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GUIDANCE ON CUSTOMS DEBT

(TITLE III OF UCC)

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REVISION 3

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

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I. DEFINITIONS AND ABBREVIATIONS

‘Customs debt’ means the obligation on a person to pay the amount of import or export duty, which applies to specific goods under the customs legislation in force

‘Debtor’ means any person liable for a customs debt

‘Import duty’ means customs duty payable on the import of goods

‘Export duty’ means customs duty payable on the export of goods

‘UCC’ means Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

‘CCC’ means Regulation (EEC) No 2913/1992 of 12 October 1992 establishing the Community Customs Code

‘MCC’ means Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)

‘DA’ means the delegated act for the UCC: Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code

‘IA’ means the implementing act for the UCC: Commission implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code

‘Transitional DA’ means Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446

‘SPE Guidance’ refers to the guidance document *Special procedures — Title VII UCC: Guidance for Member States and Trade*

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II. LEGAL PROVISIONS RELEVANT TO CUSTOMS DEBT

The relevant provisions concerning debts in the UCC are the following: Articles 77-88, 101-115, 124-126, 195, 211 and 233.

The relevant provisions concerning debts in the DA are the following: Articles 72-80, 86-91, 103, 148, 168 and 206.

The relevant provisions concerning debts in the IA are the following: Articles 165-171, 233, 237, 244, 265, 268, 280 and 310-311.

The relevant provisions concerning debts in the transitional DA are the following: Articles 7 and 8.

Other acts relevant to customs debt are the following:

- Council Decision (2014/335/EU, Euratom) of 26 May 2014 on the system of own resources of the European Union
- Council Regulation (EU, Euratom) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union and repealing Regulation (EU, Euratom) No 608/2014
- Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements.

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III. INCURRENCE OF A CUSTOMS DEBT

III.1. CUSTOMS DEBT ON IMPORT

III.1.1. 'Regular' customs debt on import

Under Article 77(1) UCC, a customs debt on import is incurred by placing non-Union goods liable to import duty under either of the following customs procedures: release for free circulation (including release for free circulation under the end-use provisions) and temporary admission with partial relief from import duty.

III.1.1.1. Release for free circulation (including release for free circulation under the end-use provisions — Article 77(1) UCC)

A customs debt is incurred by releasing the goods for free circulation at the time of the acceptance of the customs declaration in line with Article 77(2) UCC.

The debtor

In the case of release for free circulation, the debtor is, according to Article 77(3) UCC:

- the declarant;

- in the event of indirect representation, *also* the person on whose behalf the customs declaration is made (it is to be noted however that indirect representation cannot be applied in the context of end-use;
- where a customs declaration is drawn up on the basis of information which leads to all or part of the import duty not being collected, *also* the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false.

Under **Article 84 UCC**, if several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they are jointly and severally liable for payment of that amount.

III.1.1.2. Temporary admission (TA) with partial relief from import duty

Pursuant to Article 252 of the UCC, the amount of import duty in respect of goods placed under the temporary admission procedure with partial relief from import duty is 3 % of the amount of import duty (for every month or fraction of a month) which would have been payable on those goods had they been released for free circulation **on the date on which they were placed under the temporary admission procedure.** The amount is payable when the procedure is discharged (for example, by re-export of the goods).

Accordingly, the amount of import duty should be determined based on the tariff classification, customs value, quantity, nature and origin of the goods **on the date on which the goods were placed under the temporary admission procedure.**

Article 206(3) of the DA provides that goods which do not meet all the relevant requirements for total relief from import duty laid down in Articles 209 to 216 and Articles 219 to 236 of the DA are granted use of the temporary admission procedure with partial relief from import duty, and that the amount of import duty payable under Article 252 for particular months of use must be paid **when the procedure has been discharged**.

Under Article 215 UCC, the procedure is deemed to be discharged when the goods are placed under a subsequent customs procedure, taken out of the customs territory of the Union, destroyed with no waste remaining, or abandoned to the State. So the time of incurrence of a customs debt is the time when the procedure is discharged (i.e. the time when a customs declaration or any other document is accepted if the procedure is discharged by destroying the goods or by abandoning them to the State, or the time when the goods have been taken out from the customs territory of the EU).

The debtor

In the case of temporary admission, the debtor is, according to Article 77(3) UCC:

- the declarant;
- -
- where a customs declaration is drawn up on the basis of information which leads to all or part of the import duty not being collected, *also* the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false.

Under **Article 84 UCC**, if several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they are jointly and severally liable for payment of that amount.

Note: For release for free circulation from the temporary admission with partial relief, see part III.1.1.4.

Example:

Goods with with a customs value worth EUR 12 000 were placed under the temporary admission procedure with partial relief from import duty on 2 January 2017. They were re-exported on 4 March 2017 and the procedure was discharged by calculating the duties in accordance with Article 252 UCC.

The calculation of the charges on the day when the goods were placed under the temporary admission procedure, 2 January 2017, is:

customs value of goods EUR 12 000 x customs duty rate 6 % = EUR 720;

720 x 3 % = EUR 21.6 per month or fraction of a month.

To determine the number of months in which the goods were under the procedure, i.e. from 2 January 2017 until 4 March 2017, in terms of calendar days the following calculations should be made (see Articles 3(1) and 3(2)(c) of Regulation (EEC/EURATOM) No 1182/71):

- *Two months passed by from the beginning of the first hour on 3 January 2017 and until the end of the last hour on 3 March 2017, and*
- *a fraction of a month passed by from the first hour on 4 March 2017 until the last hour on 4 March 2017 (i.e. one day in this case).*

Therefore, in this case the import duty is 21.6 x 3 = EUR 64.8 because Article 252 UCC states that 'the amount shall be payable for every month or fraction of a month', so one extra day or more (as long as the days in total do not account for more than a whole month), means that charges are paid for an additional month.

According to Article 251(2) UCC, except where otherwise provided, the maximum period during which goods may remain under the temporary admission procedure for the same purpose and under the responsibility of the same authorisation holder is 24 months (or more, under exceptional circumstances — see Article 251(3) UCC), even if the procedure was discharged by placing the goods under another special procedure and subsequently placing them under the temporary admission procedure again. If the procedure is not discharged within the period stipulated in the authorisation or in the customs legislation, the customs debt for the goods is incurred under Article 79 UCC.

III.1.1.3. Special provisions relating to non-originating goods

A no-drawback rule is only applicable where non-originating materials incorporated in a finished originating product that is exported to the market of the partner country receive tariff treatment more favourable than the same materials incorporated in the same finished product but intended for the home market (released for free circulation) would receive.

The debtor

For the special provisions relating to non-originating goods, the debtor is, according to Article 78(3) UCC:

- the declarant;

- in the event of indirect representation, *also* the person on whose behalf the customs declaration is made (it is to be noted however that indirect representation cannot be applied in the context of special procedures;
- where a customs declaration is drawn up on the basis of information which leads to all or part of the import duty not being collected, *also* the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false.

In the case of non-Union goods as referred to in Article 270 UCC:

- the person who lodges the re-export declaration;
- in the event of indirect representation, *also* the person on whose behalf the declaration is lodged.

Under **Article 84 UCC**, if several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they are jointly and severally liable for payment of that amount.

In the scenario of IP EX/IM, with the prior export of the processed products, the rights and obligations of the holder of a procedure with regard to the non-union goods that were replaced by the equivalent goods may be fully or partially transferred to another person who fulfils the conditions laid down for the procedure concerned (A 218 UCC).The non-Union goods can then be imported by a person other than the IP holder, even in another EU Member State. In addition, according to Article 266 IA, the competent customs authority '*shall decide'* whether a transfer of rights and obligations as referred to in Article 218 of the Code may take place or not. If the decision is positive, the competent customs authority '*shall establish the conditions under which the transfer is allowed'*. For more information regarding the transfer of rights and obligations, please see the Guidance for Special Procedures.

Care should be taken in explaining the no-drawback rule and the inward processing regime, taking into account the following possible cases.

A. Inward processing procedure for import/export (IP IM/EX)

Non-Union goods are placed under IP IM/EX, transformed and then re-exported under a proof of preferential origin.

> *Example:*
>
> *Chinese mangoes are placed under the inward processing procedure, transformed into mashed mangoes and re-exported under a preferential proof of origin to Israel.*
>
> *Under Article 78 UCC, a customs debt for the import of the non-originating goods included in the processed product under the inward processing procedure is incurred when a declaration for re-export of the products concerned is accepted. In other words, the time of incurrence of the customs debt is the date of acceptance of the declaration for re-export.*
>
> *The origin rules of the EU-Israel FTA include a no-drawback rule, and the Chinese mangoes do not originate from the EU or Israel. So the customs duties on the Chinese mangoes must be paid when the mashed mangoes are re-exported as in the case of a customs debt resulting from the acceptance, on the same date, of the customs declaration for release for free circulation of the non-originating goods (i.e. Chinese mangoes) used.*

Under the IP IM/EX regime, processed products for export, obtained from Union goods equivalent to the non-Union and non-originating goods, are in stock at the premises of the IP holder (regular IM/EX).

For the purpose of ending the inward processing procedure, the amount of the debt for import duty is calculated using exactly the same information as it would be if it resulted from the acceptance, on the same date, of a customs declaration for release for free circulation of the non-originating goods used to make the products concerned. In other words, the import customs duty is calculated under the rules (tariff classification, customs value, quantity, nature and origin of goods, and also import duty rate) for calculating customs duty which were applied to the goods concerned when those goods were re-exported. (In this case, all the information used to calculate the import customs duty must comply with the rules as they were when the declaration for re-export was accepted.)

A no-drawback rule in a free trade agreement between the EU and a partner country is not applied if products resulting from inward processing are subject to the same amount of import duty (which may be zero) whether they are released for free circulation and left on the domestic market or released for free circulation and subsequently exported to a partner country.

Inward processing followed by re-export results in the same customs debt as inward processing followed by release for free circulation and regular export.

> *Example:*
>
> *Good A, subject to 4 % customs duties, is placed under IP. The processed product B is subject to 0 % customs duties.*
>
> *If IP is discharged by re-exporting B to a partner country, there is no customs debt for non-originating A, because if B was released into free circulation and subsequently exported to the same partner country, no customs duties would be paid either.*

B. Inward processing procedure for export/import (IP EX/IM)

This case refers to the use of the ‘equivalent’ system (use of equivalent Union goods instead of non-Union goods).

Processed products obtained from Union goods equivalent to the non-Union goods are not in stock at the premises of the IP holder (EX/IM equivalence combined with prior exportation). The non-Union goods have to be imported within a certain period of time and placed under the IP regime. A change of status occurs at the time of importation and the non-Union goods become Union goods without payment of customs duties. They can be used freely.

If processed products obtained from the Union goods are exported with preferential proof of origin under an FTA to which the no-drawback rule applies, customs duties should be paid upon re-exportation in the first case and upon importation of the non-Union and non-originating goods in the second case (see the Agrover case).

But, in reality, payment is irrelevant, as Article 223(3)(b) of the UCC does not authorise the use of equivalent goods if the origin protocol for the FTA concerned refers to a no-drawback rule.

If the origin protocol for the FTA concerned does not refer to a no-drawback rule, the use of equivalent goods is authorised. That means that the non-Union and non-originating goods can be used without paying customs duties.

III.1.1.4. Release for free circulation if the previous procedure was a special procedure (*storage in a customs warehouse, storage in a free zone, temporary admission, end-use, inward processing or outward processing)*

Storage in a customs warehouse

The rules for calculating the debt when lodging a declaration for the release of goods for free circulation after storage in customs warehouses (private or public customs warehouses, pursuant to Article 240(2) UCC) depend on the procedure that preceded that storage.

In the declaration for a special procedure – storage (type H2 declaration), data on the identification of goods (box 33 — commodity code) and on the customs value and charges are not mandatory. However, the data provided through information, documents, certificates and authorisations relevant to applying the legislation and calculating charges is needed so that when the goods are taken from a customs warehouse to be placed in the next procedure, it can be used to complete box 44 of the declaration. (*Member States may waive this entry if their systems allow them to obtain that information automatically and with certainty on the basis of other information given in the declaration.*)

A customs debt on import is incurred pursuant to Article 77 UCC by placing non-Union goods under release for free circulation (i.e. when the customs declaration for the release of goods for free circulation is accepted). If the goods are placed first under the **inward** or **outward processing** or **specific use** (end-use[1]) procedures, and then under the **customs warehouse** procedure, and are then released for free circulation in the next procedure, storage in a customs warehouse is not entered as the previous procedure, but inward or outward processing or specific use. Subsequently, depending on the procedure, the relevant rules for calculating customs debt are applied.

Accordingly, the rule for calculating the amount of import customs debt depends on the previous procedure — the general rule for calculating the amount of import or export duty is applied, pursuant to Article 85 UCC, unless procedures excluded by special rules for calculating the amount of import duty, pursuant to Article 86 UCC, are concerned.

These arrangements are also set out in the Implementing Regulation. Annex B, Title II — Codes in relation with the common data requirements for declarations and notifications — 1/10 Procedure states: *'where the previous procedure is **customs warehousing** or **temporary admission** or if the goods have come from a **free zone**, the relevant code should be used only where the goods **have not been** placed under inward or outward processing or end-use'.*

Example:

Release for free circulation of goods imported under the inward processing procedure and later placed under the customs warehousing procedure: first procedure = 5100; second procedure = 7151; third procedure (release for free circulation) = 4051.

[1] Goods in end-use cannot be discharged by placing them under the customs warehouse procedure, since a good cannot be placed under two customs procedures. Article 118(4) of the Code allows the goods in question to be placed under the customs warehousing procedure instead of having to be taken out of the customs territory of the Union so that repayment or remission can be granted. However, this provision is very limited in scope.

Storage in a free zone

Under Article 158 UCC, goods intended to be placed under the free zone procedure do not have to be declared for a specific procedure. They are only subject to customs formalities pursuant to Article 245 UCC.

A customs declaration for non-Union goods stored in a free zone does have to be lodged if the goods are released for free circulation or placed under the inward processing, temporary admission or specific use procedure, under the conditions laid down for those procedures. In such cases, the goods are no longer regarded as being under the free zone procedure pursuant to Article 247 UCC.

A customs debt on import is incurred pursuant to Article 77 UCC by releasing the non-Union goods for free circulation, when the customs declaration for release for free circulation is accepted. If **inward** or **outward processing** or **specific use** (end-use[2]) is approved for goods stored in a free zone, and they are released for free circulation in the next procedure, then either inward or outward processing or specific use are entered as the previous procedure when the goods stored in a free zone are released for free circulation, and subsequently the respective rules for calculating the customs debt are applied.

So the rule for calculating the customs debt depends on the previous procedure — the general rule for calculating the amount of import or export duty is applied, pursuant to Article 85 UCC, unless procedures covered by special rules for calculating the amount of import duty apply pursuant to Article 86 UCC.

These arrangements are also set out in the Implementing Regulation, Annex B, Title II — Codes in relation with the common data requirements for declarations and notifications — 1/10 Procedure states: 'where the previous procedure is **customs warehousing** or **temporary admission** or if the goods have come from a **free zone**, the relevant code should be use only where the goods **have not been** placed under the inward or outward processing or end-use.'

> *Example:*
>
> *Release for free circulation of goods stored in free zones under the inward processing procedure = 4051 (first procedure = 5178; second procedure = 7851; third procedure: 4051).*

Temporary admission with total relief

If a customs debt incurs from the release for free circulation of goods from temporary admission procedure with total relief by regular lodging of customs declaration for the release for free circulation, the calculation of debt is performed according to the mentioned Article 85 UCC. The customs debt incurs when the declaration is accepted. The debt is calculated under the rules applicable on the day on which the declaration for free circulation was accepted.

If the debt is calculated because of non-compliance or failure to fulfil the conditions of the temporary admission procedure with total relief, as determined by a document other than the customs declaration, then the debt is incurred pursuant to Article 79 UCC. The rules for calculating it are those that applied on the day on which the goods were placed under the

[2] Goods in end-use cannot be discharged by placing them under the customs warehouse procedure, since a good cannot be placed under two customs procedures. Article 118(4) of the Code allows the goods in question to be placed under the customs warehousing procedure instead of having to be taken out of the customs territory of the Union so that repayment or remission can be granted. However, this provision is very limited in scope.

procedure or on the date when the conditions of the procedure ceased to be fulfilled, depending on the particular case. *(Note: this is further explained below in section III.1.2. Customs duty incurred through non-compliance.)*

Temporary admission with partial relief

If a customs debt arises from the release for free circulation of goods from temporary admission procedure with partial relief because the holder of the procedure lodges a normal customs declaration for release for free circulation, the debt is calculated in accordance with Article 85 UCC. The customs debt arises when the customs declaration for the release for free circulation is accepted. The debt is calculated under the rules applicable on the day on which the declaration for free circulation was accepted.

End-use

Pursuant to Article 254 UCC, goods may be released for free circulation with a duty exemption or at a reduced rate of duty on account of their specific use.

Pursuant to Article 211(1)(a) UCC, exemption from, or a reduced rate of duty on account of the specific use for which the goods are intended can be obtained by lodging a customs declaration in accordance with Article 163 DA (if acceptance of the customs declaration is also an authorisation), or through making a formal application for authorisation (Annex A of the DA) in accordance with Article 22 UCC.

Exemption or the reduced customs debt arises at the time of lodging the customs declaration for release for free circulation/end-use, and the obligation of customs supervision lasts until the situations referred to in Article 254(4) UCC arise.

If the obligation to use the goods for the specific purpose stated in the application is not complied with, the customs debt is incurred pursuant to Article 79 UCC. (*Note: this is further explained below in section III.1.2. Customs duty incurred through non-compliance.)*

Inward processing

For releasing goods for free circulation from inward processing procedure general rules for calculating the amount of import duty apply (Article 85 UCC). The rules are those applicable to the goods concerned at the time when the customs debt in respect of the goods was incurred (i.e. at the time when the customs declaration was accepted).

Pursuant to Article 86 (3) UCC, where a customs debt is incurred for processed products resulting from the inward processing procedure, the amount of import duty corresponding to such debt shall, at the request of the declarant, be determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure at the time of acceptance of the customs declaration relating to those goods, i.e. special rules for calculating the amount of import duty apply.

Pursuant to Article 86 (3) UCC the tariff classification, customs value, quantity, nature and origin of the goods placed under inward processing is determined at the time of acceptance of the customs declaration for inward processing, and the import duty rate is determined at the time of acceptance of the customs declaration for free circulation of those goods.

Other provisions:

Furthermore, in order to determine the precise amount of import duty to be charged on processed products, in accordance with Article 86 (3) UCC, the quantity of the goods placed under the inward processing procedure considered to be present in the processed products for which a customs debt is incurred, is determined by the quantitative/value scale method elaborated in Article 72 DA.

Article 86 (3) applies also at the request of the declarant if the application of legislation on end-use procedure on processed products resulting from the inward processing procedure, and the application of favourable tariff treatment for goods placed under inward processing procedure, elaborated in Article 73 DA and Article 74 DA.

Moreover, pursuant to Article 205 UCC, at the request of the declarant, Article 86 (3) applies when determining the amount of import customs duty on the goods referred to in Article 203 UCC (returned goods which fulfils the conditions for exemption of import charges) which originally have been re-exported from the customs territory of the Union after inward processing procedure.

The cases when Article 86 (3) UCC applies without a request from the declarant, i.e. ex officio by customs authority:

Except at the request from the declarant, and pursuant to Article 86 (4), in special cases, the amount of import duty is determined pursuant to paragraphs 2 and 3 of Article 86 without the request from the declarant in order to avoid circumvention of the customs measures covered by Article 56 (2) (h). Article 86(3) UCC is applied without a request from the declarant also in the cases expressed in Article 205 UCC and Article 76 UCC-DA. For more information see SPE Guidance.

Article 85 UCC applies with the examination of the economic conditions in cases in Article 166(1)(b) and (c) DA, and Article 86 (3) UCC applies with the examination of the economic conditions in the case covered by Article 166(1)(a) DA (see SPE Guidance).

Application of commercial policy measures when releasing for free circulation processed products obtained under inward processing

Provisions on releasing the goods for free circulation (Title VI UCC) explain the method of application of commercial policy measures when releasing for free circulation processed products obtained under inward processing. Pursuant to Article 5 (36) "commercial policy measures" means non-tariff measures established, as part of the common commercial policy, in the form of Union provisions governing international trade in goods.

Article 202 UCC (Commercial policy measures) lays down the following:

1. Where processed products obtained under inward processing are released for free circulation and the calculation of the amount of import duty is made in accordance with Article 86(3), the commercial policy measures to be applied shall be those applicable to the release for free circulation of the goods which were placed under inward processing.

2. Paragraph 1 shall not apply to waste and scrap.

3. Where processed products obtained under inward processing are released for free circulation and the calculation of the amount of import duty is made in accordance with

Article 85(1), the commercial policy measures applicable to those goods shall be applied only where the goods which were placed under inward processing are subject to such measures.

Outward processing

Pursuant to Article 86(5) UCC, if a customs debt is incurred for processed products resulting from the outward processing procedure or for replacement products as referred to in Article 261(1) UCC, the amount of import duty is calculated on the basis of the cost of the processing done outside the customs territory of the Union.

The cost of the processing operation is calculated in the same way that the amount of the import duty (i.e. the basis for calculating import duty) is calculated: on the basis of the customs value of the processed products at the time of acceptance of the customs declaration for release of goods for free circulation, minus the statistical value of the corresponding temporary export goods at the time when the goods were placed under the outward processing procedure.

In addition, Article **75 DA** lays down the method for calculating the specific duty, i.e. the customs duty calculated by the quantity of goods: where a specific import duty is to be applied to processed products resulting from the outward processing procedure or to replacement products, the amount of import duty is calculated on the basis of the customs value of the processed products at the time of acceptance of the customs declaration for release for free circulation, minus the statistical value of the corresponding temporary export goods at the time when they were placed under outward processing, multiplied by the amount of import duty applicable to the processed products or replacement products, divided by the customs value of the processed products or replacement products.

Example 1: application of Article 86(5) UCC

The customs value of re-imported goods from outward processing: EUR 150 000

Statistical value of temporary exported goods: EUR 100 000

Duty rate for re-imported products is 3 %

Calculation: (150 000-100.000) x 3 % = EUR 1 500

Example 2: application of Article 75 DA (example from the draft guidelines for special procedures)

The customs value (see Article 75 DA and the example in the SPE Guidance) of re-imported goods from outward processing (processed products): EUR 400/t

Statistical value of temporary exported goods: EUR 200

Duty rate for re-imported products is: EUR 420/t

Calculation of import duties: (EUR 400-200) x EUR 420/400 = EUR 210

Example 3: application of Article 75 UCC DA:

A ham-producing company based in the EU wants to process, mature and smoke its ham in China.

Goods that have been put under outward processing (free issue products):
fresh cooled pork; ham

Code number:	*0203 1211 00*
Statistical value:	*EUR 43 858*
Declared net weight:	*24 231.00 kg*
Country of outward processing:	*China*
Processed products:	*Ham, salted and smoked*

Code number:	*0210 1131 00*
Processing price (FOB Ningbo):	*EUR 12 000.00*
Costs of sea freight to Hamburg:	*EUR 890.00*
Declared net weight:	*22 251 kg*

Customs value: *EUR 56 748.00*
(= processing price + free issue products + costs of transport)

Rate of duty of the processed goods: *EUR 151.20 per 100 kg*

<u>Calculation of import duty (customs) according to Article 75 DA:</u>
1st calculation:
Customs value of the processed goods minus statistical value of the goods, that have been temporarily exported:
EUR 56 748.00-43.858.00 = EUR 12 890.00 (=a)

2nd calculation:
Amount of the rate of duty for the processed goods (customs duty)
*22.251 kg*EUR 151.20/100 = EUR 33 643.51 (=b)*

*3rd calculation: (a) * (b)*
*EUR 12 890.00*33.643.51 = EUR 433 664 843.90 (=c)*

4th calculation: (c) customs value of the processed goods
EUR 433 664 843.90/56 748.00 = EUR 7 641.94

The amount of import duty (customs) to be paid is EUR 7 641.94.

Additional provisions on release for free circulation of goods under outward processing are laid down in Article 202(4) UCC on the application of commercial policy measures on release for free circulation: where EU legislation establishes commercial policy measures on release for free circulation, such measures **<u>do not apply</u>** to processed products released for free circulation following outward processing if:

(a) the processed products retain their Union origin within the meaning of Article 60;

(b) the outward processing involves repair, including the standard exchange system referred to in Article 261; or

(c) the outward processing follows further processing operations in accordance with Article 258 (The goods placed under IP are temporarily exported for carrying out further

processing operations outside the EU and, later on, the final products return back into the customs territory of the Union and released for free circulation or is placed under inward processing procedure in order to carry out processing operations).

If the goods are placed in a free zone or customs warehouse after the **outward processing procedure** and then released for free circulation, the previous procedure when releasing the goods for free circulation is not storage in a free zone or customs warehouse, but outward processing. Consequently, the special rule pursuant to Article 86(5) UCC applies. Release for free circulation must take place within the period allowed for discharging the outward processing procedure, if the calculation method for outward processing is to be used.

III.1.1.5. External transit

Pursuant to Article 215(2) UCC, the customs authorities compare the data available to the customs office of departure and those available to the customs office of destination. If the comparison allows them to establish that the procedure has ended correctly, they discharge the transit procedure.

Article 233 UCC sets out the obligations of the holder of a Union transit procedure and of the carrier and recipient of goods moving under the procedure. Paragraph 2 stipulates that the holder's obligation has been met and the transit procedure ends when the goods placed under the procedure and the required information are available at the customs office of destination in accordance with the customs legislation. Paragraph 3 stipulates that a carrier or recipient who accepts goods knowing that they are moving under the Union transit procedure is also responsible for presenting them intact at the customs office of destination within the prescribed time-limit and in compliance with the measures taken by the customs authorities to ensure their identification.

An enquiry procedure is set out in Article 310(1) to (6) of the IA. Pursuant to Article 310(8) IA, if, in the course of the enquiry, it is established that the Union transit procedure cannot be discharged, the customs authority of the Member State of departure establishes whether a customs debt has been incurred. If a customs debt has been incurred, the customs authority of the Member State of departure must identify the debtor and determine the customs authority responsible for notifying the customs debt in accordance with Article 102(1) UCC and Article 87(2) UCC.

'The fact that the transit procedure has been discharged, either implicitly or formally, is without prejudice to the rights and obligations of the competent authority to pursue the holder of the procedure and/or the guarantor where it appears at a later date (subject to the regulatory time periods for recovery or the imposition of penalties) that the procedure had not actually ended and should not therefore have been discharged, or irregularities relating to particular transit operations have been detected at a later stage.' (*Transit Manual*)

If a transit procedure ends correctly, no customs debt is incurred. If a transit procedure does not end correctly and the customs debt for external transit was incurred through non-compliance with the obligations arising from the procedure, then a customs debt is incurred not under Article 77 UCC, but under Article 79 UCC.

Customs authorities determine whether the amount of import and export duties can be precisely established, i.e. whether, pursuant to Article 15 UCC, they consider the information needed to calculate the customs debt, which must be provided at their request, to be sufficient. The UCC DA, Annex B, *Common data requirements for declarations, notifications and proof of the customs status of Union goods, Title I, Chapter I* states: '*without prejudice to Article 15*

of the Code, the content of the data provided to customs for a given requirement will be based on the information as it is known by the economic operator that provides it at the time it is provided to customs'. If the information is sufficient, the debt is established on the basis of the rules (tariff classification, customs value, quantity, nature and origin of the goods) applied to the goods concerned at the time the customs debt for them was incurred (i.e. pursuant to Article 85 UCC and the application of the general rules for calculating the amount of duty).

(Note: the time when the customs debt is incurred and other provisions under Article 79(2) UCC are further described in the text on calculating a customs debt incurred through non-compliance with obligations, i.e. through the removal of goods from customs supervision pursuant to Article 79 UCC).

III.1.2. Customs duty incurred through non-compliance

Customs debt on import incurred through non-compliance is defined in Article 79 UCC. In cases of non-compliance, the authorities in charge have to be determined at national level. Pursuant to Article 79 UCC, goods liable to import duty incur a customs debt through non-compliance with any of the following obligations or conditions.

(a) One of the **obligations** laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory.

In these cases, the customs debt is incurred at the time of the unlawful introduction of the goods or at the time of their removal from customs supervision, or at the time when the goods are spent or used for the first time in breach of the above obligations. The rules for calculating the debt are those applied to the goods concerned at the time of the failure to meet the obligations that gives rise to the customs debt, or for any special rules stipulated in the authorisation (for one of the procedures covered by a special rule), at the expiry of the time-limit set.

Example:

Goods under the transit procedure are removed from customs supervision

If goods under the transit procedure are removed from customs supervision (e.g. all or part of the goods have been stolen), a customs debt is incurred pursuant to Article 79(1) UCC at the time when they were removed from customs supervision, pursuant to the general rules for calculating the amount of duty (Article 85 UCC) that were applicable to the goods concerned at the time when the customs debt for them was incurred.

(b) One of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union.

Example:

The holder of the authorisation for the end-use procedure, pursuant to Article 239 DA, has an obligation to use the goods for the purposes laid down for the application of the duty exemption or reduced rate of duty.

If it is subsequently established that the goods were not used for the purposes laid down in the authorisation within the time-limit set in the authorisation in accordance with Article 79(1)(b), a customs debt is incurred because of non-compliance with that obligation.

(c) non-compliance with a condition governing the placing of non-Union goods under a customs procedure or the granting of duty exemption or a reduced rate of import duty by virtue of the end-use of the goods.

The time at which the customs debt is incurred is one of the following:

(a) The time when an obligation, non-fulfilment of which gives rise to the customs debt, is not met or ceases to be met.

Example 1

The obligation to discharge a special procedure within a certain time-limit — Article 215 UCC

Article 1(23) UCC DA defines the discharge period for a procedure as the time by which goods placed under a special procedure (except transit) or processed products must be placed under a subsequent customs procedure, must be destroyed, must have been taken out of the customs territory of the Union or must be assigned to their prescribed end-use.

For example, if the inward processing procedure has not been discharged within a certain time-limit, a customs debt is incurred on the first day after the expiry of the time-limit set (unless it has been extended). The rules applied to calculate the debt are as follows:

– for the goods which are produced in the final, processed products – the general rule will apply, according to Article 85 UCC, but the special rule from Article 86(3) UCC will be applied, in order to avoid circumvention of the measures covered by Article 56 (2)(h) UCC in accordance with Article 86(4) UCC;

Example 2

The obligation to submit the bill of discharge for the procedure

If the holder fails to meet the obligation to submit the bill of discharge, as stipulated in the authorisation pursuant to Article 211 UCC and Article 175 UCC DA, within 30 days after the expiry of the period for discharging the procedure, a customs debt is incurred on the first day following the date set as the deadline for submitting the bill of discharge.

The obligation to submit a bill of discharge for the procedure relates to the use of the inward processing IM/EX procedure, the inward processing EX/IM procedure without the use of standardised exchange of information referred to in Article 176 DA, and end-use.

Example 3

The obligation to submit the bill of discharge for the procedure within the time-limit

For inward processing: if the bill of discharge of the procedure has not been submitted within the time-limit, the customs debt is incurred on the first day following the date set as the deadline for submitting the bill.

The rules for calculating the debt are:

- for processed products, the general rule (in accordance with Article 85 UCC) or a special rule (under Article 86(3) UCC, , in order to avoid circumvention of the measures covered by Article 56(2)(h) UCC) in accordance with Article 86(4) UCC.

The customs debt is calculated on the basis of all the goods placed under the procedure for which the period of discharge has expired, as if the procedure was not ended correctly.

For the *end-use procedure*: if the bill of discharge for the procedure is not submitted within the time-limit, a customs debt is incurred on the first day following the date set as the deadline for submitting the bill.

Example 4

Conditions relating to fulfilment of the economic conditions (e.g. Article 167(1)(s) DA)

Goods placed under inward processing pursuant to Article 167(1)(s) DA meet the economic conditions, i.e. the total value of the goods placed under the procedure by the applicant and by calendar year for each eight-digit Combined Nomenclature code does not exceed EUR 300 000. The time of incurrence of a customs debt is the time when the total value exceeds EUR 300 000: that is the point at which the obligation ceases to be met and non-compliance leads to the customs debt.

The rules for calculating the debt are those applied at the time when the limit was exceeded, applying Article 85 UCC (or Article 86(3) UCC in order to avoid circumvention of the measures covered by Article 56(2)(h) UCC) in accordance with Article 86(4) UCC *for goods that were placed in inward processing (referring to the existing authorisation) at the time that the value was exceeded or later.*

Example 5:

Condition relating to the purpose of goods placed under the temporary admission procedure with total relief from duty

The goods are placed under temporary admission with total relief from duty, intended for e.g. an exhibition of a non-commercial character. It is established that the goods

have been used for other purposes, contrary to the condition stipulated in the authorisation.

The time of incurrence of the customs debt is the time of acceptance of the customs declaration for placing the goods under the temporary admission procedure.

The rules for calculating the customs debt are the general rules pursuant to Article 85 UCC, i.e. the amount of the import customs duty is determined on the basis of those rules for calculating duties that were applicable to the goods concerned on the day on which the goods were placed under the procedure.

(b) the time when a customs declaration is accepted for placing goods under a customs procedure, if it is subsequently established that a condition governing the placing of the goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

Example 1:

Wrong tariff classification of goods placed under a special procedure (not all situations of wrong classification are covered; there may be exceptions)

The authorisation for a special procedure, e.g. inward processing, contains a tariff heading stipulating the type of goods that can be placed under the procedure. If the goods are not listed in the authorisation, they have been incorrectly placed under the procedure, and a customs debt is incurred for that type of goods because of non-compliance with the conditions stipulated in the authorisation.

The time of incurrence of the customs debt is the time of acceptance of the customs declaration for placing the goods under customs procedure if it is subsequently established that a condition or obligation governing the placement of the goods under that procedure has not actually been met.

Other legal grounds for calculating a customs debt incurred through non-compliance

On how to calculate the amount of a customs debt on import incurred through non-compliance, apart from the provisions cited, Article 80 UCC provides for the option of deducting a previously determined amount of import duty already paid:

- if a customs debt is incurred under Article 79(1) on goods released for free circulation at a reduced rate of import duty on account of their end-use, the amount of import duty paid when the goods were released for free circulation is deducted from the amount of import duty corresponding to the customs debt (this applies where a customs debt is incurred for scrap and waste resulting from the destruction of such goods);
- if a customs debt is incurred under Article 79(1) on goods placed under temporary admission with partial relief from import duty, the amount of import duty paid under partial relief is deducted from the amount of import duty corresponding to the customs debt;

If the customs debt is not incurred through failure constituting an attempt at deception, Article 86 UCC applies.

Example:

Goods are placed under temporary admission with partial relief from duty. After 6 months a re-export declaration is lodged with a view to discharging the procedure and subsequently the partial duty is paid.

Subsequently, it is established that the goods did not exit from the customs territory of the Union; a customs debt is incurred pursuant to Article 79(1)UCC.

- *The time of incurrence of the customs debt is the time when non-fulfilment of the conditions is determined.*

Under Article 80(2) UCC, the amount of import duty paid under partial relief must be deducted from the amount of import duty corresponding to the customs debt.

The debtor

For a customs debt incurred through non-compliance, the debtor is, according to Article **79(3) UCC:**

⇨ In cases referred to under Article 79(1)(a) and (b) UCC:

- *any person who was required to fulfil the obligations concerned*. In general, an employee is not considered to be the debtor. It is assumed that a company is the debtor (there are a number of situations in which the employee may become the debtor; see for example Viluckas Jonasus. case C-238/02). If the customs debt arises from an employee's act, the company remains the debtor (subsequently, under national law, the company may bring a case against its employee). See also Ultra-Brag, case C-679/15: when establishing fraudulent dealing or obvious negligence by the employer within the meaning of Article 212a CCC, the conduct of its employee must also be attributed to it, if he was fulfilling assignments entrusted to him by the employer.
- *any person who was aware or should reasonably have been aware that an obligation under the customs legislation was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation, or who participated in the act which led to the non-fulfilment of the obligation*.
- *any person who acquired or held the goods in question and who was aware or should reasonably have been aware at the time of acquiring or receiving the goods that an obligation under the customs legislation was not fulfilled*.

⇨ In cases referred to under Article 79(1)(c) UCC:

- *the person who is required to comply with the conditions governing the placing of the goods under a customs procedure or the customs declaration of the goods placed under that customs procedure or the granting of a duty exemption or reduced rate of import duty by virtue of the end-use of the goods*;
- where a customs declaration is drawn up on the basis of information which leads to all or part of the import duty not being collected, *also the person who provided the*

information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false.

Under **Article 84 UCC**, if several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they are jointly and severally liable for payment of that amount.

III.1.3. Common provisions on the ways in which a customs debt may be incurred

One can conclude from the provisions cited above that a customs debt under Article 77 UCC is incurred by acceptance of the customs declaration (either for release for free circulation, including under the end-use provisions, or to calculate charges for the temporary admission procedure with partial relief from import duty). In contrast, a customs debt through non-compliance, under Article 79 UCC, is incurred as a result of an act of non-compliance with the procedure under which the goods are placed. An administrative decision may formally state that a customs debt due to non-compliance was incurred prior to that decision (the decision itself does not give rise to the existence of the debt).

Under Article 114(2) UCC, if a customs debt is incurred on the basis of Article 79 or 82 UCC (non-compliance), or if the notification of the customs debt results from post-release controls, interest on arrears is charged in addition to the import or export duty payable, from the date on which the customs debt was incurred until the date of its notification.

Example (applying different rules to calculate the customs debt, depending on the document used to end the procedure):

If the holder of an authorisation for temporary admission with total relief from duty lodges a declaration for the release of goods for free circulation (Article 77 UCC), the rules for calculating the debt are the general rules pursuant to Article 85 UCC at the time of acceptance of the customs declaration (the rules for calculating the duty that applied to the goods concerned at the time when the customs debt in respect of them was incurred, without interest on arrears).

However, if that debt is determined through checks on the procedure, i.e. if it is found that, for example, the goods have been used for purposes other than the one stipulated in the authorisation (Article 79 UCC), the customs debt is incurred at the time when the customs declaration for the temporary admission procedure with total relief from duty was accepted (Article 79(2)(a) UCC), so the rules applied are those which applied to the goods concerned at the time when the customs debt in respect of them was incurred, i.e. when the goods were placed under the procedure. This means that, in this case, interest on arrears must be charged.

III.2. CUSTOMS DEBT ON EXPORT

III.2.1. 'Regular' customs debt on export

Pursuant to Article 81 UCC, a customs debt on export is incurred through placing goods liable to export duty under the export procedure or the outward processing procedure. It is incurred at the time of acceptance of the customs declaration.

Moreover, pursuant to Article 85 UCC (general rules for calculating the amount of import or export duty), the amount of import or export duty is determined on the basis of the rules for calculation of duty that were applicable to the goods concerned at the time when the customs debt in respect of them was incurred.

If it is not possible to determine precisely when the customs debt was incurred, it is deemed to be the time when the customs authorities conclude that the goods are in a situation in which a customs debt has been incurred.

However, if the information available to the customs authorities enables them to establish that the customs debt was incurred before they reached that conclusion, then the customs debt is deemed to have been incurred at the earliest time that such a situation can be established.

The debtor

In the case of export and outward processing, the debtor is, according to Article **81(3) UCC:**

- the declarant;
    - in the event of indirect representation, *also* the person on whose behalf the customs declaration is made (this does not include outward processing; indirect representation is not permitted in special procedures other than transit, with the exception of public customs warehousing — see document Ref. Ares(2017)841088 - 15/02/2017);
- where a customs declaration is drawn up on the basis of information which leads to all or part of the export duty not being collected, *also* the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false.

Under **Article 84 UCC**, if several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they are jointly and severally liable for payment of that amount.

III.2.2. Customs debt incurred through non-compliance

Article 82 UCC explains when a customs debt on export is incurred through non-compliance:

'1. For goods liable to export duty, a customs debt on export shall be incurred through non-compliance with either of the following:

(a) one of the obligations laid down in the customs legislation for the exit of the goods;

(b) the conditions under which the goods were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty.

2. The time at which the customs debt is incurred shall be one of the following:

(a) the moment at which the goods are actually taken out of the customs territory of the Union without a customs declaration;

(b) the moment at which the goods reach a destination other than that for which they were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty;

(c) should the customs authorities be unable to determine the moment referred to in point (b), the expiry of the time-limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled.'

The debtor

For customs debt incurred through non-compliance, the debtor is, according to Article **82(3) UCC:**

⇨ In cases referred to under Article 82(1)(a) UCC:

- 'any person who was required to fulfil the obligation concerned;
- any person who was aware or should reasonably have been aware that the obligation concerned was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation;
- any person who participated in the act which led to the non-fulfilment of the obligation and who was aware or should reasonably have been aware that a customs declaration had not been lodged but should have been.'

⇨ In cases referred to under Article 82(1)(b) UCC:

- 'any person who is required to comply with the conditions under which the goods were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty.'

Under **Article 84 UCC**, if several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they are jointly and severally liable for payment of that amount.

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IV. COMMON PROVISIONS ON CUSTOMS DEBTS

IV.1. PLACE WHERE THE CUSTOMS DEBT IS INCURRED

Under Article 87 UCC, a customs debt is incurred:

1. at the place where the customs declaration or the re-export declaration is lodged *(example: a ship arrives in Antwerp, Belgium, where the declaration for release for free circulation is lodged)*;
2. at the place where the events from which it arises occur, in all other cases;
3. if it is not possible to determine that place, at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred;
4. if the goods were placed under a customs procedure which has not been discharged or if temporary storage did not end properly, and the place where the customs debt is incurred cannot be determined under points 2 or 3 *within a specific time-limit*, at the place where the goods were either placed under the procedure concerned or introduced into the customs territory of the Union under that procedure, or where they were in temporary storage.

Where the information available to the customs authorities enables them to establish that the customs debt may have been incurred in several places, the customs debt is deemed to have been incurred at the place where it was first incurred.

If a customs authority establishes that a customs debt has been incurred under Article 79 UCC or Article 82 UCC in another Member State and the amount of import or export duty corresponding to that debt is lower than EUR 10 000, the customs debt is deemed to have been incurred in the Member State where the finding was made. *(Example: clothes with a total value of EUR 7 500 were placed under the external transit procedure in France and the procedure was discharged in Spain. The customs authorities in Spain asserted that the goods arrived too late and that the guarantee was invalid. The customs debt is deemed to have been incurred in Spain.)*

Relevant Court decisions: Cases C-526/06, C-488/09, and C-230/06.

IV.1.1. Time-limit for establishing the place where the customs debt is incurred

As referred to above in point 4 of section IV.1, there is a *specific time-limit* for determining the place where the customs debt was incurred (see Article 87(2) UCC).

Under Article 77 DA, in the case of goods placed under the Union transit procedure, the time-limit is either of the following:

(a) ‘seven months from the latest date on which the goods should have been presented at the customs office of destination, unless before the expiry of that time-limit a request to transfer the recovery of the customs debt was sent to the authority responsible for the place where, according to the evidence obtained by the customs authority of the Member State of departure, the events from which the customs debt arises occurred, in which case that time-limit is extended by a maximum of one month;

(b) one month from the expiry of the time-limit for the reply by the holder of the procedure to a request for the information needed to discharge the procedure, where the customs authority of the Member State of departure has not been notified of the arrival of the goods and the holder of the procedure has provided insufficient or no information.'

According to Article 78 DA, for goods placed under transit in accordance with the Customs Convention on the international transport of goods under cover of TIR carnets, including any subsequent amendments (TIR Convention), the time-limit is seven months from the latest date on which the goods should have been presented at the customs office of destination or exit.

Article 79 DA states that for goods placed under transit in accordance with the ATA Convention or with the Istanbul Convention the time-limit is seven months from the date on which the goods should have been presented at the customs office of destination.

Article 80 states that for goods placed under a special procedure other than transit or for goods which are in temporary storage, the time-limit is seven months from the expiry of any of the following periods:

1. the prescribed period for discharge of the special procedure;
2. the prescribed period for ending customs supervision of end-use goods;
3. the prescribed period for ending temporary storage;
4. the prescribed period for ending the movement of goods placed under the warehousing procedure between different places in the customs territory of the Union if the procedure was not discharged.

IV.1.2. Application in time

For a customs debt incurred before 1 May 2016, one might be asked which legal base should be used to determine the place where the customs debt is incurred: Article 215(4) CCC (with a threshold of EUR 5 000) or Article 87(4) UCC (with a threshold of EUR 10 000).

The thresholds in Article 215(4) CCC and Article 87(4) UCC are substantive, since they relate to the establishment of the customs debt (a substantive provision) and determine the Member State in which a customs debt is incurred. So, in accordance with established case-law (see C-201/04 *Molenbergnatie* NV, para. 31), Article 288(2) CCC is to be interpreted in such a way that Article 87 UCC does not apply to situations existing before 1 May 2016.

Consequently, the CCC (Article 215(4)) applies to customs debts incurred before 1 May 2016.

IV.2. AMOUNT OF CUSTOMS DUTIES AND OTHER CHARGES

IV.2.1. General rules for calculating the amount of import or export duty

Under **Article 85 UCC**, the amount of import or export duty (tariff classification of goods, customs value, quantity, nature and origin of goods) is determined on the basis of the rules for the calculation of duty that were applicable to the goods concerned at the time when the customs debt in respect of them was incurred. For the consideration of customs value, elements should be taken into account as per Articles 69-74 UCC, for instance all costs

incurred to manufacture/process non-Union goods under the inward processing procedure, licence fees or the value of assists.

If it is not possible to determine that time precisely, it is deemed to be the time when the customs authorities conclude that the goods are in a situation in which a customs debt has been incurred.

However, if the information available to the customs authorities enables them to establish that the customs debt was incurred before they reached that conclusion, then the customs debt is deemed to have been incurred at the earliest time that such a situation can be established.

The general rule in Article 85 does not apply to determining import or export charges in cases set out in **Article 86 UCC**, i.e. where **special rules for calculating the amount of import duty** apply, **including the following** (for details, see IV.2.2)**:**

- **Article 86(1) UCC**: 'Where costs for storage or usual forms of handling have been incurred within the customs territory of the Union in respect of goods placed under a customs procedure or in temporary storage, such costs or the increase in value shall not be taken into account for the calculation of the amount of import duty where satisfactory proof of those costs is provided by the declarant.'
- Nevertheless, according to **Article 86(3) UCC**, where a customs debt is incurred for the processed products resulting from inward processing, the amount of import duties is determined, at the request of the declarant, on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure at the time of acceptance of the customs declaration relating to those goods.

  Since the rate of duty is not in the list laid down in Article 86(3) UCC, it should be inferred that when it adopted Article 53(3) MCC (which became Article 86(3) UCC) the legislature intended to clarify the scope of Article 86(3) UCC and limit it to the elements of taxation explicitly mentioned, leaving the rate of duty subject to the general rule under Article 85(1) UCC.

  So the rate of duty applied should be the rate in force on the date on which the customs debt is incurred (namely the date of acceptance of the declaration for release for free circulation of the processed products) and not on the date of acceptance of the customs declaration placing the imported goods under the procedure.
- **Article 86(2) UCC:** where the tariff classification of goods placed under a customs procedure changes as a result of usual forms of handling, within the meaning of Article 220 UCC, in the customs territory of the Union, the original tariff classification for the goods placed under the procedure is applied at the request of the declarant.
- **Article 86(3) to (5) UCC:** these provisions apply to processed products resulting from the inward processing procedure released for free circulation and to processed products or replacement products resulting from the outward processing procedure released for free circulation[3].
- **Article 86(6) UCC:** Where the customs legislation provides for favourable tariff treatment of goods, or for relief or total or partial exemption from import or export duty pursuant to points (d) to (g) of Article 56(2) UCC (application of favourable tariff measures and treatment by reason of their nature or end-use, etc.), Articles 203, 204,

[3] Through the reference to paragraph 2, Article 86(4) UCC may also apply to goods placed under customs warehousing, insofar as the usual forms of handling take place during customs warehousing.

205 UCC (provisions on relief from import customs duties for returned goods) and Article 208 UCC (relief from import charges for products of sea-fishing and processed products, provided they fulfil certain conditions) or Articles 259 to 262 UCC (provisions regarding outward processing) or pursuant to Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, such favourable tariff treatment, relief or exemption also applies in cases where a customs debt is incurred pursuant to Articles 79 or 82 UCC (non-compliance), on condition that the failure which led to the incurrence of a customs debt did not constitute an attempt at deception.

In each individual case, customs authorities must assess whether the failure which led to the incurrence of a customs debt constitutes attempted fraud, taking into account the economic operator's experience, the complexity of the legislation related to a particular procedure and particular type of goods, the frequency of similar failure and all other circumstances and any criteria which could influence the assessment of whether the failure constitutes an attempt at deception or not. So customs authorities must keep the documentation they need on such failure.

'Attempt at deception'

An attempt at deception presumes a premeditated/intentional action, the operator acting with knowledge and wilfulness, with deliberate behaviour against the law.

A shortening/curtailment of duties or other charges should not necessarily be considered intended. But 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. Also, if legislation has been published, no one can claim ignorance — this principle is enshrined in the national law of some Member States.

An attempt at deception may include, but is not limited to, acts that have given rise to criminal proceedings.

This has to be assessed taking into consideration all the facts of each individual case.

If an examination of the record has not already established that no attempt at deception was involved, the economic operator or the person in question may be asked to provide documentation to satisfy the customs authorities that no attempt at deception was involved.

The customs authorities may request any documentation they need (see Article 15 UCC). If the customs authorities, based on the evidence at hand including the documentation provided by the debtor, reach the conclusion that there is sufficient proof that an attempt at deception was made, the authority must not apply the favourable treatment or exemption from customs duty provided for in Article 86(6)[4]. However, before taking such a decision, the debtor must be allowed the right to be heard in accordance with Article 22(6). If the debtor then provides such information that there is no longer sufficient proof of an attempt at deception, then the favourable treatment or exemption from customs duty must apply in accordance with Article 86(6), unless the authority decides to investigate the issue further. So, if there is no attempt at deception, Article 86(6) will apply.

[4] For example, a customs debt is incurred if goods are unlawfully introduced (Article 79 UCC). When the customs authority calculates the customs debt, if there is some proof that the goods qualify for favourable treatment (e.g. a certificate of origin), it may be taken into account to apply the reduced or 0 % customs duty rate, relief or exemption from customs duty (Article 86(6) UCC). This policy is excluded in the legislation only where there has been an attempt at deception.

Under **Article 101 UCC**, the amount of import or export duty payable is determined by the customs authorities responsible for the place where the customs debt is incurred, or is deemed to have been incurred in accordance with Article 87 UCC, as soon as they have the necessary information.

Without waiving the right to carry out post-release controls (Article 48 UCC), the customs authorities may accept the amount of import or export duty payable determined by the declarant.

If the amount of import or export duty payable is not a whole number, it may be rounded.

1) If the amount is expressed in *euros*, rounding may not be more than rounding up or down to the nearest whole number.
2) For a Member State whose currency is not the *euro*, rounding may not be more than rounding up or down to the nearest whole number **or** it may derogate from that condition, provided that the rules applicable on rounding do not have a greater financial impact than the rule set out in the first condition.

IV.2.2. Special rules for calculating the amount of import duty

Costs for storage or usual forms of handling

Based on **Article 86(1) UCC**, where costs for storage or usual forms of handling are incurred within the customs territory of the Union in respect of goods placed under a customs procedure or in temporary storage, such costs or the increase in value are not taken into account in calculating the amount of import duty if the declarant provides satisfactory proof of those costs.

However, the customs value, quantity, nature and origin of non-Union goods used in the operations are taken into account in calculating the amount of import duty.

Example

The goods — the soft drink Coca Cola (quantity: 1 000 bottles; value: EUR 750.00 (CIF); unit price: EUR 0.75 per 1.5 l bottle) imported from the US — were placed in temporary storage on 5 November 2016.

The customs authority found that part of the goods — 200 bottles — had disappeared on 25 November 2016, so at that date a customs debt was incurred.

The declarant proved that the cost of goods storage from 5-25 November 2016 was EUR 300.00.

Calculation of the customs debt for the disappeared goods:

a) quantity: 200 bottles

b) customs value: 200 x 0.75 = EUR 150 (storage costs not taken into account)

c) country of origin: USA

d) tariff classification: 22021000,

e) tariff rate of import duty: 9.6 %

150 x 9.6 % = EUR 14.40

Changes in the tariff classification of goods

Under **Article 86(2) UCC**, if the tariff classification of goods placed under a customs procedure changes as a result of usual forms of handling in EU customs territory, the original tariff classification for the goods placed under the procedure is applied *at the declarant's request.*

Under **Article 86(4) UCC**, in specific cases the amount of import duty is determined *without a request from the declarant* in order to avoid circumvention of other tariff measures provided for in agricultural or commercial or other EU legislation (Article 56(2)(h) UCC).

Example (in relation to Article 86(2) UCC)

The goods — 'milk in tank' (CN code: 04011090; quantity: 20 000 kg; value: EUR 10 500.00 (CIF)), imported from Russia — were placed in storage in a customs warehouse on 10 October 2016.

The goods changed as a result of usual forms of handling (UFH) (they were poured into retail packaging) to goods — 'milk in retail packing 1.5 l' (CN code 04011010, tariff rate EUR 13.8/100 kg/net) and were released for free circulation on 31 October 2016.

The declarant submitted a request to apply the original tariff classification for the goods placed in storage in the customs warehouse.

The changes as a result of the usual forms of handling were not taken into account when customs duties were calculated:

(a) Quantity: 20 000 kg net

(b) Customs value: EUR 10 500 (storage and usual forms of handling costs not taken into account)

(c) Country of origin: Russia

(d) Tariff classification: 0401109000 (not 0401101000)

(e) Tariff rate of the import duty: EUR 12.9/100 kg/net (not EUR 13.8/100 kg/net)

20 000/100 x 12.9 = EUR 2 580.00

Application of favourable tariff treatment and exemption from duty

Under **Article 86(6) UCC**, if customs legislation provides for favourable tariff treatment of goods, or for relief or total or partial exemption from import or export duty pursuant to Article 56(2)(d) to (g), Articles 203-205, 208, or 259-262 UCC or pursuant to Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, that favourable tariff treatment, relief or exemption also applies in

cases where a customs debt is incurred pursuant to Articles 79 or 82 UCC, on condition that the failure which led to the incurrence of a customs debt did not constitute an attempt at deception.

Example

The goods — polymer package material (CN code 39232100; quantity: 600 kg; value: EUR 3 400.00 (CIF)) from Ukraine placed in a free zone — were removed from customs supervision on 7 January 2017.

The goods had preferential certificate of origin Form A issued by the authorised institution in Ukraine.

It was proved that the failure which led to the incurrence of a customs debt did not constitute an attempt at deception.

Calculation of the customs debt for the goods removed from customs supervision:

(a) Quantity: 600 kg

(b) Customs value: EUR 3 400

(c) Country of origin: Ukraine

(d) Tariff classification: 39232100

(e) Tariff rate of import duty: 3 % according to GSP tariff treatment (not the conventional tariff rate of 6.5 %)

3 400 x 3 % = EUR 102.00

Deduction of an amount of import duty already paid

According to **Article 80 UCC**, if a customs debt is incurred under Article 79(1) UCC, the amount of import duty already paid is deducted from the amount of import duty payable for the customs debt in respect of:

- goods released for free circulation at a reduced rate of import duty on account of their end-use (where a customs debt is incurred in respect of scrap and waste resulting from the destruction of the goods), or
- goods placed under temporary admission with partial relief from import duty.

N.B.: Based on equality, non-discrimination and equity, the deduction of the amount previously paid should be allowed irrespective of the way in which the customs debt is incurred, i.e. pursuant to either Article 77(1) – incurrence at acceptance of the customs declaration – or Article 79(1) – incurrence through non-compliance."

Calculation of the amount of import duty on processed products resulting from *inward* processing

Under **Article 86(3) UCC**, if a customs debt is incurred for processed products resulting from the inward processing procedure, the amount of import duty corresponding to the debt is, *at*

the declarant's request, determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure at the time of acceptance of the customs declaration relating to those goods.

Under **Article 86(4) UCC** and **Article 76 DA**, in specific cases the amount of import duty is determined *without a request from the declarant* in order to avoid circumvention of other tariff measures provided for by agricultural or commercial or other EU legislation (Article 56(2)(h) UCC).

Such specific case relate to scenarios,

(i) where all of the following conditions are fulfilled:

- the processed products resulting from inward processing are imported directly or indirectly by the relevant holder of the authorisation within one year after their re-export;
- at the time of acceptance of the customs declaration for placing the goods under the inward processing procedure, the goods would have been subject to a commercial or agricultural policy measure or an anti-dumping duty, countervailing duty, safeguard duty or retaliation duty, had they been released for free circulation at that time;
- no examination of the economic conditions was required under Article 166 DA.

or

(ii) where the processed products were obtained from goods placed under inward processing which would, at the time of the acceptance of the first customs declaration for placing the goods under the inward processing procedure, have been subject to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation and the case is not covered by Article 167(1) (h), (i), (m) or (p) of the DA.

However, where the goods placed under inward processing would not be subject anymore to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions at the time when a customs debt is incurred for the processed products, Article 86(4) UCC shall not be invoked automatically (i.e. without prior request of the declarant) for the calculation of import duty.

Under **Article 72(1) to (6) DA**, in order to determine the amount of import duty to be charged on processed products, the quantity of the goods placed under the inward processing procedure considered to be present in the processed products for which a customs debt is incurred is determined by the quantitative scale method. In cases where the quantitative scale method is not applicable, the value scale method applies.

The quantitative scale method		
Article	Cases where it must be applied	Determining the quantity
72(2)(a) **72(3)** **DA**	where only one kind of processed products is derived from the processing operations	the quantity of the goods placed under the inward processing procedure considered to be present in the processed products for which a customs debt is incurred shall be determined by

		applying the percentage which the processed products for which a customs debt is incurred constitute of the total quantity of the processed products resulting from the processing operation, to the total quantity of the goods placed under the inward processing procedure.
72(2)(b) **72(4)** **DA**	where different kinds of processed products are derived from the processing operations and all constituents or components of the goods placed under the procedure are found in each of those processed products	the quantity of the goods placed under the inward processing procedure considered to be present in the processed products for which a customs debt is incurred shall be determined by applying, to the total quantity of the goods placed under the inward processing procedure, a percentage calculated by multiplying the following factors: • the percentage which the processed products *for which a customs debt is incurred* constitute of the total quantity of the processed products of the same kind resulting from the processing operation; • the percentage which the total quantity of the processed products of the same kind, *irrespective of whether a customs debt is incurred*, constitutes of the total quantity of all processed products resulting from the processing operation.
72(5) **DA**	Quantities of goods placed under the procedure which are destroyed and lost during the processing operation, in particular by evaporation, desiccation, sublimation or leakage, shall not be taken into account.	

Example

Article 72(2)(a), 72(3) of the DA

The goods — *bentonite* (CN code: 25081000; quantity: 10 000 kg; value: EUR 8 500.00 (CIF)) imported from Kazakhstan — were placed under the inward processing procedure on 3 September 2016.

The goods, changed as a result of processing by adding sodium carbonate and processed products — *bentonite with sodium carbonate* (CN code: 38249996; quantity: 10 100 kg), were released for free circulation on 26 October 2016.

The declarant submitted a request to apply the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure at the time of acceptance of the customs declaration relating to those goods.

1) Determination of the quantity of the goods placed under the inward processing by using the quantitative scale method:

Example 1: a single processed product

- Non-EU goods placed under IP:
  100 kg plastic

- Processed product:
  90 kg plastic cups

- Customs debt for:
  20 kg plastic cups

- Quantity for calculation of the customs debt:
  20/90 x 100 kg = 22.22 kg plastic.

Example 2: more than one processed product

- Non-EU goods placed under IP:
  100 kg plastic

- Processed products:
  80 kg plastic cups containing 80 kg plastic
  10 kg key-holders containing 10 kg plastic
  5 kg plastic dolls containing 5 kg plastic

- Calculation of quantities:
  Cups: 80/95 × 100 kg = 84.21 kg plastic
  Key-holders: 10/95 × 100 kg = 10.53 kg plastic
  Dolls: 5/95 × 100 kg = 5.26 kg plastic
  Total: 100.00 kg plastic pellets

- Customs debt for:

10 kg cups

5 kg dolls

- Quantity for calculation of customs debt:

  Cups: 10/80 × 84.21 kg = 10.53 kg

  Dolls: 5/5 × 5.26 kg = 5.26 kg

- Total: 15.79 kg

2) Calculation of the customs debt for the processed goods:

- Quantity: 9900 kg
- Customs value: EUR 8 500 x 9 900/10 000 = EUR 8 415.00

3) Country of origin: Kazakhstan

- Tariff classification: 25081000
- Tariff rate of the import duty: 0 % (not corresponding to the tariff classification of the processed products 38249996, duty rate 6.5 %)

8 415.00 x 0 % = EUR 0

Example

Article 72(2)(b), 72(4) of the DA

The goods — *pine logs* (CN code 44032110; quantity: 7000 m^3; value: EUR 3 300.00 (CIF)) imported from Norway — were placed under inward processing procedure on 10 August 2016.

The goods were fully processed by sawing, planing and pressing. Processed products — *planed boards* (CN code 44071120; quantity: 6000 m^3) and *pressed wood sawdust briquettes* (CN code 44013900; quantity: 1600 m^3) were released for free circulation on 11 November 2016.

The declarant submitted a request to apply the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure at the time of acceptance of the customs declaration relating to those goods.

4) Determination of the quantity of the goods placed under inward processing by using the quantitative scale method:

- Quantity: … kg
- Customs value: EUR 3 300 x …
- Country of origin: Norway
- Tariff classification: 44032110
- Tariff rate of the import duty: 0 %

…. x 0 % = EUR 0		
The value scale method		
Article	Cases where it must be applied	Determining the quantity
72(6) DA	In cases when the quantitative scale method shall not be applicable	the quantity of the goods placed under the inward processing procedure considered to be present in processed products for which a customs debt is incurred shall be determined by applying, to the total quantity of the goods placed under the inward processing procedure, a percentage calculated by multiplying the following factors: • the percentage which the processed products *for which a customs debt is incurred* constitute of the total value of the processed products of the same kind resulting from the processing operation; • the percentage which the total value of the processed products of the same kind, *irrespective of whether a customs debt is incurred*, constitute of the total value of all processed products resulting from the processing operation.
72(6) DA	The value of the processed products *shall be established* on the basis of current ex-works prices in the customs territory of the Union *or*, where such ex-works prices cannot be determined, the current selling prices in the customs territory of the Union for identical or similar products. Prices between parties which appear to be associated *or* to have a compensatory arrangement with each other *may not be used for the determination* of the value of the processed products *unless* it is determined that the prices are unaffected by the relationship. Where the value of the processed products cannot be determined as mentioned above it shall be determined by any reasonable method.	
72(6) DA	Where the value of the processed products cannot be determined pursuant to the quantitative scale method it shall be determined by any reasonable method.	
Application of the provisions on end-use procedure (only applies in cases set out in		

Article 86(3))		
Article	Rules	Conditions
73 DA	when determining the amount of import duty corresponding to the customs debt *on processed products* resulting from the inward processing procedure, the goods placed under that procedure shall benefit from a duty exemption or a reduced rate of duty on account of their specific use, which would have been applied to those goods if they had been placed under the end-use procedure in accordance with Article 254 UCC.	where the following conditions are fulfilled: • an authorisation to place the goods under the end-use procedure could have been issued, *and* • the conditions for the duty exemption or the reduced rate of duty on account of specific use of those goods would have been fulfilled at the time of acceptance of the customs declaration for placing goods under the inward processing procedure.
Application of the preferential tariff treatment (applies only in cases set out in Article 86(3) in relation with IP)		
Article	Rules	Conditions
74 DA	the goods shall be eligible for any preferential tariff treatment provided for in respect of identical goods at the time of acceptance of the declaration of release for free circulation.	where at the time of the acceptance of the customs declaration for placing goods under the inward processing procedure the imported goods fulfil the conditions to qualify for preferential tariff treatment within tariff quotas or ceilings.

IV.3. NOTIFICATION OF THE CUSTOMS DEBT

Under **Article 102 UCC**, the debtor must be notified of the customs debt in the form prescribed at the place where the customs debt is incurred, or is deemed to have been incurred (Article 87 UCC).

1. If the amount of import or export duty payable is the amount entered in the customs declaration, the customs authorities' release of the goods serves as notification of the customs debt.
2. If payment has been guaranteed, the customs debt for the total amount of import or export duty relating to all the goods released to the same person in a period fixed by

the customs authorities (maximum 31 days) may be notified at the end of that period (supplementary declaration under Article 167 UCC, Article 146 DA, and Article 225 IA).

3. In other cases, the debtor is notified of the customs debt when the customs authorities are in a position to determine the amount of import or export duty payable and take a decision on it.

If notification of the customs debt would prejudice a criminal investigation, the customs authorities may defer notification until it no longer prejudices the criminal investigation.

The customs debt may be notified by means other than by electronic data-processing techniques (Article 87 DA).

No notification is given if:

(a) pending final determination of the amount of import or export duty, a provisional commercial policy measure taking the form of a duty has been imposed;

(b) the amount of import or export duty payable exceeds that determined on the basis of BTI decisions and BOI decisions (Article 33 UCC);

(c) the original decision not to notify the customs debt or to notify a 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;

(d) the customs authorities are exempted from notification of the customs debt — in cases where the customs debt is incurred through non-compliance (under Article 79 or 82 UCC) and the amount is less than EUR 10 [Article 88(1) DA] or, where the difference between the amount of the customs debt initially notified and the amount of import or export duty payable, is less than EUR 10 [Article 88(2) DA];; the EUR 10 limit applies to each recovery action[5] (Article 88 DA).

The customs legislation does not define 'recovery action'. However, in a ruling of 12 December 1985, in case 214/84, the European Court of Justice provided the following interpretation:

'The term 'a given action for recovery' in Article 8 of Regulation No 1697/79 of the Council of 24 July 1979 must be interpreted as referring to each individual import or export transaction. That interpretation does not preclude the practice of combining several separate actions for recovery in a single recovery order, provided that the amount concerned in each action exceeds the amount specified in the first paragraph of the aforesaid Article 8.'

Article 222 IA provides that if a declaration covers two or more items of goods, 'the particulars stated in that declaration relating to each item shall be regarded as constituting a separate customs declaration'.

Therefore, 'Recovery action' within the meaning of article 88 DA refers to the customs debt relating to a single customs operation or an individual item of goods on the customs declaration, in accordance with Article 222 IA.

Article 102 UCC states that the notification '**shall not be made […] where the customs authorities are exempted […] from notification of the debt**'. Article 88 DA states that customs '**may refrain from** notifying a debt [of] less

[5] *Recovery action' refers to the customs debt relating to* a *single* customs operation or *an individual item of goods on the customs declaration, in accordance with Article 222 IA*

than EUR 10'. This should be interpreted as meaning that the customs authorities are neither exempt from, nor obliged to notify the debtor of a debt lower than EUR 10; the law leaves customs the choice of whether or not to notify the debtor of a customs debt under EUR 10.

Under **Article 103(1) UCC** the customs debt cannot be notified to the debtor after the expiry of a period of 3 years from the date on which the customs debt was incurred.

Article 103(2) UCC states:

> 'Where the customs debt is incurred as the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the three-year period laid down in paragraph 1 shall be extended to a period of a minimum of five years and a maximum of 10 years in accordance with national law.'

These periods are suspended where:	The suspension applies:
an appeal is lodged in accordance with Article 44 UCC	from the date on which the appeal is lodged and shall last for the duration of the appeal proceedings (Article 103(3)(a) UCC)
the customs authorities communicate to the debtor the grounds on which they intend to notify the customs debt *(Article 22(6) UCC)*	from the date of that communication until the end of the period within which the debtor is given the opportunity to express his or her point of view (Article 103(3)(b) UCC)
a customs debt is reinstated *(Article 116(7) UCC)*	from the date on which the application for repayment or remission was submitted in accordance with Article 121 UCC, until the date on which the decision on the repayment or remission was taken (Article 103(4) UCC)

IV.3.1. Right to be heard (Article 22(6) UCC)

Article 105(3) UCC states: 'Where a customs debt is incurred in circumstances not covered by paragraph 1, the amount of import or export duty payable shall be entered in the accounts within 14 days of the date on which the customs authorities **are in a position** to determine the amount of import or export duty in question **and take a decision**.'

According to **Article 22(6) UCC**, customs authorities are in a position to take a decision only after the right to be heard has been exercised (to be read in conjunction with Article 29 UCC for ex officio decisions).

Article 22(6) UCC states that '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. Following the expiry of that period, the applicant shall be notified, in the appropriate form, of the decision.'

This interpretation is confirmed by recital (27) UCC:

'(27) In accordance with the Charter of Fundamental Rights of the European Union, it is necessary, in addition to the right of appeal against any decision taken by the customs authorities, to ***provide for the right of every person to be heard before any decision is taken which would adversely affect him or her.*** *'*

Where the customs authority intends to take an unfavourable decision, it shall communicate its grounds to the person concerned in writing, on which it intends to base its decision. It also shall inform the person concerned of his right to have access to the file. The person concerned shall be given the opportunity to express his point of view in writing to the customs authority within a period of 30 days from the date on which he has received the communication.

Article 8(1) DA stipulates that applicants have 30 days to express their point of view before a decision which would adversely affect them is taken. This does not apply, however, where the decision pertains to the results of the control of goods for which no summary declaration, temporary storage declaration, re-export declaration or customs declaration has been lodged. In that case, the customs authorities may require the person concerned to express his or her point of view within 24 hours.

Article 8(1) IA requires the communication referred to in Article 22(6) first subparagraph of UCC to:

> "(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) in accordance with the applicable provisions."

It specifies that where the person concerned gives his point of view before the expiry of the period referred to in Article 8(1)(b) DA 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 determined.

Pursuant to Article 22(6), second subparagraph, of the UCC, the right to be heard does not apply to decisions in the following cases:

(a) relating to binding information — BTI decisions and BOI decisions (Article 33(1) UCC);

(b) relating to refusal of the benefit of a tariff quota where the specified tariff quota volume is reached (Article 56(4) UCC);

(c) where the nature or the level of a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers so requires;

(d) where the decision aims at securing the implementation of another decision for which the right to be heard has been applied, without prejudice to the law of the Member State concerned;

(e) where it would prejudice investigations initiated for the purpose of combating fraud;

(f) in other specific cases (see below Article 10 DA).

Article 10 DA lists specific cases where the applicant is not given an opportunity to express his point of view:

(a) where the application for a decision does not fulfil the conditions laid down in Article 11 DA or with the second subparagraph of Article 12(2) IA;

(b) where the customs authorities notify the person who lodged the entry summary declaration that the goods are not to be loaded in the case of containerised maritime traffic and of air traffic;

(c) where the decision concerns a notification to the applicant of a Commission decision as referred to in Article 116(3) UCC;

(d) where an EORI number is to be invalidated.

A decision which adversely affects the applicant must set out the grounds on which it is based and must refer to the right of appeal provided for in Article 44 UCC.

IV.3.2. Appeal procedure

Under **Article 44 UCC**, any person has the right to appeal:

- against any decision taken by the customs authorities relating to the application of the customs legislation which concerns him or her directly and individually;
- if the person has applied to the customs authorities for a decision and has not obtained a decision on that application within the specified time-limits, i.e. without delay and at the latest within 120 days of the date of acceptance of the application, or, if it is reasonably necessary, within a further period which must not exceed 30 days (Article 22(3) UCC).

The right of appeal may be exercised in at least two steps:

(a) initially, before the customs authorities or a judicial authority or other body designated for that purpose by the 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.

The appeal must be lodged in the Member State where the decision was taken or was applied for.

Member States must ensure that the appeals procedure enables the prompt confirmation or correction of decisions taken by the customs authorities.

Pursuant to **Article 45 UCC** the submission of an appeal must not cause implementation of the disputed decision to be suspended.

The customs authorities must, however, suspend implementation of such a decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with the customs legislation or that irreparable damage is to be feared for the person concerned. Where the disputed decision has the effect of causing import or export duty to be

payable, suspension of implementation of that decision is conditional upon the provision of a guarantee, unless it is established, on the basis of a documented assessment, that such a guarantee would be likely to cause the debtor serious economic or social difficulties.

Article 43 UCC states that Articles 44 and 45 UCC do not apply to appeals lodged with a view to the annulment, revocation or amendment of a decision on the application of the customs legislation taken by a judicial authority, or by customs authorities acting as judicial authorities.

IV.4. ENTRY IN THE ACCOUNTS

IV.4.1. Entry in the accounts

Pursuant to **Article 104**(1) UCC, the customs authorities responsible for the place where the customs debt is incurred, or is deemed to have been incurred in accordance with Article 87 UCC, must enter in their accounts, on the basis of the national legislation, the amount of import or export duty payable as determined under Article 101 UCC. This rule is not applicable in cases where the customs debt is not notified, in accordance with second subparagraph of Article 102(1) UCC[6].

Moreover, Article 104(2) UCC states that amounts of import or export duty which, pursuant to Article 103 UCC, correspond to a customs debt which can no longer be notified to the debtor need not be entered in the accounts.

Member States decide on the practical procedures for entry in the accounts of the amounts of import or export duty. Their procedures may differ according to whether, in view of the circumstances in which the customs debt was incurred, the customs authorities are satisfied that those amounts will be paid.

IV.4.2. Time of entry in the accounts

Article 105 UCC governs the time of entry in the accounts. Paragraphs 1 to 4 require the customs authorities to enter the amount of import or export duty payable in the accounts **within 14 days**:

- **of the release of the goods**, where a customs debt is incurred as a result of the acceptance of the customs declaration of goods for a customs procedure, other than temporary admission with partial relief from import duty, or of any other act having the same legal effect as such acceptance. However, if payment has been guaranteed, the total amount of import or export duty relating to all the goods released to the same person during a period fixed by the customs authorities (of maximum 31 days) may be covered by a **single entry in the accounts** at the end of that period. Such entry in the accounts must take place **within 14 days of the expiry of the period concerned** (paragraph 1).
- **of the day on which the amount of import or export duty payable is determined or the obligation to pay that duty is fixed**, where goods may be released subject to certain conditions which govern either the determination of the amount of import or export duty payable or its collection. However, where the customs debt relates to a provisional commercial policy measure taking the form of a duty, the amount of import or export duty

[6] For cases where the customs debt is not notified, see section IV.3.

payable must be entered in the accounts **within two months of the date of publication in the *Official Journal of the European Union* of the Regulation establishing the definitive commercial policy measure** (paragraph 2).

– **of the date on which the customs authorities are in a position to determine the amount of import or export duty in question and take a decision**, where a customs debt is incurred in circumstances not covered by paragraph 1 (paragraph 3), **or**, with regard to the amount of import or export duty to be recovered or which remains to be recovered where the amount of import or export duty payable has not been entered in the accounts in accordance with paragraphs 1, 2 and 3, or has been determined and entered in the accounts at a level lower than the amount payable (paragraph 4).

According to Article 105(5) UCC, the time-limits for entry in the accounts laid down in paragraphs 1, 2 and 3 do not apply in **unforeseeable circumstances** or in **cases of *force majeure***.

Finally, entry in the accounts may be **deferred** in the case referred to in the second subparagraph of Article 102(3) UCC, until such time as notification of the customs debt no longer prejudices a **criminal investigation** (Article 105(6) UCC).

The rules in Articles 104 and 105 UCC are also relevant for the purpose of establishing and making available the amounts of traditional own resources to the Commission. With regard to this important issue, attention is drawn to Article 2 of Regulation No 609/2014[7]; see also the relevant ACOR-TOR documents.

IV.5. PAYMENT

IV.5.1. General time-limits for payment

Under **Article 108**(1) UCC, the amounts of import or export duty corresponding to a customs debt notified in accordance with Article 102 UCC must be paid by the debtor within the period prescribed by the customs authorities, which, without prejudice to Article 45(2) UCC, must not exceed **10 days** after the debtor is notified of the customs debt. If entries in the accounts are aggregated (see the second subparagraph of Article 105(1) UCC), the period must be fixed so as not to enable the debtor to obtain a longer period for payment than if he or she had been granted deferred payment under Article 110 UCC.

Upon application by the debtor, the customs authorities may extend the period if the amount of import or export duty payable was determined in the course of post-release control as referred to in Article 48 UCC, but, without prejudice to Article 112(1) UCC, the extensions must not exceed the time necessary for the debtor to take the appropriate steps to discharge his or her obligation.

If the debtor is entitled to any of the payment facilities laid down in Articles 110 to 112 UCC, payment must be made within the period or periods specified in relation to those facilities (Article 108(2) UCC).

[7] Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements.

IV.5.2. Suspension of the time-limit for payment

Article 108(3) UCC lists the following cases in which the time-limit for payment of the amount of import or export duty corresponding to a customs debt is suspended:
(a) where an application for remission of duty is made in accordance with Article 121 UCC;

(b) where goods are to be confiscated, destroyed or abandoned to the State;

(c) where the customs debt was incurred pursuant to **Article 79** UCC and there is more than one debtor.

The rules on this suspension and the period of suspension in each case are set out in Articles 89 to 91 DA, which are covered in detail below.

Suspension of the time-limit for payment if remission is applied for (Article 108(3)(a) UCC)

Under **Article 89(1) DA**, customs authorities must suspend the time-limit for payment of the amount of import or export duty corresponding to a customs debt until they have taken a decision on an application for remission if:

(a) the conditions laid down in the relevant Article are likely to be met, where an application for remission has been presented pursuant to Article 118, 119 or 120 UCC;

(b) the conditions laid down in Article 117 and Article 45(2) of the Code are likely to be met, where an application for remission has been presented pursuant to Article 117 UCC.

Under Article 89(2) DA, a guarantee must be provided if goods subject to an application for remission are no longer under customs supervision at the time of the application. However, the customs authorities must not require a guarantee if providing the guarantee would be likely to cause the debtor serious economic or social difficulties (Article 89(3) DA).

Suspension of the time-limit for payment if goods are to be confiscated, destroyed or abandoned to the State (Article 108(3)(b) UCC)

Article 90 UCC DA requires the customs authorities to suspend the time-limit for payment of the amount of import or export duty corresponding to a customs debt if (a) the goods are still under customs supervision and are to be confiscated, destroyed or abandoned to the State, and (b) the customs authorities consider that the conditions for confiscation, destruction or abandonment are likely to be met. The time-limit must be suspended until the final decision on their confiscation, destruction or abandonment is taken.

Suspension of the time-limit for payment if customs debts are incurred through non-compliance (Article 108(3)(c) UCC)

Article 91 DA

‘1. The customs authorities shall suspend the time-limit for payment, by the person referred to in Article 79(3)(a) UCC, of the amount of import or export duty corresponding to a customs debt where a customs debt has been incurred through non-compliance with an obligation, provided that the following conditions are fulfilled:

(a) at least one other debtor has been identified in accordance with Article 79(3)(b) or (c) of the Code;

(b) the amount of import or export duty concerned has been notified to the debtor referred to in point (a) in accordance with Article 102 of the Code;

(c) the person referred to in Article 79(3)(a) of the Code is not considered a debtor in accordance with Article 79(3)(b) or (c) of the Code and no deception or obvious negligence may be attributed to that person.

2. The suspension shall be conditional on the person for whose benefit it is granted issuing a guarantee for the amount of the import or export duty at stake, except in either of the following situations:

(a) a guarantee covering the whole amount of import or export duty at stake already exists and the guarantor has not been released from his obligations;

(b) it is established, on the basis of a documented assessment, that the requirement of a guarantee would be likely to cause the debtor serious economic or social difficulties.

3. The duration of the suspension shall be limited to one year, but this period may be extended by the customs authorities for justified reasons.'

IV.5.3. Payment

Article 109 UCC

'1. Payment shall be made in cash or by any other means with similar discharging effect, including by adjustment of a credit balance, in accordance with national legislation.

2. Payment may be made by a third person instead of the debtor.

3. The debtor may in any case pay all or part of the amount of import or export duty without awaiting expiry of the period he or she has been granted for payment.'

IV.5.4. Deferment of payment

Deferment of payment

Article 110 UCC

'The customs authorities shall, upon application by the person concerned and upon provision of a guarantee, authorise deferment of payment of the duty payable in any of the following ways[8]:

(a) separately in respect of each amount of import or export duty entered in the accounts in accordance with the first subparagraph of Article 105(1), or Article 105(4);

(b) globally in respect of all amounts of import or export duty entered in the accounts in accordance with the first subparagraph of Article 105(1) during a period fixed by the customs authorities and not exceeding 31 days;

(c) globally in respect of all amounts of import or export duty forming a single entry in accordance with the second subparagraph of Article 105(1).'

Periods for which payment is deferred

Article 111 UCC

[8].

‘1. The period for which payment is deferred under Article 110 UCC shall be 30 days.

2. Where payment is deferred in accordance with point (a) of Article 110 UCC, the period shall begin on the day following that on which the customs debt is notified to the debtor.

3. Where payment is deferred in accordance with point (b) of Article 110 UCC, the period shall begin on the day following that on which the aggregation period ends. It shall be reduced by the number of days corresponding to half the number of days covered by the aggregation period.

4. Where payment is deferred in accordance with point (c) of Article 110 UCC, the period shall begin on the day following the end of the period fixed for release of the goods in question. It shall be reduced by the number of days corresponding to half the number of days covered by the period concerned.

5. Where the number of days in the periods referred to in paragraphs 3 and 4 of Article 111 UCC is an odd number, the number of days to be deducted from the 30-day period pursuant to those paragraphs shall be equal to half the next lowest even number.

6. Where the periods referred to in paragraphs 3 and 4 of Article 111 UCC are weeks, Member States may provide that the amount of import or export duty in respect of which payment has been deferred is to be paid on the Friday of the fourth week following the week in question at the latest. If those periods are months, Member States may provide that the amount of import or export duty in respect of which payment has been deferred is to be paid by the 16th day of the month following the month in question.’

IV.5.5. Other payment facilities

Article 112(1) UCC allows customs authorities to grant the debtor **payment facilities** other than deferred payment on condition that a **guarantee** is provided.

If such facilities are granted, **credit interest** must be charged on the amount of import or export duty, as follows (Article 112(2) UCC):

- For a Member State whose currency is the euro, the credit interest rate is the interest rate published in the *Official Journal of the European Union*, C series, which the European Central Bank applied to its main refinancing operations, on the first day of the month in which the due date fell, increased by one percentage point;
- For a Member State whose currency is not the euro, the credit interest rate is the rate applied on the first day of the month in question by the National Central Bank for its main refinancing operations, increased by one percentage point, or, for a Member State for which the National Central Bank rate is not available, the most equivalent rate applied on the first day of the month in question on the Member State’s money market, increased by one percentage point.

However, under Article 112(3) UCC, the customs authorities may refrain from requiring a guarantee or from charging credit interest where it is established, on the basis of a documented assessment of the situation of the debtor, that this would create serious economic or social difficulties.

Under Article 112(4) UCC, where the amount - for each recovery action is less than EUR 10, the customs authorities must not charge credit interest.

IV.5.6. Enforcement of payment

Article 113 UCC states: 'Where the amount of import or export duty payable has not been paid within the prescribed period, the customs authorities shall secure payment of that amount by all means available to them under the law of the Member State concerned.'

On this subject, attention is drawn to Article 13 ('Irrecoverable amounts') of Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements; see also the relevant ACOR-TOR documents.

IV.5.7. Interest on arrears

Article 114(1) UCC requires **interest on arrears** to be charged on the amount of import or export duty from the date of expiry of the prescribed period until the date of payment, as follows:

- 'For a Member State whose currency is the euro, the rate of interest on arrears shall be equal to the interest rate as published in the *Official Journal of the European Union*, C series, which the European Central Bank applied to its main refinancing operations, on the first day of the month in which the due date fell, increased by two percentage points.'
- 'For a Member State whose currency is not the euro, the rate of interest on arrears shall be equal to the rate applied on the first day of the month in question by the National Central Bank for its main refinancing operations, increased by two percentage points, or, for a Member State for which the National Central Bank rate is not available, the most equivalent rate applied on the first day of the month in question on the Member State's money market, increased by two percentage points.'

According to Article 114(2) UCC, if the customs debt is incurred on the basis of Article 79 or 82 UCC, or if notification of the customs debt results from a post-release control, interest on arrears must be charged over and above the amount of import or export duty, from the date on which the customs debt was incurred until the date of its notification. The rate of interest on arrears must be set in accordance with Article 114(1) UCC.

However, the customs authorities may refrain from charging interest on arrears if it is established, on the basis of a documented assessment of the situation of the debtor, that to charge it would create serious economic or social difficulties (Article 114(3) UCC).

If the amount for each recovery action[9] is less than EUR 10, the customs authorities must refrain from charging - interest on arrears (Article 114(4) UCC).

Rate of interest on arrears

1. The reference dates for establishing the period for calculating the interest on arrears are:
    - the first day following the date of the expiry of the prescribed period for payment (Article 114(1) UCC) or;

-

- the first day following the date on which the customs debt was incurred (Article 114(2) UCC).

2. Interest on arrears is calculated as follows (Article 114(1) 2nd subparagraph UCC:

$$\frac{\text{Amount of import or export duty} \times (\text{ECB interest rate} + 2\ \%) \times \text{Number of days in arrears}}{365 \text{ days}}$$

"For a Member State whose currency is not the Euro, the rate of interest on arrears shall be equal to the rate applied on the first day of the month in question by the National Central Bank for its main refinancing operations, increased by two percentage points, or, for a Member State for which the National Central Bank rate is not available, the most equivalent rate applied on the first day of the month in question on the Member State's money market, increased by two percentage points" (Article 114(1) 3rd subparagraph UCC).

IV.5.8. Application in time of Article 114 UCC

Date from which Article 114(2) UCC is applicable

Where it (1) requires the payment of default interest on the amounts of customs duties which were not paid on the due date, (2) fixes the rate of interest, and (3) grants customs authorities the right not to impose interest, Article 114 should be applied to legal situations arising after 1 May 2016.

Dealing with a customs debt established following post-release control, where interest is due as a result of delay in establishing the debt (Article 114(2) UCC), not of delay in payment of the debt (Article 114(1) UCC)

- Article 114 UCC needs to be applied to all customs debts where the date of expiry of the prescribed period (for payment) ends after 1 May 2016.
- A claim for interest because of late payment is a substantive issue, and has to be distinguished from the customs debt itself. If a customs debt arose under the CCC, the payment period provided in the CCC continues to apply. But if that payment period ends after 1 May 2016, the relevant facts (i.e. delayed payment) fall within the scope of the UCC *ratione temporis*. This interpretation is compatible with the principle of non-retroactivity, especially as Article 232(1)(b) of the CCC also provided for interest on arrears.

IV.6. Extinguishment of a customs debt

IV.6.1. Legal base

Article 124(1) UCC provides that, without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt if a court establishes that the debtor is insolvent, a customs debt on import or export must be extinguished in any of the following ways:

(a) where the debtor can no longer be notified of the customs debt, in accordance with Article 103 UCC;

(b) by payment of the amount of import or export duty;

(c) by remission of the amount of import or export duty (although if several persons are liable for payment of the amount of import or export duty corresponding to the customs debt and remission is granted, the customs debt is extinguished only in respect of the person or persons to whom remission is granted — Article 124(5) UCC);

(d) where, in respect of goods declared for a customs procedure entailing the obligation to pay import or export duty, the customs declaration is invalidated;

(e) where goods liable to import or export duty are confiscated or seized and simultaneously or subsequently confiscated (in these cases, the customs debt is nevertheless deemed, for the purposes of penalties applicable to customs offences, not to have been extinguished where, under the law of a Member State, import or export duty or the existence of a customs debt provide the basis for determining penalties — Article 124(2) UCC);

(f) where goods liable to import or export duty are destroyed under customs supervision or abandoned to the State;

(g) where the disappearance of the goods or the non-fulfilment of obligations arising from the customs legislation results from the total destruction or irretrievable loss of those goods as a result of the actual nature of the goods or unforeseeable circumstances or *force majeure*, or as a consequence of instruction by the customs authorities; for the purpose of this point, goods shall be considered as irretrievably lost when they have been rendered unusable by any person (the provisions in force pertaining to standard rates for irretrievable loss due to the nature of goods apply where the person concerned fails to show that the real loss exceeds that calculated by applying the standard rate for the goods in question — Article 124(4) UCC);

(h) where the customs debt was incurred pursuant to Article 79 or 82 UCC and where the following conditions are fulfilled (see also Article 125 UCC on application of penalties):

(i) the failure which led to the incurrence of a customs debt had no significant effect on the correct operation of the customs procedure concerned and did not constitute an attempt at deception (failures with no significant effect on the correct operation of the customs procedure concerned are listed in Article 103 DA, see section IV.6.2);

(ii) all of the formalities necessary to regularise the situation of the goods are subsequently carried out;

(i) where goods released for free circulation duty-free, or at a reduced rate of import duty by virtue of their end-use, have been exported with the permission of the customs authorities;

(j) where it was incurred pursuant to Article 78 UCC and where the formalities carried out in order to enable the preferential tariff treatment referred to in that Article to be granted are cancelled. In cases where the customs debt has been incurred by virtue of Article 78 UCC and there is a failure in the procedures for the issuance or making out of a proof of origin this can be considered as constituting 'the formalities carried out in order to enable the preferential tariff treatment' and customs debt may be extinguished pursuant to Article 124 (1)(j) UCC;

(k) where the customs debt was incurred pursuant to Article 79 UCC and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been taken out of the customs territory of the Union (but the customs debt is not extinguished in respect of any person or persons who attempted deception — Article 124(6) UCC).

Under Article 124(7) UCC, if the customs debt was incurred pursuant to Article 79 UCC, it is extinguished with regard to the person whose behaviour did not involve any attempt at deception[10] and who contributed to the fight against fraud. Article 124(7) is a stand-alone provision and was intended to cover particular situations in which an operator contributes to the fight against fraud.

IV.6.2. Failures which have no significant effect on the correct operation of a customs procedure (Article 124(1)(h)(i) UCC)

Article 103 DA lists the following situations as 'a failure with no significant effect on the correct operation of the customs procedure:

(a) exceeding a time-limit by a period of time which is not longer than the extension of the time-limit that would have been granted had that extension been applied for;
For example, if a customs debt has occurred according to Article 79 UCC due to the late submission of the bill of discharge, the customs debt is to be recovered, unless it can be considered extinguished either in accordance with Articles 124(1)(h) UCC and 103(a) UCC DA together with Article 124(1)(k) UCC or only according to Article 124(1)(k).

(b) where a customs debt has been incurred for goods placed under a special procedure or in temporary storage pursuant to Article 79(1)(a) or (c) UCC and those goods were subsequently released for free circulation;

(c) where the customs supervision has been subsequently restored for goods which are not formally a part of a transit procedure, but which previously were in a temporary storage or were placed under a special procedure together with goods formally placed under that transit procedure;

(d) in the case of goods placed under a special procedure other than transit and free zones or in the case of goods which are in temporary storage, where an error has been committed concerning the information in the customs declaration discharging the procedure or ending the temporary storage provided that error has no impact on the discharge of the procedure or the end of the temporary storage;

(e) where a customs debt has been incurred pursuant to Article 79(1)(a) or (b) UCC, provided that the person concerned informs the competent customs authorities about the non-compliance before either the customs debt has been notified or the customs authorities have informed that person that they intend to perform a control.'

Article 125 UCC provides that 'where the customs debt is extinguished on the basis of point (h) of Article 124(1), Member States shall not be precluded from the application of penalties for failure to comply with the customs legislation.' On the application of penalties, see Article 42 UCC.

IV.6.3. Application in time of the extinguishment of the customs debt

Where a customs debt was incurred before 1 May 2016 and the provision on extinction/extinguishment of the customs debt was narrower under the old legislation — meaning there would have been no extinguishment of the debt under the old legislation (Article 233 CCC) — it is necessary to assess whether Article 124 UCC may be applied, if it were to provide extinguishment under the new legal framework. One should consider whether the customs debt for goods confiscated or seized (but not for unlawful introduction) before

[10] For more details regarding the concept of "attempt at deception", please see chapter IV.2.1.

1 May 2016 is extinguished with the entry into force of the UCC. The scope of the corresponding rule contained in the Community Customs Code (Article 233 CCC) was narrower, so under the legislation valid before 1 May 2016 there would be no extinguishment.

Article 124 UCC on the extinguishment of a customs debt (together with Article 233 CCC) is substantive (one could possibly draw a parallel here with the ECJ's reasoning in *Molenbergnatie* NV, C-201/04, para. 41, on the time-limit according to Article 221(3) CCC). So, the CCC should in principle be applied to situations existing before 1 May 2016, and not the UCC.

At the same time, it should be borne in mind that the ECJ has held that substantive rules can exceptionally be interpreted as applying to situations existing before the date of application laid down in law, 'in so far as it follows clearly from their terms, objectives or general scheme that such effect must be given to them' (*Beemsterboer*, C-293/04, para. 21). In the *Beemsterboer* case (para. 22(f)), the Court deemed that this exception should be applied based on its finding that the *lex posteriori* was just interpreting and clarifying a concept, which had already existed in the previous regulation. This is not the case for the question under discussion: Article 124 UCC contains amendments of substance.

In any case, the question whether the relevant facts occurred prior to 1 May 2016 or not is to be determined specifically for each situation listed in Article 124(1) UCC. For instance, for Article 124(1)(b) UCC, the date of payment of the import/export duty is decisive; for Article 124(1)(c), the date of remission is to be taken into account; and for Article 124(1)(k), it is the date when the goods were taken out of the customs territory. In the same vein, for goods that disappeared before 1 May 2016, a related customs debt could only be extinguished under the narrower conditions of Article 233 CCC (e.g. *force majeure*), even if the wider conditions of Article 124(1)(g) and (h) UCC were met.

Regarding time-limits, the ECJ made clear in *Molenbergnatie* (para. 39 et seq.) that the applicable limit is that valid at the time when the customs debt was incurred. For a customs debt incurred before 1 May 2016, Article 221(3) CCC continues to apply (i.e. Article 124(1)(a) and Article 103 UCC are not applicable, even if the time-limit ends after 1 May 2016). The time when the customs debt is incurred is decisive in determining the provisions applicable, i.e. a customs debt incurred before 1 May 2016 is extinguished in accordance with Article 233 CCC, not Article 124 UCC. This will depend on the individual case and on the particular point in Article 124 that applies to it.

IV.7. SIMPLIFICATIONS

IV.7.1. Simplified customs declaration

Article 166 UCC provides for two types of simplified customs declaration:

- it may omit certain of the particulars referred to in Article 162 UCC; or
- it may omit certain of the supporting documents referred to in Article 163 UCC, required for applying the provisions governing the customs procedure for which the goods are declared.

Simplified declaration may be used on an occasional basis (Article 166(1) UCC), or regularly (Article 166(2) UCC, subject to authorisation).

Under Article 172 UCC, except where otherwise provided, the date of acceptance of the customs declaration by the customs authorities is the date to be used for applying the rules of the customs procedure for which the goods are declared and for all other import or export formalities. This means that the general rule for calculating the customs debt is applied, pursuant to Article 85 UCC.

If the goods under inward processing covered by special rules for calculating the debt are released for free circulation, and if this was requested by the applicant of the inward processing authorisation granted by the competent customs authorities or the goods to be placed under inward processing are subject to any of the mesasures reffered to of the Article 76(2) DA

, Article 86(3) UCC applies.

IV.7.2. Entry in the declarant's records

The customs declaration is deemed to have been accepted at the moment at which the goods are entered in the records, pursuant to Article 182 UCC, i.e. the date of entry in the declarant's records is the time when the customs debt is incurred.

The entry in the declarant's records may be granted for the following procedures: release for free circulation, customs warehousing, temporary admission, end-use, inward processing, outward processing, export and re-export (Article 150 (2) DA).

For release for free circulation, the general rule applies in calculating the debt, pursuant to Article 85 UCC; a special rule applies if that is stipulated in the authorisation for a certain procedure.

Example 1

Goods are placed under inward processing, pursuant to Article 182 UCC (entry in the declarant's records) on 7 June 2016. The authorisation stipulates Article 86(3) UCC as the debt calculation method. The goods are released for free circulation in the form of an entry in the declarant's records on 29 July 2016. A supplementary declaration, pursuant to Article 146 DA, is lodged on 2 August 2016. The date of entry in the declarant's records, 29 July 2016, is deemed to be the time when the debt is incurred. The date of placing the goods under inward processing, 7 June 2016, is the date applied to the information items for calculating the debt, pursuant to Article 86(3) UCC.

Example 2

Goods are placed under inward processing pursuant to Article 182 UCC (entry in the declarant's records) on 7 June 2016. The authorisation stipulates Article 85 UCC as the debt calculation method. The goods are released for free circulation in the form of an entry in the declarant's records on 29 July 2016. A supplementary declaration, pursuant to Article 146 DA, is lodged on 2 August 2016. The date of entry in the declarant's records, 29 July 2016, is deemed to be the time when the debt is incurred. Furthermore, pursuant to Article 85 UCC, that is the date applied to the information items for calculating the debt.

IV.7.3. Other simplifications

Goods falling within different tariff subheadings declared under a single tariff subheading

Pursuant to Article 177 UCC and Article 228 IA, import or export customs duty is payable on the whole consignment of goods falling within different tariff subheadings on the basis of the tariff subheading of the goods which are subject to the highest rate of import or export duty.

Article 228 IA further details ways of determining the tariff subheading of the consignment if the goods contained in the consignment fall within tariff subheadings subject to a specific duty by reference to the same unit of measure, a specific duty expressed by reference to different units of measure, ad valorem duty or a specific duty:

> *'1. For the purposes of Article 177 of the Code, where the goods in a consignment fall within tariff subheadings subject to a specific duty expressed by reference to the same unit of measure, the duty to be charged on the whole consignment shall be based on the tariff subheading subject to the highest specific duty.*
>
> *2. For the purposes of Article 177 of the Code, where the goods in a consignment fall within tariff subheadings subject to a specific duty expressed by reference to different units of measure, the highest specific duty for each unit of measure shall be applied to all of the goods in the consignment for which the specific duty is expressed by reference to that unit, and converted into an ad valorem duty for each type of those goods.*
>
> *The duty to be charged on the whole consignment shall be based on the tariff subheading subject to the highest rate of the ad valorem duty resulting from the conversion pursuant to the first subparagraph.*
>
> *3. For the purposes of Article 177 of the Code, where the goods in a consignment fall within tariff subheadings subject to an ad valorem duty and a specific duty, the highest specific duty as determined in accordance with paragraphs 1 or 2 shall be converted into an ad valorem duty for each type of goods for which the specific duty is expressed by reference to the same unit..*
>
> *The duty to be charged on the whole consignment shall be based on the tariff subheading subject to the highest rate of ad valorem duty, including the ad valorem duty resulting from the conversion pursuant to the first subparagraph.'*

The customs debt is incurred at the time of acceptance of the customs declaration. The rules for calculating the customs debt are those which were applicable to the tariff subheading as established using the method above for calculating import or export duty at the time the customs debt was incurred.

Centralised clearance

Pursuant to Article 179 UCC, Articles 229-232 IA and Article 149 DA, a person authorised by the customs authorities may lodge a customs declaration at one customs office (responsible for the place where that person is established) for goods which are presented to customs at a different customs office.

The time when the customs debt is incurred is the time of acceptance of the customs declaration; the same time is used in applying the general rule for calculating the customs debt, pursuant to Article 85 UCC or a special rule (Article 86 UCC) if one is stipulated in the authorisation for a particular procedure.

Self-assessment

Pursuant to Article 185 UCC, Article 237 IA and Articles 151-152 DA, a person authorised by the customs authorities may carry out certain customs formalities which are to be carried out by the customs authorities, to determine the amount of import and export duty payable, and to perform certain controls under customs supervision.

Transit

Two simplifications regarding transit procedures should be mentioned as presenting their specificities regarding guarantees compared to the standard procedure:

- the use of a transit declaration with a reduced dataset (Article 233(4)(d) UCC);

- the use of an electronic transport document as a transit declaration for air and sea transport (Article 233 (4)(e) UCC).

IV.8. AMENDING CUSTOMS REPRESENTATIVE STATUS AFFECTING THE DECLARANT

Without prejudice to Articles 15, 173, 174 and 195 UCC, it may be possible for the declarant to request the amendment of the customs representative status in order to reflect the correct evidence of empowerment, valid before the lodging of the customs declaration.

Such request may be exceptionally granted by the customs authorities with a view to correct a bona fide error from the declarant's part where the identity of the declarant was wrongly stated according to the evidence and proof of empowerment existing before the lodging of the declaration in order to comply with the obligations arising from the placing of the goods under the customs procedure concerned.

Nevertheless, the amendment requested should not be granted when it is likely to jeopardize the objectives pursued by the customs legislation.

Thus, the assessment of an application for the amendment of a customs declaration needs to be made on a case-by-case basis to allow the customs authorities exercise their right to reject the request. Such rejection might be justified under various circumstances. In view of the customs authorities' obligation of ensuring the effective protection of the EU financial interests and of protecting the Union from unfair and illegal trade, as indicated in Article 3 of the UCC ("Mission of customs authorities"), examples of reasons justifying rejection can be cases of misuse, fraudulent practices and situations where amending the customs representative status would harm or put at risk the EU and MS financial interests (the indication of the grounds for rejection is not exhaustive).

In this context, it should be taken into consideration that accepting an amendment by which indirect representation changes to direct representation would have an impact in terms of liability for the guarantee or payment of the customs debt, which might justify a rejection

decision of an application for the amendment of the customs declaration affecting the declarant ([11]).

For the cases where the application for the amendment of the customs declaration affecting the declarant took place before the release of the goods and a customs debt was due, any rectification of the identity of the declarant would – in principle – result in the transfer of the declarant's rights and obligations to the new declarant. Consequently, amending the customs representative status affecting the declarant, either before or after release of the goods as the case might be, should only be possible if the new declarant either ensured the provision of a (new) guarantee to cover the customs debt or paid the debt, taking into consideration Article 195 of the UCC.

It should be underlined that, acceptance of a request to amend the customs representative status does not preclude that the former declarant might also be considered liable for the payment of the customs debt, in accordance with the relevant provisions of the UCC (for instance Article 19(1) UCC, second subparagraph, Article 15 UCC and Article 77(3), second sub-paragraph).

*

([11]) This needs to be read in complement with the Guidance on Customs Formalities on Entry and Import into the European Union (Part E, Title 6).

V. COOPERATION BETWEEN CUSTOMS AUTHORITIES — MUTUAL ASSISTANCE

To ensure recovery of the customs debt, customs authorities should provide mutual assistance in cases where a customs debt is incurred in a Member State other than the Member State which accepted the guarantee.

Article 153 IA covers situations where a customs debt is incurred in a Member State other than the Member State that accepted a guarantee in one of the forms referred to in Article 83(1) DA which may be used in more than one Member State. In such situations, the Member State which accepted the guarantee must transfer the unpaid amount of import or export duty (within the limits of the guarantee) to the Member State where the customs debt was incurred, if the latter requests this after the time-limit for payment has expired. The amount must be transferred within 1 month of receipt of the request.

V.1. General provisions

Under **Article 165 IA**, where a customs debt is incurred, the customs authorities competent for recovery of the amount of import or export duty corresponding to the customs debt inform the other customs authorities involved of the fact that a customs debt was incurred, and of the action taken against the debtor to recover the sums concerned. The Member States assist each other with recovery of the amount of import or export duty corresponding to the customs debt.

Unless Article 87(4) UCC applies, if the customs authority of a Member State in which goods were placed under a special procedure other than transit, or were in temporary storage, obtains evidence, before the time-limit referred to in Article 80 DA expires, that the events from which a customs debt arises or is deemed to arise occurred in another Member State, that customs authority must immediately and in any event within that time-limit send all the information available to the customs authority responsible for that other place. The latter must acknowledge receipt and state whether it is responsible for recovery. If no response is received within 90 days, the sending customs authority must immediately proceed with recovery.

Unless Article 87(4) UCC applies, if a Member State's customs authority finds that a customs debt has been incurred with respect to goods which were neither placed under a customs procedure nor under temporary storage and, before notifying the debtor, obtains evidence that the events from which the debt arises or is deemed to arise occurred in another Member State, that customs authority shall immediately, and certainly before notification, send all the information available to the customs authority responsible for that other place. The latter customs authority must acknowledge receipt and state whether it is responsible for recovery. If no response is received within 90 days, the sending customs authority must immediately proceed with recovery.

V.2. Customs office for coordinating matters relating to ATA carnets or CPD carnets

Under **Article 166 IA**, customs authorities designate a customs office for coordination of any action on customs debts incurred through non-compliance with obligations or conditions relating to ATA carnets or CPD carnets under Article 79 UCC. Each Member State must give the Commission the name and address of the customs office for coordination and its reference number. The Commission must make this information available on its website.

V.3. Recovery of other charges under the Union transit procedure and transit in accordance with the TIR Convention

The customs authorities have notified a customs debt and an obligation to pay other charges in connection with the import or export of goods placed under the Union transit procedure or under the transit procedure in accordance with the TIR Convention. They then obtain evidence regarding the place where the events giving rise to the customs debt and the obligation to pay other charges occurred. Under **Article 167 IA**, they must suspend the recovery procedure and immediately send all the necessary documents, including an authenticated copy of the evidence, to the authorities responsible for that place. The sending authorities must simultaneously request confirmation of the receiving authorities' responsibility for recovery of the **other charges**.

The receiving authorities must acknowledge receipt of the information and state whether they are responsible for recovery of the other charges. If no response is received within 28 days, the sending authorities must immediately resume the recovery proceedings they started.

Any pending proceedings for recovery of other charges started by the sending authorities must be suspended as soon as the receiving authorities acknowledge receipt of the documents and state that they are competent for recovering the other charges. As soon as the receiving authorities provide proof that they have recovered the sums in question, the sending authorities must repay any other charges already recovered or cancel the recovery proceedings.

V.4. Notification of recovery of duties and other charges under the Union transit procedure and transit in accordance with the TIR Convention

Under **Article 168 IA**, where a customs debt is incurred with respect to goods placed under the Union transit procedure or under the transit procedure in accordance with the TIR Convention, the customs authorities responsible for recovery must inform the customs office of departure of the recovery of **duties and other charges**.

V.5. Recovery of other charges for goods placed under transit in accordance with the ATA Convention or the Istanbul Convention

The customs authorities have notified a customs debt and an obligation to pay other charges for goods placed under transit in accordance with the ATA Convention or the Istanbul Convention. They then obtain evidence regarding the place where the events giving rise to the customs debt and the obligation to pay other charges occurred. Under **Article 169 IA,** they must immediately send all the necessary documents, including an authenticated copy of the evidence, to the authorities responsible for that place. They must simultaneously request confirmation of the receiving authorities' responsibility for recovery of the other charges.

The receiving authorities must acknowledge receipt of the information and state whether they are responsible for recovery of the other charges. For those purposes, the receiving authorities use the model discharge set out in Annex 33-05 indicating that claim proceedings have been started with respect to the guaranteeing association in the receiving Member State. If no response is received within 90 days, the sending authorities must immediately resume the recovery proceedings they started.

If the receiving authorities are responsible, they must start new proceedings for recovery of other charges, where appropriate after the period referred to in the preceding paragraph, and inform the sending authorities immediately.

The receiving authorities must if necessary collect, from the guaranteeing association with which they are connected, the duties and other charges due at the rates applicable in the Member State where those authorities are located.

As soon as the receiving authorities state that they are responsible for the recovery of other charges, the sending authorities must refund the guaranteeing association with which they are connected for any sums which that association may have deposited or provisionally paid.

The proceedings must be transferred within a period of 1 year from the date of expiry of validity of the carnet unless payment has become final pursuant to Article 7(2) or (3) of the ATA Convention or Article 9(1)(b) and (c) of Annex A to the Istanbul Convention.

V.6. Recovery of other charges for goods placed under temporary admission in accordance with the ATA Convention or the Istanbul Convention

Article 170 IA states that in case of recovery of other charges for goods placed under temporary admission in accordance with the ATA Convention or the Istanbul Convention, Article 169 IA applies *mutatis mutandis.*

V.7. Claim for payment from a guaranteeing association under the procedure for the ATA Convention and the Istanbul Convention

Article 171 IA says that where the customs authorities establish that the customs debt has been incurred for goods covered by an ATA carnet, they must make a claim against the guaranteeing association without delay. The coordinating customs office making the claim referred to in Article 86 DA must at the same time send the coordinating customs office for the jurisdiction where the goods were placed under temporary admission an information memo on the claim sent to the guaranteeing association. It must use the form set out in Annex 33-03.

The information memo must be accompanied by a copy of the non-discharged voucher, if the coordinating customs office has the voucher. The information memo may be used whenever necessary.

The taxation form referred to in Article 86 DA may be sent after the claim to the guaranteeing association is made, though not more than 3 months later than the claim and certainly not more than 6 months from the date on which the customs authorities start recovery proceedings. The taxation form is set out in Annex 33-04.

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