



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
CUSTOMS POLICY  
**Customs legislation**

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**TAXUD/458/2004 – REV 4**

# **Modernized Customs Code**

European Commission, B-1049 Brussels, Belgium. Tel: (32-2) 299 11 11.  
Office: MO51 1/71. Tel: direct line (32-2) 2987414. Fax: (32-2) 299.23.83.  
E – mail: james.douglas-hamilton@cec.eu.int



## **Preliminary impact assessment statement**

### **1. PROBLEM IDENTIFICATION**

Current customs procedures and processes are largely paper-based and are unnecessarily cumbersome, out of date and out of step with the modern, IT based trading environment. Member States' customs authorities have themselves introduced IT systems in order both to mitigate the negative impact of paper-based processes and to improve control of the flow of goods into and out of the Community. However, IT systems differ from Member State to Member State and the lack of common standards for use of IT in the customs area (apart from for the New Computerised Transit System – NCTS) effectively prevents electronic communication between these systems. This compromises efficient customs clearance and risk-based controls within the internal market. This situation is also contrary to the current policy of facilitating international trade (Doha round) and strengthening security and safety checks at the external border of the Community (*inter alia* the Container Security Initiative - CSI).

### **2. OBJECTIVE OF THE PROPOSAL**

The streamlining of customs procedures and processes and the adaptation of the rules towards common standards for IT systems will

- implement the *e*-Government initiative in the area of customs;
- fulfil the commitment to the 'better regulation' initiative in this area, by providing less complex and better structured rules and regrouping several Regulations;
- enhance the competitiveness of companies doing business in and with the Community, thus creating economic growth;
- increase security and safety at the external border, once common standards (including those for risk-analysis) are introduced and managed via a common IT framework;
- reduce the risk of fraud; and
- contribute to better coherence with other Community policies, such as indirect taxation, agricultural, commercial, environmental, health and consumer protection policy.

### **3. POLICY OPTIONS**

In order to achieve the above-mentioned objectives, a comprehensive revision of the Customs Code and the inclusion of other autonomous customs legislation (duty relief, issuing of certificates of origin, baggage control) is proposed.

The option of partially amending the Customs Code (e.g. only introducing the principle of electronic declarations and inter-operability between Member States' IT systems) is not suitable, given that it would perpetuate the existing complex procedures and the often divergent application of these rules resulting from this complexity.

The option of non-action would have even more negative effects, given that it would not even address the most urgent needs, such as the principle of electronic declarations and inter-operability.

Leaving customs legislation to Member States is not an option, given the exclusive Community competence in the area of external trade (Article 133 EC Treaty) and the need for common rules at the external border of the customs union (Articles 14 and 23 EC Treaty).

Consequently, the principles of subsidiarity and proportionality are respected.

#### **4. IMPACTS – POSITIVE AND NEGATIVE**

Positive impacts include lower costs for customs clearance, thanks to

- simpler procedures;
- more competition between customs service providers throughout the Community, due to standard procedures and data requirements;
- common guarantees for the use of several procedures, valid throughout the Community;
- pan-European procedures for companies doing business in several Member States;
- improved transparency and greater uniformity in the application of the customs rules; and
- better allocation of human resources to risk areas, thus increasing security and reducing the risk of irregularity.

Negative impacts are the cost of change-over to the electronic systems and, possibly, some reduction in employment as a result of increased competition throughout the Single Market, especially in areas where de-facto monopolies exist (e.g. in Member States which restrict a certain type of representation to customs agents established and registered in that country).

#### **5. FOLLOW-UP**

An external study in 2003 has allowed the Commission to gain a clearer understanding of the current situation in the Member States and of the potential cost and benefits.

The draft Customs Code has already been regularly discussed with EU customs administrations (in the Customs Code Committee) and traders (in the Trade Contact Group) and, since July 2004, the draft has also been available on the Europa website, for open consultation in line with the interactive policy making initiative by the Commission.

An extended impact assessment is not recommended, given that any estimate on cost savings through a common functionality of IT systems depends largely on the individual situation in each Member State. Under the external study attempts were made to gather such data, but Member States were not able to provide such information within a reasonable timeframe.

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**FINANCIAL STATEMENT**





Proposal for a

**REGULATION (EC) NO [...] OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**laying down the Community Customs Code**

Having regard to the Treaty establishing the European Community, and in particular Articles 26, 95, 133 and 135 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>3</sup>, has been repeatedly and substantially amended. Important legal changes have also occurred in recent years, both at Community and international level, such as the expiry of the ECSC Treaty and the entry into force of the Act of Accession on 1<sup>st</sup> May 2004, as well as the Kyoto Convention. Further changes are necessary, in order to achieve the most effective functioning of the internal market and to introduce procedures and instruments that will not only prevent fraud but will also simplify and rationalize the Community's Customs rules, as requested by the Council Resolution of 25<sup>th</sup> October 1996.<sup>4</sup>
- (2) The revised International Convention on the simplification and harmonization of Customs procedures<sup>5</sup>, hereinafter referred to as the 'Kyoto Convention', to which the Community is a Contracting Party, facilitates legitimate trade, promotes the use of risk management procedures enabling customs administrations to identify and target higher risk transactions more effectively and urges customs administrations to commit to the employment of automated systems, which are inherently more reliable and secure than paper-based procedures.
- (3) The use of Information Technology (IT) is a key element in ensuring trade facilitation and, at the same time, the effectiveness of customs controls, thus reducing costs for business. The *e-Europe 2005 initiative*<sup>6</sup> foresees interactive public services (*e-Government*), accessible to all and offered on multiple platforms. However, current procedures remain complicated and often paper-based and, while Member States have already developed and partially implemented their own strategies and systems for an electronic customs environment, these are driven by existing national practices, priorities and requirements. As a consequence, traders operating in more than one Member State have to comply with different conditions for electronic access, which in itself creates additional costs and hinders trade. Electronic communication between Member States' customs administrations is similarly hampered by this lack of common standards. Only a standardized integrated customs process can avoid high administrative costs and serious competitive disadvantage for companies doing business in the Community. It is necessary, therefore, to establish an agreed inter-operability framework to support the delivery of pan-

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<sup>1</sup> OJ No C [...] [...], p. [...]

<sup>2</sup> OJ No C [...] [...], p. [...]

<sup>3</sup> OJ No L 302, 19.10.1992, p. 1. as last amended by Regulation (EC) No [...] /2004, OJ C [...] [...], p. [...]

<sup>4</sup> OJ No C 332, 17.11.1996, p.1.

<sup>5</sup> OJ No L 86, 3.04.2003, p. 21

<sup>6</sup> COM (2002) 263 final, 28.5.2002

European e-Government services in the field of customs to citizens and enterprises, and to revisit the legislation affecting customs operations.

- (4) Such an approach is in line with the “better regulation” initiative, which is one of the commitments of the White Paper on European Governance<sup>7</sup> and aims at simplifying European legislation in order to reduce the cost of doing business in Europe and increase legal certainty for citizens.
- (5) The Communication from the Commission on a simple and paperless environment for Customs and Trade<sup>8</sup>, as endorsed by the Parliament, the Council and the European Economic and Social Committee, has specified these objectives as well as concrete measures for their implementation. One of the principal measures is the simplification of customs legislation.
- (6) The facilitation of legitimate trade and the fight against fraud will require simple, rapid and standard customs procedures and processes. Simplification of customs legislation will allow the use of modern tools and technology, promote the uniform application of customs legislation and provide the basis for efficient and simple clearance procedures.
- (7) The completion of the internal market, the removing of barriers to international trade and the need to ensure security and safety at the Community's external borders have transformed the role of customs, making them a central part of the globalization process and, in the monitoring and management of international trade, a catalyst to the competitiveness of countries and companies. The current customs legislation should therefore be examined in the light of the new economic reality and the new role of customs.
- (8) It is necessary to establish the legal principle that all customs and trade transactions are to be handled electronically and that IT systems for customs operations offer, in each Member State, the same facilities to traders and are fully inter-operational, with regard to both the systems of other border agencies (such as police, veterinary and environmental authorities) and to the customs systems of other Member States. The principle of a 'single window', 'one stop shop' and of a common portal will support this approach.
- (9) Customs procedures should be merged or aligned and the number of procedures reduced to those that are economically justified. Such a merger/alignment of procedures would entail other simplifications, such as the use of a single guarantee for all procedures, which are currently separately secured.
- (10) European best practice, such as the use of Single European Authorizations, should be promoted. Such authorizations would be granted by the customs office responsible for the place where the trader is established, holds his main accounts or performs his main economic activities and should be valid throughout the customs territory of the Community.
- (11) An equivalent level of protection in customs controls should be ensured for goods brought into or out of the customs territory of the Community. This implies a sharing of responsibilities and cooperation between inland and border customs offices, which will necessitate a review of the rules relating to the place where the customs debt is incurred.
- (12) Most customs rules traditionally relate to the collection of customs duties, but these rules need to be better aligned on the provisions relating to the collection, suspension or reimbursement of VAT and excise duties, without change to the scope of the tax provisions in force. Furthermore, procedures governing the control of health, security, safety and environment aim at ensuring

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<sup>7</sup> COM (2001) 428 final, 25.7.2001

<sup>8</sup> COM (2003) 452 final, 24.07.2003

compliance with marketing, food and hygiene standards as well as phytosanitary, veterinary and conservation requirements and depending on the Member State, these controls may be enforced by a mix of specialist agencies. The involvement of these many agencies in the control of goods passing across the external border makes an integrated approach a key element to the revision of customs legislation. The electronic transmission of harmonised data through common interfaces ('single window') will free traders from having to make numerous declarations to different agencies at the borders, often including the same or similar data. At the same time, the presentation and control of goods at different times and at different places by different agencies should also be avoided, through the concept of the 'one stop shop'.

- (13) The effective combating of fraud and the efficient functioning of the internal market require that penalties for infringements of the customs rules have comparable consequences in the Member States. It is necessary, therefore, to introduce a legal framework for the creation of common rules for administrative sanctions, in full respect of the Charter of Fundamental Rights.
- (14) In accordance with the Communication from the Commission concerning the protection of the Communities' financial interests and the Action Plan for 2004-2005<sup>9</sup>, it is important to adapt the legal and judicial framework for the protection of the financial interests of the European Union.
- (15) In accordance with the principle of proportionality, it is necessary, and appropriate for the effective functioning of the Customs Union as the pillar of the Internal Market, to revise the customs rules in order to ensure the appropriate monitoring of trade between the Community and third countries. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.
- (16) In the enlarged Community, it is necessary to provide for efficient mechanisms for the adoption of implementing provisions, explanatory notes, guidelines, and decisions on the use of inward and outward processing or temporary admission, as well as for the preparation of a common position in committees, working groups and panels introduced by or under international agreements dealing with the customs rules. Given the positive experiences with the management procedure used under Regulation (EEC) 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff<sup>10</sup>, the use of this procedure is extended to areas currently covered by the regulatory procedure.
- (17) Regulation (EEC) No 2913/92, establishing the Community Customs Code, has been amended several times. The amendments resulting from the current review of the customs rules lead to important changes both in the structure and the content of the Community Customs Code, to such an extent that it should be replaced by a new Regulation laying down the Community Customs Code. For the sake of transparency, the following Regulations have been included in this new Regulation laying down the Community Customs Code:
  - Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duties<sup>11</sup>,
  - Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing;<sup>12</sup>

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<sup>9</sup> COM(2004) 544 final, 9.8.2004

<sup>10</sup> OJ No L 256, 7.9.1987, p.1.

<sup>11</sup> OJ No L 105, 23.4.1983, p. 1.

<sup>12</sup> OJ No L 374, 31.12.1991, p.4

- Council Regulation (EC) No 82/2001 of 5 December 2000 concerning the definition of the concept of "originating products" and methods of administrative co-operation in trade between the customs territory of the Community and Ceuta and Melilla<sup>13</sup>,
- Council Regulation (EC) No 1207/2001 of 11 June 2001 on procedures to facilitate the issue of movement certificates EUR.1, the making-out of invoice declarations and forms EUR.2 and the issue of certain approved exporter authorizations under the provisions governing preferential trade between the European Community and certain countries<sup>14</sup>.

These Regulations, together with Regulation (EEC) No 2913/92, are replaced by the new arrangements in this Regulation and should therefore be repealed;

HAVE ADOPTED THIS REGULATION

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<sup>13</sup> OJ No L 2001, 20.1.2001, p. 1.

<sup>14</sup> OJ No L 165, 21.6.2001, p. 1.

**TITLE I**  
**GENERAL PROVISIONS**

**CHAPTER 1**

**MISSION OF CUSTOMS, SCOPE OF CUSTOMS LEGISLATION AND BASIC DEFINITIONS**

**Mission of customs**

*Article 1*

The mission of customs authorities, without prejudice to other tasks entrusted to them under national provisions, shall be, in particular :

- to co-operate closely with each other and, where appropriate, with other competent authorities within, and where international agreements provide for this, outside of the Community, so as to interact and perform their duties as though they were one administration and achieve equivalent results at every point of the customs territory of the Community; and
- to act in partnership with economic operators involved in international trade, so as to contribute towards the ability of European Union business to compete in the global market place.

The customs authorities shall, accordingly,

- facilitate international trade in goods by keeping customs formalities and controls to a level necessary for effective control using, wherever possible, electronic data exchange and by providing for information provided by traders to be shared between all authorities competent for formalities with regard to the import and export of goods ('single window') and for goods presented to be controlled by those authorities at the same time and the same place ('one stop shop');
- encourage compliance and ensure the correct application of the customs rules, taking into account the need for fair and equal treatment of economic operators throughout the Community;
- to ensure the correct application of and consistency with legislation in other fields pertaining to international trade in goods, such as fiscal, commercial, agricultural, environmental, conservation and health policy measures;
- to prevent and fight against fraud and to contribute to security and safety in the international trade supply chain;
- to enforce prohibitions and restrictions justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value or the protection of industrial or commercial property, including controls on chemical pre-cursors, counterfeit goods and cash entering or leaving the Community.

**Scope and application of customs rules**

*Article 2*

1. Customs rules shall consist of the provisions of this Code and the provisions adopted at Community level and, where appropriate, at national level, to implement them, as well as international agreements containing customs provisions, insofar as they are applicable in the Community. This Code shall apply, without prejudice to legislation in other fields pertaining to trade in goods between the customs territory of the Community and other countries or territories.

2. Except where otherwise provided, either under international conventions or customary practices of a limited geographic and economic scope or under autonomous Community measures, Community customs rules shall apply uniformly throughout the customs territory of the Community

3. Certain provisions of customs rules may also apply outside the customs territory of the Community within the framework of either legislation governing specific fields or international conventions.

### **Customs territory**

#### *Article 3*

1. The customs territory of the Community shall comprise:

- the territory of the Kingdom of Belgium,
- the territory of the Czech Republic,
- the territory of the Kingdom of Denmark, except the Faeroe Islands and Greenland,
- the territory of the Federal Republic of Germany, except the Island of Heligoland and the territory of Buesingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation),
- the territory of the Republic of Estonia,
- the territory of the Hellenic Republic,
- the territory of the Kingdom of Spain, except Ceuta and Melilla,
- the territory of the French Republic, except New Caledonia, Mayotte, Saint-Pierre and Miquelon, Wallis and Futuna Islands and French Polynesia,
- the territory of Ireland,
- the territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio,
- the territory of the Republic of Cyprus, in accordance with the provisions of the Act of Accession,
- the territory of the Republic of Latvia,
- the territory of the Republic of Lithuania,
- the territory of the Grand Duchy of Luxembourg,
- the territory of the Republic of Hungary,
- the territory of the Republic of Malta,
- the territory of the Kingdom of the Netherlands in Europe,
- the territory of the Republic of Austria,
- the territory of the Republic of Poland,
- the territory of the Portuguese Republic,
- the territory of the Republic of Slovenia,
- the territory of the Slovak Republic,
- the territory of the Republic of Finland,
- the territory of the Kingdom of Sweden,
- the territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man.

2. The following territories situated outside the territory of the Member States shall, taking the conventions and treaties applicable to them into account, be considered to be part of the customs territory of the Community:

(a) FRANCE

The territory of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (Official Journal of the French Republic of 27 September 1963, p. 8679),

(b) CYPRUS

The territory of the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia as defined in the Treaty concerning the Establishment of the Republic of Cyprus, signed in Nicosia on 16 August 1960 (United Kingdom Treaty Series No 4 (1961) Cmnd. 1252).

3. The customs territory of the Community shall include the territorial waters, the inland maritime waters and the airspace of the Member States, and the territories referred to in paragraph 2, except for the territorial waters, the inland maritime waters and the airspace of those territories which are not part of the customs territory of the Community pursuant to paragraph 1.

### **Definitions**

#### *Article 4*

For the purposes of this Code, the following definitions shall apply:

(1) 'Person' means:

- any natural person who is able to perform the legal act concerned according to the provisions in force;
- any legal person;
- where the possibility is provided for under the provisions in force, any association of persons recognized as having the capacity to perform legal acts but lacking the legal status of a legal person.

(2) 'Person established in the customs territory of the Community' means:

- in the case of a natural person, any person who is normally resident there;
- in the case of a legal person or an association of persons, any person that has his registered office, central headquarters or a permanent business establishment in the customs territory of the Community.

(3) 'Customs authorities' means the customs administrations of the Member States responsible for applying customs rules and any other authorities empowered by Member States to apply certain customs rules.

(4) 'Customs controls' means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status; such acts may consist of examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons.

(5) 'Customs supervision' means action taken in general by the customs authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed.

- (6) 'Customs formalities' means any requirement laid down in the customs rules or imposed by the customs authorities upon operators in respect of the control of the movement of goods, the presentation or examination of documents and other information, irrespective of form of medium, and of any application made for any purpose relating to a customs procedure.
- (7) 'Risk' means the likelihood of an event that may occur, with regard to the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods which do not have Community status, which
- prevents the correct application of Community or national measures; or
  - compromises the financial interests of the Community and its Member States; or
  - poses a threat to the Community's security and safety, to public health, the environment or to consumers.
- (8) 'Risk management' means the systematic identification of risk and the implementation of all measures necessary for limiting exposure to risk. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action, and regular monitoring and review of the process and its outcomes, based on international, Community and national sources and strategies.
- (9) 'Customs status' means the status of goods as Community or non-Community goods.
- (10) 'Community goods' means goods:
- wholly obtained in the customs territory of the Community and not incorporating goods imported from countries or territories not forming part of the customs territory of the Community;
  - imported from countries or territories not forming part of the customs territory of the Community which have been released for free circulation;
  - obtained or produced in the customs territory of the Community, either from goods referred to in the second indent alone or from goods referred to in the first and second indents.
- (11) 'Non-Community goods' means goods other than those referred to under (7) above or which have lost their Community status.
- (12) 'Customs procedure' means the legal situation under which goods are placed according to this Code. This covers
- release for free circulation;
  - special procedures (transit; storage; specific use; processing); and
  - export.
- (13) 'Customs declaration' means the act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure, with an indication, where appropriate, of the specific arrangement to be applied.
- (14) 'Declarant' means the person making the customs declaration in his own name or the person in whose name a customs declaration is made.



- (15) 'Holder of the procedure' means the person on whose behalf the customs declaration was made or the person to whom the rights and obligations of the above-mentioned person in respect of a customs procedure have been transferred.
- (16) 'Presentation of goods to customs' means the notification to the customs authorities, in accordance with the customs rules, of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities and their availability for customs controls.
- (17) 'Holder of the goods' means the person who is the owner of the goods or who has a similar right of disposal over them or who has physical control of them.
- (18) 'Release of goods' means the act whereby the customs authorities make goods available for the purposes stipulated by the customs procedure under which they are placed.
- (19) 'Customs debt' means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply to specific goods under the Common Customs Tariff.
- (20) 'Import duties' means:
- customs duties as laid down in the Common Customs Tariff and defined in Article 26 (3), payable on the importation of goods; and
  - other import duties introduced under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products.
- (21) 'Export duties' means:
- customs duties as laid down in the Common Customs Tariff and defined in Article 26 (3), payable on the exportation of goods; and
  - other export duties introduced under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products.
- (22) 'Debtor' means any person liable for payment of a customs debt.
- (23) 'Authorization' means an authorization under Article 10 or Article 114, which is granted to one or several specific persons (holder of the authorization).
- (24) 'Decision' means any official act by the customs authorities pertaining to customs rules giving a ruling on a particular case, such act having legal effects on one or more specific or identifiable persons (holder of the decision).
- (25) 'Provisions in force' means Community or national provisions in force.
- (26) 'Commercial policy measures' means non-tariff measures established, as part of the common commercial policy, in the form of Community provisions governing the import and export of goods, in particular surveillance or safeguard measures, quantitative restrictions or limits and import or export prohibitions;
- (27) 'Committee procedure' means the procedure referred to in Article 162.
- (28) 'Guidelines' means general guidance determined in accordance with the committee procedure which aims at ensuring the uniform application of this Code, its implementing provisions or the customs provisions of international agreements.

- (29) 'Explanatory notes' means rules determined in accordance with the committee procedure which provide a Community-wide interpretation of the provisions of this Code and its implementing provisions or the customs provisions of international agreements.

## CHAPTER 2

### RIGHTS AND OBLIGATIONS OF PERSONS WITH REGARD TO CUSTOMS RULES

#### Section 1

#### Provision of information

#### Exchange of data, data protection

##### *Article 5*

1. All exchange of data, accompanying documents, decisions and notifications between customs authorities and between economic operators and customs authorities required under the customs rules shall be done using electronic data processing techniques, except in cases to be determined in accordance with the committee procedure.
2. Where not otherwise specifically provided for in this Code, the committee procedure shall be used to determine
  - the rules defining and governing the messages to be exchanged between customs offices, as required for the application of the customs rules; and
  - a common data set and format of the data messages to be exchanged under the customs rules. This data shall contain the particulars necessary for risk analysis and the proper application of customs controls, using, where appropriate, international standards and commercial practices.
3. All information which is by its nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed, other than for the purposes of customs controls as provided for under Article 20 (4), by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged or authorized to do so pursuant to the provisions in force, particularly in respect of data protection, or in connection with legal proceedings.

Communication of confidential data to the customs administrations and other bodies (e.g. security agencies) of third countries is only permitted in the framework of an international agreement.

The disclosure or communication of information shall take place in full respect of data protection provisions in force, in particular Directive 95/46/EC<sup>15</sup> and Regulation (EC) No 45/2001<sup>16</sup>.

#### Memorandum of understanding

##### *Article 6*

1. Customs authorities and economic operators may, in particular under a memorandum of understanding, exchange information not specifically required under the customs rules, for the purpose

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<sup>15</sup> OJ No L 281, 23.11.1995, p.31.

<sup>16</sup> OJ NO L 82, 22.03.1997, p. 7.

of mutual co-operation in the identification and counteraction of risk. This may include access to the economic operator's computer system(s) by the customs authorities.

2. Any information provided by one party to the other in the course of this co-operation shall be confidential unless both parties agree otherwise. A memorandum of understanding shall continue in force until either party gives the other written notice of its wish to discontinue or amend such co-operation and shall not create binding legal obligation on either party.

### **Provision of information by the customs authorities**

#### *Article 7*

1. Any person may request information concerning the application of customs legislation from the customs authorities. Such a request may be refused where it does not relate to an import or export operation actually envisaged.

2. Without prejudice to Article 22, the information shall be supplied to the applicant free of charge.

3. Customs administrations shall maintain a dialogue with economic operators and other authorities involved in international trade in goods in order to ensure that the needs of all parties involved are taken into account and that changes in legislation or administrative practices are published before their implementation. They shall promote transparency by making the legislation, administrative rulings, applications forms etc. pertaining to international trade in goods available to economic operators free of cost and, wherever practical, through the Internet.

### **Provision of information to the customs authorities**

#### *Article 8*

1. For the purposes of applying the customs rules, any person directly or indirectly involved in the operations concerned for the purposes of trade in goods shall provide the customs authorities with all the requisite documents and information, irrespective of the medium used, and all the requisite assistance, at their request and by any time limit prescribed.

2. Without prejudice to the possible application of administrative penalties or penalties under criminal law, the lodging of a summary or customs declaration, including simplified declaration or notification, or of an application for an authorization, or the provision of any information required by customs authorities under the customs rules by the person defined under those rules, shall render the declarant, applicant or provider of the information responsible for

- the accuracy of the information given in the declaration, application or in other relevant form,
- the authenticity of any documents submitted or made available, and
- where applicable, compliance with all of the obligations relating to the placing of the goods in question under the procedure concerned, or to the conduct of the authorized operations.

3. Where the declaration or application is lodged or requested information is provided by a representative of the declarant or applicant, the representative shall also be bound by the obligations of paragraph 2.

4. Member States shall co-operate with the Commission in the establishment of an electronic system for the common registration and maintenance of records of

- all economic operators directly or indirectly involved in the trade in goods,

- of any authorization under the customs rules granted to any economic operator,  
and for common access to that data.

The committee procedure shall be used to determine the standard form and content of the data to be registered and the rules for access to that data.

## **Section 2**

### **Customs representation**

#### *Article 9*

1. Any person may appoint a representative in his dealings with the customs authorities to perform the acts and formalities laid down in the customs rules.

A customs representative can act as a fiscal representative, as provided for under VAT and excise provisions in force.

2. Such customs representation may be:

- direct, in which case the representative shall act in the name of and on behalf of another person, or
- indirect, in which case the representative shall act in his own name but on behalf of another person.

3. Except in the cases referred to in Article 93 (3), such a representative must be established within the customs territory of the Community.

4. A representative must state that he is acting on behalf of the person represented, specify whether the customs representation is direct or indirect and be empowered to act as a representative.

A person who fails to state that he is acting in the name of or on behalf of another person or who states that he is acting in the name of or on behalf of another person without being empowered to do so shall be deemed to be acting in his own name and on his own behalf.

5. The customs authorities may require any person stating that he is acting in the name of or on behalf of another person to produce evidence of his powers to act as a representative, except where a person is entitled to act on behalf of another person pursuant to provisions determined in accordance with the committee procedure.

6. Where a person acts in the name of or on behalf of another person or persons as a customs representative on a regular and commercial basis, he may be accredited by the customs authorities and granted the status of 'authorized economic operator' in accordance with Article 10.

## **Section 3**

### **Authorized Economic Operator**

#### *Article 10*

1. Customs authorities, if necessary following consultation with other competent authorities, shall grant, subject to the criteria provided for in paragraph 2, the status of 'authorized economic operator' to any economic operator established in the customs territory of the Community.

An 'authorized economic operator' shall benefit from facilitations with regard to customs controls relating to security and safety and/or from simplifications provided for under the customs rules.

The status of 'authorized economic operator' shall, subject to the rules and conditions laid down in paragraph 2, be recognized by the customs authorities in all Member States, without prejudice to customs controls. Customs authorities shall, on the basis of the recognition of the status of 'authorized economic operator' and provided that the requirements related to a specific type of simplification provided for in Community customs legislation are fulfilled, authorize the operator to benefit from that simplification.

2. The criteria for the granting of the status of 'authorized economic operator' shall include:
  - an appropriate record of compliance with customs requirements;
  - a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
  - where appropriate, proven financial solvency;
  - where appropriate, practical standards of competence or professional qualifications directly related to the activity carried out; and
  - where applicable, appropriate security and safety standards.

The committee procedure shall be used to determine the rules

- for the granting of the status of 'authorized economic operator';
- for the accreditation of customs representatives, in accordance with Article 9 (6);
- for the granting of authorizations for the use of simplifications;
- laying down which customs authority is competent for the granting of such status and authorizations;
- for the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety, taking into account the rules for common risk management;
- for consultation with and provision of information to other customs authorities;

and the conditions under which

- an authorization may be limited to one or more Member States;
- the status of 'authorized economic operator' may be suspended or withdrawn; and
- the requirement of being established in the Community may be waived for specific categories of authorized economic operators, taking into account, in particular, international agreements.

3. The holder of the authorization shall notify the customs authorities of all factors arising after the authorization was granted which may influence its continuation or content.

## **Section 4**

### **Decisions relating to the application of customs rules**

#### *Article 11*

1. Where one or more persons request that the customs authorities take a decision relating to the application of the customs rules, they shall supply all the information required by those authorities in order for them to be able to take a decision.

2. Such decision shall be taken, and the applicant(s) notified, at the earliest opportunity or, at the latest, within two months from the date on which the said request is received by the customs authorities, unless a different period has been laid down in the customs rules.

However, that period may be exceeded where the customs authorities are unable to comply with it. In that case, those authorities shall so inform the applicant(s) before the expiry of the above-mentioned period, stating the grounds which justify exceeding it and indicating the further period of time which they consider necessary in order to give a decision on the request.

3. Unless otherwise specified in the customs rules or stipulated in the decision, the decision shall take effect from the date that the notification of the decision is received, or is deemed to have been received, by the applicant. Except in the cases provided for in Article 16 (2), decisions adopted shall be enforceable by the customs authorities from that date.

4. Decisions taken by the customs authorities which either reject requests or are detrimental to the person(s) to whom they are addressed shall set out the grounds on which they are based. They shall refer to the right of appeal provided for in Article 15.

5. Without prejudice to rules laid down in other fields which stipulate the cases in which and the conditions under which decisions are invalid or become null and void, the customs authorities who issued a decision may annul, amend or revoke it where it does not conform with the customs rules or their interpretation, unless such rules stipulate otherwise.

6. Unless otherwise requested or specified in the customs rules, decisions taken by the customs authorities are valid throughout the customs territory of the Community.

### **Annulment of favourable decisions**

#### *Article 12*

1. A decision favourable to the person(s) concerned shall be annulled if it was issued on the basis of incorrect or incomplete information and:

- the applicant knew or should reasonably have known that the information was incorrect or incomplete, and
- such decision could not have been taken on the basis of correct or complete information.

2. The person(s) to whom the decision was addressed shall be notified of its annulment.

3. Annulment shall take effect from the date on which the decision annulled was originally taken, unless otherwise specified in the customs rules.

### **Revocation and amendment of favourable decisions**

#### *Article 13*

1. A decision favourable to the person(s) concerned shall be revoked or amended where, in cases other than those referred to in Article 12, one or more of the conditions laid down for its issue were not or are no longer fulfilled.

2. A favourable decision addressed to several persons may be revoked only in respect of the person(s) concerned who fail(s) to fulfil an obligation imposed under that decision.

3. The person(s) to whom the decision is addressed shall be notified of its revocation or amendment.

4. The revocation or amendment of the decision shall take effect from the date that the notification of the revocation or amendment is received, or is deemed to have been received, by the

person(s) concerned. However, in exceptional cases where the legitimate interests of the person(s) to whom the decision is addressed so require, the customs authorities may defer the date when revocation or amendment takes effect.

## **Classification and origin decisions**

### *Article 14*

1. The customs authorities shall issue classification or origin decisions on request. Such a request may be refused where it does not relate to an import or export operation actually envisaged.
2. Without prejudice to Article 22, classification or origin decisions shall be supplied to the applicant free of charge.
3. Classification or origin decisions shall be binding only in respect of the tariff classification or determination of the origin of goods and on
  - the customs authorities, as against the holder, only in respect of goods on which customs formalities are completed after the date of the decision, and
  - on the holder, as against the customs authorities, from the date he receives notification of the decision.
4. Classification or origin decisions shall be valid for a period of three years from the date of notification.
5. The holder(s) of such a decision must be able to prove that:
  - in the case of a classification decision: the goods declared correspond in every respect to those described in the decision,
  - in the case of an origin decision: the goods concerned and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the decision.
6. By way of derogation from Article 11 (5) and Article 12, classification and origin decisions shall be annulled where they are based on inaccurate or incomplete information from the applicants.
7. Classification or origin decisions shall be revoked in accordance with Article 11 (5) and Article 13. They cannot be amended.
8. Notwithstanding Article 13, the conditions under which and the moment when the decision ceases to be valid, as well as the conditions under which it may still be used, shall be determined in accordance with the committee procedure.
9. Decisions on the application of other customs rules shall be issued where this is provided for under provisions laid down in accordance with the committee procedure.

## **Section 5**

### **Appeals**

#### **Lodging of an appeal**

### *Article 15*

1. Any person shall have the right to appeal against any decision taken by the customs authorities which relates to the application of the customs rules and which concerns him directly and individually.

Any person who has applied to the customs authorities for a decision relating to the application of the customs rules and has not obtained a decision on that request within the period referred to in Article 11 (2) shall also be entitled to exercise the right of appeal.

The appeal must be lodged in electronic or written form in the Member State where the decision has been taken or applied for.

2. The right of appeal may be exercised:
  - (a) initially, before the customs authorities or another body which may be a judicial authority or an equivalent specialized body designated for that purpose by the Member States;
  - (b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialized body, according to the provisions in force in the Member States.

### **Suspension of implementation**

#### *Article 16*

1. The lodging of an appeal shall not cause implementation of the disputed decision to be suspended.
2. The customs authorities shall, however, suspend implementation of such decision, in whole or in part, where they have good reason to believe that the disputed decision is inconsistent with the customs rules or that irreparable damage may be caused to the person concerned.
3. Where the disputed decision has the effect of causing import duties or export duties to be charged, suspension of implementation of that decision shall be subject to the existence or lodging of a guarantee. However, such guarantee need not be required where such a requirement would be likely, due to the debtor's circumstances, to cause serious economic or social difficulties.

### **Decision on the appeal**

#### *Article 17*

1. Article 11 applies with regard to decisions by the customs authorities on appeals.
2. Insofar as no Community provisions exist, the provisions for the implementation of the appeals procedure shall be determined by the Member States in such a way as to allow for the prompt review and correction of decisions taken by the customs authorities relating to the application of the customs rules.

### **Criminal law**

#### *Article 18*

This Section shall not apply to appeals lodged with a view to the annulment or revision of a decision taken by the customs authorities on the basis of criminal law.

### **Section 6 Administrative penalties**

#### *Article 19*

1. Without prejudice to the application of criminal law, each Member State shall introduce administrative penalties to be applied in cases of failure to comply with the customs rules. Such penalties shall be effective, proportionate and dissuasive.



2. Administrative penalties shall take the form of
  - a pecuniary charge by the customs authorities, including a settlement applied in place of and in lieu of a criminal penalty; and / or
  - the withdrawal, suspension or revision of any authorization held by the person infringing the customs rules.

Where administrative penalties are combined with criminal penalties, undue aggregation of such penalties shall be avoided.

3. In order to ensure equal treatment of economic operators throughout the customs territory of the Community, the criteria and conditions for the application of administrative penalties for infringements of the customs rules shall be determined in accordance with the committee procedure.

The committee procedure shall determine, in particular:

- the circumstances which aggravate or minimize an infringement and which influence the amount of the penalty;
- a list of the types of infringements to which a penalty may apply;
- the minimum and the maximum amount to be charged, according to the type of infringement;
- the effect of the application of administrative penalties on the status of the authorised economic operator.

5. Member States shall notify the Commission, by [...] <sup>17</sup> at the latest, of the national provisions in force for the application of administrative penalties for infringements of the customs rules.

## **Section 7**

### **Customs controls**

#### *Article 20*

1. The customs authorities may, in accordance with the conditions laid down by the provisions in force, carry out all of the controls they deem necessary to ensure that customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and other territories, and the presence of non-Community goods, are correctly applied. Such controls may be carried out outside the customs territory of the Community where an international agreement provides for this.

2. Customs controls, other than random checks, shall be based on risk analysis using electronic data processing techniques, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national, Community and, where available, international level.

Member States, in co-operation with the Commission, shall develop, maintain and employ an electronic system for the implementation of risk management.

The committee procedure shall be used

- for determining a common risk management framework,
- for establishing common criteria and priority control areas, and

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<sup>17</sup> 12 months after the entry into force of this Regulation.

- for determining the rules defining and governing the exchange or risk information and analysis between customs administrations.

3. Where controls are performed by authorities other than the customs authorities, such controls shall be performed in close co-ordination with the customs authorities, wherever possible at the same time and place.

4. In the framework of the controls provided for in this Article, customs and other competent authorities, such as veterinary and police authorities, may communicate data received, in the context of the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and other territories, and the presence of non-Community goods, between themselves, between the customs authorities of Member States, and the Commission where this is required for the purposes of minimising risk.

5. The customs authorities may, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant or his representative, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes. Those authorities may also examine the goods where it is still possible for them to be presented.

6. No control or formalities shall be carried out in respect of:

- the cabin and hold baggage of persons taking an intra-Community flight;
- the baggage of persons making an intra-Community sea crossing.

The provisions of this paragraph apply without prejudice to:

- the security and safety checks carried out on baggage by the authorities of the Member States, port or airport authorities or carriers;
- checks linked to prohibitions or restrictions laid down by the Member States, provided they are compatible with the Treaty.

### **Keeping of documents and other information**

#### *Article 21*

1. The person(s) concerned shall keep the documents and information referred to in Article 8 for the purposes of customs controls, for the period laid down in the provisions in force and for at least three calendar years, irrespective of the medium used. That period shall run from the end of the year in which:

- a) in the case of goods released for free circulation in circumstances other than those referred to in (b), or goods declared for export: from the end of the year in which the declarations for release for free circulation or export are accepted;
- b) in the case of goods released for free circulation duty free or at a reduced rate of import duty on account of their end-use: from the end of the year in which they cease to be subject to customs supervision;
- c) in the case of goods placed under another customs procedure: from the end of the year in which the customs procedure concerned has ended.

2. Without prejudice to the provisions of Article 59 (5), where a customs control carried out by the customs authorities in respect of a customs debt shows that the relevant entry in the accounts has to be corrected, the documents shall be kept for one year beyond the time limit provided for in paragraph 1.

### **Fees and costs**

#### *Article 22*

1. No fees shall be charged by customs authorities for the performance of customs controls or any other application of the customs rules during the normal opening hours of their competent customs offices.

2. However, the customs authorities may charge fees or recover costs where specific services are rendered, in cases determined and by the rules laid down in accordance with the committee procedure.

These cases shall include:

- attendance, where requested, by customs staff outside normal office hours or at other than customs premises;
- analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions supplied under Article 14 or the provision of information under Article 7;
- the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than that of using customs staff are involved;
- exceptional control measures, where these are necessary due to the nature of the goods or to potential risk.

## **CHAPTER 3**

### **CURRENCY CONVERSION, TIME LIMITS AND SIMPLIFICATION**

#### **Currency conversion**

##### *Article 23*

1. Where the conversion of currency is necessary

- because factors used to determine the customs value of goods are expressed in a currency other than that of the Member State where the customs value is determined, or
- because the value of the EUR is required in national currencies for the purposes of determining the tariff classification of goods, value thresholds and the amount of import or export duties,

the rate of exchange applicable shall be that published, or made available on the Internet, by the competent authorities and shall reflect, as effectively as possible, the current value of the converted currency in terms of the currency of the Member State.

2. The value of the EUR in national currencies to be applied within the framework of the customs rules in other cases shall be fixed once a year.

3. Detailed rules for the implementation of paragraphs 1 and 2 shall be determined in accordance with the committee procedure.

#### **Time limits**

*Article 24*

1. Where a period, date or time limit is laid down in the customs rules, such period shall not be extended and such date or time limit shall not be deferred unless specific provision is made in the provisions concerned.
2. The rules applicable to periods, dates and time limits set out in Regulation (EEC, Euratom) No.1182/71<sup>18</sup> shall apply to time limits set within the customs rules, except where other specific provisions apply.

**Simplification**

*Article 25*

The committee procedure shall be used to determine in which cases and under which conditions the application of this Code may be simplified.

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<sup>18</sup> OJ No L 124, 08.06.1971, p.1.

## TITLE II

### FACTORS ON THE BASIS OF WHICH IMPORT OR EXPORT DUTIES AND OTHER MEASURES PRESCRIBED IN RESPECT OF TRADE IN GOODS ARE APPLIED

#### CHAPTER 1

#### COMMON CUSTOMS TARIFF AND TARIFF CLASSIFICATION OF GOODS

##### *Article 26*

1. Duties legally owed where a customs debt is incurred shall be based on the Common Customs Tariff.
2. The other measures prescribed by Community provisions governing specific fields relating to trade in goods shall, where appropriate, be applied according to the tariff classification of those goods.
3. The Common Customs Tariff comprises:
  - (a) the combined nomenclature of goods;
  - (b) any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and which is established by Community provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;
  - (c) the conventional or autonomous import duties normally applicable to goods covered by the combined nomenclature;
  - (d) the preferential tariff measures contained in agreements which the Community has concluded with certain countries or groups of countries and which provide for the granting of preferential tariff treatment;
  - (e) preferential tariff measures adopted unilaterally by the Community in respect of certain countries, groups of countries or territories;
  - (f) autonomous measures providing for a reduction in or exemption from import duties chargeable on certain goods;
  - (g) favourable tariff treatment stipulated for certain goods by reason of their nature or end-use in the framework of measures referred to under (c), (d), (e), (f) or (h);
  - (h) other measures in the tariff provided for by other Community legislation, such as anti-dumping, countervailing, safeguard, retaliation or export duties.
4. Without prejudice to the rules on flat-rate charges, the measures referred to in paragraph 3 (d), (e), (f) and (g) shall apply at the declarant's request instead of those provided for in subparagraph (c) where the goods concerned fulfil the conditions laid down by those first-mentioned measures. An application may be made retrospectively within the stipulated time limit and provided that the relevant conditions are fulfilled.
5. Where application of the measures referred to in paragraph 3 (d), (e), (f), (g), or the exemption from measures referred to in paragraph 3 (h), is restricted to a certain volume of imports, it shall cease:
  - (a) in the case of tariff quotas: as soon as the stipulated limit on the volume of imports or exports is reached;
  - (b) in the case of tariff ceilings: by regulation of the Commission.

6. 'Tariff classification' of goods means the determination, according to the rules in force, of one of the following subheadings under which goods are to be classified for the purpose of applying the measures attached to that subheading:

- (a) the subheading of the combined nomenclature or the subheading of any other nomenclature referred to in paragraph 3 (b): or
- (b) the subheading of any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and which is established by Community provisions governing specific fields with a view to the application of measures other than tariff measures relating to trade in goods.

## CHAPTER 2

### ORIGIN OF GOODS

#### Section 1

#### Non-preferential origin

##### Scope

##### *Article 27*

Except as otherwise provided, the provisions of this Section define the non-preferential origin of goods for the purposes of:

- (a) applying the Common Customs Tariff with the exception of the measures referred to in Article 26 (3) (d) and (e);
- (b) applying measures other than tariff measures established by Community provisions governing specific fields relating to trade in goods;
- (c) applying other Community measures relating to the origin of goods.

##### Acquisition of origin

##### *Article 28*

- 1 Goods wholly obtained in a single country originate in that country.
- 2 Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last substantial transformation.

##### Proof of origin

##### *Article 29*

1. Customs rules or other Community legislation governing specific fields may provide that an electronic or written document must be produced as proof of the origin of goods.
2. Notwithstanding the production of that document, the customs authorities may, in the event of serious doubt, require any additional proof to ensure that the indication of origin does comply with the rules laid down by the relevant Community legislation.
3. A document justifying origin may also be issued in the Community when the exigencies of trade so require.
4. Documents justifying origin, as referred to in paragraphs 1 and 3, must comply with the rules prescribed for that purpose.

## **Section 2**

### **Preferential origin of goods**

#### *Article 30*

1. The rules on preferential origin shall lay down the conditions governing acquisition of origin which goods must fulfil in order to benefit from the measures referred to in Article 26 (3) (d) or (e) and, where appropriate, from non tariff preferential measures, as well as the procedures relating thereto.

Those rules shall:

- (a) in the case of goods benefiting from preferential measures contained in agreements which the Community has concluded with certain countries or groups of countries, be determined in those agreements;
- (b) in the case of goods benefiting from preferential measures adopted unilaterally by the Community in respect of certain countries, groups of countries or territories other than those referred to under (c), be determined in accordance with the committee procedure;
- (c) in the case of goods benefiting from preferential measures contained in preferential arrangements in favour of the overseas countries and territories associated with the Community, be determined in accordance with Article 187 of the EC Treaty;

2. The measures necessary for the implementation within the Community of the rules referred to in paragraph 1 shall be determined in accordance with the committee procedure.

## **CHAPTER 3**

### **VALUE OF GOODS FOR CUSTOMS PURPOSES**

#### **Scope of this Chapter**

##### *Article 31*

1. The provisions of this Chapter shall determine the customs value for the purposes of applying the Common Customs Tariff and non-tariff measures laid down by Community provisions governing specific fields relating to trade in goods.

2. Specific rules may be determined, in accordance with the committee procedure, to determine the customs value in specific cases where obligations deriving from international agreements, or with regard to goods for which a customs debt is incurred after the use of a special procedure, are to be taken into account.

#### **Transaction value**

##### *Article 32*

1. The customs value of imported goods shall be the transaction value: that is the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted, where necessary, in accordance with paragraph 4, provided:

- (a) that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:
  - are imposed or required by a law or by the public authorities in the Community,
  - limit the geographical area in which the goods may be resold, or

- do not substantially affect the value of the goods;
  - (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
  - (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with paragraph 4; and
  - (d) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes under paragraph 2.
2. In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related shall not in itself be sufficient grounds for regarding the transaction value as unacceptable. Where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the declarant or otherwise, the customs authorities have grounds for considering that the relationship influenced the price, they shall notify the declarant of their grounds and he shall be given a reasonable opportunity to respond. If the declarant so requests, the notification of the grounds shall be in writing.
3. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instrument and may be made directly or indirectly.
4. Those elements which, in determining the customs value, shall be added to, or deducted from, the price actually paid or payable, shall be specified in the provisions laid down in accordance with the committee procedure.

### **Secondary methods of customs valuation**

#### *Article 33*

1. Where the customs value cannot be determined under Article 32, it is to be determined by proceeding sequentially through subparagraphs (a), (b), (c) and (d) of paragraph 2 to the first subparagraph under which it can be determined, subject to the provision that the order of application of subparagraphs (c) and (d) shall be reversed if the declarant so requests; it is only when such value cannot be determined under a particular subparagraph that the provisions of the next subparagraph in a sequence established by virtue of this paragraph can be applied.
2. The customs value as determined under this Article shall be:
- (a) the transaction value of identical goods sold for export to the customs territory of the Community and exported at or about the same time as the goods being valued;
  - (b) the transaction value of similar goods sold for export to the customs territory of the Community and exported at or about the same time as the goods being valued;
  - (c) the value based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the customs territory of the Community in the greatest aggregate quantity to persons not related to the sellers;
  - (d) the computed value, consisting of the sum of:



- the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the customs territory of the Community; and
- the cost or value of
  - (i) transport and insurance of the imported goods, and
  - (ii) loading and handling charges associated with the transport of the imported goods

to the place of introduction into the customs territory of the Community.

3. Any further conditions and rules for the application of paragraph 2 shall be determined in accordance with the committee procedure.

### **Fall back method**

#### *Article 34*

1. Where the customs value of imported goods cannot be determined under Articles 32 or 33, it shall be determined, on the basis of data available in the customs territory of the Community, using reasonable means consistent with the principles and general provisions of:

- the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade,
- Article VII of the General Agreement on Tariffs and Trade,
- the provisions of this Chapter.

2. A customs value shall not be determined under paragraph 1 on the basis of:

- (a) the selling price in the customs territory of the Community of goods produced in that territory;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with Article 33 (2) (d);
- (e) prices for export to a country not forming part of the customs territory of the Community;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

**TITLE III**  
**GUARANTEES AND CUSTOMS DEBT**

**CHAPTER 1**  
**GUARANTEE FOR A POTENTIAL OR EXISTING CUSTOMS DEBT**

**General provisions**

*Article 35*

- 1 Unless otherwise specified in this Code, this Chapter provides for rules applicable to guarantees for customs debts which have been incurred or which may be incurred.
- 2 Where, in accordance with the customs rules, the customs authorities require a guarantee to be provided in order to ensure payment of a customs debt and of other charges, such as VAT and excise duty, in so far as the relevant provisions provide for them, it shall be provided by the debtor or the person who may become liable for that debt.
- 3 The customs authorities shall require only one guarantee to be provided in respect of specific goods or a specific declaration. The guarantee provided for a specific declaration shall apply to all goods covered by or released against that declaration, whether or not that declaration is correct.
- 4 The customs authorities may permit the guarantee to be provided by a person other than the person from whom it is required.
- 5 At the request of the person referred to in paragraph 2 or 4, the customs authorities may authorize, in accordance with Article 38, a comprehensive guarantee to be provided to cover two or more operations, declarations or procedures.
- 6 No guarantee shall be required from States, regional and local government authorities and other bodies governed by public law, in respect of the activities in which they engage as public authorities. Other cases in which no guarantee or a reduced guarantee shall be required shall be determined in accordance with the committee procedure.
- 7 The customs authorities may waive the requirement for provision of a guarantee where the amount to be secured does not exceed the statistical threshold for declarations.
- 8 Unless determined otherwise in accordance with the committee procedure, a guarantee accepted or authorized by the customs authorities shall be valid throughout the customs territory of the Community, for the purposes for which it is given.

**Compulsory guarantee**

*Article 36*

- 1 Where the customs rules make it compulsory for a guarantee to be provided, and subject to the specific provisions laid down in accordance with the committee procedure, the customs authorities shall fix the amount of such guarantee at a level equal to:
  - the precise amount of the customs debt or debts in question where that amount can be established with certainty at the time when the guarantee is required,
  - in other cases the maximum amount, as estimated by the customs authorities, of the customs debt or debts, which have been or may be incurred.

2. Without prejudice to Article 38, where a comprehensive guarantee is provided for customs debts which vary in amount over time, the amount of such guarantee shall be set at a level enabling the customs debts in question to be covered at all times.

### **Optional guarantee**

#### *Article 37*

1. Where the customs rules provide that the provision of a guarantee is optional, such guarantee shall be required by the customs authorities if they consider that a customs debt is not certain to be paid within the prescribed period. Its amount shall be fixed by those authorities so as not to exceed the level provided for in Article 36.

2. The guarantee referred to in paragraph 1 shall be required:

- at the time of application of the rules for which such a guarantee is to be provided, or
- at any subsequent time when the customs authorities find that the customs debt is not certain to be paid within the prescribed period.

### **Comprehensive guarantee**

#### *Article 38*

1. The authorization referred to in Article 35 (5) shall be granted only to persons who

- are established in the Community;
- have not committed serious or repeated offences against customs or tax law; and
- are regular users of the procedures involved or are known to the customs authorities to have the capacity to fulfil their obligation in relation to these procedures.

2. Where a comprehensive guarantee is to be provided for customs debts which may be incurred, a person who has been granted the status of 'authorized economic operator', in accordance with Article 10, may further be authorized to use a comprehensive guarantee for a reduced amount or to have a guarantee waiver.

The additional criteria for this authorization shall include:

- (a) the correct use of the procedure concerned during a given period;
- (b) co-operation with the customs authorities, and
- (c) in respect of the guarantee waiver, a good financial standing which is sufficient to fulfil the commitments of the said person.

3. The detailed rules for authorizations granted under paragraphs 1 and 2 shall be determined in accordance with the committee procedure.

4. In cases where a customs debt may be incurred, the following provisions shall apply, where appropriate, in respect of a specific procedure:

- (a) The guarantee waiver authorized in accordance with paragraph 2 shall not apply to goods which, as determined in accordance with the committee procedure, are considered to present increased risks.
- (b) In line with the principles underlying paragraph 2, use of the comprehensive guarantee for a reduced amount may be temporarily prohibited in accordance with the committee procedure as an exceptional measure in special circumstances.

- (c) In line with the principles underlying paragraph 2, use of the comprehensive guarantee may be temporarily prohibited in accordance with the committee procedure in respect of goods which have been identified as being subject to large-scale fraud while under a comprehensive guarantee.

### **Types of guarantee**

#### *Article 39*

1. A guarantee may be provided by:
  - a cash deposit; or
  - a guarantor; or
  - another type of guarantee where provisions laid down in accordance with the committee procedure so provide and where such a guarantee provides equivalent assurance that the customs debt will be paid.
2. The person required to provide a guarantee shall be free to choose between the types of guarantee laid down in paragraph 1.

However, the customs authorities may refuse to accept the type of guarantee proposed where it is incompatible with the proper functioning of the customs procedure concerned. The same shall apply as regards the amount of guarantee proposed. The customs authorities may require that the type of guarantee chosen be maintained for a specific period.

### **Cash deposit**

#### *Article 40*

1. A cash deposit shall be made in EUR or in the currency of the Member State in which the guarantee is required.

The submission of any instrument recognized by the customs authorities as a means of payment shall be deemed equivalent to a cash deposit.

2. The customs authorities may accept a cash deposit which does not fulfil the conditions of paragraph 1 where they consider that such guarantee is certain to ensure payment of the customs debt.
3. A guarantee in the form of a cash deposit or payment deemed equivalent to a cash deposit shall be given in accordance with the provisions in force in the Member State in which the guarantee is required.

### **Guarantor**

#### *Article 41*

1. The guarantor must be a third person established in the customs territory of the Community. The guarantor must be approved by the customs authorities of the Member State requiring the guarantee, unless the guarantor is a bank or other officially recognized financial institution accredited in the Community.
2. The guarantor shall undertake in writing to pay jointly and severally with the debtor the secured amount of a customs debt which falls to be paid.

The undertaking of the guarantor shall also cover, within the limits of the secured amount, amounts of import or export duties which fall to be paid following *a posteriori* controls.

3. The customs authorities may refuse to approve the guarantor or type of guarantee proposed where the latter do not appear certain to ensure payment of the customs debt within the prescribed period.

### **Additional or replacement guarantee**

#### *Article 42*

Where the customs authorities establish that the guarantee provided does not ensure, or is no longer certain or sufficient to ensure, payment of the customs debt within the prescribed period, they shall require the person referred to in Article 35 (2), at his option, to provide additional guarantee or to replace the original guarantee with a new guarantee.

### **Release of the guarantee**

#### *Article 43*

1. The guarantee shall not be released until such time as the customs debt in respect of which it was given is extinguished or can no longer arise. Once the customs debt is extinguished or can no longer arise, the guarantee shall be released forthwith.

2. Once the customs debt has been extinguished in part, or may arise only in respect of part, of the amount which has been secured, part of the guarantee shall be released accordingly at the request of the person concerned, unless the amount involved does not justify such action.

## **CHAPTER 2**

### **INCURRENCE OF A CUSTOMS DEBT**

#### **Section 1**

#### **Customs debt on importation**

#### **Release for free circulation, temporary admission**

#### *Article 44*

1. A customs debt on importation shall be incurred through the placing of non-Community goods under:

- (a) release for free circulation, or
- (b) temporary admission with partial relief from import duties.

2. A customs debt shall be incurred at the time of acceptance of the customs declaration in question.

3. The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor.

Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part of the duties legally owed not being collected, the person(s) 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, shall also be debtors.

## **Special provisions**

### *Article 45*

1. Where a prohibition of drawback of, or exemption from, import duties applies to non-originating goods used in the manufacture of products, for which a proof of origin is issued or made out in the framework of a preferential arrangement between the Community and certain countries or group of countries, a customs debt on importation shall be incurred for these products, through:
  - the acceptance of the export declaration relating to the products in question, obtained under inward processing,
  - the acceptance of the declaration relating to import goods in the case of prior exportation of the products in question under inward processing.
2. Article 44 (2) and (3) shall apply.
3. Where a customs debt is incurred in accordance with paragraph 1, first indent, the amount of the import duties corresponding to this customs debt shall be determined under the same conditions as in the case of a customs debt resulting from the acceptance, on the same date, of the declaration for release for free circulation of the non-originating goods used in the manufacture of the products in question for the purpose of ending inward processing.

## **Non-compliance**

### *Article 46*

1. In cases other than those referred to in Articles 44 and 45, a customs debt on importation shall be incurred through:
  - (a) non-fulfilment of one of the obligations laid down in the customs rules for the introduction of non-Community goods into the customs territory of the Community, or for the movement, processing, storage, use or disposal of goods within that territory; or
  - (b) non-compliance with a condition governing the placing of non-Community 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.
2. The customs debt shall be incurred at the moment when:
  - (a) the obligation whose non-fulfilment gives rise to the customs debt is not met or ceases to be met, or
  - (b) the goods are placed under the customs procedure or declared for that purpose where it is established subsequently that a condition governing the placing of the goods under the said 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.
3. The debtor shall be:
  - (a) in cases referred to under paragraph 1 (a):
    - any person who was required to fulfil the obligations concerned, and
    - any person who was aware or should reasonably have been aware that an obligation under the customs rules 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;

and

- 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 rules was not fulfilled.
- (b) in cases referred to under paragraph 1 (b), the person who is required to comply with the conditions governing the placing of the goods under a customs procedure or declaring the goods concerned under that procedure or the granting of a duty exemption or reduced rate of duty by virtue of the end-use of the goods; and
- (c) where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up, or any information required under the customs rules relating to the conditions governing the placing of the goods under a customs procedure is given to the customs authorities, which leads to all or part of the duties owed not being collected, 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.

### **Deduction of duties already paid**

#### *Article 47*

1. Where in accordance with Article 46 (1) a customs debt is incurred in respect of goods released for free circulation at a reduced rate of import duty on account of their end-use, the amount paid when the goods were released for free circulation shall be deducted from the amount of the customs debt.

This provision shall apply *mutatis mutandis* where a customs debt is incurred in respect of scrap and waste resulting from the destruction of such goods.

2. Where in accordance with Article 46 (1) a customs debt is incurred in respect of goods placed under temporary admission with partial relief from import duties, the amount paid under partial relief shall be deducted from the amount of the customs debt.

## **Section 2**

### **Customs debt on exportation**

#### **Export declaration**

#### *Article 48*

1. A customs debt on exportation shall be incurred, insofar as the goods are liable to export duties, through the exportation from the customs territory of the Community of goods under cover of a customs declaration.

2. The customs debt shall be incurred at the time when such customs declaration is accepted.

3. The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the declaration is made shall also be a debtor.

Where a customs declaration is drawn up on the basis of information which leads to all or part of the duties legally owed not being collected, the person(s) 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, are also considered as debtors.

## **Non-compliance**

### *Article 49*

1. A customs debt on exportation shall be incurred, insofar as the goods are liable to export duties, through:
  - (a) non fulfilment of one of the obligations laid down in the customs rules for the exit, movement or disposal of the goods; or
  - (b) non compliance with the conditions under which the goods were allowed to leave the customs territory of the Community with total or partial relief from export duties.
2. The customs debt shall be incurred at the time when the goods:
  - (a) actually leave the customs territory of the Community without a customs declaration;
  - (b) reach a destination other than that for which they were allowed to leave the customs territory of the Community with total or partial relief from export duties or, should the customs authorities be unable to determine that time, the expiry of the time limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled.
3. The debtor shall be:
  - (a) where goods liable to export duties are removed from the customs territory of the Community without a customs declaration:
    - any person who was required to fulfil the obligation concerned, and
    - 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 but should have been lodged,
  - (b) in case of failure to comply with the conditions under which the goods were allowed to leave the customs territory of the Community with total or partial relief from export duties:
    - the declarant, and
    - in the event of indirect representation, the person on whose behalf the declaration is made.

## **Section 3**

### **Provisions common to customs debts incurred on importation and exportation**

#### **Prohibitions and restrictions**

### *Article 50*

The customs debt on importation or exportation shall be incurred even if it relates to goods subject to measures of prohibition or restriction on importation or exportation of any kind whatsoever. However, no customs debt shall be incurred on the unlawful introduction into the customs territory of the Community of counterfeit currency or of narcotic drugs and psychotropic substances which do not enter into the economic circuit strictly supervised by the competent authorities with a view to their use for medical and scientific purposes.



For the purposes of penalties as applicable to customs offences, the customs debt shall nevertheless be deemed to have been incurred where, under a Member State's law, customs duties or the existence of a customs debt provide the basis for determining penalties.

### **Several debtors**

#### *Article 51*

Where several persons are liable for payment of one customs debt, they shall be jointly and severally liable for such debt. However, where one or several persons have deliberately infringed the customs rules, priority should be given to recovery of the customs debt from those persons.

### **General rules for calculation of duty**

#### *Article 52*

1. Except as otherwise expressly provided in Article 53 and without prejudice to paragraph 2, the amount of the import duty or export duty applicable to goods shall be determined on the basis of the rules for calculation of duty appropriate to those goods at the time when the customs debt in respect of them is incurred.

2. Where it is not possible to determine precisely when the customs debt is incurred, the time to be taken into account in determining the rules for calculation of duty appropriate to the goods concerned shall be the time when the customs authorities conclude that the goods are in a situation in which a customs debt is incurred.

However, where the information available to the customs authorities enables them to establish that the customs debt was incurred prior to the time when they reached that conclusion, the amount of the import duty or export duty payable on the goods in question shall be determined on the basis of the rules for calculation of duty appropriate to the goods at the earliest time when existence of the customs debt arising from the situation may be established from the information available.

### **Special rules for calculation of duty**

#### *Article 53*

1. Where costs for storage or usual forms of handling have been incurred within the customs territory of the Community in respect of goods placed under a customs procedure, such costs or the increase in value shall not be taken into account for the calculation of the import duty where satisfactory proof of these costs is provided by the declarant. However, the customs value, nature and origin of non-Community goods used in the operations shall be taken into account for the calculation of the import duties.

2. Where the tariff classification has been changed because of usual forms of handling within the customs territory of the Community, at the request of the declarant the original tariff classification for the goods placed under the procedure shall be applied where satisfactory proof is provided.

3. Where a customs debt is incurred for processed products resulting from the inward processing system, the amount of such debt shall, at the declarant's request, be determined on the basis of the tariff classification, customs value, nature and origin of the import goods at the time of acceptance of the declaration of placing these goods under inward processing.

4. Special rules for the determination of the amount of the import duty or export duty applicable to goods may be determined in accordance with the committee procedure.

## **Place of incurrence**

### *Article 54*

1. A customs debt shall be incurred at the place where the customs declaration is lodged or, in accordance with Article 104 (3), is deemed to have been lodged.
2. In all other cases a customs debt shall be incurred
  - at the place where the events from which it arises occur, or
  - 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, or
  - if the goods have been entered for a customs procedure which has not been discharged, and the place cannot be determined pursuant to the first or second indent within a period of time determined, if appropriate, in accordance with the committee procedure, at the place where the goods were either placed under the procedure concerned or were introduced into the customs territory of the Community under that procedure.

Where the information available to the customs authorities enables them to establish that the customs debt was already incurred when the goods were in another place at an earlier date, the customs debt shall be deemed to have been incurred at the place which may be established as the location of the goods at the earliest time when existence of the customs debt may be established.

3. If a customs authority establishes that a customs debt has been incurred under Article 46 (1) (a) in another Member State and the amount of that debt is lower than EUR 100,000, the debt shall be deemed to have been incurred in the Member State where the finding was made.

## **CHAPTER 3**

### **RECOVERY AND PAYMENT OF DUTY, REPAYMENT AND REMISSION OF DUTY**

#### **Section 1**

#### **Entry in the accounts and communication of the amount of duty to the debtor**

##### **Entry in the accounts**

### *Article 55*

1. Each and every amount of import or export duty resulting from a customs debt, hereinafter called 'amount of duty', shall be determined by the customs authorities of the Member State where the customs debt is incurred, or is deemed to have been incurred in accordance with Article 54, as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium (entry in the accounts).

The first subparagraph shall not apply:

- (a) where a provisional anti-dumping or countervailing duty has been introduced;
- (b) where the amount of duty legally due exceeds that determined on the basis of a decision made in accordance with Article 14;

- (c) where the provisions adopted in accordance with the committee procedure waive the requirement for the customs authorities to enter in the accounts amounts of duty below a given level.

The customs authorities may discount amounts of duty which, under Article 59, could not be notified to the debtor after the end of the time allowed.

- 2. The Member States shall determine the practical procedures for the entry in the accounts of the amounts of duty, provided the procedures ensure that the said amounts will be paid.

### **Time of entry in the accounts**

#### *Article 56*

- 1. Where a customs debt is incurred as a result of the acceptance of the declaration of goods for a customs procedure, other than temporary admission with partial relief from import duties, or of any other act having the same legal effect as such acceptance, the amount corresponding to such customs debt shall be entered in the accounts as soon as it has been calculated and, at the latest, on the second day following that on which the goods were released.

However, provided that payment has been secured, the total amount of duty relating to all the goods released to one and the same person during a period fixed by the customs authorities, which may not exceed 31 days, may be covered by a single entry in the accounts at the end of the period. Such entry in the accounts shall take place within five days of the expiry of the period in question.

- 2. Where it is provided that goods may be released subject to meeting certain conditions laid down by Community legislation which govern either determination of the amount of the debt or its collection, entry in the accounts shall take place no later than two days following the day on which the amount of the debt or the obligation to pay the duties resulting from that debt is determined or fixed.

However, where the customs debt relates to a provisional anti-dumping or countervailing duty, that duty shall be entered in the accounts no later than two months following publication in the *Official Journal of the European Union* of the Regulation establishing a definitive antidumping or countervailing duty.

- 3. Where a customs debt is incurred under conditions other than those referred to in paragraph 1, the relevant amount of duty shall be entered in the accounts within two days of the date on which the customs authorities are in a position to:

- (a) calculate the amount of duty in question, and
- (b) determine the debtor.

### **Subsequent entry in the accounts**

#### *Article 57*

- 1. Where the amount of duty resulting from a customs debt has not been determined and entered in the accounts in accordance with Article 56 (1), or has been determined and entered in the accounts at a level lower than the amount legally owed, the amount of duty to be recovered or which remains to be recovered shall be determined and entered in the accounts within two days of the date on which the customs authorities become aware of the situation and are in a position to calculate the amount legally owed and to determine the debtor.

Where Article 59 (3) applies, the amount of duties shall be entered into the accounts within two days of the date on which the customs authorities notify the debtor of the decision determining the amount of duty to be recovered.

2. Except in the cases referred to in the second and third subparagraphs of Article 55 (1), subsequent entry in the accounts shall not occur where:

- (a) the original decision not to enter duty in the accounts or to enter it in the accounts at a figure less than the amount of duty legally owed was taken on the basis of general provisions invalidated at a later date by a court decision;
- (b) the provisions laid down in accordance with the committee procedure exempt the customs authority from the subsequent entry in the accounts of amounts of duty.

### **Extension of time limits**

#### *Article 58*

1. The time limits for entry in the accounts laid down in Articles 56 and 57 may, where appropriate, be extended. Such extended time limit shall not exceed 14 days.

2. The time limits laid down in paragraph 1 shall not apply in unforeseeable circumstances or in cases of *force majeure*.

### **Notification of the debt**

#### *Article 59*

1. Except in cases referred to in paragraph 3, the decision determining the amount of duty payable shall be notified to the debtor(s), in the appropriate form, as soon as it has been entered in the accounts.

2. Where the amount of duty payable has been entered in the customs declaration, the debtor(s) need not be notified of such decision in accordance with paragraph 1 unless the amount of duty indicated does not correspond to the amount determined by the authorities.

Without prejudice to the application of the second subparagraph of Article 56 (1), where use is made of the possibility provided for in the preceding subparagraph, release of the goods by the customs authorities shall be equivalent to a decision notifying the debtor(s) of the amount of duty entered in the accounts.

3. Where the customs debt is incurred;

- as a result of the acceptance of a declaration or any other act having the same legal effect as such acceptance, but the amount of duty resulting from this customs debt has not been entered into the accounts, or has been entered in the accounts at a lower level than the amount legally owed, or
- under Article 46 as a result of non-compliance with the customs rules which leads to its amount not being entered into the accounts, or being entered in the accounts at a lower level than the amount legally owed, and where this non-compliance is not considered to be deliberate, in so far as the debtor(s) is concerned,

the customs authorities shall, as soon as they become aware of the situation, advise the debtor(s) of their intention to recover the debt, of the amount of duty to be recovered and of the reasons justifying the recovery.

The debtor(s) shall, within a period following this advice to be determined in accordance with the committee procedure, have the opportunity to make his views known before the duties are recovered. Upon expiry of this period, the debtor(s) shall be notified, in the appropriate form, of the decision determining the amount of duty to be recovered.

4. Notification of a decision determining the amount of duty may not be issued to the debtor(s) after the expiry of a period of three years from the date on which the customs debt was incurred. This period shall be suspended from the time an appeal within the meaning of Article 15 is lodged, for the duration of the appeal proceedings.

5. Where a duty liability is reinstated by virtue of Article 67 (4), the three-year period referred to in paragraph 4 shall be considered as suspended from the time the repayment or remission application was lodged in accordance with Articles 68 to 71, until a decision on the repayment or remission has been taken.

6. Where the customs debt is the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings under the provisions in force, the time limit for notification of the decision determining the amount of duty to the debtor(s) is extended to a period of ten years from the date on which the customs debt was incurred.

## **Section 2**

### **Time limit and procedures for payment of duty**

#### **General time limits for payment, supervision of payment**

##### *Article 60*

1. Amounts of duty notified in accordance with Article 59 shall be paid by debtor(s) within the following periods:

- (a) if the person is not entitled to any of the payment facilities laid down in Articles 62 to 65, payment shall be made within the period prescribed.

Without prejudice to Article 16 (2), that period shall not exceed ten days following notification to the debtor of the amount of duty owed and, in the case of aggregation of entries in the accounts under the conditions laid down in the second subparagraph of Article 56 (1), it shall be so fixed as not to enable the debtor to obtain a longer period for payment than if he had been granted deferred payment.

An extension shall be granted automatically where it is established that the person concerned received the notification too late to enable him to make payment within the period prescribed.

Extension of the period may also be granted by the customs authorities at the request of the debtor where the amount of duty to be paid results from action for post-clearance recovery. Without prejudice to Article 65 (1), such extensions shall not exceed the time necessary for the debtor to take the appropriate steps to discharge his obligation;

- (b) if the person is entitled to any of the payment facilities laid down in Articles 62 to 65, payment shall be made no later than the expiry of the period or periods specified in relation to those facilities.

2. The cases in and conditions under which a debtor's obligation to pay duty shall be suspended may be determined in accordance with the committee procedure:

- where an application for remission of duty is made in accordance with Article 68, 70 or 71, or
- where goods are seized with a view to subsequent confiscation, or are to be destroyed or abandoned to the Exchequer in accordance with point (a) (iii) of Article 72 (1) (a) (iii), or

- where the customs debt was incurred under Article 46 and there is more than one debtor.

## **Payment**

### *Article 61*

1. Payment shall be made in cash or by any other means with similar discharging effect in accordance with the provisions in force. It may also be made by adjustment of credit balance where the provisions in force so allow.
2. Payment may be made by a third person instead of the debtor.

## **Deferment of payment**

### *Article 62*

1. Provided the amount of duty payable by the person concerned relates to goods declared for a customs procedure which entails the obligation to pay such duty, and without prejudice to Article 68, the customs authorities shall, at that person's request, permit deferment of payment of that amount under one of the following procedures:
  - (a) separately in respect of each amount of duty entered in the accounts under the conditions laid down in the first subparagraph of Article 56 (1) or in Article 58 (1); or
  - (b) globally in respect of all amounts of duty entered in the accounts under the conditions laid down in the first subparagraph of Article 56 (1) during a period fixed by the customs authorities not exceeding 31 days; or
  - (c) globally in respect of all amounts of duty forming a single entry in accordance with the second subparagraph of Article 56 (1).
2. The permission to defer a payment shall be conditional on the provision of a guarantee by the applicant.

## **Time limits for deferred payment**

### *Article 63*

1. The period for which payment is deferred shall be 30 days. It shall be calculated as, follows:
  - (a) where payment is deferred in accordance with Article 62 (1)(a), the period shall be calculated from the day following the date on which the amount of duty is entered in the accounts by the customs authorities.

Where Article 57 is applied, the period of 30 days calculated in accordance with the first subparagraph shall be reduced by the number of days corresponding to the period in excess of two days used to enter the amount in the accounts;
  - (b) where payment is deferred in accordance with Article 62 (1)(b), the period shall be calculated from the day following the date on which the aggregation period expires. It shall be reduced by the number of days corresponding to half the number of days in the aggregation period;
  - (c) where payment is deferred in accordance with Article 62 (1)(c), the period shall be calculated from the day following the expiry date of the period during which the goods in question were released. It shall be reduced by the number of days corresponding to half the number of days in the period concerned.

2. Where the number of days in the periods referred to in paragraph 1 (b) and (c) is an odd number, the number of days to be deducted from the 30-day period pursuant to paragraph 1 (b) and (c) shall be equal to half the next lowest even number.

3. To simplify matters, where the periods referred to in paragraph 1 (b) and (c) are a calendar week or a calendar month, Member States may provide that the amount of duty in respect of which payment has been deferred shall be paid:

- (a) if the period is a calendar week, on the Friday of the fourth week following that calendar week;
- (b) if the period is a calendar month, by the sixteenth day of the month following that calendar month.

### **Missing information on customs value**

#### *Article 64*

1. Deferment of payment shall not be granted in respect of amounts of duty which, although relating to goods entered for a customs procedure which entails the obligation to pay such duty, are entered in the accounts in accordance with the provisions in force concerning acceptance of incomplete declarations, because the declarant has not, by the time of expiry of the period set, provided the information necessary for the definitive valuation of the goods for customs purposes or has not supplied the particulars or the document missing when the incomplete declaration was accepted.

2. However, deferment of payment may be granted in the cases referred to in paragraph 1 where the amount of duty to be recovered is entered in the accounts before the expiry of a period of 30 days from the date on which the amount originally charged was entered in the accounts or, if it was not entered in the accounts, from the date on which the declaration relating to the goods in question was accepted. The duration of the deferment of payment granted in such circumstances shall not extend beyond the date of expiry of the period which, pursuant to Article 63, was granted in respect of the amount of duty originally fixed, or which would have been granted had the amount of duty legally due been entered in the accounts when the goods in question were declared.

### **Other payment facilities**

#### *Article 65*

1. The customs authorities may grant the debtor payment facilities other than deferred payment.

The granting of such payment facilities shall:

- (a) be conditional on the provision of a guarantee. However, such guarantee need not be required where it is established that to require it would, because of the situation of the debtor, create serious economic or social difficulties;
- (b) result in credit interest being charged over and above the amount of duty. The amount of such interest shall be equivalent to the amount which would be charged for this purpose on the EUR market or, where appropriate, the national market of the currency in which the amount is payable.

The customs authorities may refrain from claiming credit interest where to claim it would, because of the situation of the debtor, create serious economic or social difficulties.

2. Whatever the payment facilities granted to the debtor, the latter may in any case pay all or part of the amount of duty without awaiting expiry of the period he has been granted for payment.

## **Enforcement of payment, arrears**

### *Article 66*

1. Where the amount of duty due has not been paid within the prescribed period:
  - (a) the customs authorities shall avail themselves of all options open to them under the legislation in force, including enforcement, to secure payment of that amount.

Special provisions may be determined in accordance with committee procedure in respect of guarantors within the framework of a special procedure;
  - (b) interest on arrears shall be charged over and above the amount of duty. The rate of interest on arrears may be no more than one percentage point higher than the rate of credit interest within the EUR market or the national currency market concerned. It may not be lower than that rate.
2. Where a customs debt is incurred under Articles 46 or 49 or where the amount of a customs debt is determined and entered in the accounts pursuant to Article 58 (1), interest on arrears shall be charged over and above the amount of duty. The rate of interest on arrears shall be set in accordance with paragraph 1.
3. The customs authorities shall waive collection of interest on arrears:
  - (a) where, because of the situation of the debtor, it would be likely to create serious economic or social difficulties; or
  - (b) where the period or amount does not exceed a period or amount fixed in accordance with the committee procedure.

## **Section 3**

### **Repayment and remission of duty**

#### **General provisions**

### *Article 67*

1. The following definitions shall apply:
  - (a) ‘repayment’ means a decision to refund, totally or partially, import or export duties which have been paid;
  - (b) ‘remission’ means a decision either to waive all or part of the amount of a customs debt or to render void an entry in the accounts of all or part of an amount of import or export duty which has not been paid.

2. Import or export duties shall be repaid or remitted under the conditions laid down in this Section only if the amount to be repaid or remitted exceeds an amount fixed in accordance with the committee procedure.

However, the customs authorities may also grant repayment or remission in respect of a lower amount.

3. Repayment by the competent authorities of amounts of import or export duties or of credit interest or interest on arrears collected on payment of such duties shall not give rise to the payment of interest by those authorities. However, interest shall be paid where a decision to grant a request for repayment is not implemented within three months of the date of adoption of that decision.



The amount of such interest shall be calculated in such a way that it is equivalent to the amount which would be charged for this purpose on the EUR market or national currency market concerned.

4. Where a customs decision has been taken in error to repay import or export duties, duty liability is reinstated in so far as recovery of the original customs debt is not time-barred according to Article 59. Any interest paid under paragraph 3 must be reimbursed.

### **Repayment of overcharged duties**

#### *Article 68*

1. Import or export duties shall be repaid or remitted in so far as it is established that the original decision determining the amount of duties did not correspond to the amount legally owed or that the amount has been determined contrary to Article 58 (2).

No repayment or remission shall be granted when the situation which led to the decision determining an amount of duty results from deception by the person concerned.

2. A decision to repay or remit shall be taken upon submission of an application to the appropriate customs office within a period of three years from the date on which the debtor was notified of the amount of those duties .

That period shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or *force majeure*.

Where the customs authorities themselves discover within this period that one or other of the situations described in the first and second subparagraphs of paragraph 1 exists, they shall repay or remit on their own initiative.

### **Invalidation of a customs declaration**

#### *Article 69*

Import or export duties shall be repaid where a customs declaration is invalidated in accordance with the customs rules and the duties have been paid. A decision on repayment shall be granted upon submission by the person concerned of the application for invalidation of the customs declaration.

### **Defective goods**

#### *Article 70*

1. Import duties shall be repaid or remitted in so far as it is established that the decision determining the amount of such duties relates to goods released for free circulation and rejected by the importer because at the point in time referred to in Article 96 they were defective or did not comply with the terms of the contract on the basis of which they were imported.

Defective goods, within the meaning of the first subparagraph, shall be deemed to include goods damaged before their release.

2. Repayment or remission of import duties shall be granted on condition that:

- (a) the goods have not been used, except for such initial use as may have been necessary to establish that they were defective or did not comply with the terms of the contract;
- (b) the goods are exported from the customs territory of the Community.

At the request of the person concerned, the customs authorities shall permit the goods to be placed under external transit, inward processing or a storage procedure instead of being exported.

3. A decision to repay or remit shall be taken upon submission of an application to the appropriate customs office within a period of three years from the date on which the debtor was notified of the amount of those duties .

That period shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or *force majeure*.

## **Equity**

### *Article 71*

1. In situations other than those referred to in Articles 68, 69 and 70, a decision to repay or remit import or export duties shall be taken:

- (a) where the original decision determining the amount of duty did not correspond to the amount legally owed as a result of an error on the part of the customs authorities which could not reasonably have been detected by the debtor, the latter for his part having acted in good faith.

Where the preferential status of the goods is established on the basis of a system of administrative co-operation involving the authorities of a third country, the issue of a certificate by those authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of the first subparagraph.

The issue of an incorrect certificate shall not, however, constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where, in particular, it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment.

The debtor may plead good faith when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled.

The debtor may not, however, plead good faith if the European Commission has published a notice in the *Official Journal of the European Union*, stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country;

- (b) shall be repaid or remitted where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied shall be determined in accordance with the committee procedure.

2. The procedures to be followed for the application of paragraph 1 shall be determined in accordance with the committee procedure. Repayment or remission may be made subject to special conditions.

3. Import or export duties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within three years from the date on

which the debtor was notified of the amount of the duties . This period shall be suspended from the time an appeal within the meaning of Article 15 is lodged against the notification of the customs debt, for the duration of the appeal proceedings.

That period shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or *force majeure*.

Without prejudice to specific conditions laid down in accordance with the committee procedure, where the customs authorities themselves discover within this period that one or other of the situations described in paragraph 1 exists, they shall repay or remit on their own initiative.

## CHAPTER 4 EXTINCTION OF CUSTOMS DEBT

### *Article 72*

1. Without prejudice to the provisions in force relating to the time-barring of a customs debt and non-recovery of such a debt in the event of the legally established insolvency of the debtor, a customs debt on importation or exportation shall be extinguished:

- (a) vis-à-vis all debtors:
  - (i) by payment of the amount of duty;
  - (ii) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties the customs declaration is invalidated,
  - (iii) where goods liable to import or export duties are either seized and simultaneously or subsequently confiscated, destroyed or abandoned to the Exchequer, or irretrievably lost as a result of their actual nature or of unforeseeable circumstances or *force majeure*;

In the event of seizure and confiscation, the customs debt shall, nevertheless, for the purposes of penalties applicable to customs offences, be deemed not to have been extinguished where, under a Member State's law, customs duties or the existence of a customs debt provide the basis for determining penalties;

- (b) vis-à-vis the beneficiary of a remission decision, by the decision to remit the amount of duty.

2. A customs debt on importation shall also be extinguished where the person concerned proves that:

- (a) the failure to comply with the customs rules had no significant effect on the correct operation of the procedure concerned, or the procedure intended, according to the customs declaration, provided that the failure which leads to the incurrence of a customs debt does not constitute an attempt at deception and that all of the formalities necessary to regularize the situation of the goods are subsequently carried out;
- (b) the disappearance of the goods or the non-fulfilment of obligations arising from the customs rules results from the total destruction or irretrievable loss of the said goods as a result of the actual nature of the goods or unforeseeable circumstance or *force majeure*;

*majeure*, or as a consequence of authorization by the customs authorities; goods shall be considered as irretrievably lost when they are rendered unusable by any person;

- (c) the conditions for favourable tariff treatment pursuant to Articles 26 (3) (d), (e), (f) and (g), Articles 108 to 112, 147 and 151 to 153 are fulfilled, provided that the failure which leads to the incurrence of a customs debt does not constitute an attempt at deception;
- (d) 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.
- (e) vis-à-vis debtors whose behaviour did not involve any attempt at deception:
  - (i) where the debt was incurred under Article 46 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used and have been exported from the customs territory of the Community;
  - (ii) where the debt was incurred under Article 46 and the person concerned contributed actively to the fight against fraud, in particular in cases where a controlled delivery was performed to facilitate the identification of criminals. The conditions and the procedure under which this provision shall be applicable shall be determined in accordance with the committee procedure.
- (f) in so far as it was incurred by virtue of Article 45, where the formalities carried out in order to enable the preferential tariff treatment referred to in Article 45 to be granted are cancelled or satisfactory proof is submitted that preferential tariff treatment has not been granted.

3. Where, in accordance with paragraph (2) (b), a customs debt is extinguished in respect of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, any scrap or waste resulting from such destruction shall be deemed to be non-Community goods.

**TITLE IV**  
**ARRIVAL OF GOODS IN THE CUSTOMS TERRITORY OF THE COMMUNITY**

**CHAPTER 1**

**PRE-ARRIVAL DECLARATION**

**Obligation to lodge a pre-arrival declaration**

*Article 73*

1. Goods brought into the customs territory of the Community shall be covered by a pre-arrival declaration, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory of the Community without a stop within this territory.
2. Except where otherwise specified within the customs rules, the pre-arrival declaration shall take the form of a summary declaration and shall be lodged or made available at the competent customs office before the goods are brought into the customs territory of the Community.
3. The committee procedure shall be used to determine, according to special circumstances and applying to certain types of goods traffic or modes of transport or to economic operators or where international agreements provide for special security arrangements,
  - the time limit by which the pre-arrival declaration shall be lodged or made available before the goods are brought into the customs territory of the Community;
  - the rules for exceptions from and variations to the time limit referred to above;
  - the conditions under which the requirement for a pre-arrival declaration may be waived or adapted; and
  - the rules determining the competent customs office at which
    - the summary declaration shall be lodged or made available; and
    - where risk analysis and risk-based entry controls are to be carried out.

**Lodgement and responsible person**

*Article 74*

1. The summary declaration shall be lodged using an electronic data processing technique. Commercial, port or transport information may be used, provided it contains the necessary particulars. Customs authorities may accept paper-based summary declarations in exceptional circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using an electronic data processing technique and that the requirements for the exchange of such data with other customs offices can otherwise be met.
2. The summary declaration shall be lodged by the person who brings the goods, or who assumes responsibility for the carriage of the goods, into the customs territory of the Community.
3. Notwithstanding the obligations of the person described in paragraph (2), the summary declaration may be lodged instead by
  - (a) the importer or consignee or other person in whose name or on whose behalf the person referred to in paragraph (2) acts; or

- (b) any person who is able to present the goods in question or to have them presented to the competent customs authority; or
- (c) a representative of one of the persons referred to in paragraph (2) or paragraph (3) (a) or (b).

4. Where appropriate, the customs authorities shall inform the person who lodged the summary declaration of consignments which may pose particular security or safety risks.

5. The person referred to in paragraph (2) or (3) shall, at his request, be permitted to amend one or more particulars of the summary declaration after it has been lodged. However, no amendment shall be possible after the customs authorities

- (a) have informed the person who lodged the summary declaration that they intend to examine the goods; or,
- (b) have established that the particulars in question are incorrect; or,
- (c) have allowed the removal of the goods, except in cases determined in accordance with the committee procedure.

### **Customs declaration replacing summary declaration**

#### *Article 75*

The competent customs office may waive the lodging of a summary declaration in respect of goods for which, prior to the expiry of the time limit referred to in Article 73 (2) or (3), a customs declaration is lodged. In this case, the customs declaration shall contain at least the particulars necessary for the summary declaration and, until such time as the former is accepted in accordance with Article 92, it shall have the status of a summary declaration.

## **CHAPTER 2**

### **ARRIVAL OF GOODS**

#### **Section 1**

#### **Entry of goods into the customs territory of the Community**

##### **Customs supervision**

#### *Article 76*

1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to customs controls in accordance with the provisions in force.

2. They shall remain under such supervision for as long as necessary to determine their customs status. Non-Community goods shall remain under customs supervision until their customs status is changed, or they are exported or destroyed. Without prejudice to Article 144, Community goods shall not be subject to customs supervision once their status is established.

3. Goods under customs supervision may, with the permission of the customs authorities, at any time be examined or have samples taken, in order to determine their tariff classification, customs value or customs status.

4. Goods shall not be removed from customs supervision until release is granted by the customs authorities

## Conveyance to the appropriate place

### Article 77

1. Goods brought into the customs territory of the Community shall be conveyed by the person who brought them into the Community without delay, by the route specified by the customs authorities and in accordance with their instructions, if any:

- (a) to the customs office designated by the customs authorities or to any other place designated or approved by those authorities; or,
- (b) to a free zone, if the goods are to be brought into that free zone direct:
  - by sea or air, or
  - by land without passing through another part of the customs territory of the Community, where the free zone adjoins the land frontier between a Member State and a third country,

and shall be presented to the customs authorities, in accordance with Article 79, immediately upon their arrival at that place.

2. Any person who assumes responsibility for the carriage of goods after they have been brought into the customs territory of the Community, *inter alia* as a result of transshipment, shall become responsible for compliance with the obligation laid down in paragraph 1.

3. Goods which, although still outside the customs territory of the Community, may be subject to customs controls under the provisions in force, shall be treated in the same way as goods brought into the customs territory of the Community.

4. Paragraph 1 (a) shall not preclude implementation of any provisions in force with respect to letters, postcards, printed matter, tourist and frontier traffic, on condition that customs supervision and customs control possibilities are not thereby jeopardised.

5. Paragraphs 1 to 4 and Articles 73 to 75 and 78 to 81 shall not apply to goods which have temporarily left the customs territory of the Community while moving between two points in that territory by sea or air, provided that carriage has been effected by a direct route and by a regular air or shipping service without a stop outside the customs territory of the Community.

6. Paragraph 1 shall not apply to goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory of the Community without a stop within this territory.

## Conveyance under special circumstances

### Article 78

1. Where, by reason of unforeseeable circumstances or *force majeure*, the obligation laid down in Article 77 (1) cannot be complied with, the person bound by that obligation or any other person acting on that person's behalf shall inform the customs authorities of the situation without delay. Where the unforeseeable circumstances or *force majeure* do not result in total loss of the goods, the customs authorities shall also be informed of their precise location.

2. Where, by reason of unforeseeable circumstances or *force majeure*, a vessel or aircraft covered by Article 77 (6) is forced to put into port or land temporarily in the customs territory of the Community and the obligation laid down in Article 77 (1) cannot be complied with, the person who brought the vessel or aircraft into the customs territory of the Community or any other person acting on that person's behalf shall inform the customs authorities of the situation without delay.

3. The customs authorities shall determine the measures to be taken in order to permit customs supervision of the goods referred to in paragraph 1, or those on board a vessel or aircraft in the circumstances specified in paragraph 2, and to ensure, where appropriate, that they are subsequently conveyed to a customs office or other place designated or approved by the authorities.

## **Section 2**

### **Presentation of goods to customs**

#### *Article 79*

1. Goods arriving in the customs territory of the Community shall be presented to customs by
  - (a) the person who brought the goods into the customs territory of the Community; or,
  - (b) the person in whose name or on whose behalf the person in who brought into the goods into that territory acts; or
  - (c) if appropriate, by the person who assumed responsibility for carriage of the goods after they were brought into the customs territory of the Community, *inter alia* as a result of transshipment.
2. Notwithstanding the obligations of the person described in paragraph (1), presentation of the goods may be effected instead by
  - (a) any person who immediately places the goods under a customs procedure; or
  - (b) the holder of an authorization for the operation of storage facilities or any person who carries out activity in a free zone; or
  - (c) a representative of one of the persons referred to in paragraph 1 or paragraph 2 (a) or (b).
3. The person presenting the goods shall make a reference to the summary declaration or customs declaration lodged in respect of the goods.
4. Paragraph 1 shall not preclude the implementation of rules in force relating to:
  - (a) goods carried by travellers;
  - (b) goods placed under a customs procedure but without the requirement for them to be presented to customs;
  - (c) letters, postcards and printed matter.

## **Section 3**

### **Unloading and examination of goods**

#### *Article 80*

1. Goods shall be unloaded or transhipped from the means of transport carrying them solely with the permission of the customs authorities in places designated or approved by those authorities.

However, such permission shall not be required in the event of the imminent danger necessitating the immediate unloading of all or part of the goods. In that case, the customs authorities shall be informed accordingly forthwith.

2. For the purpose of inspecting goods and the means of transport carrying them, or of taking samples, the customs authorities may at any time require goods to be unloaded and unpacked.



3. Goods presented to customs shall not be removed from their original position without the permission of the customs authorities.

#### **Section 4**

##### **Obligation to place non-Community goods under a customs procedure**

###### *Article 81*

1. Without prejudice to Article 105, non-Community goods presented to customs shall be placed under a customs procedure in order to allow their release.
2. Except where goods are immediately placed under a specific customs procedure for which a customs declaration has been accepted, or have entered into a free zone, non-Community goods presented to customs shall be deemed to have been placed under temporary storage, in accordance with Article 130.
3. Without prejudice to the obligation laid down in Article 73 (2) and the exceptions or waiver provided for under Article 73 (3), where non-Community goods presented to customs are not covered by a summary declaration lodged prior to their arrival, the summary declaration shall be lodged immediately, in accordance with Article 74.

#### **Section 5**

##### **Goods which have moved under a transit procedure**

###### **Waiver for goods arriving under transit**

###### *Article 82*

Article 77, with the exception of paragraph 1 (a) thereof, and Articles 79 to 81 shall not apply when goods already under a transit procedure are brought into the customs territory of the Community.

###### **Provisions applicable to non-Community goods after a transit procedure has ended**

###### *Article 83*

Once non-Community goods which

- have been brought into customs territory of the Community under a transit procedure, or
- have moved within that territory under a transit procedure

have been presented to customs at an office of destination in the customs territory of the Community in accordance with the rules governing transit, Articles 80 and 81 shall apply.

**TITLE V**  
**GENERAL RULES ON CUSTOMS STATUS AND CUSTOMS PROCEDURE**

**CHAPTER 1**  
**STATUS OF THE GOODS**

**Assumption of Community status**

*Article 84*

1. All goods in the customs territory of the Community shall be assumed to be Community goods, unless it is established that they do not have Community status.
2. Except where provided for under this Code, the cases in which the assumption in paragraph 1 shall not apply, and the means by which the Community status of goods may be established, shall be determined in accordance with the committee procedure.

**Loss of Community status**

*Article 85*

Community goods shall lose their Community status and become non-Community goods where:

- (a) they are moved out of the customs territory of the Community, insofar as the rules on internal transit or Article 86 do not apply;
- (b) they have been placed under external transit, storage or inward processing, insofar as the customs rules allow for this;
- (c) they have been placed under the end-use procedure and are subsequently abandoned to the Exchequer; or
- (d) the declaration for release for free circulation is invalidated after release in accordance with Article 95.

**Goods leaving the customs territory temporarily**

*Article 86*

The conditions under which Community goods may move, without being subject to a customs procedure, from one point to another within the customs territory of the Community and temporarily out of that territory without alteration of their customs status shall be determined in accordance with the committee procedure.

**CHAPTER 2**  
**USE OF THE CUSTOMS PROCEDURES; PROHIBITIONS AND RESTRICTIONS**

*Article 87*

1. Except as otherwise provided, goods may at any time, under the conditions laid down, be placed under any customs procedure irrespective of their nature or quantity, or their country of origin, consignment or destination.
2. Paragraph 1 shall not preclude the imposition of any prohibitions or restrictions in force.

CHAPTER 3  
CUSTOMS DECLARATION

**Section 1**

**General provisions**

**Declaration, supervision of Community goods**

*Article 88*

1. All goods intended to be placed under a customs procedure, except for free zones, shall be covered by a declaration for that customs procedure.
2. Community goods declared for a customs procedure shall be subject to customs supervision from the time of acceptance of the customs declaration until such time as they leave the customs territory of the Community or are abandoned to the Exchequer or the customs declaration is invalidated in accordance with Article 95

**Competent customs offices**

*Article 89*

1. Insofar as Community legislation lays down no rules on the matter, Member States shall determine the location and competence of the various customs offices situated in their territory and shall ensure that reasonable days and hours are appointed for the opening of these offices, taking into account, where applicable, the nature of the traffic and of the goods and the customs procedure under which they are to be placed, so that the flow of international traffic is neither hindered nor distorted.
2. The committee procedure shall be used to establish the rules determining the competent customs office at which
  - a customs declaration shall be lodged or made available, in accordance with the procedure concerned; and
  - where risk analysis and risk-based import or and export controls are to be carried out.

**Types of customs declaration**

*Article 90*

The customs declaration shall be lodged:

- (a) using an electronic data-processing technique in accordance with the customs rules; in this case the supporting documents required for the implementation of the provisions governing the customs procedure for which the goods are declared can also be submitted or made available by this technique;
- (b) in writing, where this is provided for by an international agreement or by provisions laid down in accordance with the committee procedure;
- (c) by means of a oral declaration or any other act whereby goods can be placed under a customs procedure in accordance with the provisions laid down in accordance with the committee procedure.

## **Section 2**

### **Normal declaration**

#### **Content, supporting documents**

##### *Article 91*

1. Customs declarations shall correspond to the specification laid down in accordance with the committee procedure. They shall be authenticated and contain all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared.
2. The electronic or written documents required for the implementation of the provisions governing the customs procedure for which the goods are declared shall be available to the customs authorities when the declaration is lodged. Upon request the customs authorities may allow the documents required to be made available after release of the goods.

#### **Acceptance**

##### *Article 92*

1. Declarations which comply with the conditions laid down in Article 91 shall be accepted by the customs authorities immediately, provided that the goods to which they refer are available for control by the customs authorities.
2. Where the a customs declaration is lodged, within the customs rules, at an office other than the office at which the goods are presented, the declaration can be accepted when the office of presentation confirms the availability of goods for control.
3. Special rules may be laid down in accordance with the committee procedure.

#### **Declarant**

##### *Article 93*

1. A customs declaration may be made by any person who is or will be able to present the goods in question or to have them presented to the competent customs office and who is able to present or make available all of the documents which are required for the application of the rules governing the customs procedure in respect of which the goods are declared.
2. However,
  - (a) where acceptance of a customs declaration imposes particular obligations on a specific person, the declaration must be made by that person or on his behalf;
  - (b) the declarant must be established in the customs territory of the Community.
3. The conditions under which the requirement of being established in the Community may be waived shall be determined in accordance with the committee procedure, taking into account, in particular, international agreements.

#### **Amendment**

##### *Article 94*

The declarant shall, at his request, be permitted to amend one or more of the particulars of the declaration after it has been accepted by customs. The amendment shall not have the effect of rendering the declaration applicable to goods other than those it originally covered.

No amendment shall be permitted where it is requested after the customs authorities:

- (a) have informed the declarant that they intend to examine the goods; or,
- (b) have established that the particulars in question are incorrect; or,
- (c) have released the goods, except in cases determined in accordance with the committee procedure,.

### **Invalidation**

#### *Article 95*

1. The customs authorities shall, at the request of the declarant, invalidate a declaration already accepted where they are satisfied that

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

Nevertheless, where the customs authorities have informed the declarant of their intention to examine the goods, a request for invalidation of the declaration shall not be accepted until after the examination has taken place.

2. The declaration shall not be invalidated after the goods have been released, except in cases determined in accordance with the committee procedure.

3. Invalidation of the declaration shall be without prejudice to the application of administrative or criminal penalties.

### **Date for the application of customs rules**

#### *Article 96*

Except where otherwise expressly provided, the date to be used for the purposes of all the provisions governing the customs procedure for which the goods are declared shall be the date of acceptance of the declaration by the customs authorities.

### **Verification**

#### *Article 97*

1. For the verification of declarations which they have accepted, the customs authorities may:

- (a) examine the declaration and all of the written or electronic documents required for the implementation of the provisions of the customs procedure for which the goods are declared. The customs authorities may require the declarant to present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration;
- (b) examine the goods and take samples for analysis or for detailed examination.

2. The findings made by the customs authorities shall have the same conclusive force throughout the customs territory of the Community.

### **Examination and sampling of goods**

#### *Article 98*

1. Transport of the goods to the places where they are to be examined and samples are to be taken, and all the handling necessitated by such examination or taking of samples, shall be carried out by or under the responsibility of the declarant. The costs incurred shall be borne by the declarant.

2. The declarant shall be entitled to be present when the goods are examined and when samples are taken. Where they deem it appropriate, the customs authorities shall require the declarant to be present or represented when the goods are examined or samples are taken in order to provide them with the assistance necessary to facilitate such examination or taking of samples.

3. Provided that samples are taken in accordance with the provisions in force, the customs authorities shall not be liable for payment of any compensation in respect thereof but shall bear the costs of their analysis or examination.

### **Partial examination**

#### *Article 99*

1. Where only part of the goods covered by a declaration are examined, the results of the partial examination shall be taken to apply to all the goods covered by that declaration.

However, the declarant may request a further examination of the goods if he considers that the results of the partial examination are not valid as regards the remainder of the goods declared. Once the goods have been released, the declarant can no longer challenge the representativeness of the sample.

2. For the purposes of paragraph 1, where a declaration covers two or more items, the particulars relating to each item shall be deemed to constitute a separate declaration.

### **Results of the verification**

#### *Article 100*

1. The results of verifying the declaration shall be used for the purposes of applying the provisions governing the customs procedure under which the goods are placed. The results of the verification by the customs authorities shall have the same conclusive force throughout the customs territory of the Community.

2. Where the declaration is not verified, the provisions referred to in paragraph 1 shall be applied on the basis of the particulars contained in the declaration.

### **Identification measures**

#### *Article 101*

1. The customs authorities shall take, or authorize economic operators in accordance with Article 10 to take, the measures necessary to identify the goods where identification is required in order to ensure compliance with the conditions governing the customs procedure for which the said goods have been declared. The identification measures taken or authorized shall have the same conclusive force throughout the customs territory of the Community.

2. Means of identification affixed to the goods or means of transport shall be removed or destroyed only by the customs authorities or, if authorized in accordance with Article 10, by economic operators, unless, as a result of unforeseeable circumstances or *force majeure*, their removal or destruction is essential to ensure the protection of the goods or means of transport.

### **Release of the goods**

#### *Article 102*

1. Without prejudice to Article 103, where the conditions for placing the goods under the procedure in question are fulfilled and provided the goods are not subject to any prohibition or restriction, the customs authorities shall release the goods as soon as the particulars in the declaration have been verified or accepted without verification. The same shall apply where such verification

cannot be completed within a reasonable period of time and the goods are no longer required to be present for verification purposes.

2. All the goods covered by the same declaration shall be released at the same time.

For the purposes of this paragraph, where a declaration covers two or more items, the particulars relating to each item shall be deemed to constitute a separate declaration.

3. Where the goods are presented, in accordance with the customs rules, at a customs office other than the office at which the customs declaration has been accepted, the offices involved shall exchange the information necessary for the release of the goods, without prejudice to security and safety related controls.

4. Special rules may be determined in accordance with the committee procedure.

### **Guarantee**

#### *Article 103*

1. Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration shall not be released unless the customs debt has been paid or guaranteed. However, without prejudice to paragraph 2, this provision shall not apply to temporary admission with partial relief from import duties.

2. Where, pursuant to the provisions governing the customs procedure for which the goods are declared, the customs authorities require the provision of a guarantee, the said goods shall not be released for the customs procedure in question until such guarantee is provided.

### **Section 3**

#### **Simplified declaration**

#### *Article 104*

1. In order to simplify completion of formalities and procedures as far as possible while ensuring that operations are conducted in a proper manner, the customs authorities shall, under the conditions laid down in accordance with the committee procedure, authorize an economic operator in accordance with Article 10 to have goods released on the basis of a simplified declaration; the simplified declaration must correspond to the specification laid down in accordance with the committee procedure.

2. The customs authorities, without prejudice to the legal obligations of the declarant, may waive the obligation for the declarant

- to present the goods to customs; and/or
- to transmit the simplified declaration data where they have access to this data in the declarant's electronic system and provided that the requirements for the exchange of such data with other customs offices can otherwise be met.

3. Except in cases to be determined in accordance with the committee procedure, the declarant shall furnish a supplementary declaration which may be of a general, periodic or recapitulative nature.

The supplementary declaration and the simplified declaration referred to in paragraph 1 shall be deemed to constitute a single, indivisible instrument taking effect on the date on which the simplified declaration is accepted in accordance with Article 92.

Where the simplified declaration is replaced by entry in the trader's records and access to this data by the customs authorities, the declaration shall take effect from the date on which the goods are entered into the records.

The place where the supplementary declaration is to be lodged in accordance with the authorization is deemed, for the purposes of Article 54, to be the place where the customs declaration has been lodged.

4. Where the use of a simplified declaration is requested on an occasional basis, the customs office to which the declaration was submitted may accept it without an authorization being granted.
5. Section 2 of this Chapter shall apply *mutatis mutandis* to simplified declarations.

## CHAPTER 4 DISPOSAL OF GOODS

### *Article 105*

1. Where the circumstances so require, the customs authorities may require goods presented to customs to be destroyed and shall inform the holder of the goods accordingly. The costs of destruction shall be borne by the holder of the goods.
2. The customs authorities shall take any necessary measures, including confiscation, sale or destruction to deal with goods which:
  - (a) have been brought unlawfully into the customs territory of the Community or have been withheld from customs supervision,
  - (b) cannot be released because:
    - it has not been possible to undertake or continue examination of the goods within the period prescribed by the customs authorities for reasons attributable to the declarant; or
    - the documents which must be produced before the goods can be placed under, or released for, the customs procedure requested have not been made available; or
    - payments or a guarantee which should have been made or provided in respect of import or export duties, as the case may be, have not been made or provided within the period prescribed; or
    - they are subject to prohibitions or restrictions, including those related to security and safety;
  - (c) are not removed within a reasonable period after their release;
  - (d) after their release, are found not to have fulfilled the conditions for that release; or
  - (e) are abandoned to the Exchequer. Non-Community goods may be abandoned to the Exchequer by the holder of the goods or, where applicable, the holder of the procedure.
3. Abandonment shall not entail any expense for the Exchequer. The holder of the goods or, where applicable, the holder of the procedure shall bear the costs of any destruction or disposal of goods.
4. Detailed rules for the disposal of goods may be determined in accordance with the committee procedure.



**TITLE VI**  
**RELEASE FOR FREE CIRCULATION**

**Scope**

*Article 106*

1. Release for free circulation shall confer on non-Community goods the customs status of Community goods.
2. It shall entail application of commercial policy measures in so far as they do not have to be applied at an earlier stage, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due, such as import duties and, as provided for under VAT and excise provisions in force, value added tax at importation and excise duties.
3. Without prejudice to the provisions laid down concerning prohibitions or restrictions which may be applicable to the goods in question, where a customs debt on importation is incurred pursuant to Article 46 and the import duties have been paid, those goods shall be deemed to be Community goods without the need for a declaration for release for free circulation.

**Facilitation of duty calculation**

*Article 107*

Where a consignment is made up of goods falling within different tariff subheadings, and dealing with each of those goods in accordance with its tariff classification for the purpose of drawing up the declaration would entail a burden of work and expense disproportionate to the import duties chargeable, the customs authorities may, at the request of the declarant, agree that import duties be charged on the whole consignment on the basis of the tariff classification of the goods which are subject to the highest rate of import duty.

**TITLE VII**  
**RELIEF FROM IMPORT DUTIES**

CHAPTER 1  
RETURNED GOODS

**Scope**

*Article 108*

1. Community goods which, having been exported from the customs territory of the Community, are returned to that territory and are declared for release for free circulation within a period of three years shall, at the request of the person concerned, be granted relief from import duties.

However:

- the three-year period may be exceeded in order to take account of special circumstances;
- where, prior to their export from the customs territory of the Community, the returned goods had been released for free circulation duty-free or at a reduced import duty because of a particular end-use, exemption from duty under the first subparagraph shall be granted only if they are to be released for free circulation for the same end-use.

Where the end-use for which the goods in question are to be released for free circulation is no longer the same, the amount of import duties chargeable upon them shall be reduced by any amount levied on the goods when they were first released for free circulation. Should the latter amount exceed that levied on the release for free circulation of returned goods, no repayment shall be granted.

2. The relief from import duties provided for in paragraph 1 shall not be granted in the case of:

- (a) goods exported from the customs territory of the Community under outward processing unless those goods remain in the state in which they were exported;
- (b) goods which have been the subject of a Community measure involving their export out of the customs territory of the Community. The circumstances in which and the conditions under which this requirement may be waived shall be determined in accordance with the committee procedure.

3. Where Community goods have been placed under one of the procedures referred to in Article 85 and are subsequently released for free circulation, paragraph 1 shall apply *mutatis mutandis*.

**Processing of goods outside the customs territory**

*Article 109*

The relief from import duties provided for in Article 108 shall be granted only if goods are re-imported in the state in which they were exported. The circumstances in which and the conditions under which this requirement may be waived shall be determined in accordance with the committee procedure.

**Goods previously placed under inward processing**

*Article 110*

1. Articles 108 and 109 shall apply *mutatis mutandis* to processed products which had been placed under inward processing prior to being exported from the customs territory of the Community.

2. At the request of the declarant and provided he submits the necessary information, the amount of import duty is determined on the basis of the rules applicable under inward processing.
3. The relief from import duties provided for in Article 108 shall not be granted for processed products obtained from equivalent goods under inward processing which have been exported before importation of the import goods (prior exportation), unless it is ensured that no import goods will be placed under the inward processing procedure.

## CHAPTER 2

### PRODUCTS OF SEA-FISHING AND OTHER PRODUCTS TAKEN FROM THE SEA

#### *Article 111*

1. Without prejudice to Article 28 (1), the following shall be exempt from import duties when they are released for free circulation:
  - (a) products of sea-fishing and other products taken from the territorial sea of a third country by vessels solely registered or recorded in a Member State and flying the flag of that state;
  - (b) products obtained from products referred to in (a) on board factory-ships fulfilling the conditions laid down in that subparagraph.
2. The detailed rules on the operation of this arrangement shall be determined in accordance with the committee procedure.

## CHAPTER 3

### RELIEF FROM IMPORT DUTY ON ACCOUNT OF SPECIAL CIRCUMSTANCES

#### *Article 112*

The cases in which, and the conditions under which, relief from import duties shall be granted on account of special circumstances, where goods are released for free circulation, shall be determined in accordance with the committee procedure, taking into account:

- international agreements,
- the status of the person concerned,
- the nature of the goods, and
- the end-use of the goods.

**TITLE VIII**  
**SPECIAL PROCEDURES**

CHAPTER 1  
GENERAL PROVISIONS

**Scope of Title VIII**

*Article 113*

1. This Title covers the following special procedures:
  - transit (external and internal transit);
  - storage (temporary storage, customs warehousing and free zones);
  - specific use (temporary admission and end-use); and
  - processing (inward and outward processing).

**Application and Authorization**

*Article 114*

1. The use of a the processing or specific use procedure and/or the operation of storage facilities for the temporary storage or customs warehousing of goods shall be conditional upon authorization being issued by the customs authorities.
2. Except where otherwise provided for in the customs rules, the authorization referred to in paragraph 1 shall be granted only:
  - to persons who are established in the customs territory of the Community, except for temporary admission, in which case the persons must be established outside the customs territory of the Community;
  - to persons who offer every guarantee necessary for the proper conduct of the operations and, in cases where a customs or fiscal debt may be incurred for goods placed under a special procedure, provide a guarantee in accordance with Article 35;
  - in the case of temporary admission or inward processing, to the person who uses the goods or arranges for their use or who carries out processing operations on the goods or arranges for them to be carried out, respectively;
  - where the customs authorities can supervise and monitor the procedure(s) without having to introduce administrative arrangements disproportionate to the economic needs involved; and
  - where the essential interests of Community producers would not be adversely affected by an authorization for inward or outward processing or temporary admission.
3. The application for an authorization shall be submitted to the customs authorities designated for the place where the applicant's main accounts are held. Derogations from this rule shall be determined in accordance with the committee procedure.
4. The conditions under which the use of one or more special procedure(s) is permitted shall be set out in the authorization.

5. The conditions and procedure under which authorizations involving the customs authorities of different Member States (single authorization) or for the use of more than one special procedure (integrated authorization) are granted shall be determined in accordance with the committee procedure.

6. The essential interests of Community producers shall be deemed not to be adversely affected by an authorization for inward or outward processing or temporary admission, except where indications to the contrary exist. In the latter case, the examination of the economic conditions shall take place in accordance with the committee procedure.

7. The holder of the authorization shall notify the customs authorities of all factors arising after the authorization was granted which may influence its continuation or content.

### **Records**

#### *Article 115*

1. Except for transit, the holder of the authorization, the holder of the procedure, and all persons carrying on an activity involving the storage working or processing, sale or purchase of goods in free zones, shall keep records in a form approved by the customs authorities. The records must enable the customs authorities to supervise and control the procedure, in particular with regard to the identification of the goods placed under a special procedure, their customs status and their movements.

2. Derogations from the obligation of keeping records may be determined in accordance with the committee procedure.

### **End or discharge of a procedure**

#### *Article 116*

1. In the case of transit, the procedure and the obligations of the holder of the procedure (principal)

- shall end when the goods placed under the procedure and the required data are produced at the customs office of destination in accordance with the provisions of the procedure in question; and
- shall be discharged by the customs authorities, when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and that available to the customs office of destination, that the procedure has ended correctly.

2. In other cases than transit and without prejudice to Article 144, a special procedure shall end or be discharged when the goods placed under the procedure or the processed products

- are placed under a subsequent customs procedure, or
- have left the customs territory of the Community.

This shall include, where applicable, release for free circulation after outward processing.

3. The customs authorities shall take all the measures necessary to regularise the situation of goods in respect of which a procedure has not been discharged under the conditions prescribed.

### **Transfer of rights and obligations**

#### *Article 117*

Except for transit, the rights and obligations of the holder of a procedure with regard to goods which have been placed under a special procedure may, under the conditions laid down by the customs

authorities, be transferred successively to other persons who fulfil the conditions laid down for the procedure in question.

### **Movement of goods**

#### *Article 118*

Goods placed under a special procedure other than transit may be moved between different places in the customs territory of the Community under the provisions laid down in accordance with the committee procedure.

Where goods are destined to leave the customs territory of the Community, the provisions governing export shall be respected.

### **Usual forms of handling**

#### *Article 119*

Goods placed under customs warehousing or the processing procedure or in a free zone may undergo usual forms of handling intended to preserve them, improve their appearance or marketable quality or prepare them for distribution or resale.

### **Equivalent goods**

#### *Article 120*

1. 'Equivalent goods' means Community goods which are stored, used or processed instead of the goods placed under a special procedure. Under outward processing, 'equivalent goods' means non-Community goods which are processed instead of Community goods placed under outward processing.

Unless otherwise specified in provisions determined in accordance with the committee procedure, equivalent goods shall have the same eight-digit combined nomenclature code, be of the same commercial quality and possess the same technical characteristics as the goods placed under a special procedure.

2. Subject to paragraphs 5 and 6, the customs authorities shall authorize, under the condition that the proper conduct of the procedure, in particular regarding the customs supervision, is ensured, that

- (a) equivalent goods under a special procedure other than transit and temporary storage may be used;
- (b) processed products obtained from equivalent goods may be exported before importation of the goods placed under inward processing (prior exportation of equivalent goods);
- (c) processed products obtained from equivalent goods may be imported before exportation of the goods placed under outward processing (prior importation of equivalent goods).

3. Where paragraph 1 applies, the goods placed under the procedure shall be regarded for customs purposes as equivalent goods and the latter as goods placed under the procedure.

4. Recourse to the use of equivalent goods is not permitted

- in connection with usual forms of handling as defined in Article 119; or
- if the use would lead to an unjustified import duty advantage.

5. Where paragraph 1 (b) is applied and the processed products would be liable to export duties if they were not being exported in the context of a processing procedure, the holder of the authorization shall provide a guarantee to ensure payment of the duties should the non-Community goods not be imported within the period prescribed.

6. The use of equivalent goods under temporary admission shall be authorized by the customs authorities only in cases determined in accordance with the committee procedure.

### **Implementing provisions**

#### *Article 121*

Rules for the operation of the special procedures and for simplifications, and provisions aimed at avoiding the circumvention of commercial or agricultural policy measures, shall be determined in accordance with the committee procedure, taking into account the international obligations of the Community and its Member States.

## **CHAPTER 2**

### **TRANSIT**

#### **Section 1**

#### **External transit**

##### **Scope**

#### *Article 122*

1. External transit shall allow the movement of non-Community goods from one point to another within the customs territory of the Community:

- (a) without such goods being subject to
  - import duties;
  - as provided for under VAT and excise provisions in force, value added tax on importation and excise duties; or
  - to commercial policy measures;
- (b) which have been placed under the procedure as Community goods in cases and under the conditions laid down in accordance with the committee procedure or Community legislation governing specific fields.

Such goods shall, however, remain liable to any measures in force prohibiting or restricting the entry or exit of goods to or from the customs territory of the Community.

2. Movement as referred to in paragraph 1 shall take place:

- (a) under the external Community transit procedure; or
- (b) under cover of a TIR carnet (TIR Convention) provided that such movement:
  - (1) began or is to end outside the customs territory of the Community; or
  - (2) relates to consignments of goods which must be unloaded in the customs territory of the Community and which are conveyed with goods to be unloaded outside that territory; or
  - (3) is effected between two points in the customs territory of the Community through the territory of a third country;

- (c) under cover of an ATA carnet (ATA Convention/Istanbul Convention) used as a transit document; or
- (d) under cover of the Rhine Manifest (Article 9 of the revised Convention for the Navigation of the Rhine); or
- (e) under cover of the form 302 provided for in the Convention between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951; or
- (f) by post (including parcel post) as described in and governed by the acts in force of the universal postal union, when carried by or for holders of rights and obligations under such acts.

3. External transit shall apply without prejudice to the specific provisions applicable to the movement of goods in accordance with Article 118.

### **Goods passing through the territory of a third country**

#### *Article 123*

External Community transit shall apply to goods passing through a territory outside of the customs territory of the Community only if:

- (a) provision is made to that effect under an international agreement; or
- (b) carriage through that country is effected under cover of a single transport document drawn up in the customs territory of the Community; in such case the operation of that procedure shall be suspended while the goods are outside the customs territory of the Community.

### **Obligations of the holder of the external Community transit procedure**

#### *Article 124*

1. The holder of the external Community transit procedure (principal) shall be responsible for:
  - (a) presentation of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification;
  - (b) observance of the customs provisions relating to the procedure; and
  - (c) providing a guarantee in order to ensure payment of any customs or fiscal debt or other charges which may be incurred in respect of the goods, except where this requirement has been waived under the customs rules.
2. Notwithstanding the obligations of the holder of the procedure under paragraph 1, a carrier or recipient of goods who accepts goods knowing that they are moving under external Community transit shall also be responsible for presentation of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification.



## **Section 2**

### **Internal transit**

#### **Scope**

##### *Article 125*

1. Internal transit shall, under the conditions laid down in paragraphs 2 to 4, allow the movement of Community goods from one point to another within the customs territory of the Community passing through another territory without any change in their customs status.
2. The movement referred to in paragraph 1 may take place either:
  - (a) under internal Community transit, provided that such a possibility is provided for in an international agreement;
  - (b) under cover of a TIR carnet (TIR Convention);
  - (c) under cover of an ATA carnet (ATA Convention/Istanbul Convention) used as a transit document;
  - (d) under cover of a Rhine Manifest (Article 9 of the Revised Convention for the Navigation of the Rhine);
  - (e) under cover of form 302 as provided for in the agreement between the States party to the North Atlantic Treaty on the status of their forces, signed in London on 19 June 1951, or
  - (f) by post (including parcel post) ) as described in and governed by the acts in force of the universal postal union, when carried by or for holders of rights and obligations under such acts.
3. In the case referred to in paragraph 2 (a), Article 124 shall apply *mutatis mutandis*.
4. In the cases referred to in paragraph 2 (b) to (f) goods shall keep their customs status only if that status is established under the conditions and in the form prescribed by the provisions laid down in accordance with the committee procedure.
5. Internal Community transit shall also apply where Community legislation makes express provision for its application.

## **CHAPTER 3**

### **STORAGE**

#### **Section 1**

#### **Common provisions**

##### **Scope**

##### *Article 126*

The storage procedure shall allow the storage of non-Community goods:

- (a) without such goods being subject to
  - import duties;
  - as provided for under VAT and excise provisions in force, to value added tax on importation and excise duties; or

- commercial policy measures;
- (b) which have been placed under the procedure as Community goods, in cases and under the conditions laid down in accordance with the committee procedure or Community legislation governing specific fields.

Such goods shall, however, remain liable to any measures in force prohibiting or restricting the entry or exit of goods to or from the customs territory of the Community.

### **Responsibilities of the holder of the authorization or procedure**

#### *Article 127*

1. The holder of the authorization and the holder of the procedure shall be responsible for:
  - (a) ensuring that goods under temporary storage or customs warehousing are not removed from customs supervision;
  - (b) fulfilling the obligations arising from the storage of goods covered by temporary storage or customs warehousing; and
  - (c) complying with the particular conditions specified in the authorization for customs warehousing or for operation of the storage facilities.
2. By way of derogation from paragraph 1, where the authorization concerns a public customs warehouse as defined in Article 131 (2), it may provide that the responsibilities referred to in paragraph 1(a) and/or (b) devolve exclusively upon the holder of the procedure (depositor). In this case the customs authorities may require the holder of the procedure to provide a guarantee with a view to ensuring payment of any customs and fiscal debt which may arise.
3. The holder of the procedure shall at all times be responsible for fulfilling the obligations arising from the placing of the goods under temporary storage or customs warehousing.

### **Period for discharge and temporary removal**

#### *Article 128*

1. There shall be no limit to the length of time goods may remain under the storage procedure.
2. However, in exceptional cases, the customs authorities may set a time limit by which the storage procedure must be discharged.
3. Where circumstances so warrant, goods placed under customs warehousing may be temporarily removed from the customs warehouse. Such removal must, except in case of unforeseeable circumstances or *force majeure*, be authorized in advance by the customs authorities, who shall stipulate the conditions on which it may take place.

### **Community goods and processing activities**

#### *Article 129*

1. Where an economic need exists and customs supervision is not adversely affected thereby, the customs authorities may authorize:
  - (a) Community goods to be stored on the premises of a customs warehouse;
  - (b) goods to be processed on the premises of a customs warehouse under inward processing and/or end-use, subject to the conditions provided for by these procedures.
2. In the cases referred to in paragraph 1, the goods are not under customs warehousing.

**Section 2**  
**Temporary storage**

*Article 130*

1. Non-Community goods
  - which are brought into the customs territory of the Community, other than directly into a free zone; or
  - which are brought into another part of the customs territory of the Community from a free zone; or
  - for which the external transit procedure is ended,

where not otherwise expressly declared for a customs procedure, shall be deemed to be declared for temporary storage by the holder of the goods after their presentation to customs or when external transit has ended. The customs declaration shall be considered to have been lodged and accepted by the customs authorities at that moment.

The summary declaration shall constitute the customs declaration for temporary storage.

In such cases no authorization to use the storage procedure is required.

2. Goods in temporary storage shall be stored only in authorized storage facilities.
3. The customs authorities may require the holder of the goods to provide a guarantee with a view to ensuring payment of any customs debt which may arise.
4. Without prejudice to the provisions of Article 76 (3), goods in temporary storage shall be subject only to such forms of handling as are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics.
5. In cases covered by paragraph 1 in which no summary declaration is made, no person is holding the goods or in which the goods, for any other reason, cannot be released for temporary storage, the customs authorities shall without delay take all measures necessary, as provided for in Article 105, to regularize the situation after 30 days from the date on which the external transit procedure is ended or on which the goods have been presented to customs.

**Section 3**  
**Customs warehousing**  
**Types of customs warehouses**

*Article 131*

1. 'Customs warehouse' means facilities authorized by and under the supervision of the customs authorities where non-Community goods may be stored in accordance with Article 126.
2. A customs warehouse may be either a public warehouse or a private warehouse.

'Public customs warehouse' means a customs warehouse available for use by any person for the warehousing of goods.

'Private customs warehouse' means a customs warehouse used for the storage of goods by the holder of an authorization for customs warehousing.

## **Section 4**

### **Free zones**

#### **Designation of free zones**

##### *Article 132*

1. Member States or the customs authorities
  - may designate parts of the customs territory of the Community situated in that territory and separated from the rest of it as free zones,
  - shall determine the area covered by each zone, and
  - shall define the entry and exit points of each free zone.
2. Free zones shall be enclosed. The perimeter and the entry and exit points of the area of free zones shall be subject to supervision by the customs authorities.
4. Persons and means of transport entering or leaving free zones may be subject to customs controls.

#### **Buildings and activities in free zones**

##### *Article 133*

1. The construction of any building in a free zone shall require the prior approval of the customs authorities.
2. Any industrial, commercial or service activity in a free zone shall be approved by the customs authorities. The carrying on of such activities shall be subject to notification, in advance, to the customs authorities.
3. The customs authorities may impose certain prohibitions or restrictions on the activities referred to in paragraph 1, having regard to the nature of the goods concerned, or the requirements of customs supervision, or security or safety requirements.
4. The customs authorities may prohibit persons who do not provide the necessary guarantees of compliance with the customs provisions from carrying on an activity in a free zone.

#### **Other customs procedures**

##### *Article 134*

1. Non-Community goods may, while they remain in a free zone:
  - (a) be released for free circulation;
  - (b) be placed under inward processing or specific use under the conditions laid down for these procedures.
2. In the cases referred to in paragraph 1, the goods are not under the free zone procedure.

#### **Presentation of goods and their placement under the procedure**

##### *Article 135*

1. Goods brought into the area of a free zone shall be presented to customs and undergo the prescribed customs formalities where

- (a) they are brought into the area of a free zone directly from outside the customs territory of the Community; a pre-arrival declaration shall be lodged in accordance with Article 73;
  - (b) they have been placed under a customs procedure which is ended or discharged when they are placed under the free zone procedure;
  - (c) they are placed under the free zone procedure in order to benefit from a decision granting repayment or remission of import duties; or
  - (d) they qualify for agricultural policy measures involving the export of such goods;
2. Goods brought into the area of a free zone other than in the circumstances covered by paragraph 1 need not be presented to customs.
  3. Goods are deemed to be placed under the procedure at the moment of their entry into the area of a free zone unless they are under another customs procedure.

### **Community goods in free zones**

#### *Article 136*

1. Community goods may be entered, stored, transferred, used, processed or consumed in a free zone. In this case the goods are not under the free zone procedure.
2. At the request of the person concerned, the customs authorities shall certify the Community status of goods entering into a free zone, after undergoing processing operations or release for free circulation therein.

### **Consumption or processing of non-Community goods**

#### *Article 137*

1. Where Article 134 is not applied, non-Community goods shall not be consumed, used or processed in free zones.
2. Without prejudice to the provisions applicable to supplies or victualling storage, where the procedure concerned so provides, paragraph 1 shall not preclude the use or consumption of goods, the release for free circulation or temporary admission of which would not entail application of import duties or measures under the common agricultural or commercial policy. In that event, no declaration of release for free circulation or temporary admission shall be required.

Such declaration shall, however, be required if such goods are to be charged against a tariff quota or a ceiling.

### **Export and bringing of goods into another part of the customs territory of the Community**

#### *Article 138*

1. Without prejudice to Community legislation governing specific fields, goods in a free zone may be:
  - exported from the customs territory of the Community, or
  - brought into another part of the customs territory of the Community.

The provisions of Articles 76 to 81 shall apply *mutatis mutandis* to goods brought into other parts of that territory except in the case of goods which leave that zone by sea or air without being placed under a transit or other procedure.

2. For goods brought out of a free zone directly leaving the customs territory of the Community, a pre-departure declaration must be lodged in accordance with Articles 156 to 158.

3. The customs authorities shall ensure that the rules governing export are respected where goods are brought out of the customs territory of the Community from a free zone.

### **Status of returned goods**

#### *Article 139*

1. Where goods are returned to another part of the customs territory of the Community, the certificate referred to in Article 136 (2) may be used as proof of the Community status of such goods.

2. Where the status of goods is not proved by the certificate or approved documents, the goods shall be considered to be:

- Community goods, for the purposes of applying export duties and export licences or export measures laid down under the commercial or agricultural policy;
- non-Community goods in all other cases.

## **CHAPTER 4**

### **SPECIFIC USE**

#### **Section 1**

#### **Temporary admission**

##### **Scope**

#### *Article 140*

1. Temporary admission shall allow the temporary use of non-Community goods in the customs territory of the Community, with

- total or partial relief from import duties; and
- as provided for under VAT and excise provisions in force,
  - in the case of total relief from import duties, relief from value added tax on importation;
  - relief from excise duties;

and without their being subject to commercial policy measures.

Such goods shall, however, remain liable to any measures in force prohibiting or restricting the entry or exit of goods to or from the customs territory of the Community.

2. Temporary admission may be used only where:

- the export of the goods is intended, except in cases determined in accordance with the committee procedure,
- the goods are not intended to undergo any change, except normal depreciation due to the use made of them,
- it is possible to ensure that the goods placed under the procedure can be identified, except where, in view of the nature of the goods or of the operations to be carried out, the absence of identification measures is not liable to give rise to any abuse of the procedure or in the

case referred to in Article 120, where compliance with the conditions laid down in respect of equivalent goods can be verified.

### **Period during which goods may remain under temporary admission**

#### *Article 141*

1. The customs authorities shall determine the period within which goods placed under the procedure must have been exported or placed under a subsequent customs procedure. Such period must be long enough for the objective of authorized use to be achieved.
2. The maximum period during which goods may remain under temporary admission for the same purpose and under the responsibility of the same holder of the authorization, even where the procedure was discharged by placing the goods under a subsequent customs procedure and subsequently placing them under temporary admission again, shall be 24 months.
3. However, where exceptional circumstances so warrant, the customs authorities may, at the request of the holder of the authorization and within reasonable limits, extend the periods referred to in paragraphs 1 and 2 in order to permit the authorized use.

### **Situations covered by temporary admission**

#### *Article 142*

The cases in which and the conditions under which temporary admission may be used with total or partial relief from import duties shall be determined in accordance with the committee procedure, taking into account

- international agreements;
- the nature of the goods; and
- the use of the goods.

### **Amount of import duties in case of temporary admission with partial relief from import duties**

#### *Article 143*

1. The amount of import duties payable in respect of goods placed under temporary admission with partial relief from import duties shall be set at 3%, for every month or fraction of a month during which the goods have been placed under temporary admission with partial relief, of the amount of duties which would have been payable on the said goods had they been released for free circulation on the date on which they were placed under temporary admission.
2. The amount of import duties charged shall not exceed that which would have been charged if the goods concerned had been released for free circulation on the date on which they were placed under temporary admission.

## **Section 2**

### **End-use**

#### *Article 144*

Where goods are released for free circulation duty-free or at reduced duty rate on account of their end-use, they shall remain under customs supervision. Customs supervision under the end-use procedure shall end when the conditions laid down for granting such duty exemption or reduced rate of duty cease to apply, where the goods are exported, destroyed or abandoned to the Exchequer or where the use of

the goods for purposes other than those laid down for the application of the duty exemption or reduced duty rate is permitted subject to payment of the import duties due.

## CHAPTER 5 PROCESSING

### Section 1

#### General provisions and definitions

##### *Article 145*

1. 'Processed products' means goods placed under the processing procedure which have undergone processing operations.
2. 'Processing operations' means:
  - the working of goods, including erecting or assembling them or fitting them to other goods;
  - the processing of goods;
  - the destruction of goods;
  - the repair of goods, including restoring them and putting them in order; and
  - the use of goods which are not to be found in the processed products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process (production accessories).
3. 'Rate of yield' means the quantity or percentage of processed products obtained from the processing of a given quantity of goods placed under the procedure.

#### Rate of yield

##### *Article 146*

1. Without prejudice to paragraph 2, the customs authorities shall set either the rate of yield or average rate of yield of the operation carried out under the processing procedure or where appropriate, the method of determining such rate. The rate of yield or average rate of yield shall be determined on the basis of the actual circumstances in which processing operations are, or are to be, carried out. This rate may be adjusted subsequently, where appropriate.
2. Where a rate of yield has been determined in Community legislation governing specific fields, this rate shall be applied by the customs authorities.

### Section 2

#### Inward processing

##### Scope

##### *Article 147*

1. Without prejudice to Article 120, inward processing shall allow non-Community goods to be used in the customs territory of the Community in one or more processing operations without such goods being subject to
  - import duties; or



- as provided for under VAT and excise provisions in force, value added tax on importation and excise duties, or,
- commercial policy measures.

Such goods shall, however, remain liable to any measures in force prohibiting or restricting the entry or exit of goods to or from the customs territory of the Community.

2. The procedure may be used only:

- in cases other than repair, where the goods placed under the procedure can be identified in the processed products insofar as they are incorporated or contained in them; or
- in the case referred to in Article 120, where compliance with the conditions laid down in respect of equivalent goods can be verified.

3. This procedure shall also apply for goods:

- which have to undergo operations to ensure their compliance with technical provisions for their release for free circulation; or
- which have to undergo usual forms of handling in accordance with Article 119.

### **Period for discharge**

#### *Article 148*

1. The customs authorities shall specify the period within which the goods placed under the procedure or processed products must have been placed under a subsequent customs procedure, unless they are destroyed and no waste remains. That period shall take account of the time required to carry out the processing operations and to place the processed products to a subsequent customs procedure.

2. The period shall run from the date on which the non-Community goods are placed under the procedure. The customs authorities may grant an extension on submission of a duly substantiated request by the holder of the authorization.

The authorization may specify that a period which commences in the course of a calendar month, quarter or semester shall end on the last day of a subsequent calendar month, quarter or semester respectively.

3. In cases of prior exportation in accordance with Article 120 (2) (b), the customs authorities shall specify the period within which the non-Community goods must be declared for the procedure. That period shall run from the date of acceptance of the export declaration relating to the processed products obtained from the corresponding equivalent goods.

### **Temporary export**

#### *Article 149*

Some or all of the goods placed under the procedure or the processed products may be temporarily exported for the purpose of further processing outside the customs territory of the Community if the customs authorities so authorize, in accordance with the conditions laid down for outward processing.

### **Section 3**

#### **Outward processing**

##### **Scope**

###### *Article 150*

1. Outward processing allows Community goods to be exported temporarily from the customs territory of the Community in order to undergo processing operations and the processed products resulting from them to be released for free circulation with total or partial relief from import duties.

However, outward processing shall not be open to Community goods:

- whose export gives rise to repayment or remission of import duties;
- which, prior to exportation, were released for free circulation with total relief from import duties by virtue of their end-use, for as long as the conditions for granting such relief have not been fulfilled, unless these goods have to undergo repair operations;
- whose export gives rise to the granting of export refunds or in respect of which a financial advantage other than such refunds is granted under the common agricultural policy by virtue of the exportation of the said goods.

2. Total or partial relief from import duties provided for in paragraph 3 and in Articles 151 to 153 shall be granted on request where the processed products are declared for release for free circulation by the holder of the procedure.

3. In cases not covered by Articles 151 and 152 and where ad valorem duties are involved, the amount of the import duty is calculated on the basis of the cost of the processing operation undertaken outside the customs territory of the Community. The rules for such calculation and the rules where specific duties are involved shall be determined in accordance with the committee procedure.

4. The customs authorities shall specify the period within which the processed products must be re-imported into the customs territory of the Community in order to be able to benefit from total or partial relief from import duties. They may extend that period on submission of a duly substantiated request by the holder of the authorization.

##### **Repaired goods**

###### *Article 151*

1. Where it is established to the satisfaction of the customs authorities that goods were repaired free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect, they are eligible for total relief from import duty.

2. Paragraph 1 shall not apply where account was taken of the defect at the time when the goods in question were first released for free circulation.

##### **Standard exchange system**

###### *Article 152*

1. The standard exchange system shall permit an imported product, hereinafter referred to as a 'replacement product', to replace a processed product.

2. Replacement products shall have the same combined nomenclature code, be of the same commercial quality and possess the same technical characteristics as the defective goods had the latter undergone the repair in question.

3. Where the defective goods have been used before export, the replacement products must also have been used and may not be new products.

The customs authorities may, however, waive this rule if the replacement product has been supplied free of charge either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect.

4. The customs authorities shall authorize the standard exchange system to be used where the processing operation involves the repair of Community goods other than those subject to the common agricultural policy measures or to the specific arrangements applicable to certain goods resulting from the processing of agricultural products.

5. The provisions applicable to processed products shall also apply to replacement products.

### **Prior importation**

#### *Article 153*

1. The customs authorities shall, under the conditions they lay down, authorize replacement products to be imported before the defective goods are exported (prior importation of replacement products).

In the event of prior importation of a replacement product, a guarantee covering the amount of the import duties shall be provided.

2. The defective goods shall be exported within a period of two months from the date of acceptance by the customs authorities of the declaration for the release of the replacement products for free circulation.

3. However, where exceptional circumstances so warrant, the customs authorities may, at the request of the person concerned, extend within reasonable limits the period referred to in paragraph 2.

## **TITLE IX**

### **DEPARTURE OF GOODS FROM THE CUSTOMS TERRITORY OF THE COMMUNITY**

#### **CHAPTER 1**

#### **GOODS LEAVING THE CUSTOMS TERRITORY**

##### **Obligation to lodge pre-departure declaration**

###### *Article 154*

1. Goods destined to leave the customs territory of the Community, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory of the Community without a stop within this territory, shall be covered by a pre-departure declaration.
2. The pre-departure declaration shall take the form of a customs declaration or a re-export notification, as applicable, where required under the customs rules or, where neither a customs declaration nor a re-export notification is required, a summary declaration. The pre-departure declaration shall be lodged or made available at the competent customs office before the goods are to be brought out of the customs territory of the Community.
3. The pre-departure declaration shall contain at least the particulars necessary for the summary declaration referred to in Article 158.
4. The committee procedure shall be used to establish, according to special circumstances and applying to certain types of goods traffic, modes of transport or economic operators or where international agreements provide for special security arrangements,
  - the time limit by which the pre-departure declaration shall be lodged or made available before the goods are brought out of the customs territory of the Community;
  - the rules for exceptions from and variations to the above-mentioned time limit and the conditions under which the requirement for an pre-departure declaration may be waived or adapted; and
  - the cases in which and the conditions under which goods leaving the customs territory of the Community are not subject to an pre-departure declaration, and
  - the rules determining the competent customs office at which
    - the export declaration shall be lodged or made available; and
    - where risk analysis and risk-based export and exit controls are to be carried out..

##### **Formalities and customs supervision**

###### *Article 155*

1. Goods destined to leave the customs territory of the Community shall be subject to the application of exit formalities including
  - repayment or remission of import duties;
  - required under the VAT and excise provisions in force;
  - application of prohibitions and restrictions, notably in the context of commercial, agricultural and security policy measures; or

- where appropriate, collection of export duties.
2. The goods in question shall leave the customs territory of the Community in the same condition as when the export declaration was accepted.
  3. Goods leaving the customs territory of the Community shall be subject to customs supervision. They may be subject of customs controls in accordance with the provisions in force. They shall leave the said territory using, where appropriate, the route determined by the customs authorities in accordance with the procedures laid down by those authorities.

## CHAPTER 2

### EXPORT

#### **Export procedure**

##### *Article 156*

1. The export procedure shall allow Community goods to leave the customs territory of the Community, subject to the rules for supervision and control determined in accordance with the committee procedure.
2. Community goods destined to leave the customs territory of the Community shall be placed under the export procedure with the exception of:
  - goods placed under end-use or outward processing;
  - goods placed under internal transit or leaving the customs territory of the Community temporarily, in accordance with Article 86.
3. Goods placed under end-use or outward processing shall be subject to the export formalities for that procedure determined in accordance with the committee procedure

#### **Non-Community goods**

##### *Article 157*

1. Non-Community goods destined to leave the customs territory of the Community shall not be placed under the export procedure but shall be subject to the to the requirement for a re-export notification to be lodged at the competent customs office and to the exit formalities determined in accordance with the committee procedure.

The provisions of Title V, Chapter 3 shall apply *mutatis mutandis* to the re-export notification.

- 2 Paragraph 1 shall not apply to
  - goods placed under external transit and only passing through the customs territory of the Community;
  - goods transhipped in, or directly exported from, a free zone; or
  - goods in temporary storage directly exported from an authorized temporary storage facility.

#### **Summary declaration**

##### *Article 158*

1. Where non-Community goods are destined to leave the customs territory of the Community and a re-export notification is not required under Article 157, a summary declaration shall be lodged at the competent office.

2. The summary declaration shall be made using an electronic data processing technique. Commercial, port or transport information may be used, provided that it contains the necessary particulars.

Customs authorities may accept paper-based summary declarations in exceptional circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using an electronic data processing technique and that the requirements for the exchange of such data with other customs offices can otherwise be met.

3. The summary declaration shall be lodged by:

- (a) the person who brings the goods, or who assumes responsibility for the carriage of the goods, out of the customs territory of the Community; or
- (b) the exporter or consignor or other person in whose name or on whose behalf the persons referred to in (a) above act; or
- (c) any person who is able to present the goods in question or to have them presented to the competent customs authority; or
- (d) a representative of one of the persons referred to in points (a), (b) or (c).

4. The person referred to in paragraph 3 shall, at his request, be permitted to amend one or more particulars of the summary declaration after it has been lodged. However, no amendment shall be possible after the customs authorities:

- (a) have informed the person who lodged the summary declaration that they intend to examine the goods; or,
- (b) have established that the particulars in questions are incorrect; or,
- (c) have allowed the removal of the goods, except in cases determined in accordance with the committee procedure.

### **Temporary export**

#### *Article 159*

The cases in which and the conditions under which goods intended for re-importation may be temporarily exported from the customs territory of the Community with a view to benefiting from duty relief upon re-importation shall be determined in accordance with the committee procedure.

## **CHAPTER 3**

### **RELIEF FROM EXPORT DUTY ON ACCOUNT OF SPECIAL CIRCUMSTANCES**

#### *Article 160*

The cases in which and the conditions under which relief from export duties shall be granted, on account of special circumstances, where goods are exported, shall be determined in accordance with the committee procedure, taking into account:

- international agreements,
- the status of the person concerned, and
- the nature of the goods.

**TITLE X**  
**FINAL PROVISIONS**

**CHAPTER 1**  
**CUSTOMS CODE COMMITTEE**

*Article 161*

1. The Commission shall be assisted by the Customs Code Committee (hereinafter referred to as 'the Committee').
2. The Committee shall adopt its rules of procedure.
3. The Committee may examine any question concerning the customs rules which is raised by its chairman, either on the initiative of the Commission or at the request of a Member State's representative.

*Article 162*

1. The provisions necessary for the implementation of this Regulation shall be adopted in accordance with the management procedure referred to in paragraph 3, in compliance with the international commitments entered into by the Community.
2. This procedure shall also apply to
  - the adoption of explanatory notes and guidelines to this Code and the provisions adopted for its implementation, as well as to the rules of origin referred to in Article 30 (1) (a) and (c);
  - the adoption of the rules for the examination of the essential interests of Community producers in order to conclude whether or not an authorization for the use of inward or outward processing or temporary admission may be granted;
  - the preparation of a common position of the Community in committees, working groups and panels introduced by or under international agreements dealing with the customs rules;
  - the resolution of problems arising from any divergent application of the customs rules by different customs authorities;
  - the agreement of rules and standards for the inter-operability of Member States' customs systems to bring about improved co-operation based upon electronic data exchange between customs authorities and between customs authorities and economic operators.
3. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4 (3) of Decision 1999/468/EC shall be set at one month.

4. In establishing the measures referred to in paragraphs (1) and (2), the Commission shall respect the mission of customs as laid down in Article 1.

**CHAPTER 2**  
**OTHER FINAL PROVISIONS**

*Article 163*

1. The following Regulations are hereby repealed:

- Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duties<sup>19</sup>,
- Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing;<sup>20</sup>
- Council Regulation (EEC) No 2913/92 of 12 October 1992, establishing the Community Customs Code<sup>21</sup>,
- Council Regulation (EC) No 82/2001 of 5 December 2000 concerning the definition of the concept of "originating products" and methods of administrative co-operation in trade between the customs territory of the Community and Ceuta and Melilla<sup>22</sup>,
- Council Regulation (EC) No 1207/2001 of 11 June 2001 on procedures to facilitate the issue of movement certificates EUR.1, the making-out of invoice declarations and forms EUR.2 and the issue of certain approved exporter authorizations under the provisions governing preferential trade between the European Community and certain countries<sup>23</sup>.

2. In all Community acts where reference is made to the Regulations referred to in paragraph 1, that reference shall be deemed to refer to this Code.

#### *Article 164*

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007. However, electronic declaration and automated systems for the implementation of risk management, as stipulated in Article 20 (2), for the electronic exchange of data between customs offices, as stipulated in Article 5 (1), and for the automated systems for the registration of traders, as stipulated in Article 8 (4), shall be in place by [1<sup>st</sup> January 2009].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the European Parliament

For the Council

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<sup>19</sup> OJ No L 105, 23.4.1983, p. 1.

<sup>20</sup> OJ No L374, 31.12.1991, p.4

<sup>21</sup> OJ No L 302, 19.10.1992, p. 1.

<sup>22</sup> OJ No L 2001, 20.1.2001, p. 1.

<sup>23</sup> OJ No L 165, 21.6.2001, p. 1.



<b>FINANCIAL STATEMENT</b>					
				DATE:	
1. BUDGET HEADING: <b>B 5307 (14 04 02)</b>				APPROPRIATIONS:	
2. TITLE: Draft Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EEC) No xxxxx establishing the Community Customs Code (presented by the Commission)					
3. LEGAL BASIS: Articles 26, 95, 133, 135 EC Treaty					
4. AIMS: Implementation of electronic Customs					
5. FINANCIAL IMPLICATIONS		12 MONTH PERIOD [2004] (EUR million)	CURRENT FINANCIAL YEAR [2005] (EUR million)	FOLLOWING FINANCIAL YEAR [2006] (EUR million)	
5.0 EXPENDITURE					
- CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTIONS) (see observation n° 2 below)		<b>11,4</b>	<b>18,5</b>	<b>22,4</b>	
- NATIONAL AUTHORITIES					
- OTHER					
5.1 REVENUE					
- OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES)					
- NATIONAL					
		[2007]	[2008]	[2009]	[2010]
5.0.1 ESTIMATED EXPENDITURE		<b>23,4</b>	<b>24,5</b>	<b>24,0</b>	<b>24,0</b>
5.1.1 ESTIMATED REVENUE					
5.2 METHOD OF CALCULATION: <b>IT project cost estimate (Strategy, specification, development &amp; maintenance, operation, support, co-ordination, quality control and quality assurance, meetings)</b>					
6.0 CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?				YES <del>NO</del>	
6.1 CAN TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET FINANCE THE PROJECT?				<del>YES</del> NO	
6.2 WILL A SUPPLEMENTARY BUDGET BE NECESSARY?				<del>YES</del> NO	
6.3 WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?				<del>YES</del> NO	
OBSERVATIONS:					
1. Financial implications are linked to the setting up of an automated system for an integrated Customs risk & control management, of a community interface with the Economic Operators					
2. In addition, the EC Budget may well fund via the 6 <sup>th</sup> and 7 <sup>th</sup> framework Programmes research projects proposed in the area of IST eGovernment Research with direct relevance to electronic Customs. It is however not possible at this stage to know whether such project will exist, and if it does, which level of funding will be allocated.					