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GUIDANCE ON REPAYMENT AND REMISSION

REV 1 EN

"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."

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1. INTRODUCTION – REPAYMENT AND REMISSION

1.1 *LEGAL PROVISIONS*

* Regulation (EU) n° 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC) (OJEU L 269 of 10 October 2013)

– Articles 116 to 123

* Commission delegated regulation (EU) n.º 2015/2446 of the European Parliament and of the Council of 28 July 2015 supplementing UCC (OJEU L 343 of 29 December 2015) – (DA)

– Articles 92 to 102

– Annex A – general provisions, title I, chapter 1 column 4 c, chapter 2, title VIII Annexes 33-06 and 33-07

* Commission implementing regulation (EU) n.º 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of UCC (OJEU L 343 of 29 December 2015) – (IA)

– Articles 172 to 181

– Annex A – general provisions, title I, II and III, and Annexes 33-06 and 33-07.

2. PROCEDURE FOR REPAYMENT OR REMISSION

2.1 *GENERAL*

Applications for repayment or remission in accordance with Article 116 UCC shall be submitted to the customs authorities (Article 121 UCC).

However, and subject to the rules of competence for a decision, where the customs authorities themselves discover within the periods prescribed that an amount of duty is repayable or remissible, pursuant to Articles 117, 119 or 120 UCC, they shall repay or remit on their own initiative (Article 116 (4) UCC).

2.2 *SCOPE OF APPLICATION*

Submitting an application for repayment or remission is mandatory where the ground for the repayment or remission is:

- invalidation of the customs declaration (second subparagraph of Article 116(1); or
- defective goods or goods not complying with the terms of the contract (Article 118 UCC).

Where the ground for repayment or remission is:

- overcharged amount of import or export duty (Article 117 UCC),
- error by the competent authorities (Article 119 UCC), or
- equity (Article 120 UCC),

the repayment or remission can be granted either on own initiative of the customs authorities or following an application by the person concerned.

2.3 *PROCEDURE*

2.3.1 The submission of an application for repayment or remission

2.3.1.1 Who may submit an application for repayment or remission?

An application for repayment or remission shall be submitted by the person who has paid or is liable to pay the amount of import or export duty, or by any person who has succeeded him in his rights and obligations (Article 172 IA).

The application may also be lodged by a customs representative of the applicant (Article 18 UCC).

Where the customs clearing agent lodges the application for repayment, he may submit the application for repayment due to Article 18 UCC, and not because he paid the duties to Customs within the meaning of Article 172 IA. It was the debtor who paid the duties within the meaning of that provision.

Where the debtor lodges the application for repayment, he is the person who may submit the application for repayment according to Article 172 IA (because he paid duties to Customs). The situation is similar in case of remission.

The customs authorities may require persons stating that they are acting as a customs representative to provide evidence of their empowerment by the person represented (Article 19 (2) UCC).

2.3.1.2 How to submit an application for repayment or remission?

The application shall be made using electronic data-processing techniques (Article 6 (1) UCC). However, the application for repayment or remission may also be made by means other than electronic data-processing techniques (paper-based) in accordance with the provisions laid down by the Member State concerned (Article 92 (2) DA).

2.3.1.3 Where to submit an application for repayment or remission?

The application shall be submitted to the competent customs authority of the Member State where the customs debt was notified (Article 92 (1) DA). It will also be up to the competent customs authority of that Member State to take the decision.

2.3.1.4 When to submit an application for repayment or remission?

The period for submitting an application depends on the ground for the repayment or remission (Article 121 UCC). With the exception of the invalidation of a customs declaration the periods start with the notification of the customs debt. In the case of invalidation of a customs declaration, an application for repayment has to be submitted within the period specified in the rules applicable to invalidation.

The date of notification of the customs debt is the date on which the debtor receives it, or is deemed to have received it – see the general rule of Article 22 (4) UCC.

The following chapters specify the periods for each ground of repayment or remission separately.

2.3.1.5 What to submit for an application for repayment or remission?

An application for repayment or remission requires certain data. These data are set out in the DA, Annex A (Article 6 (2) UCC, Article 2 DA). More specific, the data required for an application for repayment or remission is mainly laid down in:

- Introductory notes to the data requirement tables for applications.

- Title I General data requirements (including its notes), column 4c Application (and decision) on the repayment or remission of amounts of import or export duty.

- Title VIII: Specific data requirements (including its notes) for the application for the repayment or remission of the amounts of import or export duty.

Where a person applies for repayment or remission, that person shall supply all the information required by the competent customs authorities in order to enable them to take that decision (Article 22 (1) UCC).

Within 30 days of receipt of the application for repayment or remission, the customs authorities shall verify whether the conditions for the acceptance of that application are fulfilled (Article 22 (2) UCC). See par. 2.3.2.

2.3.1.6 Documents

"Attached documents" is the name of one of the data elements for the application for repayment or remission (DA, annex A, Title I, Data Element order number 2/4). According to this data element information needs to be provided on the type and, if applicable, the identification number and/or the date of issue of the document(s) attached to the application. Also the total number of the documents attached should be indicated. An application relating to goods in respect of which an import or export licence was produced when the relevant customs declaration was lodged, needs to be supported by certification in certain cases (see par 2.3.2.b). Other documents are not part of data requirements for the application for the repayment or remission of duties.

After acceptance of the application for repayment or remission the customs authority competent to take the decision may consider it necessary to ask for additional information (e.g. documents) from the applicant in order to reach its decision (Article 13 (1) DA).

2.3.1.7 Presentation of goods

Repayment or remission is subject to the presentation of the goods.

Where the goods cannot be presented to the customs authorities, the customs authority competent to take the decision shall grant repayment or remission only where it has evidence showing that the goods in question are the goods in respect of which repayment or remission has been requested (Article 173 IA).

2.3.2 Acceptance of an application for repayment or remission

The customs authority shall, without delay and, at the latest within 30 days of receipt of application for repayment or remission, verify whether the conditions for the acceptance of that application are fulfilled (Article 22 (2) UCC).

The conditions for acceptance are:

a. The general conditions for acceptance
b. The data requirements

Where the customs authority establish that the application for repayment or remission contains all the information required in order for them to be able to take a decision, they shall communicate its acceptance to the applicant within 30 days of receipt of the application (Article 22 (2), second subparagraph UCC).

a) General conditions for acceptance (Article 11 DA)

An application for repayment or remission of import or export duties shall be accepted provided that the following conditions are met:

i) the applicant is registered (in accordance with Article 9 UCC – in principle registration is only required for economic operators);

ii) the application has been submitted to the customs authority competent to receive applications for repayment or remission;

iii) the application does not concern a decision with the same purpose as a previous decision addressed to the same applicant which, during the one year period [three years period in cases mentioned in Article 12 (2) DA] preceding the application, was annulled or revoked on the grounds that the applicant failed to fulfil an obligation imposed under that decision.

b) Data requirements (Annex A DA Title I column 4c and Title VIII)

*** The data requirements needed for acceptance are the following:**

Type of application code (D.E. order Nr 1/1)

In case of an application for repayment: **REP** code (Annex A IA, title II, 2 Codes)

In case of an application for remission: **REM** code (Annex A IA, title II, 2 Codes)

*** Identification of the applicant and of his representative, if any (D.E. order Nr 3/2 and 3/4)**

- Applicant identification (D.E. order Nr 3/2):

The applicant is the person who applies to the customs authorities for a decision. The Economic Operators Registration and Identification number (EORI number) of the applicant is required (if any). In case of an application made by using an electronic data processing technique, the EORI number of the applicant always needs to be provided.

- **Representative identification (D.E. order Nr 3/4):**

If the applicant is represented, the EORI number of the representative needs to be provided (if any).

If requested by the decision-taking customs authority, a copy of a relevant contract, power of attorney, or any other document which provides evidence of the empowerment for the status of customs representative, needs to be provided (see Article 19 UCC).

*** Applicant (D.E. order Nr 3/1)**

The applicant is the person who applies to the customs authorities for a decision. The name and address of the applicant is mandatory only in the cases where the EORI number of the person is not required. Where the EORI number is provided, the name and address should not be provided, unless a paper-based application is issued (Note 4)

*** Representative (D.E. order Nr 3/3)**

If the applicant is represented, relevant information (i.e. name, address) about the representative is required. If requested by the decision-taking customs authority, a copy of a relevant contract, power of attorney, or any other document which provides evidence of the empowerment for the status of customs representative, needs to be provided.

This information is mandatory only in the cases where the EORI number is not required. Where the EORI number is provided, the name and address should not be provided, unless a paper-based application is issued (Note 4)

*** Title for recovery (D.E. order No VIII/1)**

The Master Reference Number (MRN) of the customs declaration(s) or reference to any other document which gave rise to notification of the import duties, the repayment or remission of which is requested, is required. On the basis of the application, it must be possible to identify without doubt the customs debt for which repayment or remission is asked.

A repayment or remission application may concern one or more import declarations.

*** Customs office where the customs debt was notified (D.E. order No VIII/2)**

The identifier of the customs office where the import or export duty to which the application refers was notified is required.

In case of a paper-based application, the name and full address, including postal code, if any, of the customs office concerned is required.

*** Legal basis (D.E. order No VIII/9).**

Using the relevant code (Annex A IA, title II, 2 Codes, VIII/9 Legal basis), the legal basis of the application for the repayment or remission of the import or export duty is required. The relevant codes to be used are:

Code	Description	Legal basis
Code A	**Overcharged amounts of import or export duty**	**Article 117 UCC**
Code B	**Defective goods or goods not complying with the terms of the contract**	**Article 118 UCC**
Code C	**Error by the competent authorities**	**Article 119 UCC**
Code D	**Equity**	**Article 120 UCC**
Code E	**Amount of import or export duty paid in relation with a customs declaration**	**116 (1) UCC**

	invalidated in accordance with Article 174 UCC	

<u>* Description of the grounds for repayment or remission (D.E. order No VIII/13)</u>

Detailed description of the justification that forms the basis of the request for remission or repayment of the import or export duty, is required.

This data element needs to be completed in all cases where the information cannot derive from elsewhere in the application.

The 'justifications' most often invoked are the following:

- on the basis of Article 117 UCC – Overcharged duty

A posteriori request for relief from import duty (for returned goods – see Article 203 UCC)

A posteriori request for the benefit of a tariff quota, a tariff ceiling or other favourable tariff measures (Article 117 (2) UCC)

A posteriori request for the benefit of a tariff suspension

A posteriori request for the benefit of a preferential regime

Amendment of the tariff classification

Change in quantity (supplementary units)

Omission or error

A posteriori proof of the regularity of a transit operation

Amendment of the customs value

Material mistakes where calculating the amount of duty (error in currency etc.)

- on the basis of Article 116 (1), second subparagraph UCC - Invalidation of a declaration for reasons set out in Article 148 DA:

* goods declared in error for a customs procedure under which a customs debt is incurred instead of being declared for another procedure;

* goods have been declared in error instead of other goods for a customs procedure under which a customs debt is incurred;

* goods sold under a distance contract as defined in Article 2 (7) of Directive 2011/83/EU of European Parliament and of the Council have been released for free circulation and are returned;

* Union goods have been declared in error for a customs procedure applicable to non-Union goods and their customs status as Union goods has been proved afterwards by means of a T2L, T2F or customs goods manifest;

* goods erroneously declared under more than one customs declarations;

* authorisation with retroactive effect is granted in accordance with Article 211 (2) UCC.

- on the basis of Article 118 UCC

* Goods refused by the importer for non-conformity at the time of release with the terms of the contract on the basis of which they were imported

* Goods refused by the importer as defective at the time of release

- on the basis of Article 119 UCC

* Error of the customs authority in the follow up of a tariff quota (Article 119(2) UCC)

* Error by the competent authorities (Article 119 (1) UCC)

- on the basis of Article 120 UCC

* Equity (Special circumstances)

- on the basis of Article 128 CCC (transitional period laid down in Article 349 (2) IA)

* Inward processing in the form of the drawback system.

*** Commodity code (D.E. order Nr 5/1)**

The 8-digit Combined Nomenclature code, the TARIC code and, if applicable, the TARIC additional code(s) and the national additional code(s) of the goods concerned, is required.

*** Description of goods (D.E. order Nr 5/2)**

The usual trade description of the goods or their tariff description must be indicated. The description must correspond to that used in the customs declaration.

The number, kind, marks and identification numbers of packages must be stated. In the case of unpackaged goods, the number of objects must be stated or 'in bulk' must be indicated.

*** Goods quantity (D.E. order Nr 5/3)**

The net quantity of the goods expressed in supplementary units within the meaning of the Combined Nomenclature (Annex I to Council Regulation (EEC) No 2658/87) is required.

*** Customs value (D.E. order No VIII/6)**

The customs value of the goods must be indicated.

*** Type of import or export duty (D.E. order No VIII/8)**

Using the relevant codes (according to Annex A IA Title I the codes provided for in Annex B concerning D.E. 4/3 Calculation of taxes – tax type shall be used) the type of the import or export duty to be repaid or remitted, is required.

The codes applicable are given below:

Import duties	A00
Definitive antidumping duties	A30
Provisional antidumping duties	A35
Definitive countervailing duties	A40
Provisional countervailing duties	A45
Export duty	C00
Duties collected on behalf of other countries	E00

*** Amount of import duties to be repaid or be submitted (D.E. order No VIII/7)**

Using the relevant code (according to Annex A IA Title I the ISO-alpha-3 currency codes (ISO 4217) shall be used for the currency) for the national currency the amount of import or export duty to be repaid or remitted is required.

The relevant codes applicable are given below:

Currency	Code
Euro	EUR
Danish Krone	DKK
Swedish Krona	SEK
Pound Sterling	GBP
Czech Koruna	CZK
Forint	HUF
Zloty	PLN
Bulgarian Lev	BGN
Romanian Leu	RON
Kuna	HRK

*** Attached documents (D.E. order Nr 2/4)**

In certain cases it is required that an application is supported by a certification of authorities (Annex A DA, title I, Note 3). In general it relates to goods in respect of which an import or export licence was produced when the relevant customs declaration was lodged.

For the rest attached documents are not required for an application for repayment or remission. However, in case documents are attached to the application, information on the type, and, if applicable, the identification number and/or the date of issue needs to be provided.

If the document contains an addition to information provided elsewhere in that application, a reference to the data element concerned must be indicated.

*** Bank and account details (D.E. order No VIII/14)**

If applicable, the bank-account details where the import or export duty shall be repaid or remitted[1], is required.

*** Place, date and signature and position of signatory:**

*** Place (D.E. order Nr 4/1)**

Place at which the application was signed or otherwise authenticated, is required.

***Date (D.E. order Nr 4/2)**

Date on which the applicant has signed or otherwise authenticated the application, is required.

***Signature/authentication (D.E. order Nr 1/2[2])**

Paper-based applications must be signed by the person who lodges the application. The signatory must add his capacity.

Applications made by using an electronic data processing technique must be authenticated by the person who lodges the application (applicant or representative).

*** Location of goods (D.E. order Nr 4/8)**

This information may be omitted in the cases where the Union customs legislation waives the obligation to present the goods (Note 11)

Otherwise, the name and address of the location of the goods (including the postal code if applicable) is required.

In case the application is submitted by using electronic data processing techniques, the relevant code may replace the address if it provides an unambiguous identification of the location concerned.

*** Customs office responsible for the place where the goods are located (D.E. order No VIII/3)**

This information only needs to be provided if it is different than the customs office where the customs debt was notified.

The identifier of the customs office concerned is required.

In case of a paper-based application, the name and full address, including postal code, if any, of the customs office concerned is required

[1] The bank account details are not needed in a remission application. Nevertheless, if the payment is made in the meantime, the remission procedure becomes a repayment procedure and the information becomes useful in those specific situations.

[2] If the application is signed by a (customs) representative, the application has to mention that it is signed by the signatory in his capacity as representative of the person who is represented

*** Customs procedure (request for prior completion of formalities) (D.E. order No VIII/5)**

Except in the cases of overcharged amounts of import or export duty (Article 116 (1) 1st subparagraph (a)), the relevant code of the (customs) procedure under which the applicant wishes to place the goods, is required.

The codes provided for in Annex B concerning D.E. 1/10 "Procedure" need to be used (Annex A, title I, D.E. order number VIII/5). These codes are:

10 Permanent export.

Union goods to be taken out of the customs territory of the Union shall be placed under the export procedure (Article 269 (1) UCC).

51 Placing goods under inward processing procedure

The inward processing procedure also covers destruction (the destruction of goods is a processing operation (Article 5 (37) UCC), except where destruction is carried out by, or under the supervision of, customs.

76: Placing of goods under the customs warehousing procedure.

Union goods may be placed under the customs warehousing in order to benefit from a decision granting repayment or remission of import duty (Article 237(2) UCC).

Explanation:

- Following the release for free circulation, application for repayment or remission of import duty based on the goods being defective or not complying with the terms of the contract (Article 118 UCC)

- The goods in question may be placed under the customs warehousing procedure instead of having to be taken out of the customs territory of Union in order for the repayment or remission to be granted.

78: Placing of goods under free-zone.

Union goods may be placed under the free zone procedure in order to benefit from a decision granting repayment or remission of import duty (Article 237 (2) UCC).

It's required to indicate if prior completion of formalities is requested.

c) Date of acceptance

Concerning the date of acceptance, several cases are possible:

1st case

Where the customs authority accepts an application, the date of acceptance of that application shall be the date on which all the information required was received by the

customs authority (Article 12 (1) IA) Where the application for repayment or remission is lodged, the conditions of Article 11 DA are fulfilled and all the required information of Annex A were submitted and the mandatory document provided, if it is due, the date of acceptance is the date of receipt of the application.

2nd case

Where the application for repayment or remission was submitted, the conditions of Article 11 DA are fulfilled, but not all the required information of Annex A DA have been provided and that the mandatory document not submitted, the date of acceptance is the date on which the customs authority received, following its request, the last of the required information and/or document which were missing (Article 12(1) IA).

3 rd case

Where the applicant does not provide the information requested by the customs authority within the period set by them for that purpose, the application shall not be accepted and the applicant shall be notified accordingly (Article 12 (3) IA).

4th case

In the absence of any communication to the applicant in relation to whether the application has been accepted or not, that application shall be deemed to be accepted. The date of acceptance shall be the date of submission (Article 12 (3) IA).

2.3.3 The assessment of an application for repayment or remission

2.3.3.1 – Check the time-limit for lodging a request

An application for repayment or remission must be submitted within a certain period of time (Article 121 (1) UCC). This period is depending on the ground for repayment or remission (see the following chapters for the specific period).

That period shall be extended where the applicant provides evidence that he or she was prevented from submitting an application within the prescribed period as a result of unforeseeable circumstances or force majeure (Article 121 (2) UCC).

In the context of customs legislation, the concepts of '*force majeure*' and 'unforeseeable circumstances' both contain an objective element relating to abnormal circumstances extraneous to the trader and a subjective element involving the obligation, on that person's part, to guard against the consequences of an abnormal event by taking appropriate steps without making unreasonable sacrifices (see, to that effect, the judgment of 18 May 2017, *'Latvijas Dzelzceļš' VAS v Valsts ienemumu dienests*, C-154/16, paragraph 61).

It is settled case-law that the concept of force majeure must be understood in the sense of "circumstances beyond the control of those claiming it, abnormal and unforeseeable circumstances, whose consequences could not have been avoided even if all due care had been exercised" (Case 5/02/1987 Denkavit, Case C-145/85; Case 7/12/1993, Edmond Huygens case C-12/92; Judgment given on 23/02/1995, Case C-334/93 Bonapharma,

judgment of 17/07/1997, Case C-97/95 Pascoal & Filhos judgment of 10/06/1999, Case C-37/97).

Furthermore, the concepts of '*force majeure*' and 'unforeseeable circumstances', within the meaning of Article 121 (1) UCC, must be interpreted in a strict sense (see, by analogy, the judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, paragraphs 190 and 191).

The extension of the time-limit is not possible in case of lodging an application for the invalidation of a declaration. For such application, the time-limits stipulated in art 148 DA cannot be prolonged.

Where an appeal has been lodged against the notification of the customs debt, the period for submitting an application for repayment or remission shall be suspended from the date on which the appeal is lodged, for the duration of the appeal proceedings (Article 121 (3) UCC).

2.3.3.2 – Request additional information from the applicant

Where a person applies for a decision relating to the application of customs legislation, that person shall supply all the information required by the competent customs authorities in order to enable them to give a ruling (Article 22 (1) UCC).

Failure to present documents other than the certificate relating to the use of an import licence in support of an application for repayment or remission is not a reason for considering this application as non-acceptable.

By contrast, other documents, depending on the nature of and the motivation for the request for repayment or remission, must be provided after the acceptance of the application if the customs authority deems them necessary to take a decision.

Also, according to Article 13 (1) DA, after acceptance of the application, the customs authority may request additional information necessary for it to rule on the application for repayment or remission.

As soon as the customs authority has identified that information and/or documents are missing, a letter must be sent to the operator requesting him to provide the information and/or the documents.

Since the 120 days deadline for the authorities to take a decision starts on the date of the acceptance of the application (and not when all the relevant information has been received), any delay in the request to the operator of transmission of information or additional documents required for assessing the application affects the standard deadline for taking a decision.

Documents that could be needed for assessing the request of repayment or remission of import duty are different according the grounds invoked by the operator on his application.

Those documents could be:

- copy of the customs declaration (s) concerned

- copy of the customs declaration (s) amended under Article 173 (3) of the UCC

- invoice

- AGRIM certificate

- customs authorisation of special procedures (Title VII of UCC)

- proof of preferential origin

- contract of sale/commercial contract

- order form

- amount of duty to be repaid: breakdown of initial and corrected and amount to be repaid or remit)

- binding tariff information

- Binding origin information

- Transport document (bill of lading, packing list, etc.)

- proof of the defect or non-conformity of the goods with the terms of the contract

- proof of non-compliance with a standard

- final court decision

- proof regularity transit

- Power of Representation

- Technical sheet products

- Freight invoice

- proof of completion of the formalities to which the repayment or the remission is subject (export, destruction or placement under a special procedure)

- certification of exit referred to in Article 334 IA

Extension of the time-limit

The time-limit set by the customs authority to provide additional information shall not exceed 30 days (The time-limit for taking the decision shall be extended by that period of time. The applicant shall be informed of the extension of the time-limit for taking a decision (Article 13 (1) DA).

If the additional information or documents required are not provided by the operator within the prescribed time-limit, it is appropriate to resume the examination of the application as a refusal with prior implementation of the right to be heard.

2.3.3.3 – Request for supplementary information from another Member State

Where, for the purposes of repayment or remission supplementary information must be obtained from the customs authority of a Member State other than that in which the customs debt has been notified or where the goods must be examined by that authority in order to ensure that the conditions for repayment or remission are fulfilled, the customs authority competent to take the decision shall request the assistance of the customs authority of the Member State where the goods are located, specifying the nature of the information to be obtained or the checks to be carried out.

The request for information shall be accompanied by the particulars of the application and all documents necessary to enable the customs authority of the Member State where the goods are located to obtain the information or carry out the checks requested (Article 175 (1) IA.

For that purpose, if electronic means are not used, the customs authority sends a request in two copies to the customs authority of the Member State where the goods are, by using the form provided in Annex 33-06 (Article 175 (2) IA).

In the event of requests for assistance, the applicant (or representative) must be informed accordingly (Article13-3 DA).

The Member State where the goods are located shall comply promptly with this request. It shall obtain the information or carry out the checks requested by the customs authority competent to take the decision, within 30 days of the date of receipt of the request.

It shall enter the results obtained in the relevant part of the original of the request and shall return that document to the customs authority competent to take the decision together with all the documents provided in support of the request for assistance.

Where the customs authority of the Member State where the goods are located is unable to obtain the information or carry out the checks requested by the customs authority competent to take a decision within 30 days, it shall return the request, duly annotated (Article 175 (3) IA).

2.3.4 The decision on an application for repayment or remission

Where the customs authorities are unable to grant repayment or remission of an amount of import or export duties on the grounds invoked they should examine the merits of an application for repayment or remission in the light of the other grounds for repayment or remission (Article 121 (2) UCC).

In case the customs authorities examine the "merits of an application for repayment or remission in the light of the other grounds for repayment or remission", thus several legal bases for repayment/remission being assessed, there will still be only one decision on repayment.

If, after examining the "merits of an application for repayment or remission in the light of the other grounds for repayment or remission", the decision for repayment/remission is taken on a different article than the one mentioned in the application, that decision is considered to be taken upon application, not under own initiative, because the analysis was made based on the initial application and in correlation with Article 121(2) UCC.

2.4.4.1 - Time-limit for taking a decision

The competent customs authority has to take a decision and has to notify the applicant without delay, and at the latest within 120 days of the date of acceptance of the application (Article 22 (3), first subparagraph UCC).

Where the customs authorities are unable to comply with the time-limit for taking a decision, they shall inform the applicant of that fact before the expiry of that time-limit, stating the reasons and indicating the further period of time which they consider necessary in order to take a decision. That further period of time shall not exceed 30 days (Article 22, (3), second subparagraph UCC).

2.4.4.2 - Extension or suspension of the time-limit for taking a decision

Where the applicant requests an extension to carry out adjustments in order to ensure the fulfilment of the conditions and the criteria, the customs authorities may extend the time-limit for taking a decision (Article 22 (3), third subparagraph UCC).

The time-limit for taking a decision may be extended, where:

- after acceptance of the application, the customs authority competent to take the decision considers it necessary to ask for additional information from the applicant in order to reach its decision. The customs authorities shall set a time-limit that shall not exceed 30 days for the applicant to provide that information. The time-limit for taking a decision shall be extended by that period of time (Article 13 (1) DA).

- the right to be heard is applied. The time-limit for taking the decision shall be extended for a period of 30 days. The applicant shall be informed of the extension (Article 13 (2) DA).

- the customs authority competent to take the decision has consulted another customs authority. The time-limit for taking the decision shall be extended by the same period of time as the extension of the consultation period. The applicant shall be informed of the extension of the time-limit for taking a decision (Article 13 (3) DA).

- there are serious grounds for suspecting an infringement of customs legislation and the customs authorities conduct investigations based on those grounds. The time-limit to take the decision shall be extended by the time necessary to complete those investigations. That extension shall not exceed nine months. Unless it would jeopardise the investigations, the applicant shall be informed of the extension (Article 13 (4) DA).

Where the file is transmitted to the Commission for decision (Article 116 (3), first subparagraph UCC) or where the file is not transmitted because either the Commission has already adopted a decision on a case involving comparable issues of fact and law or the Commission is already considering a case involving comparable issues of fact and law (Article 116 (3) second subparagraph UCC), the time-limit for taking the decision on repayment or remission shall be suspended until such time as the Member State concerned has received the notification of the Commission's decision or the notification by the Commission of the return of the file (Article 97 (1) DA).

Where the decision on repayment or remission may be affected by the outcome of one of the following pending administrative procedure or court proceeding, the time-limit for

taking the decision on repayment or remission may, with the agreement of the applicant, be extended as follows:

(a) If a case involving identical or comparable issues of fact and of law is pending before the Court of Justice of the European Union in accordance with Article 267 of the Treaty on the Functioning of the European Union, the time-limit for taking the decision on repayment or remission may be extended for a period ending not later than 30 days after the date of delivery of the judgment of the Court of Justice;

(b) If the decision on repayment or remission depends on the outcome of a request for subsequent verification of the proof of preferential origin made in accordance with Articles 109, 110 or 125 of Implementing Regulation (EU) 2015/2447 or made in accordance with the preferential agreement concerned, the time-limit for taking the decision on repayment or remission may be extended for the duration of the verification as mentioned in Articles 109, 110 or 125 of Implementing Regulation (EU) 2015/2447 or by the preferential agreement concerned, and in any case not more than 15 months from the date on which the request was sent; and

(c) If the decision on repayment or remission depends on the outcome of a consultation procedure aimed to ensure, at Union level, the correct and uniform tariff classification or determination of origin of the goods concerned, made in accordance with Article 23(2) of Implementing Regulation (EU) 2015/2447, the time-limit for taking the decision on repayment or remission may be extended for a period ending not later than 30 days after the notification by the Commission of the withdrawal of the suspension of the taking of BTI and BOI decisions, as provided for in Article 23(3) of that Implementing Regulation. (Article 97(3) UCC DA)

It has to be noted that if no decision is taken within the time-limit provided for it in Article 22 (3) of the Code, the applicant, in accordance with Article 44 (1) 2nd subparagraph, is entitled to exercise the right of appeal.

If the Commission does not take a decision within the time-limit provided for in Article 100, or does not notify a decision to the Member State in question within the time-limit provided for in 101(1), the customs authority competent to take the decision shall take a decision favourable to the person concerned (Article 102 DA).

2.4.4.3 - Right to be heard in case of a unfavourable decision

Before taking a decision which would adversely affect the applicant, the customs authorities shall communicate the grounds on which they intend to base their decision to the applicant, who shall be given the opportunity to express his or her point of view, within a period prescribed from the date on which he or she receives that communication, or is deemed to have received it (Article 22 (6), first subparagraph UCC).

The period for the applicant to express his point of view before a decision which would adversely affect him is taken is 30 days (Article 8 (1) DA).

The communication shall:

a) include a reference to the documents and information on which the customs authorities intend to base their decision;

b) indicate the period within which the person concerned shall express his point of view from the date on which he receives that communication, or is deemed to have received it;

c) include a reference to the right of the person concerned to have access to the documents and information referred to in point (a) (Article 8 (1) IA).

Where the person concerned gives his point of view before the expiry of the period the customs authorities may proceed with taking the decision unless the person concerned simultaneously expresses his intention to further express his point of view within the period prescribed (Article 8 (2) IA).

Following the expiry of the period to express his or her point of view, the applicant shall be notified, in the appropriate form, of the decision (Article 22 (6), first subparagraph UCC).

Where the decision concerns a notification to the applicant of a Commission decision, the applicant is not given an opportunity to express his point of view (Article 10 (c) DA).

2.4.4.4. Data requirements to be indicated in the decision

Decisions for repayment or remission of duties shall contain the following data (Annex A DA):

- Decision code type (D.E. order Nr 1/1)

In case of a decision for repayment: **REP** (Annex A IA, title II, 2 Codes)

In case of a decision for remission: **REM** (Annex A IA, title II, 2 Codes)

- Signature/authentication (D.E. order Nr 1/2)

Signature of the paper-based decisions or authentication otherwise of the decisions made by using an electronic data processing technique by the person who takes the decision on the repayment or remission of the import or export duty.

- Decision reference number (D.E. order Nr 1/6)

Unique reference number attributed by the customs authority competent to take the decision.

- Decision taking customs authority (D.E. order Nr 1/7)

Identification number or name and address of the customs authority which takes the decision.

- Attached documents (D.E. order Nr 2/4)

Information on the type and, if applicable, the identification number and/or the date of issue of the documents attached to the decision needs to be provided. Also the total number of the documents attached must be indicated.

If the document contains the continuation of the information provided elsewhere in the decision, a reference to the data element concerned is required.

- Holder of the decision (D.E. order Nr. 3/1)

The holder of the decision is the person to whom the decision is issued.

This information is mandatory only in the cases where the EORI number of the person is not required. Where the EORI number is provided, the name and address should not be provided, unless a paper-based decision is used (Note number 4).

In case the shipping companies act as debtors, the decision is addressed to them.

- Holder of the decision identification (D.E. order Nr 3/2)

The holder of the decision is the person to whom the decision is issued.

- Representative, if any (D.E. order Nr 3/3)

If the applicant is represented, relevant information about the representative needs to be provided. This information is mandatory only in the cases where the EORI number of the person is not required. Where the EORI number is provided, the name and address should not be provided, unless a paper-based decision is used (Note number 4).

- Representative identification (D.E. order Nr 3/4)

If the applicant is represented, the EORI number of representative is required.

- Place (D.E. order Nr 4/1)

This information is only required in case of a paper-based application (Note number 7).

- Date (D.E. order Nr 4/2)

The date on which the decision on the repayment or remission of import or export duty was taken.

- General remarks (D.E. order Nr 6/3)

The decision-taking customs authority shall specify the details related to the right of appeal.

The particulars of any requirements to which the goods remain subject pending the implementation of the decision need to be indicated. If applicable, the decision shall contain a notice informing the holder of the decision that he must give the original of the decision to the implementing customs office of his choice when presenting the goods.

- Title for recovery (D.E. order No VIII/1)

The MRN of the customs declaration or reference to any other document which gave rise to the notification of the import or export duty, the repayment or remission of which is requested , is required.

- Customs office where the customs debt was notified (D.E. order No VIII/2)

The identifier of the customs office where the import or export duty to which the application refers, was notified is required.

In case of a paper-based application, the name and full address, including postal code, if any, of the customs office is required.

- The customs office responsible for the place where the goods are located (D.E. order No VIII/3)

This information only needs to be provided if it is different than the customs office where the customs debt was notified.

The identifier of the customs office concerned is required.

In case of a paper-based application, the name and full address, including postal code, if any, of the customs office concerned, is required.

- Comments of the customs office responsible for the place where the goods are located (D.E. order No VIII/4).

This data element needs to be completed in cases, where repayment or remission is subject to destruction, abandonment to the State, or placement under a special procedure or the export procedure of an Article, but the corresponding formalities are completed only for one or more parts or components of that Article.

In this case, the quantity, nature and value of the goods which are to remain in the customs territory of the Union, is required.

Where the goods are for delivery to a charity, the name and full address, including postal code, if any, of the entity concerned, is required.

- Customs procedure (request for prior completion of formalities) (D.E. order No VIII/5)

Except in the cases of overcharged amounts of import or export duty, the relevant code of the customs procedure under which the applicant wishes to place the goods, is required.

The codes provided for in Annex B concerning D.E. 1/10 Procedure need to be used (Annex A, title I, D.E. order number VIII/5). These codes are:

10 Permanent export.

Union goods to be taken out of the customs territory of the Union shall be placed under the export procedure (Article 269 (1) UCC).

51 Placing goods under inward processing procedure

The inward processing procedure also covers destruction (the destruction of goods is a processing operation (Article 5 (37) UCC)) except where destruction is carried out by, or under the supervision of, customs.

76: Placing of goods under the customs warehousing procedure.

Union goods may be placed under the customs warehousing in order to benefit from a decision granting repayment or remission of import duty (Article 237(2) UCC).

Explanation:

- Following the release for free circulation, application for repayment or remission of import duty based on the goods being defective or not complying with the terms of the contract (Article 118 UCC)

- The goods in question may be placed under the customs warehousing procedure instead of having to be taken out of the customs territory of Union in order for the repayment or remission to be granted.

78: Placing of goods under free-zone.

Union goods may be placed under the free zone procedure in order to benefit from a decision granting repayment or remission of import duty (Article 237 (2) UCC).

It's required to indicate if prior completion of formalities is requested.

- Customs value (D.E. order No VIII/6)

The customs value of the goods needs to be indicated.

- Legal basis (D.E. order No VIII/9).

Using the relevant code (Annex A IA, title II, 2 Codes, VIII/9 Legal basis), the legal basis of the application for the repayment or remission of the import or export duty is required. The relevant codes to be used are:

Code	Description	Legal basis
Code A	**Overcharged amounts of import or export duty**	**Article 117 UCC**
Code B	**Defective goods or goods not complying with the terms of the contract**	**Article 118 UCC**
Code C	**Error by the competent authorities**	**Article 119 UCC**
Code D	**Equity**	**Article 120 UCC**

Code E	**Amount of import or export duty paid in relation with a customs declaration invalidated in accordance with Article 174 UCC**	**116 (1) UCC**

- Type of import or export duty (D.E. order No VIII/8)

Using the relevant codes (according to Annex A IA Title I the codes provided for in Annex B concerning D.E. 4/3 Calculation of taxes – tax type shall be used) the type of the import or export duty to be repaid or remitted, is required.

The codes applicable are given below:

Import duties	A00
Definitive antidumping duties	A30
Provisional antidumping duties	A35
Definitive countervailing duties	A40
Provisional countervailing duties	A45
Export duties	C00
Duties collected on behalf of other countries	E00

- Amount of import or export duty to be repaid or remitted (D.E. order No VIII/7)

Using the relevant code (according to Annex A IA Title I the ISO-alpha-3 currency codes (ISO 4217) shall be used for the currency) for the national currency the amount of import or export duty to be repaid or remitted is required.

The relevant codes applicable are given below:

Currency	Code
Euro	EUR
Danish Krone	DKK
Swedish Krona	SEK
Pound Sterling	GBP
Czech Koruna	CZK
Forint	HUF
Zloty	PLN
Bulgarian Lev	BGN
Romanian Leu	RON
Kuna	HRK

- Use or destination of the goods (D.E. order No VIII/10).

Information on the use to which the goods may be put or the destination to which they may be sent, depending on the possibilities available in the particular case under UCC and where appropriate on the basis of a specific authorization by the decision-taking customs authority.

- Time-limit for the completion of formalities (D.E. order No VIII/11).

It is required to indicate in days the time-limit for completion of the formalities to which repayment or remission of the import or export duty is subject.

- Statement of the decision-taking customs authority (D.E. order No VIII/12)

If applicable, the decision taking customs authority needs to indicate that the import or export duty will not be repaid or remitted until the implementing customs office has informed the decision-taking customs authority that the formalities to which repayment or remission is subject have been completed.

- Description of the grounds for the repayment or remission

Where the grounds for the repayment or remission of the import or export duty are different for the decision from those of the application, detailed description of the justification that forms the basis of the decision is required.

An unfavourable decision must contain the same data requirements mentioned above but also be duly motivated.

The reasons for the refusal, even if they have already been explained in the RTBH, must appear clearly and in detail in the decision.

- shall mention the right of appeal and the conditions of exercise.

A decision which adversely affects the applicant shall set out the grounds on which it is based and shall refer to the right of appeal (Article 22 (7) UCC).

Where the applicant has not obtained a decision on the application for repayment or remission within the time-limits, he or she is also entitled to exercise the right of appeal (Article 44 (1), second subparagraph UCC).

The right to appeal may be exercised in at least 2 steps:

a) initially, before the customs authorities or a judicial authority or other body designated for that purpose by Member States;

b) subsequently, before a higher independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States (Article 44 (2) UCC).

The appeal shall be lodged in the Member State where the decision was taken or was applied for (Article 44 (3) UCC).

2.3.5 How to take and notify a decision on repayment or remission?

The decision shall be notified using electronic data-processing techniques (Article 6 (1) UCC). However, the decision on repayment or remission may be notified to the person concerned by means other than electronic data-processing techniques (paper-based) in accordance with the provisions laid down by the Member State concerned (Article 94 DA).

2.3.6 The finalisation of the repayment/remission procedure

2.3.6.1 – Completion of customs formalities

Where repayment or remission is subject to the completion of customs formalities, the holder of the decision for repayment or remission shall inform the monitoring customs office that he has completed those formalities. Where the decision specifies that the goods may be exported or placed under a special procedure, and the debtor avails himself of that opportunity, the monitoring customs office shall be the customs office where the goods are placed under that procedure (Article 176 (1) IA).

The monitoring customs office shall notify the customs authority competent to take the decision of the completion of the customs formalities to which the repayment or remission is subject by means of a reply (referred to in Article 95 DA))using the form set out in Annex 33-07 IA (Article 176 (2) IA).

Where the customs authority competent to take the decision has decided that repayment or remission is justified, the amount of duty shall be repaid or remitted only after that customs authority has received the information (Article 176 (3) IA).

The customs authority competent to take the decision may authorise completion of the customs formalities to which any repayment or remission may be subject before it takes a decision. Such authorisation shall be without prejudice to that decision. In these cases, paragraphs 1 to 3 of Article 176 IA shall be applicable mutatis mutandis (Article 176 (4) IA).

The monitoring customs office is the customs office which ensures, where appropriate, that the formalities or requirements to which repayment or remission of the amount of import or export duty is subject, are fulfilled (Article 176 (5) IA).

When taking a decision on repayment or remission of the import or export duties subject to the prior completion of certain customs formalities, the customs authority shall set a time-limit, which shall not exceed 60 days from the date of the notification of that decision, for completion of those customs formalities (Article 177 (1) IA).

Failure to observe the time-limit shall result in loss of entitlement to repayment or remission except where person concerned proves that he was prevented from meeting that time-limit due to unforeseeable circumstances or force majeure (Article 177 (2) IA).

2.3.6.2 – Information to be provided to the Commission

Where a customs authority grants repayment or remission on the basis of an "error by the competent authorities" (Article 119 UCC) or "equity" (Article 120 UCC), the Member State concerned has to inform the Commission thereof" (Article 121 (4) UCC).

Each Member State shall communicate to the Commission a list of the cases where repayment or remission has been granted on the basis of an error by the competent authorities or equity and where the amount repaid or remitted to a certain debtor with respect to one or more import or export operations but as a result of a single error or special situation is more than EUR 50 000, except cases transmitted to the Commission for a decision (Article 181 (1) IA).

The communication has to be made during the first and third quarters of each year for all the cases in which it was decided to repay or remit duties during the preceding half year (Article 181 (2) IA)

Where a Member State has not taken any decision on cases to be communicated to the Commission during the half-year in question, it must send the Commission a communication with the entry 'Not applicable'.

Pursuant those provisions, Member States have to communicate those cases without waiting for a request of the Commission in that sense.

Communication concerned administrative decisions and final judicial decisions

Each Member State has to hold at the disposal of the Commission a list of the cases where repayment or remission has been granted on the basis of an error by the competent authorities (Article 119 UCC) or on the basis of equity (Article 120 UCC) and where the amount repaid or remitted is equal to or less than EUR 50 000" (Article 181 (4) IA).

The following information has to be provided (Article 181 (5) IA):

(a) the reference number of the customs declaration or of the document notifying the debt;

(b) the date of the customs declaration or of the document notifying the debt;

(c) the type of the decision;

(d) the legal basis for the decision;

(e) the amount and currency;

(f) the case particulars (including a brief explanation as to why the customs authorities consider the conditions for remission/repayment of the relevant legal basis fulfilled).

Notification of decisions

The Commission has to be informed by the Member State about decisions issued by the competent customs authority on the basis of the Commission's decision (Article 101 (2) DA).

2.4 *SPECIFIC PROVISIONS*

2.4.1 Repayment/remission on own initiative

Subject to the rules of competence for a decision, where the customs authorities themselves discover within the prescribed periods, that an amount of import or export duty is repayable or remissible because of overcharging (Article 117), an error by the competent authorities (Article 119 UCC) or equity (Article 120 UCC), they shall repay or remit on their own initiative (Article 116 (4) UCC).

Example:

If the customs authorities discover that an amount of import duties of 1 million euros must be repaid because of an error of the competent authorities (Article 119 UCC), they shall transmit the file to the Commission for decision. They are not entitled to decide by themselves as the Commission is competent.

Article 116 (4) UCC ensures, in certain cases, that when the customs authorities have all the required data allowing them to proceed with the repayment/remission of duties they are not obliged to await (for purely formal reasons) the lodging of a refund/remission claim by the person concerned.

Article 116 (4) UCC does require the customs authorities to repay or remit the duties only when they are able to establish themselves there is an individual situation giving rise to repayment/remission, i.e. when they have all the information.

An *ex officio* decision needs to comply with the legal requirements.

Where the customs authorities themselves discover that an amount of import or export duty has been paid and the corresponding customs declaration is invalidated (Article 116 (1), second subparagraph UCC), the customs authorities may not repay on their own initiative.

This stems from Article 116(4) UCC which does not refer to Article 116(1) last subparagraph, only to Articles 117, 119 and 120 UCC.

Where the customs authorities themselves discover that goods are defective or not complying with the terms of the contract (Article 118 UCC) the customs authorities may not repay or remit on their own initiative.

2.4.2 Special cases of repayment/remission

a) **Repayment/remission granted in error**

Where the customs authorities have granted repayment or remission in error, the original customs debt shall be reinstated insofar as it is not time-barred (Article 116 (7) UCC).

When the customs authorities have granted repayment or remission in error, there is no obligation to take a separate decision cancelling the initial decision granting repayment or remission in error, but it is enough to notify a new decision (previously allowing the right to be heard (RTBH) to be exercised). Therefore, no explicit annulment (Article 27 UCC), revocation or amendment (Article 28 UCC) would be needed.

As to the period of time within which Article 116 (7) UCC may be invoked by customs authorities (and the date to be used as starting point of this prescription time-limit), it should be noted that:

- in accordance with the provisions of Article 103 (1) UCC, the communication to the debtor shall take place within a period of three years; however, this prescription time-limit may, in accordance with Article 103 (2) UCC, be extended by virtue of national provisions allowing the communication to the debtor to take place after the expiry of that three-year period (where the customs debt is the result of an act liable to give rise to criminal court proceedings). This extension can vary, in accordance with national law, from a period of a minimum of five years to a maximum of 10 years;

- as regards the starting point of the prescription time-limit, Article 103 (1) UCC refers to “the date on which the customs debt was incurred”. Accordingly, since in most cases, the customs debt will have been incurred under Article 77 UCC, i.e. through the release for free circulation of goods

liable to import duties, the relevant date will generally be that of acceptance of the customs declaration(s) at stake.

- In order to assess whether the customs debt is time-barred (for the purpose of the application of Article 116(7) UCC), it shall be considered that the periods laid down in paragraphs 1 and 2 of Article 103 UCC are suspended from the moment the repayment/remission application was submitted until the date on which the decision on the repayment or remission was taken [cf. Article 103 (4) UCC].

The application of Article 116 (7) UCC implies the reimbursement of any interest paid by the customs authorities pursuant to 116 (6), second subparagraph, UCC.

b) No repayment or remission in case of deception

No repayment or remission shall be granted when the situation which led to the notification of the customs debt results from deception by the debtor (Article 116 (5) UCC).

Generally, deception may include, but is not limited to acts that have given rise to criminal proceedings. Any operator who has acted in deception is barred from receiving repayment or remission of duties.

2.4.3 Payment of interest

Article 116 (6), first subparagraph, UCC provides that repayment by the customs authorities of amounts of import duties or export duties is not to give rise to the payment of interest by those authorities.

However, interest shall be paid where a decision granting repayment is not implemented within three months of the date on which that decision was taken, unless the failure to meet the deadline was outside the control of the customs authorities (Article 116 (6), second subparagraph UCC).

In such cases, the interest shall be paid from the date of expiry of the three-month period until the date of repayment. The rate of interest shall be established in accordance with Article 112 (Article 116 (6), third subparagraph UCC).

2.4.4 Repayment or remission of low amount

The customs authorities shall repay or remit an amount of import or export duty where it is EUR 10 or more, except where the person concerned requests the repayment or remission of a lower amount (Article 116 (2) UCC).

In short, it follows from Article 116 (2) UCC that when there are grounds for repayment or remission of import or export duties and there was a request from the person concerned, the repayment or remission must be granted regardless of the amount at stake. It doesn't matter if that amount is less, equal or higher than EUR 10.

On the contrary, repayment or remission of import or export duties in the context of an ex officio/own initiative procedure can only be granted where the amount concerned is EUR 10 or more.

For a Member State whose currency is not the euro, the value of the euro in national currencies to be applied shall be the rate set by the European Central Bank on the first working day of October; this rate shall apply with effect from 1 January of the following year (Article 53 (2) UCC and Article 48 (2) UCC-IA).

2.4.5 Anti-dumping duties

Article 11(8) of Council Regulation (EC) No 1036/2016 (the 'basic Regulation') provides that an importer may request reimbursement of anti-dumping duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force.

Article 11(8) of basic regulation does not pursue the same objective or has the same scope as Article 117 of the UCC.

Also, the scheme of these two procedures is fundamentally different. In particular, the procedure established in Article 11(8) of the basic Regulation falls within the competence of the Commission and can be applied only within a period of six months from the date on which the definitive amount of the duties to be levied was duly determined by the competent authorities, whereas the procedure provided for in Article 117 of the UCC falls within the remit of the national customs authorities and recourse may be had to it within a period of three years from the date on which the amount of those duties was communicated to the debtor.

2.4.6 Amendment of customs declaration

The amendment of the customs declaration could lead to a repayment or remission of customs duties. The amendment to the customs declaration and the repayment or remission of customs duties are distinct actions based on individual legal bases. Consequently, any of them is not a precondition for the other. Therefore, there is not a formal legal link between Article 173 UCC and the procedure provided under Article 121 UCC. The legal basis for remission/repayment is Article 117 UCC.

3. GROUNDS FOR REPAYMENT AND REMISSION

Subject to certain conditions, amounts of import or export duty can be repaid or remitted on any of the following grounds:

1. overcharged amounts of import or export duty;

2. defective goods or goods not complying with the terms of the contract;

3. error by the competent authorities;

4. equity;

5. invalidation of a customs declaration.

Article 116(1) UCC lists exhaustively the various grounds which may justify repayment or remission. Hereafter each ground will be further explained.

3.1 *REPAYMENT/REMISSION ON THE BASIS OF ARTICLE 117 UCC*

Overcharged amounts of import or export duty (Article 117 UCC)

The legal basis for granting repayment or remission because of "overcharge" is laid down in Article 117 UCC.

Duties are overcharged:

A) in case the amount corresponding to the customs debt initially notified exceeds the amount payable;

B) in case the customs debt was notified to the debtor contrary to points (c) and (d) of Article 102(1) UCC ;

C) in case of retrospective application of a favourable tariff measure (Article 117(2) UCC)

Paragraph 2 of Article 117 UCC is a *lex specialis* of paragraph 1.

Hereafter each (sub) ground will be further explained.

A) The amount corresponding to the customs debt initially notified exceeds the amount payable

Repayment or remission shall be granted on the basis of Article 116 (1) (a) in conjunction with Article 117 UCC where the amount corresponding to the customs debt initially notified exceeds the amount payable. "Amount payable" has the same meaning as "amount legally owed" in the CCC.

This may occur namely where:

1. The customs authorities have made an error in the determination of the amount of import or export duty payable. An erroneous determination may result from:

    - an incorrect tax base;

    - an incorrect rate of tax applicable;

    - a miscalculation of the amount of tax payable.

2. The customs debt on import or export has extinguished.

   In certain cases a customs debt on import or export extinguishes (Article 124 UCC). Extinguishment should be dealt with separately from UCC provisions on repayment/remission (extinguishment is operated directly in the accounts).

3. Inaccurate information given in a customs declaration

   A declarant may declare in error incorrect data (e.g. an incorrect commodity code) in an import declaration as a result of which the amount of the customs debt notified exceeds the amount payable. Repayment or remission shall be subject to the presentation of the goods (Article 173 IA). Presentation of the goods to customs means the notification to the customs authorities of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities and the availability of those goods for customs controls (Article 5 (33) UCC. Where the goods cannot be presented to the customs authorities, the customs authority competent to take the decision shall grant repayment or remission only where it has evidence showing that the goods in question are the goods in respect of which repayment or remission has been requested (Article 173 IA).

4. Discounts

   A seller can give a discount to a buyer concerning (non-defective or non-damaged) goods.

   Discounts are taken into account at the time of acceptance of the customs declaration (Article 130 (1) IA). However, a discount can also be given afterwards. In that case an application for repayment or remission may be submitted. Repayment may be granted if, at the time of acceptance of the customs declaration, the sales contract provides for the application and amount of the discount.

   It covers cases where elements and requirements of the discount (rates, purchase volumes triggering the price reductions etc.) are already known or agreed at the time of import of the goods being valued.

   An aspect that should be taken into account is the mechanism by which the buyer and seller conclude the adjustment process (for example, through the issue of a credit note by the seller or even a debit note by the buyer). In the latter case – debit note issued by the buyer – it shall be proved that such accounting document indeed refers to an agreed discount and that the corresponding price reduction or compensation has been settled.

   Example:

   In some branches of trade it is common practice to claim for a discount when a certain amount of goods is purchased. For practical reasons the retrospective discount is to be effectuated by an application for repayment.

5. Price adjustments for defective or damaged goods

Under certain conditions price adjustment for defective goods may be taken into consideration for the determination of the customs value (Article 132 IA). For example, one of the conditions is that the goods were defective at the time of acceptance of the customs declaration for release for free circulation. In case a defect or damage is discovered after the release of the goods, the price adjustment will be taken into consideration by means of an application for repayment. The applicant will have to prove that the goods were defective or damaged before the time of acceptance of the customs declaration.

6. Amendment of common customs tariff (see note TAXUD 741/2003)

The Common Customs Tariff may change:

- Without retroactive affect
- With Retroactive effect

6.1. Without retroactive effect

The view on the application of the tariff may change as a consequence of a court decision or the entry into force of an EU-classification regulation (art. 9 of Reg. 2658/87). The latter does not have retroactive effect. Nevertheless, such classification regulations may be applied on the past. This may result in repayment or remission. Different situations may occur:

Situation	**Explanation**
A classification regulation adopts a classification different from that used by a previous regulation which it amends or repeals. The 'new' classification regulation results in a lower customs debt.	Operators which have declared the product concerned under a heading with a higher percentage of duty during the period preceding the entry into force of the new regulation have a right to repayment. The application for repayment has to be submitted within three years of the date of notification of the customs debt. Repayment of import duties is possible at the debtor's request or on the initiative of the customs authorities within a period of three years. Exception: the classification regulation mentions explicitly that retroactive effect is impossible.
A classification regulation adopts a classification different from that used by a previous regulation which it amends or	Customs authorities have to recover the customs debt on the basis of Article 77 in conjunction with Article 101, 102, and 103

repeals. The 'new' classification regulation results in a higher customs debt.	UCC.
There is no previous classification regulation. The classification specified in the classification regulation results in a lower customs debt.	Repayment or remission of import duties is possible.
There is no previous classification regulation. The classification specified in the classification regulation results in a higher customs debt. Operators have paid lower duties than resulting from the tariff classification regulation.	Customs authorities have to recover the customs debt on the basis of Article 77 in conjunction with Article 101, 102, and 103 UCC. In case of an error of the competent authorities there may be a right to repayment or remission on the basis of Article 119 UCC

6.2. With retroactive effect (judgments of Court of Justice)

Two situations may be distinguished:

- An annulment of a regulation

An EU-regulation may be the basis for a notification of a customs debt. In case the Court of Justice annuls such a regulation, the annulment is applicable from the moment of entry into force of the annulment. This means that amounts already paid by that/those person(s), have to be repaid on the basis of Article 116 in conjunction with 117 UCC.

- Interpretation of EU law.

The interpretation of EU law by the Court of Justice may lead to a different view on the application of the tariff. In principle such an alteration has retroactive effect and may result in granting repayment. However, the Court of Justice may decide to limit the retroactivity.

B) The customs debt was notified to the debtor contrary to points (c) and (d) of Article 102(1) UCC

In case a customs debt was notified to the debtor contrary to points (c) and (d) of Article 102(1) UCC repayment or remission shall be granted on the basis of Article 116 (1) (a) UCC in conjunction with Article 117 UCC. This is the case where:

1. the original decision not to notify the customs debt or to notify it with an amount of import or export duty at figure less than the amount of import or export duty payable was taken on the basis of general provisions invalidated at a later date by a court decision.

2. The customs authorities are exempted under the customs legislation (Article 88 DA) from notification of the customs debt.

C) Retrospective application of tariff measures

Repayment may be granted if it is established retrospectively that a favourable tariff measure was applicable at the time when the declaration for release for free circulation was accepted.

Next to it, either of the following conditions are fulfilled:

(a) in the case of a tariff quota, its volume has not been exhausted;

(b) in other cases, the rate of duty normally due has not been re-established.

The following situations may occur:

- Reopening of tariff quota

A tariff quota may be reopened (e.g. due to quota returns). Repayment may be granted where a valid request to benefit from a tariff quota is made by the declarant.

In accordance with UCC Art 117(2), repayment can only take place after allocation of the requested tariff quota amount.

However, where the requested tariff quota is exhausted by the time of request of repayment, the customs authorities can only grant repayment without allocation of the tariff quota where failure to apply the reduced or zero rate of duty within the tariff quota was due to an error of the customs authorities and the customs declaration contained all the particulars and was accompanied by all the documents necessary for the application of the tariff quota (Art 119(2) UCC."

If a request for quota is forwarded too late to the Commission and the quota was exhausted in the meantime, this may be considered an error from the customs authorities.

- Retrospective submission of documents

Retrospectively documents are submitted demonstrating favourable tariff measures at the time when the declaration for release for free circulation was accepted. This relates in particular to situations in which the party concerned submits a movement certificate EUR.1 or a Certificate of origin form A and claims the application of a preferential tariff. Repayment may be granted provided that:

1. The document submitted retrospectively relates solely to the goods concerned.

2. The other conditions for granting preferential treatment are met.

3.2 *REPAYMENT/REMISSION ON THE BASIS OF ARTICLE 118 UCC*

Chapter 2 mentions the general procedure for an application for repayment/remission. This Chapter gives specific information about applications for repayment/remission based on Article 118 UCC.

3.2.1 General

Article 116(1), point (b) in conjunction with Article 118 UCC offers the possibility to grant repayment/remission where goods have been rejected by the importer because they were defective or did not comply with the terms of the contract on the basis of which they were imported. This paragraph deals with:

- cases where repayment/remission shall be granted;
- cases where repayment/remission shall not be granted.

The importer in the sense of Article 118 is the one who can reject the goods, usually the owner. The representative cannot be the importer. The importer is the person who has authority over the goods, usually the buyer.

3.2.2 Cases where repayment/remission shall be granted

Pursuant to Article 116(1), point (b) in conjunction with Article 118 UCC repayment/remission shall be granted where the importer has rejected the goods because, **at the time of release**:

- They were defective, or
- Did not comply with the terms of the contract on the basis of which they were imported.

Defective goods shall be deemed to include goods damaged before their release (Article 118 (1), second subparagraph UCC).

The following additional conditions apply:

1. The goods have not been used, except for such initial use as may have been necessary to establish that they were defective or did not comply with the terms of the contract.
2. The goods are taken out of the customs territory of the Union or the goods are placed under one of the following procedures:

- Inward processing, including for destruction.
- External transit.
- Customs warehousing.
- Free zone.

Goods in respect of which an import or export licence was produced

In case of exportation, placing of goods in a customs warehouse or free zone, or destruction of goods in respect of which an import or export license was produced when the customs declaration was lodged, a certification by the authorities responsible for issuing such licence is required attesting that the necessary steps have been taken to cancel its effects (DA, Annex A, Title I, Chapter 1, Note 3). This certification is not required where:

(a) The customs authority to which the application is submitted issued the licence itself;

(b) The ground for the application is an error that has no effect on the attribution of the licence.

Loss of customs status of Union Goods

The goods shall become non-Union goods where they are taken out of the customs territory of the Union, or where they have been placed under the inward processing procedure, the external transit procedure, the customs warehousing procedure or the free zone procedure (Article 154 UCC).

- Waste and scrap

Where destruction of goods authorised by the customs authority competent to take the decision produces waste or scrap, such waste or scrap shall be deemed to be non-Union goods once a decision granting repayment or remission has been taken (Article 179 IA).

Scope of storage

Union goods may be placed under the customs warehousing or free zone procedure in order to benefit from a decision granting repayment or remission of import duty (Article 237 UCC).

Completion of customs formalities

The person to whom the decision for repayment or remission is issued has to inform the monitoring customs office that he has completed the customs formalities (export or placing under a special procedure). The monitoring customs office is the customs office where the goods are placed under that procedure (Article 176 (1) IA).

Subsequently, the monitoring customs office has to notify the customs authority competent to take the decision of the completion of the customs formalities (Article 176 (2) IA).

After receiving the information, the competent customs authority will decide whether repayment or remission is justified (Article 176 (3) IA).

The competent customs authority may authorise completion of the customs formalities *before* it takes a decision. Such authorisation is without prejudice to that decision (Article 176 (4) IA).

Formalities related to the decision on repayment or remission

The customs authority has to set a time-limit for the completion of the customs formalities, which shall not exceed 60 days from the date of notification of the decision for repayment or remission (Article 177 (1) IA). Failure to observe this time-limit shall result in loss of entitlement to repayment or remission except where the person concerned proves that he was

prevented from meeting that time-limit due to unforeseeable circumstances or force majeure (Article 177 (2) IA).

Export or destruction without customs supervision

Where export or destruction took place without customs supervision, repayment or remission may be granted on the basis of Article 120 UCC in conjunction with Article 180 IA (see chapter 6).

3.2.3 Cases where repayment or remission shall not be granted

Repayment or remission shall not be granted:

1. In case of testing.

   Where the goods, before being released for free circulation, were placed under a special procedure for testing, repayment or remission shall not be granted. However, where the fact that the goods were defective or did not comply with the terms of the contract could not normally have been detected in the course of such tests, repayment or remission may be granted (Article 118 (3) (a) UCC).

2. In case the defect was taken into consideration.

   Where in drawing up the terms of the contract, in particular the price, the defective nature of the goods was taken into consideration, repayment or remission shall not be granted (Article 118 (3) (b) UCC).

3. In case the goods are sold.

   Where the goods are sold by the applicant after it has been ascertained that they are defective or do not comply with the terms of the contract, repayment or remission shall not be granted (Article 118 (3) (c) UCC).

Commercial risk

Goods may be exported on the basis of circumstances belonging to the normal commercial risk of the buyer. In such a case the goods are not defective nor are they not complying with the terms of the contract within the meaning of Article 118 UCC. Also where a seller and a buyer enter into an agreement deviating from commercial practice, repayment or remission may not be granted.

Examples of circumstances belonging to the normal commercial risk:

- Goods are exported because they can’t be sold due to a shortage of customers.

- A machine is exported without being used because there is no market for the goods it produces.

- Goods are exported because they were contaminated after the release, while there is no proof that the contamination is the result of a defect at the time of release.

3.2.4 The period for submit an application for repayment/remission

An application for repayment or remission on the basis of Article 116 (1) point (b) in conjunction with Article 118 UCC shall be submitted to the customs authorities within one year of the date of notification of the customs debt.

This period shall be extended where the applicant provides evidence that he or she was prevented from submitting an application within one year as a result of unforeseeable circumstances or force majeure (Article 121 (1) UCC).

Where the application for repayment or remission is not submitted on time, repayment or remission shall not be granted.

3.3 *REPAYMENT OR REMISSION ON THE BASIS OF ARTICLE 119 UCC*

Chapter 2 mentions the general procedure for an application for repayment or remission. This Chapter gives specific information about applications for repayment or remission based on Article 119 UCC.

3.3.1 Cases where repayment or remission shall be granted

Repayment or remission shall be granted where:

1. The case is not covered by another ground for repayment or remission

2. The amount corresponding to the customs debt initially notified was lower than the amount payable as a result of an error of the competent authorities

    - Error

    The notion of error includes any misinterpretation or misapplication of the applicable rules of law. In principle an error only exists where the authorities have the disposal of accurate and complete information [at the moment the error is made].

    - Competent authorities

    Any authority which, acting within the scope of its powers, furnishes information relevant to the recovery of customs duties and which may thus cause the person liable to entertain legitimate expectations, must be regarded as a competent authority. This may be the customs authorities of the Member States, but also the authorities of a third country or the Commission.

    The legitimate expectations of the person liable have to be created by the competent authorities themselves. It means that an error has to be attributable to an act of the competent authorities.

3. The debtor could not reasonably have detected that error

An error attributable to an act of the competent authorities is not sufficient for granting a repayment or remission. To create legitimate expectations it is required that the debtor could not reasonably have detected that error. In order to assess whether the error was detectable by the person liable for payment (operator), customs authorities must have regard to:

- The nature of the error

    As regard of the nature of the error it is necessary to examine the complexity of the rules concerned. In case the rules concerned are simple, the debtor could probably detect the error easier than where the rules are complex.

    Next to the complexity of rules concerned, the period of time during which the customs authorities persisted in their error should also be taken into account. The longer it goes on, the more a debtor could not reasonably detect an error.

- The professional experience of the operator

In order to assess the professional experience of an operator, it is necessary to examine whether he is a trader whose business activities consist mainly in import and export transactions and whether he had already gained some experience in the conduct of such transactions.

In assessing the professional experience of an operator, it is also required to take into account the professional experience of his customs representative.

- The degree of care taken by the operator concerned.

In order to assess the degree of care it is necessary to examine whether the operator has informed itself by reading the relevant issues of the Official Journal of the European Union with regard to the transactions he is carrying out. In case he didn't, one can reasonably assume the operator did not act carefully.

Next to it, it is required to take into account whether or not the operator concerned had doubts (or should have had doubts) as regards the application of the customs legislation. If so, he has to make an inquiry into it. For example, in case the debtor has doubt as regards the correctness of the customs value or the origin, he has the obligation to make inquiries and seek the greatest clarification possible in order to ascertain whether or not his doubts are well founded.

4. The debtor was acting in good faith

Finally, for granting repayment or remission the debtor must have acted in good faith. In case the competent authorities were misled, there is neither good faith nor an error of the competent authorities.

The *Beemsterboer* judgement remains relevant to the extent presented in the document attached, together with other Court decisions relevant to the issue of "good faith" and "burden of proof", such as: judgment of 16 March 2017, *Veloserviss*, C-47/16; of 11 November 1999, *Söhl & Söhlke*, C-48/98; of 26 October 2017, *'Aqua Pro' SIA*, C-407/16 etc

3.3.2 Preferential treatment

For the particular case of preferential arrangements the concepts of error by the competent authorities and of good faith of the person liable for payment are defined (Article 119 (3) UCC).

Error which could not reasonably have been detected

Where the preferential treatment of the goods is granted on the basis of a system of administrative cooperation involving the authorities of a country or territory outside the customs territory of the Union, the issue of an incorrect certificate by those authorities shall constitute an error which could not reasonably have been detected.

However, where the certificate is based on an incorrect account of the facts provided by the exporter, the issue of an incorrect certificate shall not constitute an error.

However, there is also an exception to this exception. Where it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment, the issue of an incorrect certificate does constitute an error which could not reasonably have been detected.

For example, a certificate must be considered to be incorrect, where the origin of the goods referred to in an EUR.1 certificate can no longer be confirmed following subsequent verification.

Good faith

The debtor shall be considered to be in good faith if he or she can demonstrate that, during the period of the trading operations concerned, he or she has taken due care to ensure that all conditions for the preferential treatment have been fulfilled

There is an exception to this rule. The debtor may not rely on a plea of good faith if the Commission [prior to the concerned import] has published a notice in the Official Journal of the European Union stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country or territory.

3.3.3 Reduced or zero rate

Where the application for repayment or remission is based on the existence, at the time when the declaration for release for free circulation was accepted, of a reduced or zero rate of import duty on the goods under a tariff quota, a tariff ceiling, or other favourable tariff measures, repayment or remission may be granted on the basis of Article 117 (2) UCC under certain conditions (see point 3(C) above).

However, in case of an error of the customs authorities, it's not necessary that the conditions laid down in Article 117 (2) UCC are fulfilled. On the other hand, the customs declaration for release for free circulation must contain all the particulars and needs to be accompanied by all the documents necessary for the application of the reduced or zero rate (Article 119 (2) UCC).

3.3.4 Period for submitting an application for repayment/remission

An application for repayment or remission on the basis of Article 116 (1) point (c) in conjunction with Article 119 UCC has to be submitted within three years of the date of notification of the customs debt.

This period shall be extended in where the applicant provides evidence that he or she was prevented from submitting an application within three years as a result of unforeseeable circumstances or force majeure (Article 121 (1), 2nd par.) UCC).

3.3.5 Procedures

An application has to meet the formal requirements. Subsequently, the customs authorities have to assess who is competent. There are two possibilities:

1. The customs authorities of the Member State may decide (par. 3.3.6)

2. The file has to be transmitted to the Commission (par. 3.3.7)

3.3.6 Cases where customs authorities may decide

In case the customs authorities grant the repayment or the remission on the basis of Article 119 UCC the Member State shall either communicate the case to the Commission or hold the case at the disposal of the Commission (Article 181 IA).

3.3.7 Cases where the Commission decides

It results from Article 116 (3), first subparagraph, UCC that where the customs authorities consider that repayment or remission should be granted on the basis of Article 119, the Member State concerned shall transmit the file to the Commission for decision in any of the following cases:

a) Where the customs authorities consider that the Commission committed an error within the meaning of Article 119;

b) Where the circumstances of the case relate to the findings of a Union investigation carried out under Council Regulation (EC) No 515/97, or under any other Union legislation (e.g. Council Regulation n° 2185/96) or any agreement concluded by the Union with countries or groups of countries in which provision is made for carrying out such Union investigations;

c) Where the amount at stake equals or exceeds EUR 500 000.

The competence of the Commission in the situations mentioned above covers not only the repayment/remission procedures launched following a request of the person concerned but also the procedures launched *ex officio* by the customs authorities (paragraph 4 of Article 116 UCC).

As the Court of Justice stated (e.g. judgment of 20 November 2008 - Case C-375/07, paragraph 62) the objective of conferring on the Commission a power of decision is to ensure the uniform application of Community law.

When the file is transmitted to the Commission, the time-limit for taking the decision on repayment or remission shall be suspended until such time as the Member State concerned has received the notification of the Commission's decision or the notification by the Commission of the return of the file for the reasons provided in Article 98(6) of UCC-DA (Article 97 UCC-DA).

3.3.8 Treatment of files to be transmitted to the Commission

The Member State shall notify the person concerned of their intention to transmit the file to the Commission before the transmission. The person concerned will be given 30 days to sign a statement certifying that he has read the file and stating that he has nothing to add or listing all the additional information that he considers should be included. Where the person concerned does not provide that statement within those 30 days, the person concerned shall be deemed to have read the file and to have nothing to add (Article 98 (1) DA).

Where a Member State transmits a file to the Commission for decision, the file shall include the following:

(a) a summary of the case;

(b) detailed information establishing that the conditions of Article 119 UCC are fulfilled;

(c) the statement of the person concerned or a statement by the Member State certifying that the person concerned is deemed to have read the file and to have nothing to add (Article 98 (2) DA).

The Commission shall acknowledge receipt of the file to the Member State concerned as soon as it has received it (Article 98 (3) DA). The Commission shall make available to all Member States a copy of the summary of the case within 15 days from the date on which it received the file (Article 98 (4) DA). Where the information transmitted by the Member State is not sufficient for the Commission to take a decision, the Commission may request additional information from the Member State (Article 98 (5) DA).

The Commission shall return the file to the Member State and the case shall be deemed never to have been submitted to the Commission in any of the following cases:

(a) the file is obviously incomplete since it contains nothing that would justify its consideration by the Commission;

(b) the case should not have been submitted to the Commission because the Commission has already adopted a decision on a case involving comparable issues of fact and law or the Commission is already considering a case involving comparable issues of fact and law.

(c) the Member State has transmitted to the Commission new information of a nature to alter substantially the presentation of the facts or the legal assessment of the case while the Commission is still considering the file (Article 98 (6) DA.

Right for the person concerned to be heard

Where the Commission intends to take an unfavourable decision in the case, it shall communicate its objections to the person concerned in writing, together with a reference to all the documents and information on which it bases those objections. The Commission shall inform the person concerned of his right to have access to the file (Article 99 (1) DA). The Commission shall inform the Member State concerned of its intention and the sending of the communication (Article 99 (2) DA). The person concerned shall be given the opportunity to express his point of view in writing to the Commission within a period of 30 days from the date on which he has received the communication (Article 99 (3) DA).

Time-limits

The Commission shall decide whether or not repayment or remission is justified within nine months from the date on which it has received the file (Article 100(1) DA). Where the Commission has found it necessary to request additional information from the Member State, the period shall be extended by the same period of time as the period between the date on which the Commission sent the request for additional information and the date on which it received that information. The Commission shall notify the person concerned of the extension (Article 100 (2) DA). Where the Commission conducts investigations in order to take a decision, the period shall be extended by the time necessary to complete the investigations. Such an extension shall not exceed nine months. The Commission shall notify the Member State and the person concerned of the dates on which investigations are initiated and closed (Article 100 (3) DA). The nine month period shall be extended by 30 days when the right to be heard is applied according to the previous paragraph (Article 100 (4) DA).

Notification of the decision

The Commission shall notify the Member State concerned of its decision as soon as possible and in any event within 30 days of the expiry of the period specified in Article 100(1) DA (Article 101 (1) DA). The customs authority competent to take the decision shall issue a

decision on the basis of the Commission's decision. The Member State to which the customs authority competent to take the decision belongs shall inform the Commission accordingly by sending to it a copy of the decision concerned (Article 101 (2) DA). Where the decision is favourable to the person concerned, the Commission may specify the conditions under which the customs authorities are to repay or remit duty in cases involving comparable issues of fact and of law (Article 101 (3) DA).

Consequences of a failure to take or notify a decision

If the Commission does not take a decision within the time-limit, or does not notify a decision to the Member State in question within the time-limit, the customs authority competent to take the decision shall take a decision favourable to the person concerned (Article 102 DA).

3.3.9 Cases which shall not be transmitted to the Commission

Article 116 (3) second subparagraph UCC clarifies that notwithstanding the cases in which the Commission is competent to decide, files shall not be transmitted in either of the following situations:

(a) Where the Commission has already adopted a decision on a case involving comparable issues of fact and of law;

(b) Where the Commission is already considering a case involving comparable issues of fact and of law.

If the Member State does not respect that provision and forwards the case to the Commission, the file will be returned to the Member State by the Commission [Article 98, paragraph 6, point b) UCC-DA].

In such circumstances, the case shall be deemed never to have been submitted to the Commission.

That means that Member States shall assess if the request lodged by a trader is «comparable in fact and law» with a case already treated by the Commission or that is under appreciation of the Commission services.

In this context, it`s important to keep in mind that Article 98 (4) DA states that the Commission shall make available to all Member States a copy of the summary of the cases transmitted by the Member States within 15 days from the date on which it received the file.

That information helps Member States to assess whether the cases under appreciation by the Commission are «comparable in fact and law» with the cases Member States are dealing with.

When the Member State does not forward a case to the Commission because there is case «comparable in fact and law» being treated by the Commission, the time-limit that customs authorities have for taking the decision on repayment or remission shall be suspended until such time as the Member State has received the notification of the Commission's decision on the case involving comparable issues in fact and of law (Article 97 UCC-DA).

Where the decision stipulates that the situation examined justifies granting repayment or remission, the Commission may set the conditions on which Member States may themselves

decide cases involving comparable issues of fact and law (Article 101, paragraph 3, UCC-DA).

Based on the principle of transparency, the decision is published on DG TAXUD's website.

A decision is valid only in the context in which it was granted.

In other words, a decision which is granted in the context of Article 120 UCC cannot be used in a case linked to the application of Article 119 UCC and vice versa.

3.4 *REPAYMENT OR REMISSION ON THE BASIS OF ARTICLE 120 UCC*

Chapter 2 mentions the general procedure for an application for repayment or remission. This Chapter gives specific information about applications for repayment or remission based on Article 120 UCC.

3.4.1 General

Article 116 (1), point (d) in conjunction with Article 120 UCC offers the possibility to grant repayment or remission in cases other than those referred to in Article 116 (1) points (a) to (c) and Article 116 (1) second subparagraph UCC.

Article 116 (1), point (d) in conjunction with Article 120 UCC is not applicable on national taxes. This means that such an application should not be transmitted to the Commission. However, where repayment or remission of import duties is granted, national taxes might be repaid as well[3].

3.4.2 Cases where repayment or remission shall be granted

According to Article 120 UCC repayment or remission of import or export duty shall be granted in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor. In general, it concerns situations where the debtor can't be blamed and where it would be inequitable to not repay or remit the duties paid.

The debtor is entitled to repayment or remission of import or export duty provided that he shows that two conditions are met: the existence of a special situation and the absence of obvious negligence or deception on his part.

Consequently, repayment or remission of duties must be refused if either of those conditions is not met.

Special circumstances

The special circumstances shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such circumstances, he or she would not have suffered disadvantage by the collection of the amount of import or export duty (Article 120(2) UCC).

Examples of special circumstances

- Serious failings on the part of the competent authorities and the European Commission, where they are such as to contribute to irregularities.

- For the purpose of an investigation the customs authorities does not inform a debtor about irregularities.

[3] In some MS, there are national provisions stating that the EU customs provisions related, namely, to repayment/remission are applicable to other taxes charged on import (even if the customs duties are not due)

- The fact that the infringements of the Union transit system originates in the conduct of an undercover agent belonging to the customs services

In other cases the payment of the amount of import or export duty is part of the trader's normal professional and commercial risk and is not therefore considered a special situation:

- The presentation of documents subsequently found to be forged, falsified or not valid, even where such documents were presented in good faith.

- Objective situations applicable to an indefinite number of traders (e.g. the special geographic and economic situation of a part of the Union customs territory).

- The inability of a customs clearance professional to recover the amount of duties from his client.

- The errors committed by an employee of the declarant, even if the employee is new or inexperienced.

Regarding the validity under the UCC of the list of special situations present in Articles 900-904 of the CCIP, the following non-constraining list of partial or complete correspondences between UCC/IA+DA and CCIP provisions may be drawn:

- Article 901 CCIP is covered by the current Article 180 IA.

- Article 900(1)(o) CCIP is now partially covered by Article 86(6) UCC.

Under CCC, there seemed to be a conflict between the case-law stating that the special situation had to exist at the time of the incurrence of the debt, on one hand, and the list in Article 900 CCIP, where not all situations described are existing at the time of the incurrence, on the other side. The UCC has brought some clarification, as some of these situations are (rightly) covered by other legal frameworks, most notably extinguishment. Regarding where would the cases previously present under Article 900 CCIP fall under the UCC:

- Article 900(1)(a-b) CCIP – covered by Article 79 UCC in correlation with Article 124(h)(i) UCC;

- Article 900(1)(c-d) CCIP – special situations under Article 120 UCC;

- Article 900(1)(e) CCIP – covered by Article 79 UCC, in correlation with Article 124(k) UCC;

- Article 900(1)(f-m) CCIP – special situations under Article 120 UCC.

Article 124(7) is a stand-alone provision and covers the particular situation where the operator has contributed to the fight against fraud.

Deception or obvious negligence

Deception has to be assessed in consideration of all factual circumstances of each individual case and in accordance with the jurisprudence of the EU Court of Justice and national law.

It may include, but is not limited to acts that have given rise to criminal proceedings.

Deception normally refers to a deliberate action and presumes a premeditated/intentional action, acting with knowledge and wilfulness, or having a deliberate behaviour against the legal provisions.

A shortening/curtailment of duties or other charges should not necessarily be considered intended. Nevertheless, recurrent behaviour disregarding rules that were known or that ought to have been known (based on the operator's experience, the clarity of the legislation etc.) can be deemed to represent deliberate behaviour.

In order to assess whether there is *obvious negligence* account must be taken in particular of the complexity of the provisions related to the non-compliance which resulted in the customs debt being incurred, and the professional experience of, and care taken by, the debtor.

- Complexity of the provisions

  The complexity of the provisions need to be assessed (among others) on the basis of the terminology of the provisions concerned.

- The professional experience of the debtor

  In order to assess the professional experience of the debtor, it is necessary to examine whether or not the debtor’s business activities consist mainly in import and export transactions and whether he had already gained some experience in the conduct of such transactions and more specific whether he had carried out similar transactions in the past on which duties had been correctly calculated.

- The degree of care of the debtor

  If the debtor concerned has doubts as regards the application of the customs legislation, he must make inquiries and seek the greatest clarification possible in order to ascertain whether or not his doubts are well founded.

It should be noted that the complexity of the provisions, the professional experience and the degree of care of the debtor are solely criteria to assess whether or not in a particular case the debtor was obviously negligent. After all, the point is to examine which actual omissions result in obvious negligence.

In assessing the professional experience of an operator, it is also required to take into account the professional experience of his customs representative.

Justification

The application for repayment or remission on the basis of Article 120 UCC needs a detailed description of the justification that:

1. The case is different from those referred to in the second subparagraph Article 116 (1), and in Articles 117, 118 and 119 UCC.

2. There are special circumstances in which no deception (fraud) or obvious negligence may be attributed to the debtor.

The description of the grounds for repayment or remission requires a detailed description of the justification that forms the basis of the request for repayment or remission (DA, Annex A, Title VIII).

3.4.3 Export or destruction without customs supervision

Article 180 IA covers a case of special circumstances in which duties may be repaid although not all conditions of the second subparagraph of Article 116 (1), Article 118 or Article 120 are met. In certain cases these Articles require that export or destruction takes place under customs supervision. Where in those cases export or destruction took place without customs supervision, repayment or remission on the basis of Article 120 UCC shall be conditional on the following:

(a) The applicant must submit evidence needed to establish whether the goods in respect of which repayment or remission is requested fulfil one of the following conditions:

- They have been exported from the customs territory of the Union.
- They have been destroyed under the supervision of authorities or persons authorised by those authorities to certify such destruction

(b) The applicant returns a document certifying or containing information confirming the customs status of Union goods of the goods in question, under cover of which the said goods may have left the customs territory of the Union,

or

The presentation of whatever evidence the said authority considers necessary to satisfy itself the document in question cannot be used subsequently in connection with goods brought into the customs territory of the Union.

The evidence the applicant must submit that the goods have been exported consists of:

- The certification of exit referred to in Article 334 IA;
- The original or a certified copy of the customs declaration for the procedure involving the incurrence of the customs debt;
- Where necessary, commercial or administrative documents containing a full description of the goods which were presented with the customs declaration for the said procedure or with the customs declaration for export from the customs territory of the Union or with the customs declaration made for the goods in the third country of destination.

The evidence the applicant must submit that the goods have been destroyed consists of either of the following documents:

- A report or declaration of destruction drawn up by the authorities under whose supervision the goods were destroyed, or a certified copy thereof;
- A certificate drawn up by the person authorised to certify destruction, accompanied by evidence of his authority.

Those documents shall contain a full description of the destroyed goods to establish, by means of comparison with the particulars given in the customs declaration for a customs procedure involving the incurrence of the customs debt and the supporting documents, that the destroyed goods are those which had been placed under the said procedure.

Where the evidence is insufficient for the customs authority to take a decision on the case submitted to it, or where certain evidence is not available, such evidence may be supplemented or replaced by any other documents considered necessary by the said authority.

3.4.4 Cases where customs authorities decide

The customs authorities of a Member State decide whether repayment or remission will be granted unless the file has to be transmitted to the Commission.

3.4.5 Cases where the Commission decides

The customs authorities do not take a decision on repayment or remission where the file has to be transmitted to the Commission (Article 116 (3) UCC).

The Member State shall transmit the file to the Commission for decision where the following conditions are fulfilled:

1) The customs authorities consider that repayment or remission should be granted on the basis of Article 120 UCC.

2) Any of the following situations is applicable:

   - The customs authorities consider that the special circumstances are the result of the Commission failing in its obligations;

   - The circumstances of the case relate to the findings of a Union investigation; or

   - The amount for which the person concerned may be liable in respect of one or more import or export operations equals or exceeds EUR 500.000 as a result of the same special circumstance, even in case these debts have been notified by means of different decisions (see Article 116(3)(d) UCC).

3) There is no deception by the debtor.

4) The file meets the formal requirements (e.g. the application is submitted within the time-limit).

The file shall not be transmitted in either of the following situations:

(a) where the Commission has already adopted a decision on a case involving comparable issues of fact and law;

(b) where the Commission is already considering a case involving comparable issues of fact and law.

3.4.6 Period for submitting an application

An application for repayment or remission on the basis of Article 120 UCC has to be submitted within three years of the date of notification of the customs debt.

This period shall be extended where the applicant provides evidence that he or she was prevented from submitting an application within three years as a result of unforeseeable circumstances or force majeure (Article 121 (1, 2nd par.) UCC).

3.4.7 Procedures

An application has to meet the formal requirements. Subsequently, the customs authorities have to assess who is competent. There are two possibilities:

1. The customs authorities of the Member State may decide (par. 3.4.4)

2. The file has to be transmitted to the Commission (par. 3.4.5)

3.4.8 Cases where customs authorities may decide

In case the customs authorities grant the repayment or remission on the basis of Article 120 UCC the Member State shall either communicate the case to the Commission or hold the case at the disposal of the Commission (Article 181 IA)

3.4.9 Treatment of files to be transmitted to the Commission

The Member State shall notify the person concerned of their intention to transmit the file to the Commission before the transmission. The person concerned will be given 30 days to sign a statement certifying that he has read the file and stating that he has nothing to add or listing all the additional information that he considers should be included. Where the person concerned does not provide that statement within those 30 days, the person concerned shall be deemed to have read the file and to have nothing to add (Article 98 (1) DA).

Where a Member State transmits a file to the Commission for decision, the file shall include the following:

(a) a summary of the case;

(b) detailed information establishing that the conditions of Article 120 UCC are fulfilled;

(c) the statement of the person concerned or a statement by the Member State certifying that the person concerned is deemed to have read the file and to have nothing to add (Article 98 (2) DA).

The Commission shall acknowledge receipt of the file to the Member State concerned as soon as it has received it (Article 98 (3) DA). The Commission shall make available to all Member States a copy of the summary of the case within 15 days from the date on which it received the file (Article 98 (4) DA). Where the information transmitted by the Member State is not sufficient for the Commission to take a decision, the Commission may request additional information from the Member State (Article 98 (5) DA).

The Commission shall return the file to the Member State and the case shall be deemed never to have been submitted to the Commission in any of the following cases:

(a) the file is obviously incomplete since it contains nothing that would justify its consideration by the Commission;

(b) the case should not have been submitted to the Commission because the Commission has already adopted a decision on a case involving comparable issues of fact and law or the Commission is already considering a case involving comparable issues of fact and law.

(c) the Member State has transmitted to the Commission new information of a nature to alter substantially the presentation of the facts or the legal assessment of the case while the Commission is still considering the file (Article 98 (6) DA.

Right for the person concerned to be heard

Where the Commission intends to take an unfavourable decision in the case, it shall communicate its objections to the person concerned in writing, together with a reference to all the documents and information on which it bases those objections. The Commission shall inform the person concerned of his right to have access to the file (Article 99 (1) DA). The Commission shall inform the Member State concerned of its intention and the sending of the communication (Article 99 (2) DA). The person concerned shall be given the opportunity to express his point of view in writing to the Commission within a period of 30 days from the date on which he has received the communication (Article 99 (3) DA).

Time-limits

The Commission shall decide whether or not repayment or remission is justified within nine months from the date on which it has received the file (Article 100(1) DA). Where the Commission has found it necessary to request additional information from the Member State, the period shall be extended by the same period of time as the period between the date on which the Commission sent the request for additional information and the date on which it received that information. The Commission shall notify the person concerned of the extension (Article 100 (2) DA). Where the Commission conducts investigations in order to take a decision, the period shall be extended by the time necessary to complete the investigations. Such an extension shall not exceed nine months. The Commission shall notify the Member State and the person concerned of the dates on which investigations are initiated and closed (Article 100 (3) DA). The nine month period shall be extended by 30 days when the right to be heard is applied according to the previous paragraph (Article 100 (4) DA).

Notification of the decision

The Commission shall notify the Member State concerned of its decision as soon as possible and in any event within 30 days of the expiry of the period specified in Article 100(1) DA (Article 101 (1) DA). The customs authority competent to take the decision shall issue a decision on the basis of the Commission's decision. The Member State to which the customs authority competent to take the decision belongs shall inform the Commission accordingly by sending to it a copy of the decision concerned (Article 101 (2) DA). Where the decision is favourable to the person concerned, the Commission may specify the conditions under which the customs authorities are to repay or remit duty in cases involving comparable issues of fact and of law (Article 101 (3) DA).

Consequences of a failure to take or notify a decision

If the Commission does not take a decision within the time-limit, or does not notify a decision to the Member State in question within the time-limit, the customs authority competent to take the decision shall take a decision favourable to the person concerned (Article 102 DA).

3.5 *REPAYMENT ON THE BASIS OF ARTICLE 116 (1), SECOND SUBPARAGRAPH, UCC*

3.5.1 General

Article 116 (1), 2nd subparagraph, UCC states that where an amount of import or export duty has been paid and the corresponding customs declaration is invalidated in accordance with Article 174 UCC, that amount concerned shall be repaid.

Article 174 UCC indicates that the invalidation of a customs declaration shall, in principle, take place before the goods have been released. The customs authorities shall, upon application by the declarant, invalidate a customs declaration already accepted in either of the following cases:

a) where they are satisfied that the goods are immediately to be placed under another customs procedure;
b) where they are satisfied that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified.

However, where the customs authorities have informed the declarant of their intention to examine the goods, an application for invalidation of the customs declaration shall not be accepted before the examination has taken place.

The customs authorities may only invalidate a customs declaration after the goods have been released in the cases identified in Article 148 DA.

Pursuant to Article 121 (1) point c) UCC, repayment shall be granted upon submission of a repayment application by the person concerned within the period set for the presentation of an invalidation request.

If it concerns the invalidation of a customs declaration before the release of the goods the period concerned is the one indicated in Article 174 (1) UCC.

On the contrary, if the invalidation is to be made after the release of the goods the period for submitting the request is the one indicated in Article 148 DA (it varies according to the grounds for the invalidation).

The application for invalidation of the customs declaration based on Article 148 (1) to (3) UCC DA, shall be submitted within 90 days from the date of the acceptance of the customs declaration.

There is no specific time limit established for the application for invalidation based on Article 148(4) UCC DA.

For further details on the time limits and conditions for invalidation, reference is made to the Guidance on Formalities on Entry and Import.

4. TRANSITIONAL PROVISIONS

The UCC has itself determined the scope of its temporal application. Article 288 (2) UCC states that Articles other than those referred to in the first paragraph of that Article shall apply as from 1 May 2016. In the absence of specific transitional rules, this issue needs to be dealt with in accordance with the general principles governing the application in time (*ratione temporis*) of EU law. EU law may not be applied retroactively, but as a rule, it has an immediate effect. It means that the "new rules apply immediately to the future effects of a situation which arose under the old rule." Retroactive effect is exceptional – only if it clearly follows from the terms or general scheme that such was the intention of the legislature. Immediate effect is a principle "unless the immediate application of a particular provision is contrary to the protection of the legitimate expectations of the parties concerned".

Indeed, it seems clear that, in the absence of transitional provisions in the matter, we must act in accordance with the jurisprudence of the EU Court of Justice ("the Court") in particular in customs matters.

It must be recalled that, according to settled case-law, procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, whereas substantive rules are usually interpreted as not applying, in principle, to situations existing before their entry into force (see, inter alia, Salumi and Others, paragraph 9; Joined Cases C-121/91 and C-122/91 CT Control(Rotterdam) and JCT Benelux v Commission [1993] ECR I-3873, paragraph 22; Case C-61/98 De Haan [1999] ECR I-5003, paragraph 13; and Case C-251/00 Ilumitrónica [2002] ECR I-10433, paragraph 29)[4].

Clearly customs authorities must proceed on a case-by-case basis, that is to say for each legal situation the rules applicable must be determined and it has to be decided whether one is dealing with a procedural rule or a substantive rule. In order to facilitate the Member States' task, we would like to refer to some situations that might arise more frequently in practice:

4.1 *THE LEGAL BASIS FOR CONSIDERING APPLICATIONS FOR REPAYMENT OR REMISSION FILED AFTER 1 MAY 2016 IN THE MEMBER STATES, BUT CONCERNING A CUSTOMS DEBT INCURRED PRIOR TO 1 MAY 2016*

If there is a customs debt incurred prior to 1 May 2016 and if the applicable provision in this case is a substantive provision, it is appropriate to apply the provision in force at the time the debt customs was born.

If there is a customs debt incurred prior to 1 May 2016 and if the applicable provision in the present case is a procedural provision, it is appropriate to apply the new provision.

Regarding the distinction between procedural and substantive rules, this remains largely a case-by-case evaluation. Nevertheless, some guiding principles may be recalled. To the extent possible, the rules governing the establishment of the debt should be considered to be those provisions which were in force at the time when the customs debt has incurred. Most of the other provisions on repayment and remission are procedural in nature and the new rules should be applied.

[4] Case C-201/04 Molenbergnatie, paragraph 31

4.2 *COMMUNICATION OF CUSTOMS DEBT REGARDING RECOVERY OF CUSTOMS DEBT INCURRED BEFORE THE FIRST OF MAY*

As of 1 May 2016, the communications will be made under the UCC, mentioning the corresponding Articles in the UCC (keeping in mind that the debt has incurred under the CCC). The corresponding Articles in CCC (i.e. Article 220(2)(b) CCC) would only apply mutatis mutandis, as far as the new legislation is similar and the corresponding case-law is still valid - which is, indeed, the case in most situations.

4.3 *ARTICLE 121 UCC*

With reference to Article 121 UCC (time limit for submitting an application for repayment and remission), apart from the special cases of defective goods and invalidation of a customs declaration, the time limit for submitting the application has been aligned with the larger time-limit of three years from the date on which the amount of the duties was communicated to the debtor.

It is settled case-law that procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, whereas substantive rules are usually interpreted as not applying, in principle, to situations existing before their entry into force (see C-201/04, *Belgische Staat* v *Molenbergnatie*, paragraph 31).

However, according to the case-law of the EU Court of Justice, the substantive rules of European law may exceptionally be interpreted as applying to situations existing before their entry into force in so far as it follows clearly from their terms, objectives or general scheme that such effect must be given to them (see C-293/04, *Beemsterboer Coldstore Services* v *Inspecteur der Belastingdienst*, paragraph 21).

In light of the title of Article 121 UCC - "procedure for repayment and remission" – this provision should be qualified as procedural. Indeed, the expiry, for instance, of the three-year period laid down in Article 121(1)(a) UCC is a bar on the right of the debtor to apply for repayment or remission. At the same time, such provision does not govern the customs debt itself, as it does not establish a rule on limitations in respect of the debt itself – see also the Judgment of the Court of Justice in C-201/04, *Belgische Staat* v *Molenbergnatie*, paragraphs 39, 40 and 41).

In case C-201/04, *Belgische Staat* v *Molenbergnatie*, paragraph 42, the Court of Justice stated that (emphasis added):

"*Only the procedural rules set out in Articles 217 to 232 of the Customs Code apply to the recovery, commenced after 1 January 1994, of a customs debt incurred prior to that date.*

On expiry of the period prescribed by Article 221(3) of the Customs Code, an action for recovery of a customs debt is time-barred […] *In the light of the rule thus established,* ***Article 221(3) must be considered, unlike Article 221(1) and (2), to be a substantive provision*** *and cannot, therefore, be applied to recovery of a customs debt incurred prior to 1 January 1994. Where the customs debt was incurred prior to 1 January 1994, that debt can be governed only by the rules on limitation in force at that date, even if the procedure for recovery of the debt was commenced after 1 January 1994*".

As a procedural rule, Article 121 UCC should apply to all proceedings pending at the time when the UCC entered into force.

Pending proceedings means, in this context, the claims for repayment/remission which had already been lodged before 1 May 2016 and for which a decision was still pending after 1 May 2016.

Article 121(1)(a) UCC has extended the time-limit of one year (set by former Article 239 CCC) to three years for an applicant to submit an application for remission/repayment; in both cases, the time-limit starts from the date of notification of the customs debt.

If an application has been submitted within the time-limit of 12 months, that application is probably pending and the extension to three years is therefore needless.

The question rests if an application has not been submitted within the time-limit of 12 months (Article 239 CCC), but it is still within the time-limit newly granted by the UCC of three years from the notification of the debt (UCC), may the applicant, at present, submit such an application?

Article 121 UCC cannot be invoked to revive a right already lost under CCC. The incurrence of the debt and the subsequent rules for repayment/remission were governed by the rules under CCC and CCIP. If that right was lost under CCC, the situation cannot be changed by the UCC, which is only applicable from the date on which it entered into force.

Indeed, Article 121 UCC cannot be invoked in order to allow the applicant to benefit from a right already lost under the CCC. This means that the applicant cannot benefit from the new three-year rule if his/her right was already extinct under the CCC. The right may be extinct, for example in the case where there was an application submitted, which was subsequently rejected on substance by the competent authorities.

Where the right is not extinct (where the operator has not submitted a request before 1 May 2016 or if the request has been submitted but was not subsequently rejected on substance by the competent authorities), the person concerned may still benefit from the new time-limit of three years. The reason for this is that the expiration of the period to file an application under the previous legislation (CCC) only suspends the possibility of exercising his/her right under that legal framework. Taking into account that the three-year time period in the UCC refers to the same object as the one-year rule in the CCC, the applicant may regain the exercise of his/her right, unless that right was extinct. This interpretation is reinforced by the possibility under the CCC to prolong the one-year period in "duly justified exceptional cases".

In conclusion, if an application has not been submitted within the time-limit of 12 months (Article 239 CCC), but is still within the time-limit newly granted by the UCC of three years from the notification of the debt (UCC), the applicant may, at present, submit such an application, on condition that the right was not extinct.

4.4 *Repayment or remission decisions adopted after 1 May 2016 regarding situations arising before that date*

As the CCC and the CCIP have been repealed, a decision after May 1st, 2016 may only be taken on the basis of the current legal base – the UCC – even if the facts of the case date from before that date. The same rule should apply to a Commission decision.

While the legal basis is the new code (UCC), the substantive rules are those applicable at the time when situations occurred, namely the CCC and CCIP for situations occurring before 1 May 2016.

For those cases where the decision to be taken by Member States or by the Commission is adopted after 1 May 2016 but refers to a situation having occurred before that date, that decision should make reference in its motivation (i.e. the reasoning normally presented in the successive paragraphs of the decision) to the substantive provisions of the CCC and/or of the CCIP applicable before 1 May 2016 to the situation.

4.5 *Decision after 1 May 2016 taken on the basis of the new legislation (UCC – i.e. Article 117 UCC), but based "on substance" on the "old" legislation*

Insofar as the situation has occurred before the 1 May 2016, the decision has to be taken in accordance with the substantial rules applicable at that time.

While the legal basis is the new code (UCC), the substantive rules to be applied to situations occurred before 1 May 2016 are those applicable at that time (CCC and CCIP).

For the sake of clarity and legal certainty, for those cases lodged before 1 May 2016 and when the decision to be taken by Member States or by the Commission occurs after that date, that decision should make reference in its motivation (i.e. the reasoning normally presented in the successive paragraphs of the decision) to the substantive provisions of the CCC and/or of the CCIP applicable before 1 May 2016 to the situation.

The only relevant distinction between the regime existing before 1 May 2016 and the one that followed after that date is that, before 1 May 2016, there is an additional condition regarding the non-entry in the accounts of the duty legally owed without this being the result of an error on the part of the customs authorities themselves. The possibility not to enter in the accounts does not exist under the UCC.

Hence, in case concerning a request made under Article 236 CCC in connection with Article 220(2)(b) CCC, all three conditions under Article 220(2)(b) CCC should be assessed, including the condition regarding the non-entry in the accounts specific to the CCC, when necessary. In this way, there would be a coherent approach regarding similar situations happening at the same time (before 1 May 2016), but dealt with at different moments because of certain delays in procedure, due to which some cases might receive a decision after facts 1 May 2016.

The Articles to be invoked in the decision should be from the new legal basis (UCC) and, if necessary, the former substantive provisions (CCC or/and CCIP) if they are applicable to the situation occurred before 1 May 2016.