non-Union goods which would be subject, at the time where they would be going to be stored together with Union goods, to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation, shall not be considered to have the same commercial quality as the Union goods .
4. Paragraph 3 shall not apply where non-Union goods are stored together with Union goods which were previously declared as non- Union goods for release for free circulation and for which the duties referred to in paragraph 3 have been paid.

The total quantity of 100 tons of raw materials A are processed under inward processing into 200 tons of processed products B. Rate of yield is 100%. 100 tons of processed products B are re-exported and the other 100 tons of processed products are declared for release for free circulation, (i.e. 50 % of the total processed products). The declarant requests the calculation of the amount of import duty to be made in accordance with Article 86(3) UCC.
This means that erga omnes import duty is due for 15 tons of raw materials A (i.e. 50 % of the 30 tons of non-Union raw material). The competent customs authority may allow the holder of the authorisation to consider in this case that the 100 tons released for free circulation correspond to EU raw materials in its entirety or partially (if there is not enough EU raw material). In this case, the holder of the authorisation will have to pay import duty for the part of the 100 tons that correspond to non-Union raw material.

2. 30 tons of raw materials A which would only be subject to erga omnes import duty (if they were declared for release for free circulation) and 70 tons of EU raw materials A are stored in bulk. The two types of raw materials (Union and non-Union subject to erga omnes import duty) are stored in a silo which is used as a storage facility for the customs warehousing of goods.
Accounting segregation is carried out in accordance with Article 177 DA with regard to the two types of raw materials A.
30 tons of raw materials A which would be only subject to erga omnes import duty (if they were declared for release for free circulation) are placed under inward processing and processed into 60 tons of processed products B. The processed products are declared for free circulation. The declarant requests the calculation of the amount of import duty to be made in accordance with Article 86(3) UCC.
This means that erga omnes import duty must be paid for 30 tons of raw materials A because they all correspond to the 30 tons of raw material A which would be only subject to erga omnes import duty if they were declared for release for free circulation.
70 tons of EU raw materials A are processed into 140 tons of processed products which are put on the EU market without a customs declaration because the products have Union status and therefore they are in free circulation.

The following example illustrates how business activities could be carried out under inward processing with the use of equivalent goods:
3. 30 tons of raw materials A which would only be subject to *erga omnes* import duty (if they were declared for release for free circulation), 30 tons of equivalent goods and 40 tons of EU raw materials A are stored in bulk. The three types of raw materials (equivalent goods, Union and non-Union subject to *erga omnes* import duty) are stored in a silo, which is not used as a storage facility for customs warehousing of goods.
Accounting segregation in accordance with Article 268(2) IA is carried out with regard to the three types of raw materials A.

Article 268 IA

Formalities for the use of equivalent goods
(Article 223 of the Code)

1. *The use of equivalent goods shall not be subject to the formalities for placing goods under a special procedure.*
2. *Equivalent goods may be stored together with other Union goods or non-Union goods. In such cases, the customs authorities may establish specific methods of identifying the equivalent goods with a view to distinguishing them from the other Union goods or non-Union goods.*
   Where it is impossible or would only be possible at disproportionate cost to identify at all times each type of goods, accounting segregation shall be carried out with regard to each type of goods, customs status and, where appropriate, origin of the goods.

The 30 tons of equivalent goods are processed instead of 30 tons of raw materials A which would be only subject to *erga omnes* import duty (if they were declared for release for free circulation) and 40 tons of Union raw materials A are processed into total 140 tons of processed products B. Rate of yield is 100%. 70 tons of processed products B are re-exported and the other 70 tons of processed products are declared for release for free circulation (i.e. 50 % of the total processed products). The declarant requests the calculation of the amount of import duty to be made in accordance with Article 86(3) UCC.
This means that *erga omnes* import duty must be paid for 15 tons of raw materials A that were used as equivalent goods and which have changed their customs status (i.e. 50 % of the 30 tons used as equivalent goods). The competent customs authority may allow the holder of the authorisation to consider in this case that the 70 tons released for free circulation correspond to EU raw materials in its entirety or partially (if there is not enough EU raw material). In this case, the holder of the authorisation will have to pay import duty for the part of the 70 tons that correspond to equivalent goods (raw material). The 30 tons of raw materials A which would only be subject to *erga omnes* import duty (if they were declared for release for free circulation) have changed their customs status and are in free circulation (see Article 269 IA).

- **<u>Common storage in different tanks connected with each other:</u>**

An applicant wants to obtain an authorisation for customs warehousing. The application requests the application of common storage to a group of tanks, which are connected with each other, commonly referred as a ‘tank pit’. The purpose is to store products with different customs status in the whole ‘tank pit’. If the products have different characteristic, then it would not be common storage.
Customs authorities could only grant this authorisation according to Article 177 UCC-DA if the purpose is that all the tanks in the ‘tank pit’ contain exactly the same Union and non-Union product (i.e. same CN code, same technical characteristics and same commercial quality), then the authorisation for common storage may be granted.

ANNEX VII

Illustrative list of goods that may be placed under temporary admission covered by Articles 219 et seq. UCC-DA.

Article 219(a) UCC-DA - Personal effects - *Illustrative list*

1. Clothing.
2. Toilet articles.
3. Personal jewellery.
4. Still and motion picture cameras together with a reasonable quantity of film and accessories therefor.
5. Portable slide or film projectors and accessories therefor together with a reasonable quantity of slides or films or any other data carriers.
6. Video cameras and portable video recorders, with a reasonable quantity of tapes or any other data carriers.
7. Portable musical instruments.
8. Portable gramophones with records.
9. Portable sound recorders and reproducers (including dictating machines), with tapes or any other data carriers.
10. Portable radio receivers.
11. Portable television sets.
12. Portable typewriters.
13. Portable calculators.
14. Portable personal computers, tablet computers, notebooks.
15. Binoculars.
16. Children strollers or buggies and children car seats.
17. Wheel-chairs and rollators for persons with reduced mobility.
18. Sports equipment such as tents and other camping equipment, fishing equipment, climbing equipment, diving equipment, horse-riding equipment, sporting firearms with ammunition, non-motorized bicycles or scooters, e-bikes*, e-scooters, canoes or kayaks less than 5.5 metres long, skis, tennis rackets, surfboards, windsurfers, hang-gliders, kites and delta wings, golfing equipment, polo equipment.
19. Portable dialysis and similar medical apparatus, and the disposable items imported for use therewith.
20. Mobile phones, headphones, noise cancelling headphones, loudspeakers and smart watches.

21. Video game consoles with accessories, equipment for indoor and outdoor games.
22. Drones*, hover boards.
23. Other articles clearly of a personal nature.

*Some e-bikes and drones may be considered as means of transport.

Article 219(b) UCC-DA - Goods imported for sports purposes - *Illustrative list*

A. Track and field equipment, such as :
- hurdles;
- javelins, discuses, poles, shots, hammers.

B. Ball game equipment, such as :
- balls of any kind;
- rackets, mallets, clubs, sticks and the like;
- nets of any kind;
- goalposts.

C. Winter sports equipment, such as :
- skis, snowboards,sticks and other equipment for skiing;
- skates;
- bobsleighs;
- curling equipment.
- ice hockey equipment
- cross-country skiing
- snow shoes

D. Sports wear, shoes, gloves, headgear, etc., of any kind.

E. Water sports equipment, such as :
- canoes and kayaks;
- sail and row boats, sails, oars and paddles;
- surf boards and sails.
- water skis.
- diving equipment (oxygen cylinder; diver eyeglasses; diving suit etc.)

F. Motor vehicles and craft, such as :
- cars*;
- motor bicycles*;
- motor boats*;
- snow mobiles*;
- quads*;
- water jet skis.

*Cars, motor bicycles, motor boats, snow mobiles and quads can also be considered as means of transport.

G. Equipment for miscellaneous events, such as :
- sports arms and ammunition;
- non-motorized bicycles;
- archer's bows and arrows;
- fencing equipment;
- gymnastics equipment;
- compasses;
- wrestling mats and tatamis;
- weight-lifting equipment;
- riding equipment, sulkies;
- hang-gliders, kites, delta wings, windsurfers;
- climbing equipment;
- music cassettes to accompany the performance.
- *roller-skates*
- *in-line-skates*
- *golf club; golf buggy; caddy*
- *equipment for billiard*
- *bowling ball and pins*
- *boule balls*
- *chess and equipment (chronometer etc.)*
- *horses for each kind of horse sport**
- *boxing equipment*
- *fencer equipment (sword etc.)*
- *darts, dart disks*
- *balloon,*
- *glider;*
- *fishing equipment like fishing-rod*

**Horses may be considered as means of transport.*

H. Auxiliary equipment, such as :
- measuring and score display equipment;
- blood and urine test apparatus.
- instruments to monitor vital constants of persons practising sports.

Article 220 UCC-DA - Welfare material for seafarers - *Illustrative list*

A. Reading material, such as:
- Books and e-books;
- Correspondence courses;
- Newspapers, journals and periodicals;
- Pamphlets on welfare facilities in ports.

B. Audio-visual material, such as:
- Sound and image reproducing instruments;
- Tape-recorders;
- Radio sets, television sets;
- Cinematographic and other projectors;
- Recordings on tapes or discs (language courses, radio programmes, greetings, music and entertainment);
- Films, exposed and developed;
- Film slides;
- Videotapes.

C. Sports gear, such as :
- Sports wear;
- Balls;
- Rackets and nets;
- Deck games;
- Athletic equipment;
- Gymnastic equipment.

D. Hobby material, such as :
- Indoor games;
- Musical instruments;
- Material for amateur dramatics;
- Materials for painting, sculpture, woodwork and metalwork, carpet making, etc.

E. Equipment for religious activities.

F. Parts and accessories for welfare material.

Article 223 UCC-DA - Animals – *Illustrative list*

The intended activities carried out using animals are not relevant for the purpose of Article 223 UCC-DA. Therefore, no illustrative list is needed for this Article.

Article 224 UCC-DA – Goods for use in frontier zones – *Illustrative list*

No illustrative list is relevant for this Article. The goods referred to in point a) refers to any equipment and the goods mentioned in point b) may be included within the scope of Article 224 UCC-DA depending on the responsibility of public authorities.

Article 225(b) UCC-DA – Publicity material - *Illustrative list*

A. Material intended for display in the offices of the accredited representatives or correspondents appointed by the official national tourist agencies or in other places approved by the Customs authorities of the territory of temporary

admission: pictures and drawings, framed photographs and photo- graphic enlargements, art books, paintings, engravings or lithographs, sculpturesand tapestries and other similar works of art. These items can also be electronic.

B. Display material (show-cases, stands and similar articles), including electronical, electrical and mechanical equipment required for operating such display.

C. Documentary films, records, tape recordings, USB-Sticks, mp3 player, hard disks or any other memory device (e.g. CD-R, DVD) intended for use in performances at which no charge is made, but excluding those whose subjects lend themselves to commercial advertising and those which are on general sale in the territory of temporary admission.

D. A reasonable number of flags.

E. Dioramas, scale models, lantern-slides, printing blocks, photo-graphic negatives.

F. Specimens, in reasonable numbers, of articles of national handicrafts, local costumes and similar articles of folklore.

G. Vehicles used exclusively for publicity purposes, even if they are not specifically equipped for those purposes, such as cars promoting a certain brand or event.

Article 226 UCC-DA – Professional equipment – *Illustrative list*

No illustrative list is needed for paragraph 1 because it refers to any professional equipment. As paragraph 2 refers to musical instruments used as professional equipment, no illustrative list is needed as well.

Note 1: Vehicles designed or specially adaptd for the professional purposes fall under the scope of Article 226(1) UCC-DA.

Note 2: Fairground amusements fall under the scope of Article 226(1) UCC-DA, provided that the operation or maintenance of such equipment requires specialized knowledge or skills and techniques.

Note 3: Tools for gardening, chain saws, brush cutters, size hedges, shears are hand tools in the sense of Article 226(3) UCC-DA.

Note 4: Drills, blowpipes, jigsaw and screw drivers are hand tools in the sense of Article 226(3) UCC-DA.

Article 227 UCC-DA - Pedagogic material - *Illustrative list*

No illustrative list is needed because any goods may be used for pedagogic or scientific purposes. These goods may be included within the scope of Article 227 UCC-DA, provided they are exclusively used for such purposes and they fufill the other conditions established in this Article.

Annex VIII

Inward Processing in the sugar sector

I. Background

Under Inward Processing (IP), non-Union sugar and raw cane sugar intended for re-export from the customs territory of the Union in the form of processed products can be used in the EU in processing operations without such sugar being subject to import duty or commercial policy measures.

The use of IP aims at maintaining the competitiveness of the sugar processing industry.

II. Overview of the relevant IP customs provisions

Legal basis

Articles 210 to 225 and 256 to 258 of Regulation (EU) 952/2013 (UCC), Articles 161 to 183 and 240 to 241 of Regulation (EU) 2015/2446 (UCC-DA) and Articles 258 to 271 and 324 to 325 of Regulation (EU) 2015/2447 (UCC-IA), as well as point 3 of Annex 71-02, 71-04 and Annex 71-05 UCC-DA.

On the use of equivalent goods, there is no market for raw beet sugar in the Union because white sugar is usually obtained from sugar beet in a continuous process. Raw beet sugar is not produced as a separate product during that process and therefore cannot be marketed. Therefore, point 3 of Annex 71-04 UCC-DA allows the use of sugar beet instead of raw cane sugar as equivalent goods, under the condition that white sugar is obtained from the processing operations. The yield of raw cane sugar has to be calculated in accordance with point III (3) of Part B of Annex III to Regulation (EU) 1308/2013 of the European Parliament and the Council because this is a specific calculation method in the sugar sector.

Economic conditions

The Member States are competent for granting authorisations for the use of IP. Authorisations may be granted only where the inward processing procedure can help create the most favourable conditions for the re-export of processed products, provided that the essential interests of Union producers are not adversely affected (*economic conditions*). It is up to the Member States to analyse whether the economic conditions justifying the authorisation are fulfilled or not. However, in accordance with Article 259 UCC-IA the examination of the economic conditions may involve the Commission upon request from customs authorities or on its own initiative.

Article 211(6) UCC states the obligation of examining the economic conditions at Union level where evidence exists that the essential interests of Union producers are likely to be adversely affected. Therefore, as per Article 211(4)(b) UCC, an IP authorisation shall be granted only

where the essential interests of Union producers would not be adversely affected by an authorisation for a processing procedure.

Article 166(1) subparagraphs a, b and c UCC-DA mention three situations where the economic conditions must be examined. However, for each of these three situations there are some cases where the economic conditions do not have to be examined.

Article 167 UCC-DA lists cases in which the economic conditions are considered to be fulfilled. The cases mentioned in article 167 UCC-DA only apply when they are specifically referred to in article 166 (1) UCC-DA. For instance, according to Article 166 (1)(a) UCC-DA the economic conditions are deemed to be fulfilled where the calculation of the amount of import duty is made in accordance with Article 86(3) UCC, evidence exists that the essential interests of Union producers are likely to be adversely affected and one of the cases referred to in Article 167 (1)(a-f) applies, for example, according to Article 167 (1)(f)(i), the "unavailability of goods produced in the Union sharing the same 8-digit CN code, the same commercial quality and technical characteristics as the goods intended to be imported for the processing operations envisaged".

Please refer to Annex II of this document.

Codes and detailed criteria

The applicant must give reasons for the fulfilment of the economic conditions by using *Codes*. Additional information may be requested by customs authorities.

The relevant *Codes* in respect of the economic conditions are listed in Data Element 35 01 090 000 of Annex A of the UCC-IA as follows:

5: the placing of goods under inward processing within the limits of the quantity determined on the basis of a balance in accordance with Article 18 Regulation (EU) No 510/2014 of the European Parliament and of the Council

6: the processing of goods which are listed in Annex 71-02 to Delegated Regulation (EU) 2015/2446, in case of unavailability of goods produced in the Union sharing the same 8-digit Combined Nomenclature code, the same commercial quality and technical characteristics as the goods intended to be imported for the processing operations envisaged.

7: the processing of goods which are listed in Annex 71-02 to Delegated Regulation (EU) 2015/2446, provided there are differences in price between goods produced in the Union and those intended to be imported, where comparable goods cannot be used because their price would not make the proposed commercial operation economically viable.

8: the processing of goods which are listed in Annex 71-02 to Delegated Regulation (EU) 2015/2446, provided there are contractual obligations, where comparable goods do not conform to the contractual requirements of the third-country purchaser of the processed products, or where, in accordance with the contract, the processed products must be obtained from the goods intended to be placed under inward processing in order to comply with provisions concerning the protection of industrial or commercial property rights.

9: the processing of goods which are listed in Annex 71-02 to Delegated Regulation (EU) 2015/2446, provided the aggregate value of the goods to be placed under the inward processing procedure per applicant and calendar year for each eight-digit Combined Nomenclature code does not exceed EUR 150 000.

12: the processing of goods obtained under a previous authorisation, the issuing of which was subject to an examination of the economic conditions.

21: usual forms of handling referred to in Article 220 of the Code.

22: the aggregate value of goods to be placed under the inward processing procedure per applicant and calendar year for each eight-digit Combined Nomenclature code does not exceed EUR 150 000 with regard to goods which are covered by Annex 71-02 to Delegated Regulation (EU) 2015/2446 and EUR 300 000 for other goods, except where the goods intended to be placed under the inward-processing procedure would be subject to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation.

III. Statistics

Statistical resources on the EU sugar sector which provide market data and short-term analysis are available on the European Commission webpage.

- The Sugar Market Observatory[6] provides statistical dashboards representing data on sugar production and consumption within the EU.

- The Agri-food Data Portal[7] contains statistical dashboards and reports on sugar prices, sugar production, sugar use, sugar stocks as well as a sugar short-term outlook. The portal also provides data on the EUs external trade in sugar. The sugar dashboard provides a monthly update of several graphs with the latest information on sugar prices, preferential imports, trade, and sugar balances.

IV Exchange of views on the current customs legislation

The existing customs rules allow operators to carry out operations under IP in a flexible manner, such as the use of equivalent goods and prior export depending on the economic need.

V. Guidance

It appears desirable to provide some more guidance to facilitate the correct application of IP rules, in particular with respect to the examination of the economic conditions, and in respect of certain other requirements on the authorisation of inward processing in the sugar sector as outlined below.

1. In accordance with customs legislation, according to Article 171(1) UCC-DA, customs authorities should communicate a decision on an IP application to the applicant without delay and at the latest within 30 days of the date of acceptance of the application.

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6 https://agriculture.ec.europa.eu/data-and-analysis/markets/overviews/market-observatories/sugar_en
7 https://agridata.ec.europa.eu/extensions/DataPortal/sugar.html

2. At the request of the applicant:

   - the use of equivalent goods can be authorised, irrespective of whether the use is systematic or not *according the rules included in Article 223 UCC* and Article 169 UCC-DA;

   - the period of validity of an IP authorization is 5 years but for goods which are covered by Annex 71-02 UCC-DA (where sugar is included) the maximum period of validity of the authorization is 3 years;

   - the period for discharge of IP must take account of the time needed to carry out the processing operations and to discharge the procedure (Article 257 UCC);

   - the period within which non-Union goods must be declared for import must be set at 6 months in the case of IP with prior exportation (IP EX/IM). According to Article 257(4) UCC, this period can be extended up to a maximum total period of 12 months.

3. When Code 7 is used, granting of an authorisation is not automatic in the sugar sector because of the difference between the world market price and the EU market price of sugar. To decide whether the intended commercial operation would not be economically viable if EU sugar were used, a case-by-case assessment is needed. This assessment also takes into consideration the period of validity of the authorization; as agricultural production of sugar is heavily dictated by seasonal periods and is organised on a yearly production cycle, this fact may be considered when assessing the period of validity of the authorisation which could be adapted to this term (e.g. one year). This means that the applicant has to provide information adapted to the concrete case. Code 7 can be accepted if the application is covered by one of the following four situations:

First and second situations
The conditions as laid down in Annex A UCC-IA with regard to Code 7 are met if either the **price difference** between non-Union raw cane sugar (CN codes 1701 13 90 and/or 1701 14 90) intended to be imported under IP and Union white sugar (CN code 1701 99 10) or the **price difference** between non-Union white sugar (CN code 1701 99 10) intended to be imported under IP and Union white sugar exceeds the applicable threshold published on Europa website in the following link: Sugar - Agriculture and rural development - European Commission.

If the price difference has this significant level then the customs authorities can conclude that the intended commercial operation would not be economically viable if EU sugar were used, without requesting additional detailed information from the applicant. This means less administrative costs both for economic operators and customs administrations and increased legal certainty for the applicant. The applicable threshold considered by the customs authorities would be the one published on Europa website at the date of acceptance of the application.

The price difference above is determined by a comparison of actual quotations/offer for non-Union sugar and for Union sugar intended to be delivered to the applicant. The price of the non-Union sugar intended to be imported under IP based on one quotation/offer has to be

compared with the price of Union sugar based on two quotations/offers. This means that the manufacturer of processed products containing sugar intended for re-export has to demonstrate the real prices of Union sugar and non-Union sugar delivered to the processing plant (i.e. what the applicant would have to pay in order to get the sugar into the processing plant). Where quotations or offers are based on different delivery terms, prices shall be adjusted accordingly to ensure comparability. Therefore, the applicant has to provide information about one real price offer of non-Union sugar to be imported under IP and two real price offers of Union sugar. If the sugar is already bought (by example, if non-Union sugar is already under customs warehousing or if Union sugar recently has been bought to process goods for the internal market), the paid or payable amount according to the bill should be taken into account. Both quotations for Union sugar must prove that the price difference is higher than the applicable thresholds referred to above.

In this context the type of processed products intended to be obtained under IP is not relevant.

Third situation
If the price difference mentioned above in the first and second situations is not higher than the applicable thresholds referred to above, the conditions as laid down in Annex A UCC-IA with regard to Code 7 are met if the applicant has satisfactorily documented that the **profit margin** would become negative or zero if Union sugar were used for the processing operations (an example of some guidance on how this could be documented is in Sub-Annex 2 of this Annex VIII).

If the profit margin would become negative or zero, then the customs authorities can conclude that the intended commercial operation would not be economically viable if Union sugar were used without requesting additional detailed information from the applicant.

In certain cases the applicant might not be able to provide information about the profit margin or does not want to provide such information (business secret). If so, the applicant may prove by other means that the intended commercial operation would not be economically viable if Union sugar were used.

Fourth situation
If the application is not covered by the three situations above, as a last resort Code 7 can be accepted if:

the applicant has sufficiently proven **by other means**, in the view of the competent customs authorities, that the intended commercial operation would not be economically viable if Union sugar were used. The competent customs authorities may consult the Customs Expert Group section Special Procedures other than transit before Code 7 is accepted in this specific situation. *(general information)*

See Sub-Annex 1 of this Annex VIII for examples of particular cases which should facilitate the correct application of the legal provisions.

Examples of particular cases

First case:
Company A is a processor of *inter alia* jam and caramel. This company manufactures products with Union sugar (equivalent goods) within the framework of its IP authorisation. The products are exported under the IP EX/IM system. Company A subsequently imports non-Union sugar under the equivalence system. However, this third-country sugar has a selling price significantly lower than that of Union sugar.

Question:
Can equivalence be recognized between these two products, since the commercial quality condition does not seem to be met? How can we define this commercial quality standard?

Answer:
The price as such does not always indicate the commercial quality. The fact that both the third-country operator and the EU operator accepted the goods on a commercial basis indicates that both categories of goods do have the same commercial quality. After the change of customs status the goods are sold at the EU price. There is no risk related to own resources as the exported goods were of higher value. The same would apply in case of preferential sugar. Therefore, the answer to the question is: yes, equivalence could be authorised between these two categories of goods.

Second case:
Company A is a processor of inter alia jam and caramel. This company manufactures products with Union sugar (equivalent goods) within the framework of its IP authorisation. The products are exported under the IP EX/IM system. Company A subsequently imports non-Union sugar under the IP EX/IM system. Company B (a dealer in sugar), which is mentioned in the IP authorisation of company A, wishes to import third-country sugar under the equivalence system. Company B wishes to sell the imported sugar under exemption from customs duties in the Union market. Company A treats this as a transfer of import rights because Company B lodges the customs declaration at import.

Question:
Company B is never involved at all in the processing operations of Company A and the third-country sugar which is imported is never used in an inward processing operation. Can this application for inward processing be accepted?

Answer:
Yes, this application for inward processing can be accepted. The intended operation could be carried out under the IP EX/IM system. Company B would be indicated in the authorisation.

Third case:
Company A is a processor of *inter alia* jam and caramel. This company manufactures products with Union sugar (equivalent goods) within the framework of its IP authorisation. The products are exported under the IP EX/IM system. Company A subsequently imports non-Union sugar under the IP EX/IM system. Therefore, thanks to this system, Company A can carry out processing within the framework of its IP authorisation without using non-Union sugar.

Question:
Can this application for inward processing be accepted?

Answer:
Yes, the application for inward processing with prior export can be accepted. The use of equivalent goods can be authorised if there is an economic need and the conditions are met. The goods replaced by the equivalent goods cannot be used in the operation. In the case of prior export the imported goods (non-Union sugar) become Union goods at the time of their release for the IP procedure.

Fourth case:
Company A is a holder of an inward processing authorisation. The use of equivalent goods is authorised. Prior exportation is not authorised. Raw cane sugar CN code 1701 13 90 is imported under inward processing. Company B processes for Company A the raw cane sugar into white sugar CN code 1701 99 10. Company C, linked to Company A, which is established in another MS, exports via another MS refined sugar CN code 1701 99 10 made from Union sugar beet CN code 1212 91 80.

Question:
Are the operations in line with the customs rules?

Answer:
In accordance with point 3 of Annex 71-04 UCC-DA , derogation from the standard rule (same eight-digit CN code, commercial quality and technical characteristics) is permitted between raw cane sugar (CN codes 1701 13 90 and/or 1701 14 90) and sugar beet (CN code 1212 91 80) under the condition that the processed products fall within CN code 1701 99 10 (white sugar). The equivalence system is related to import goods and to Union goods that are used in the processing operations instead of non-Union goods. In this case there are two different operations.
If the white sugar processed by Company B is not assigned to a new prescribed customs approved treatment or use, then the IP procedure is not discharged correctly and a customs debt is incurred. In consequence the operations described are not in line with Annex 71-04 UCC-DA. However, the alternative would be to grant an IP authorisation with prior exportation in the MS where the refined sugar CN code 1701 99 10 made from Union sugar beet is exported.

Is the proposed commercial operation economically unviable?

On basis of Union sugar (EUR/100 Kg net prices without VAT)			
Ex works (EXW) price of processed products:	x		
Variable costs:	- a		
Raw materials:			
- sugar (% * EUR/Kg)	- b		
- X (% * EUR/Kg)	- c		
- Y (% * EUR/Kg)	- d		
- Z (% * EUR/Kg)	- e		
Additional products:			
- X (% * EUR/Kg)	- f		
- Y (% * EUR/Kg)	- g		
- Z (% * EUR/Kg)	- h		
- packaging	- i		
- labour force	- j		
- energy	- k		
- transport	- l		
- interests rolling capital	- m		
Fixed costs			
- amortization	- n		
- overhead	- o		
- financial costs	- p		
Balance (profit/loss)	result		

Ex works price of processed products – costs = balance

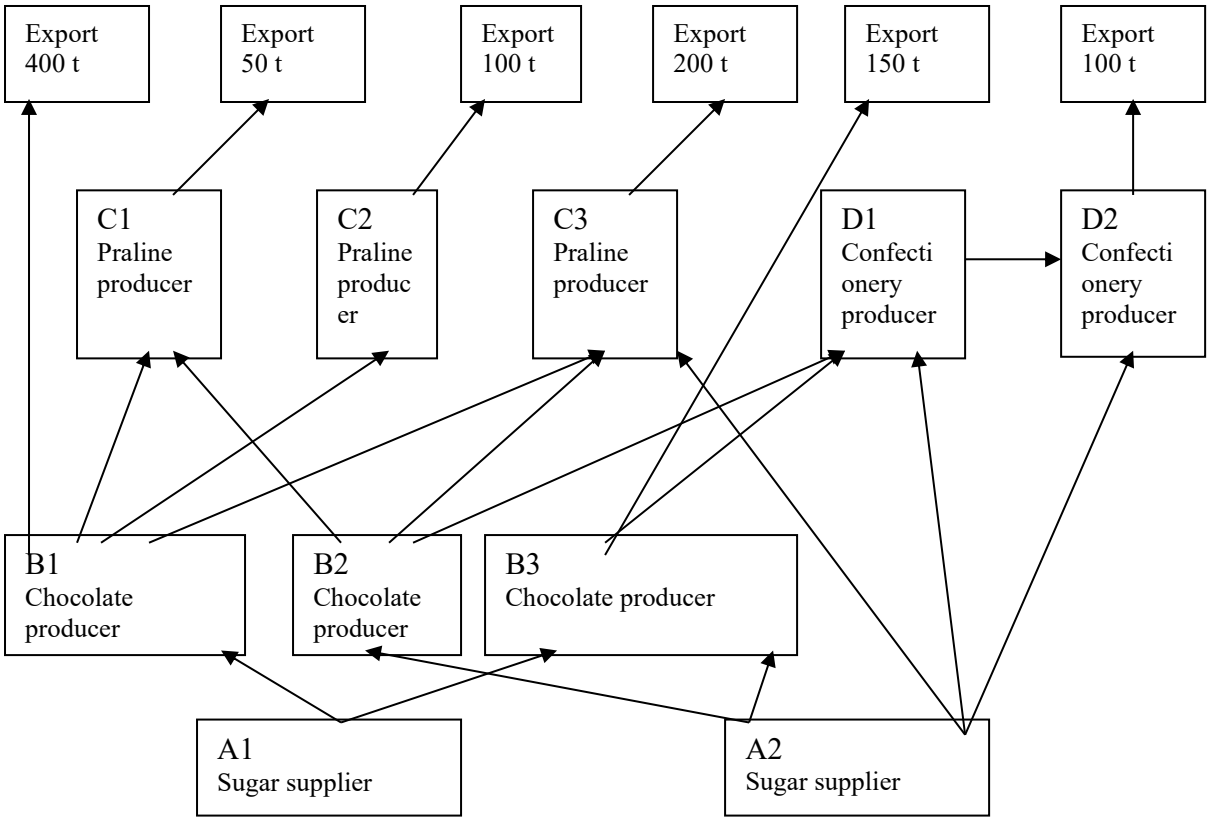
The proposed commercial operation is <u>not economically viable</u> if the balance (profit margin) is zero or negative[8]. Therefore, Code 7 can be accepted.

[8]

Note:
In case of more than one processed product obtained under IP, the average profit margin with regard to all products must be zero or negative to consider that the proposed commercial operatiomn is not economically viable.

Sub-Annex 3

Example with a scheme of a manufacturing structure



This is a real network of companies involving in the export of chocolate, pralines and confectionery:

- 2 sugar suppliers, A1 and A2,
- 3 chocolate manufacturers, B1, B2 and B3.
- 3 praline manufacturers and exporters, C1, C2 and C3
- 2 confectionery manufacturers, D1 and D2. D2 exports confectionery manufactured by both himself and by his colleague D1.

A1 sells sugar to B1 and B3.
A2 sells sugar to B2, B3, C3, D1 and D2
B1 exports chocolate and sells chocolate to C1, C2, and C3
B2 sells chocolate to C1, C3 and D1
B3 exports chocolate and sells chocolate to D1
D1 sells finished products to D2
B1 exports chocolate with a total sugar content of 4000 tonnes (600 different export operations of 4 different recipes each)
B3 exports chocolate with a total sugar content of 500 tonnes (200 different export operations of 10 different recipes each)
C1 exports pralines with a total sugar content of 500 tonnes (100 different export operations of 7 different recipes each)
C2 exports pralines with a total sugar content of 1000 tonnes (150 different export operations of 6 different recipes each)
C3 exports pralines with a total sugar content of 2000 tonnes (300 different export operations of 4 different recipes each)
D2 export confectionery with a total sugar content of 1000 tonnes (150 different export operations of 6 different recipes each)

All companies produce for the internal market as well.