EUROPEAN COMMISSION

DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
CUSTOMS POLICY
Customs legislation

Brussels, 24th February 2005

TAXUD/447/2004 Rev 2

An Explanatory Introduction to the modernized Customs Code

This document accompanies and complements

Document **TAXUD/ 458/ Rev 4 - Draft Modernized Customs Code ,** dated **11th November 2004,** and its **Addendum**, dated 23rd February 2005.

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Executive Summary

The main features of the modernized Customs Code are

- a simpler structure and more coherent terminology;
- fewer Articles and simpler rules;
- more common rules (notably for authorizations, customs debt and special procedures) with fewer exceptions;
- the inclusion of other, autonomous customs legislation, such as duty relief, origin and control of passengers' baggage;
- closer association with legislation other than customs legislation, notably fiscal, environmental, health, safety and security, to strengthen the role of customs as the principle agency for border protection and supervision in respect of the movement of goods;
- clearer and harmonized definitions of the rights and obligations of economic operators, including customs representatives; and
- the facilitation of central customs clearance for authorized economic operators, within a 'single window/one stop shop' concept based upon electronic exchange of data;
- the strengthening of provisions for Community-wide decisions, notably with regard to authorizations;
- the introduction of more efficient procedures for changes to the implementing provisions and the adoption of guidelines and explanatory notes; and
- in order to create a level playing field throughout the single market,
    - harmonization of administrative penalties; and
    - the replacement of empowerments for national simplifications, or rules based on national law, with Community rules or the possibility to adopt such rules under the committee procedure. Only judicial matters are excluded from this approach.

The specific changes include

- the requirement that electronic declarations and exchange of data be the principle means of communication between economic operators and customs administrations, as well as between administrations;
- the merger of rules for the incomplete declaration, the simplified declaration and the local clearance procedure, with the customs debt being incurred at the place where the authorized economic operator is established and has to present his periodic declaration;
- the grouping together, as 'special procedures', of all procedures that go beyond a simple release for free circulation or export and for which special requirements, such as authorization, guarantee or special records, exist. These special procedures are brought under the headings 'movement', 'storage', 'processing' and 'use' of goods, thereby reducing legal complexity and allowing for greater use of common rules, including the provisions for the assessment of a customs debt for goods placed under a special procedure. This will also facilitate the granting of authorizations for several procedures under a single guarantee and with a single supervising office;

- the merger of the customs regimes relating to inward processing, processing under customs control and destruction - the current drawback system being abolished -, and of those relating to export and re-export;
- the alignment, as far as is possible, of the rules for temporary storage, customs warehousing and free zones;
- the merger of the provisions on the irregular incurrence of a customs debt, as well as the provisions on how minor offences can be dealt with;
- the arrangement of Articles according to their systematic context, for easier reading and comprehension;
- each Article being described by a title, for ease of finding and comprehension;
- a reduction in volume of more than one third, with a corresponding reduction to be anticipated in the implementing provisions.

Introduction

The reform of the Customs Code and its structure

1. Are specific adaptations enough ?

Since the adoption of the Customs Code in 1992, amendments have only covered specific topics (such as the protection of good faith with regard to preferential certificates of origin) but no general overhaul has taken place yet.

Whenever the requirements of an electronic environment for customs and trade have been discussed with economic operators and administrations, two options have been considered:

1. Make, as in the past, specific adaptations but change as little as possible.
2. Use the opportunity for a major overhaul of procedures, processes and other customs rules.

Practically all economic operators and a vast majority of administrations have opted for the second alternative. The main reasons for this can be summarised as follows:

- The introduction of IT should be seen as an opportunity to streamline procedures and processes which have been developed for a paper-based environment.
- The structure and content of the Customs Code are a compromise between the procedures used in the Member States in the eighties, and which have been put together in a consolidated form. As a result, traders and administrations have to deal with old-fashioned and unnecessarily complex rules. Do we really need three types of duty relief after outward processing or six types of customs warehousing ?
- Since the eighties import duties have constantly been reduced and further reductions can be expected. On the other hand, other tasks of the customs authorities have become more important, such as the correct collection of VAT and excise duties at importation, the avoidance of tax fraud at exportation, the implementation of prohibitions and restrictions (e.g. for health, environmental reasons), the protection of intellectual property rights, or the protection of safety and security at the external borders. These aspects are not sufficiently reflected in the Customs Code.

The communication on a simple and paperless environment for customs and trade[1] proposes therefore a complete overhaul of the Customs Code. This objective has been endorsed by the Council Resolution of 5 December 2003.[2]

A consolidated, simpler Customs Code, followed by consolidated and simpler implementing provisions and, possibly, guidelines, would also encourage Member States to use these regulations and guidelines themselves as the primary reference for operational guidance and decisions, rather than national guidelines and instructions which include or interpret them. Better and more consistent interpretation and application of the customs rules will be greatly to the benefit of economic operators.

2. How can a simpler structure and simpler rules be achieved ?

The following principles will allow for a simpler structure and simpler rules:

- Besides those for normal import and export operations, the customs rules for special activities,

[1] COM (2003) 452 final, 24.07.2003.
[2] OJ 2003 No C 305, p. 1.

that is the movement, storage, processing or use of goods, will be grouped together (Title VIII: Special Procedures).

- Similar customs processes will be merged or grouped together, such as
  - export and re-export;
  - internal and external transit;
  - inward processing, processing under customs control and destruction.
- The variety of simplified customs declaration procedures can be abandoned, if the electronic declaration requirements are always the same.
- The provisions for the incurrence of a customs debt, the basis of assessment and the correction of irregularities can be merged or grouped together, so that more coherent rules can be applied.

3. What are the main costs and benefits of such a reform ?

Where a simplification leads to the demise of an arrangement or variants of an arrangement, the investment of a Member State or economic operator who has already computerised this arrangement or variant becomes devalued, but this will be offset by savings of the costs of continued maintenance or future development.

The merger or alignment of related procedures means that fewer specialists and better co-ordination will be needed. Administrations and companies who are in the process of reducing their staff or have done this already will benefit from such an approach.

Every reform creates transition costs; if the computerised procedures of the Member States are to be harmonized, such transition costs are inevitable. Consequently, the only procedure which has already been computerised at Community level, namely NCTS, should, in principle, not be changed and other procedures (e.g. exportation) should build on the NCTS infrastructure and the experiences gained.

Advantages of a simpler structure and a maximum of common elements across different arrangements are in particular:

- easier access to the rules,
- a level playing field for economic operators throughout the EU,
- less staff required,
- less training required,
- less programming efforts for the implementation of the customs rules,
- a more uniform application,
- less subsequent modifications of the Customs Code because each special rule generates its own exceptions.

4. What are the aims of the modernisation?

This proposal for a modernized Customs Code aims at:

- implementing the objectives of the Communication from the Commission on a simple and paperless environment for Customs and Trade (COM(2003) 452 final, 24.07.2003), as endorsed by the Parliament, the Council and the European Economic and Social Committee;

– implementing the Communication from the Commission on the role of customs in the integrated management of external borders (COM (2003) 452 final, 24.07.2003), as endorsed by the Parliament, the Council and the Economic and Social Committee;

– implementing the International Convention on the simplification and harmonisation of Customs procedures - the Kyoto Convention;

– taking into account legal changes, which have occurred since the last modification of the Customs Code, such as the expiry of the ECSC Treaty and the entry into force of the Act of Accession on 1st May 2004;

– creating a closer link between customs legislation and other legislation applied at the importation or exportation of goods, such as prohibitions and restrictions, VAT and excise duties.

The security-related amendments to the Customs Code, which are currently before the Council and the Parliament, have been taken into account on the basis of the common position of the Council: should further changes arise, they can be taken on board subsequently. In some cases, adaptations have been made, either in order to provide for a common terminology or to take account of the fact that the modernized Customs Code will enter into force at a time when the most important IT-based solutions will already have been, or are shortly to be, introduced.

TITLE I: GENERAL PROVISIONS

CHAPTER I: MISSION OF CUSTOMS, SCOPE OF CUSTOMS LEGISLATION AND BASIC DEFINITIONS

Mission of customs

Article 1 (new provision)

Many customs laws of the Member States and other countries start with a mission statement describing the role and objectives of the customs administration. Though the specific provisions of the Customs Code and the other relevant legislation take precedence over this Article, it can be used as a means of interpretation and as a convergence framework when it comes to the implementation of legal or operational objectives, such as a 'single window' or 'one-stop-shop' concept. Most of the objectives mentioned are also part of the General Annex of the Kyoto Convention, such as:

- the assessment and collection of duties and taxes (Chapter 4);
- customs control (Chapter 6);
- the application of information technology (Chapter 7);

The mission statement also includes a direct reference to customs tasks relating to enforcement of prohibitions and restrictions, as described in the former Article 58.

The Commission will also be bound by these objectives when it drafts implementing provisions or guidelines (Article162 (4)).

Scope and application of customs rules

Article 2 (formerly Articles 1 & 2)

The former text can be simplified given that the ECSC Treaty has expired and that the Euratom treaty does not contain customs provisions for the time after the transitional period. Non-customs measures based on the Euratom Treaty are covered by the term 'special rules laid down in other fields'.

The text has also been amended so that customs rules include the Custom Tariff, an omission that needed rectifying.

Customs territory

Article 3

The definition of the customs territory has been updated, taking the last Act of Accession[3] and amendments to the French constitution into account.

Definitions

Article 4

The definitions have been re-ordered into associated groups, for ease of reference.

In the first indent of (1) the words "… who is able to perform the legal act concerned according to the provisions in force;" have been added in order to cover the case of minors who can only perform certain legal acts (e.g. import with duty relief, but not apply for an inward processing authorization).

In (2) it has been clarified that the term 'established in the Community' refers to its customs territory. This is more in line with former Article 127 and Articles 557-562 CCIP. Other Articles referring to

[3] OJ 2003 No L 236, p.33.

being established in the Community have been amended accordingly (e.g. Article 93 [formerly 64]).

The definition in (4) 'Customs controls' reflects the proposal on security-related changes of the Customs Code (COM (2003) 452 final, 24.07.2003).

The definitions in (7) and (8) reflect the status of the proposals on security-related changes to the Customs Code (COM (2003) 452 final, 24.07.2003).

The former definitions of the roles of various customs offices included in the proposals on security-related changes to the Customs Code (COM (2003) 452 final, 24.07.2003), have been passed to the implementing provisions, given that the data flows may alter with technological change. The term 'competent customs office' is therefore used throughout this new Code.

In (11), the second subparagraph has been deleted, as the text has been incorporated into Article 85 (a).

The definition in (12) 'Customs procedure' [formerly (15) & (16)] reflects the merger of former 'customs procedures' with the other 'customs approved treatment or use'.

In (17) a definition of 'holder of the goods', used in Articles 106 and 130, has been introduced.

The text of (20) 'Import duties' and (21) 'Export duties' has been simplified, given that since the inception of the Customs Code there have been no practical cases of charges having an effect equivalent to customs duties to which the Customs Code was applied. In fact, whenever specific legislation was enacted at Community level (e.g. fees for veterinary controls), it also contained the rules for their assessment and collection. Furthermore, such charges are normally not collected by customs. The term import duties includes anti-dumping and safeguard duties (See Article 26 (3)(h)). The reference to the Common Customs Tariff is removed as it is referred to in Article 26 (3).

(23) and (24) define 'authorization' and 'decision' and, by derivation, the holder of these. This renders the former (22) superfluous.

(26) mirrors the definition given in CCIP Article 1 (7)

Nos (28) and (29) are introduced to define, respectively, 'guidelines' and 'explanatory notes', as used in Article 162 (2).

CHAPTER 2: SUNDRY GENERAL PROVISIONS RELATING IN PARTICULAR TO THE RIGHTS AND OBLIGATIONS OF PERSONS WITH REGARD TO CUSTOMS RULES

Section 1: Provision of information

Exchange of data, data protection

Article 5 (new provision + former Article 15)

Paragraph (1) introduces the principle of electronic data exchange between customs administrations as well as between customs administrations and economic operators. Exceptions from this principle can be laid down (see, for example, Article 90).

Paragraph (2) consolidates under one Article the requirements for the laying down under the committee procedure of the various data sets and message exchange requirements for the application of the customs rules, instead of under various Articles, both where they exist, such as former 36 (b) and 182 (d) (for the proposals on security-related changes to the Customs Code), or where they will need to exist for new initiatives such as ECS, ICS etc.

Paragraph (3) replaces and updates former Article 15 with the provisions on the protection and the

conditions of the exchange of confidential data proposed under the security-related amendments of the Customs Code (COM (2003) 452 final, 24.07.2003).

Memorandum of understanding

Article 6 (new provision)

This new Article provides a legal basis for memoranda of understanding.

Provision of information by the customs authorities

Article 7 (formerly Article 11)

The reference to cost in the former Article 11 has been integrated into new Article 22.

Paragraph (3) has been added in accordance with Chapter 9 of the General Annex to the Kyoto Convention.

Provision of information to the customs authorities

Article 8 (ex former Article 14 and Article 199 CCIP)

This new Article moves into the Code the obligation of declarants and applicants, or their representatives, to provide true information and data, in keeping with the new basis for customs debt to be based upon failure to meet obligations (see Article 46).

Paragraph 4 provides for the establishment of an economic operator database in order to avoid multiple registration of traders in several Member States and to facilitate mutual recognition of authorized economic operators..

Section 2: Customs representation

Article 9 (formerly Article 5)

Under the modernized Customs Code customs declarations are normally made in electronic form. The former possibility for Member States to restrict the right to make customs declarations by direct or indirect representation to customs agents established in that Member State is neither compatible with an electronic environment (in which the place of establishment within the Community should not play a decisive role with regard to the question as to who can lodge a customs declaration) nor with the principles of the single market (according to which service providers from all Member States should be able to carry on their business throughout the Community, see European Court of Justice, case C-131/01 *Commission v Italy* judgement of 13.02.2003). Furthermore, maintaining such restrictions in certain Member States would mean that trade is diverted to other Member States without such restrictions.

This revision is also in line with the general approach by which all empowerments for special national provisions have been removed from the Code, except where they apply to the organization of customs controls. In a Customs Union and a Single Market, it is necessary to provide for a level playing field for economic operators. The only exception from this rule is in the case of judicial matters (see Articles 17-19).

The terms 'customs representation' and 'customs representative' have been introduced to differentiate between a representative dealing with matters under the customs rules and a fiscal representative, dealing with VAT or excise (although they can be both at the same time).

In paragraph (5), provision for a waiver from the requirement to produce evidence of the power to act as a representative has been introduced. This change is intended to support the reform aimed at creating a level playing field for consignments conveyed by postal services and their competitors. This

reform envisages that operators can be authorized to act on behalf of the recipient of the consignment without having been empowered by him.

Paragraph (6) recognizes the important role that professional customs agents play in the import and export process and provides for granting to them of authorized economic operator status and the facilitations that this affords (e.g. with regard to safety and security requirements, or deferred payment on behalf of their clients).

Section 3: Authorized Economic Operators

Article 10 (formerly Article 5a, introduced following the proposal on security-related changes to the Customs Code (COM (2003) 452 final, 24.07.2003).

The text included reflects the current status of this proposal, but additions have been made to paragraph 2 to accommodate the specific accreditation of customs agents, in line with Article 9 (6).

A new paragraph (3) introduces the obligation for the authorized trader to notify the customs authorities of any change of circumstances, in line with Article 114 (7).

Section 4: Decisions relating to the application of customs rules

Article 11 (formerly Articles 6, 7, ex 10 & ex 250)

In paragraph (1) it has been clarified that several persons may request and be covered by a decision where all of them are affected by it (e.g. in the context of a single European authorization or a classification decision). This is in line with the wording of former Article 4 (5). Articles 12 and 13 [formerly Articles 8 & 9] have been amended accordingly ('persons' instead of 'person').

In paragraphs (2) and (3) decisions in electronic form and a standard time frame for decisions (two months) have been introduced.

Paragraph (4) inserts in the CCC the principle of a right of every person to be heard before any individual measure which would affect him or her adversely is taken. It is also clarified that this principle is equally applicable to decisions notifying a customs debt.

A new paragraph (5) clarifies that any decision may be annulled, amended or revoked where it does not conform with Community or national legislation or its interpretation, unless stipulated otherwise (e.g. in Articles 12 and13). The terms 'annulled', 'amended' and 'revoked' are used in Articles 12 and 13. These Articles are more restrictive because they deal with changing a decision favourable to its holder(s). Classification or origin decisions can only be annulled or revoked (see explanation to Article 14).

A new paragraph (6) stipulates that decisions taken by the customs authorities are, in principle, valid throughout the Community. Such a provision previously existed in former Article 250 for decisions pertaining to customs procedures used in several Member States. The former Article 250 can therefore be deleted, since the other elements contained in that Article have been incorporated in their appropriate place (e.g. Articles 97, 100 & 101).

Annulment of favourable decisions

Article 12 was formerly Article 8

Revocation and amendment of favourable decisions

Article 13 was formerly Article 9.

Classification and origin decisions

Article 14 (formerly article 12)

In order to apply a common terminology, the term 'binding tariff information' is replaced by 'classification decision' and 'binding origin information' by 'origin decision'. Insofar as no special rules are laid down in this Article, the general rules on decisions (Articles 11–13, 15-18) apply. This includes the possibility that a decision is valid for several persons if they have requested it (Article 11 (1)) and that decisions are, in principle, valid throughout the customs territory of the Community (Article 11 (6)). With regard to classification and origin decisions, no derogation from Community-wide application is foreseen.

The terminology in paragraph (2) has been aligned with Article 7 [formerly 11] (2).

In paragraph (3) it is proposed to extend the binding effect of the decision also to the holder(s) of the decision in order to avoid the system only being used where the applicant is satisfied with the result. Where the applicant disagrees with the decision, he can lodge an appeal (Article 15) against the decision issued and request a repayment or remission in accordance with Article 68 [formerly 236] with regard to the customs declaration(s) concerned. The treatment of the repayment/remission claim will be suspended until the final decision on the classification or origin decision has been taken.

In paragraph (4) the period of validity for classification decisions (formerly six years) has been aligned on that for origin decisions (three years). This takes into account the rapid changes in technology and in patterns of trade.

In paragraph (8) the definition of the time when a decision ceases to be valid has been transferred to the implementing provisions.

In order to allow for a proper and simple electronic filing of decisions, the possibility of 'amending' such decisions has been deleted in paragraph (7). This means that decisions must be revoked and reissued where changes are made e.g. with regard to the goods description or the tariff code.

In line with standard 9.9. of the General Annex of the Kyoto Convention, the possibility of extending decisions on the future application of customs law to other matters (e.g. customs valuation) has been introduced in paragraph (9).

Section 5: Appeals

(Formerly Title VIII but moved from Final Provisions as directly related to decisions)

Lodging of an appeal

Article 15 (formerly Article 243).

In paragraph (1) it is clarified that appeals must be lodged either in electronic or in written form. The possibility of a direct appeal to the judicial authority admitted by the European Court of Justice (case C-1/99 *Kofisa v Ministero delle Finanze* [2001] ECR I-207) has been added in paragraph (2).

Suspension of implementation

Article 16 was formerly Article 244.

For the implementation of paragraph 3, an article will be inserted in the IP providing that where no guarantee is requested the customs authorities hold at the disposal of the Commission the relevant documentation justifying the waiver of the provision of a guarantee.

Decision on the appeal

Article 17 (formerly Article 245)

Decisions by the customs authorities relating to the application of customs rules are governed by the Community Customs Code (see Article 11). The wording of former Article 245, notably in conjunction with the wording of former Article 247 (excluding the appeals procedure in total from the possibility of adopting implementing provisions) is in contradiction with this principle insofar as the customs authorities decide on an appeal. Therefore, the following approach is proposed:

- Article 11 (and any implementing provisions relating to it or to Article 15) applies where the customs authorities are competent to decide on an appeal. This ensures a level playing field for economic operators throughout the Community at least for the first phase of the appeals procedure where no judicial authority is involved. It offers the possibility of a harmonized format for an electronic appeal.
- From the moment a judicial authority is involved, national provisions shall apply, given the lack of harmonisation to date.

Paragraph 2 reflects an obligation laid down in Article X (3) (b) GATT.

Criminal law

Article18 was formerly Article 246.

Section 6: Administrative penalties

Article 19 (new provision)

Economic operators have complained for a long time about the lack of harmonisation with regard to penalties against infringements of the customs rules. Specific offences may be considered in one Member State as a serious criminal act possibly leading to imprisonment, whilst in another Member State the same act may only lead to a small - or even no - fine. Such divergences are contrary to the spirit and concept of a Single Market and a customs union.

Given that the harmonisation of criminal law is outside the scope of the first pillar of the EC Treaty, it is proposed at this stage to create a common framework only for administrative penalties. This framework may be laid down either in implementing provisions or in guidelines. The harmonisation of former rules and practices may require some time so that no deadline has been set for the implementation of this objective.

The Community competence for laying down provisions on administrative sanctions has been confirmed by the ECJ (Case C-240/90, *Germany v Commission*, 1992 ECR I-5383, and case C-210/00, *Hofmeister v Hauptzollamt Hamburg-Jonas* 2002 ECR I-6453).

Section 7: Customs controls

Article 20 (formerly Article 13 + ex Article 78).

The provisions on risk analysis, following the proposal under the security-related amendments to the Customs Code (COM (2003) 452 final, 24.07.2003), have been incorporated. The provisions of former Article 78 (2) have also been incorporated. [Former Article 78 (3) has been incorporated into Article 106].

The exchange of data with other agencies is in line with the concept of a 'single window' and 'one-stop-shop'.

Keeping of documents and other information

Article 21 (formerly Article 16)

Due to the fact that free zones will be treated as a customs procedure, there is no need for a special rule as laid down under letter (d) of former Article 16. These cases will be covered by letter c where the term 'completed' has been replaced by "ended" in conformity with the terminology used in Article 116.

Fees and costs

Article 22 (new + Article 11 (2))

This new Article is introduced to define all situations where customs administrations may recover costs or charge fees under one Article, instead of several, where it already exists, such as former Article 11, or where it would need to, such as under new Article 7. Fees for the granting of deferred payment [former Article 225] have been abolished (see explanation to Article 62).

CHAPTER 3: CURRENCY CONVERSION, TIME LIMITS AND SIMPLIFICATION

Currency conversion

Article 23 (formerly Articles 18 & 35)

The provisions of the former Article 35 (currency conversion for the purposes of the customs value) have been incorporated. Furthermore, a reference to export duties has been added in paragraph (1) in order to avoid the provisions of paragraph (2) being applied to such duties. Different rules may be adopted in the framework of agricultural provisions (see Article 2 (1), second sentence). The detailed rules to this Article are to be laid down in the implementing provisions.

Time Limits

Articles 24 (formerly Article 17)

New paragraph (2) aligns the provision with the Reg. (EEC, Euratom) 1182/71. OJ No L 124 08.06.1971, p. 1.

Simplification

Article 25 was formerly Article 19.

The text of this Article has been aligned with the terminology used in Article 2.

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 (formerly Articles 20 & 21).

The term 'Customs Tariff of the European Communities' had been introduced in order to cover also products falling under the ECSC tariff. Since the expiry of the ECSC Treaty, this is no longer necessary and the term 'Common Customs Tariff', as laid down in Articles 24 and 26 EC Treaty, can be used.

Other Articles making a reference to the customs tariff (e.g. Articles 27 & 30 [formerly 22 & 28]) have been amended accordingly.

In paragraph (3)

- (c) has been simplified, given that the previous reference to agricultural duties was a duplication of the definition laid down in former Article 4 (10) (now Article 4 (20)),
- (h) [formerly (g)] has been clarified by giving concrete examples,
- favourable tariff treatment by reason of the nature or the end-use of the goods has been transferred from the former Article 21 to new letter (g).

Consequently,

- the definition of the Common Customs Tariff in paragraph (3) is now complete, and
- paragraphs (4) and (5) also apply automatically to favourable tariff treatment under paragraph (3)(d).

Although the term 'tariff classification' is also used in Articles 53, 76 and 105, in this context it defines the action of classification, rather than the result of that action in respect of specific goods, in which sense it is used elsewhere. It is, therefore, retained here in paragraph 5 rather than placed with other definitions in Article 4.

CHAPTER 2: ORIGIN OF GOODS

Section 1: Non-preferential origin

Scope

Article 27 (formerly Article 22)

In its current form, point c) refers to an aspect that is not really related to the scope of the rules of non-preferential origin. Preparing and issuing certificates of origin is not an end in itself, but a means of ensuring compliance with the rules of non-preferential origin. Such considerations belong, rather, in Article 29 [formerly Article 26].

In addition, points a) and b) do not cover all the potential applications of the rules of non-preferential origin, since they only refer to the applications relating to the Common Customs Tariff and trade in goods. It should be recalled that there are some cases in which the rules do not necessarily apply to trade in goods (e.g. the criteria for the award of public contracts under EC-financed programmes, or any provisions relating to origin marking).

Acquisition of origin

Article 28 (formerly Articles 23 & 24)

Paragraphs 2 and 3 of former Article 23 give a definition of the concept of "wholly obtained product" which belongs in the Code's implementing provisions rather than in the Code itself.

These provisions should be put on the same footing as the definition of the concept of "last substantial processing", which is at present in Title IV, Chapter 1, Section 1 of the implementing provisions. Furthermore, for preferential origin the definition of "wholly obtained product" is already in the implementing provisions (Article 68 CCIP for the Generalised System of Preference and Article 99 CCIP for unilateral preferential tariffs).

Leaving the definition of wholly obtained products in the Code would also entail excessively cumbersome procedures when those provisions are amended (when a new definition is adopted in line with the harmonized rules of origin, after completion of work on the harmonisation of the non-preferential rules of origin). It therefore seems appropriate to transfer these to the implementing provisions.

It is therefore proposed to incorporate the list of goods to be considered "wholly obtained" within the meaning of former Article 23 to a new Article in the implementing provisions which would be placed just before the current Article 35 CCIP.

In paragraph 2, (formerly Article 24), it seems appropriate for this now to be aligned with Article 3 of the 1994 Marrakesh Agreement on rules of origin. This will mean that, after harmonisation work is completed, the harmonized rules of origin can be directly incorporated in the implementing provisions of the Customs Code under the committee procedure, without any need to amend the Code itself.

It is therefore proposed to incorporate the concepts currently covered by the last part of the sentence ("economically justified [.....] stage of manufacture") in the Article of the new implementing provisions that will contain the content of their current Article 35 since they can after all assist in certain circumstances with interpretation of the concept of "last substantial processing".

[The former Article 25 has been deleted. It seems contradictory not to treat processing which, under the applicable rules, must be deemed substantial within the meaning of former Article 24, as conferring origin. There are also grounds for questioning the compatibility of these provisions with Article 2(e) (disciplines during the transition period) of the Marrakesh Agreement on rules of origin. Rules of origin cannot be adjusted according to the circumstances, but must be administered consistently, uniformly, impartially and reasonably.

They constitute a tool which can be used in the context of certain types of regulations such as anti-dumping duties and safeguard measures. This tool must retain its consistency. If there were circumventions of a set of rules based on origin, the solution should be found in that set of rules themselves, extending its scope to products originating in other countries if necessary.

Another question is what alternative criteria to use where former Article 25 is applied to determine the origin of a product, given that it must always be possible to positively determine non-preferential origin.

Lastly, this Article is necessarily difficult to apply, since it must be established that the sole object of the person concerned was the circumvention of the measures introduced (anti-dumping, counter-measures, quotas, etc.) or, failing that, that "the facts as ascertained justify the presumption" that the sole object of the processing was circumvention of the applicable rules. The Commission services are aware of only a single case in which this Article has been invoked in its entire existence.]

Proof of origin

Article 29 (formerly Article 26)

Two new paragraphs have been added to the former Article 26. Once any reference to certificates of origin is removed from Article 27 [formerly Article 22], it seems necessary to include in the Code a legal basis for Chapter 1 of Section 3 of Title IV (Articles 47 to 65) of the implementing provisions regarding the preparation and issue of documents justifying origin.

Section 2: Preferential origin of goods

Article 30 (formerly Article 27)

A new paragraph (2) has been introduced in order to allow all autonomous rules pertaining to preferential origin (apart from those pertaining to the overseas countries and territories) to be adopted under the committee procedure. This covers notably the rules formerly laid down in Regulation (EC) No 1207/2001 (issue of EUR.1 certificates etc. and of approved exporter authorizations). The origin rules for products originating in Ceuta and Melilla could already be based on the version of former Article 27 (2nd subparagraph) (b).

CHAPTER 3: VALUE OF GOODS FOR CUSTOMS PURPOSES

Scope of this Chapter

Article 31 (formerly Articles 28 & 36)

Former Articles 28 and 36 are grouped together in view of their general coverage of valuation issues, and in addition a new provision is proposed. The purpose is to provide a general legal basis for the adoption of implementing rules, notably when the EU accepts commitments and obligations in relation to application of the WTO Agreement on Customs Valuation. Decisions of the Customs Valuation Committee of the WTO, as accepted by the EC, represent the scope of such obligations.

[Former Articles 33, 34 and 36 therefore become superfluous. Former Article 35 has been incorporated into Article 22].

Transaction value

Article 32 (formerly Articles 29 & 32).

In line with the principles of codification, a number of provisions in the former Articles 29 & 32 can be transferred to the implementing provisions. In this way, the overall balance of the provisions of the WTO Agreement shifts to the implementing rules, thus improving the overall cohesion of these rules. The adjustments formerly laid down in Article 33 are also transferred to the implementing provisions (see explanation to Article 31).

Secondary methods of customs valuation

Articles 33 (formerly Article 30)

Paragraph 2 (d) now includes transport, handling and insurance costs in the computed value.

Fall back method

Articles 34 was formerly Article 31

TITLE III: GUARANTEES AND CUSTOMS DEBT

General introduction

This Title (Formerly Title VII, Customs Debt) has been more precisely entitled "Guarantees and Customs Debt" and placed immediately after Title II (dealing with customs tariff, origin and valuation) because both types of provisions are dependent upon each other and, therefore, systematically belong together.

The modernisation and simplification of the rules on the customs debt require the following major changes:

1. Whether or not a customs debt is incurred should depend on objective circumstances and not on the degree of negligence on the part of the person concerned. This is in line with the Kyoto Convention stipulating that duties shall be repaid where it is established that they have been overcharged as a result of an error in their assessment (General Annex, Chapter 4, Standard 18). In fact, customs duties are imposed in order to protect producers of like products in the Community, but not to penalise negligent behaviour or to increase the Community budget in such cases. Administrative penalties are a more appropriate response to infringements of the customs rules in cases where the customs authorities are in a position to establish that a customs procedure has ended or been discharged in accordance with the customs rules (see Article 19). At the same time, this will reduce the number of requests for duty repayment or remission on account of special circumstances (former Article 239).

2. Given the new division of responsibilities between border and inland customs offices, in most cases the customs debt should be incurred at the place where the debtor is established, as the customs office competent for this place can best supervise the activities of the person concerned. It is therefore proposed that a customs debt is normally incurred at the place where the holder of an authorization (see Articles 10 and 114) is established. In cases where the holder of a procedure or authorization is not established in the Community customs territory (notably in cases of external transit and temporary admission) the residual rules referring to the place where the infringement occurred or where the procedure started shall apply (as today). These simpler rules will reduce the number of cases in which administrative co-operation will be required in order to establish the place where the customs debt was incurred and to recover the duties.

3. The former suspensive procedures (external transit, customs warehousing, inward processing, processing under customs control, temporary importation), free zones and free warehouses include a large variety of rules as to the basis of assessment for the calculation of a customs debt. In order to achieve a major simplification, the following rules are proposed:

    - The duty rate (including anti-dumping and agricultural duties) to be applied is always that in force at the time when the customs debt was incurred.

    - In order to cope with an increase of the value of the goods or a change in their tariff classification due to usual forms of handling (customs warehousing, free zones) or inward processing or other costs incurred on the Community customs territory, the debtor is entitled to request the application of the original tariff classification and customs value of the goods in the state in which they were imported if he provides satisfactory proof.

- Although there should be only few exceptions from these basic rules, special provisions may be laid down in the implementing provisions (for example, where goods have been treated under inward processing in such a way that they would qualify for duty relief on account of special circumstances or their end-use (see former Article 122 (e), and Article 547a CCIP).

It should be noted that the rules proposed have always been the basic rules of the Customs Code (see former Articles 67 and 214 (1)). However, the perception of what the basic rules are has been blurred by the numerous exceptions introduced with regard to individual customs procedures. Chapter 4 of the General Annex of the Kyoto Convention leaves the determination of the factors, the conditions and the point in time for the determination of duties and taxes to national (or Community) legislation. There is therefore no requirement to maintain the complicated rules as they exist today.

4. Certain provisions, currently scattered although logically linked, have been regrouped. This exercise has allowed the elimination of certain repetitions. This includes the former cases in which a customs debt is deemed not to be incurred (former Articles 204, 206 and 212a), which are now all regrouped in Article 72 covering the extinction of the customs debt (formerly Articles 233, 234), and the merger of the provisions of non-recovery in view of an error by the customs authorities (former Article 220 (2) (b)) with repayment/remission, on the basis of equity (former Article 239), in new Article 71.

CHAPTER 1 GUARANTEE FOR A POTENTIAL OR EXISTING CUSTOMS DEBT

Given the growing importance of security issues, it has been found appropriate, throughout this Chapter, to replace the term "security" by "guarantee" in order to avoid any confusion.

General provisions

Article 35 (new provision + former Articles 189, 191, 192 (3))

In this Article, it has been clarified that unless otherwise specified, this Chapter provides for rules applicable to customs debts which have been incurred and to customs debts which may be incurred. Accordingly, repeated reference to "which have been or may be incurred" has been removed, where appropriate, throughout this Chapter.

In paragraph (2), it is proposed to provide that, in line with the provisions applicable to transit, a guarantee shall not only ensure payment of the customs debt but, in so far as their provisions provide for it, of other charges, such as VAT and excise duties, as well.

In the second sentence of paragraph (3), the scope of the guarantee is extended so that it may be used to secure payment of a customs debt arising in respect of any goods included in a consignment or declaration for which the guarantee is provided that were not declared or were incorrectly declared.

The text of former Article 191 has been inserted as a new paragraph (5) and the general conditions for the use of a comprehensive guarantee has been clarified, by reference to Article 38.

It is also proposed to raise the EUR 500 threshold at former paragraph (5) [new paragraph (7)] up to the statistical threshold for declarations (currently EUR 1000), so that the threshold for a written declaration and for the lodging of a guarantee will then be aligned.

Paragraph (6), 1st sentence, is a new wording for former Article 189(4). The definition of "public authority" is replaced with a new definition taken from Article 4 (5), 1st sentence, of the Sixth VAT Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating

to turnover taxes. Paragraph (6), 2nd sentence, now additionally provides for the committee procedure to be used to define the circumstances in which a reduced guarantee, as well as a waiver can be allowed.

Paragraph (8) is based on the 2nd subparagraph of former Article 189 (2), which has been amended so as to provide that, as a general principle, a guarantee shall be valid throughout the customs territory of the Community for the purposes for which it is given. Given the general use of a guarantee for goods presented or declared, the reference to a specific 'customs procedure' made in former Article 189 (2) 2nd subparagraph has been deleted.

Compulsory guarantee

Article 36 (formerly Article 192 (1))

Optional guarantee

Article 37 (formerly Article 190 and 192 (2))

The second sentence of former Article 190(1) entitles customs authorities to require, in lieu of an optional security, an undertaking to comply with obligations. Such a provision does not appear appropriate under Chapter 1. As its usefulness also appears questionable (legal obligations must be fulfilled anyway), this provision has been deleted. Such cases can be treated as a guarantee waiver (see Article 35).

Comprehensive guarantee

Article 38 (formerly Article 94 (3) to (7))

The experience in the transit sector has shown that comprehensive guarantees are both an efficient means of ensuring recovery and convenient for economic operators. Comprehensive guarantee and guarantee waiver were both provided for in the current general provisions, but as an exception to the rule and not in a precise way. Precise guidance in this respect, taken from existing transit provisions, has therefore been inserted. Paragraph (2) makes it clear that the persons currently referred to at Article 94 (4) as satisfying "the customs authorities that they meet higher standard of reliability" should in the future be those who have been granted 'authorized economic operator' status in accordance with Article 10. In line with the transit logic, the possibility of reducing the level of the guarantee or of granting a guarantee waiver is foreseen only for customs debt which may be incurred. For debt which has been incurred, the possibility of reducing the amount of the guarantee or of granting a guarantee waiver is a sensitive issue deserving careful consideration. In the present version, such a possibility has not been introduced.

The use of a comprehensive guarantee is not restricted to Authorized Economic Operators (AEO) and the authorization under Article 35 (5) may be granted to any trader who meets the criteria in paragraph (1). However, paragraph 2 makes it clear that in order to benefit from a reduced amount or a waiver the holder of the authorization must hold or be granted the status of AEO in accordance with Article 10.

Types of guarantee

Article 39 (formerly Articles 193, 196 and 197(1))

The grouping of formerly scattered provisions has helped to clarify that there are in fact three and not two types of guarantees. The freedom of choice granted to operators has been extended to the third type of guarantees (provided by means other than a cash deposit or a guarantor, as stipulated in former Article 197). However, the balance of rights and obligations is safeguarded thanks to the customs authorities' entitlement to refuse a given type of guarantee (as provided for by the second paragraph of former Article 196).

Cash Deposit

Article 40 (formerly Articles 194, 197(2))

Former Article 194 (1) specifically mentioned "cheques" as equivalent to cash deposit. Given that cheques are, as far as payment of customs duties is concerned, a relatively old-fashioned means of payment, the wording of paragraph (1) has been simplified so that the submission of any instrument recognized by customs authorities as a means of payment shall be deemed equivalent to a cash deposit.

Guarantor

Article 41 (formerly Article 195)

In paragraph 1, it has been clarified that, to be entitled to act as a guarantor, banks accredited in the Community need not be approved by the customs authorities. It has also been clarified, in paragraph 2, second sub-paragraph, that the undertaking of the guarantor shall also cover, within the limits of the secured amount, amounts of duties which fall to be paid following *a posteriori* controls. The purpose of this provision is not to increase the amount of the guarantee. It is to provide that, where a comprehensive guarantee is in place, it may be used to secure payment of a customs debt arising from post-release controls (see Article 20 (5)) of operations covered by that guarantee, which establish that goods were not declared or were incorrectly declared. This would, however, only be possible provided that the additional amount falls within the limit or remaining balance of the comprehensive guarantee. Obviously, this will not be applicable where the guarantee put in place is an individual guarantee that has been discharged when the goods were released.. If necessary, implementing provisions will be adopted that will provide that no more than the necessary amounts are attributed to the guarantee and that such amounts are not attributed for a longer period than necessary.

Additional or replacement guarantee

Article 42 was formerly Article 198

Release of the guarantee

Article 43 was formerly Article 199

CHAPTER 2 INCURRENCE OF A CUSTOMS DEBT

Three sections have been created with a view to clarifying that certain provisions only apply to importation (Articles 44 to 47), some only to exportation (Articles 48 & 49) and others to both importation and exportation (Articles 50-54).

Section 1: Customs debt on importation

Release for free circulation, temporary admission

Article 44 (formerly Article 201)

The text of paragraph (1) has been amended in order to clarify that customs debt is not incurred when the goods are 'released for free circulation', which contradicts paragraph (2), but by placing the goods under the procedure. The reference to goods 'liable to import duties' has been deleted as being superfluous. According to Article 25 (1) no debt can be incurred (or one could argue that the customs debt is zero) if the customs tariff stipulates a duty exemption. Article 46 has been aligned accordingly.

In paragraph 3, the reference to national legislation contained in former Article 201 (3), 2nd subparagraph, has been deleted in order to create a level playing field throughout the Community. The general application of this provision is in line with Article 8 and means that a direct representative may be considered to be a debtor in cases where that person was complicit in the making of a false

declaration, but only in those circumstances (see also explanation to Article 46).

Special provisions

Article 45 (formerly Article 216)

Given that this Article deals with the incurrence of a customs debt following the submission of a declaration or a corresponding re-export notification, it has been found logical to move it up, immediately after Article 44. This Article has been amended in order to reflect better the no-drawback rules laid down in various preferential arrangements. It is proposed that the completion of the re-export formalities becomes the act leading to the incurrence of the debt instead of the 'validation' of the proof of origin, which is not an appropriate concept for all types of proofs (invoice declaration, for instance). In paragraph (1) it has been clarified, however, that in the case of prior exportation the customs debt is only incurred when the import goods are declared for free circulation.

Paragraph 2 has been amended to clarify the situation regarding indirect representation where re-export formalities are concerned.

Non-compliance

Articles 46 (formerly Articles 202, 203 & ex 204, ex 205, ex 206)

In Article 46 all cases of incurrence of a customs debt on importation other than following the submission of a customs declaration or re-export notification (former Articles 202 - 205) have been regrouped. Paragraph (1) (a) regroups former Articles 202 (1), 203 (1) and 204 (1) (a). By regrouping all of these cases in a single provision and under a single notion (that of non-fulfilment of obligations laid down for the introduction, movement, processing, storage, use or disposal of goods), the current problem of determining whether a customs debt is incurred under former Article 202, 203 or 204 will no longer exist.

In addition, in paragraph (3), in line with Article 8, it is proposed to plug a legal gap affecting the current provisions. In the case of non-compliance, committed through an incorrect declaration or by the submission of false information, which results in 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 will also be considered to be a debtor. This means that a direct representative may be considered to be a debtor in cases where that person was complicit in the making of a false declaration, but only in those circumstances. The proposed text is taken from the provision existing currently in Article 201 (3) (2nd subparagraph) for customs debts incurred as a result of the submission of an incorrect declaration.

The possibility to redress failures in case of minor offences (former Article 204 (1)) is included in Article 72 (2) (a). Together with this reform, common rules for administrative penalties are introduced (see Article 19), so that there will no longer be a need to enforce the correct application of the customs rules by imposing customs duties, if – without this minor offence- there would be no customs debt.

Deduction of duties already paid

Article 47 (formerly Articles 208, 143 (2), ex 144 (2))

Given that all rules regarding the incurrence of the customs debt are regrouped under Chapter 2, the provisions on the "capping" of the customs debt incurred in respect of goods placed under temporary admission with partial relief from import duties [former Article 143 (2)] and in respect of goods for which import duties have been paid under the end-use provisions [former Article 208] have been grouped together.

Section 2: Customs debt on exportation

Export declaration

Article 48 (formerly Article 209)

A paragraph has been added with a view to clarifying that persons who provided information which led to all or part of the duties legally owed not being collected and who knew, or who ought reasonably to have known that such information was false, are also considered as debtors. This is an alignment on Article 44 (3), second subparagraph.

Non-compliance

Article 49 (formerly Articles 210 and 211)

In this Article all cases of incurrence of a customs debt on exportation other than following the submission of a declaration have been regrouped, apart from the special provisions relating to the no-drawback rules contained in Article 45.

Section 3

Provisions common to customs debts incurred on importation and exportation

Prohibitions and restrictions

Article 50 (formerly Article 212)

A reference to administrative penalties, as well as those relating to the punishment of offenders under the legal system, is included in line with Article 19.

Several debtors

Article 51 (formerly Article 213)

It is clarified that customs authorities shall give priority to the recovery of the customs debt from the person(s) who deliberately infringed the customs rules. Such a general provision is in line with the spirit of Article 876a (3) CCIP and will further strengthen the fairness of recovery where several persons are liable for payment of one customs debt. The implementing provisions will lay down the procedure to be followed in cases where there are several debtors and one or several of them acted deliberately, including the time limit during which recovery from persons who did not act deliberately is suspended.

General rules for calculation of duty

Article 52 (formerly ex Articles 121, 122, ex 144 & Article 214 (1) & (2))

The former Article 214 (3) dealing with compensatory interest has been amended in order to simplify and unify the rules for the special procedures in which import duties are suspended. In fact, under the former rules, compensatory interest has only been applied in certain cases of inward processing and temporary admission, and a large number of exceptions has existed (see Article 519 CCIP). It is therefore proposed to renounce to the charging of compensatory interest. In fact, with the introduction of the principle that the duty rate to be applied is always that in force at the time of the incurrence of the customs debt, the maintenance of compensatory interest can no longer be justified, except where a financial advantage is wrongfully acquired through deferment of the determination of the debt and its entry in the accounts. Article 66 (2) provides for interest on arrears where the amount of duty has not been paid within the prescribed period.

Special rules for calculation of duty

Article 53 (formerly Articles 112, 121,122,135,136, ex 144 & 178)

This Article regroups and simplifies all special rules derogating from the general principle concerning the calculation of the customs debt laid down in former Article 214. The major innovation is that the duty rate to be applied is always that in force at the time when the customs debt is incurred. This simplifies the electronic clearance of goods. However, the retroactive application of the basis of assessment concerning the import goods (and notably their tariff classification, nature and customs value) is maintained for certain cases as an option for the debtor where he makes such a request and provides the necessary proof. Where non-Community goods are used under usual forms of handling (e.g. installation of a radio in a car), the duties for such goods, however, must be paid.

In so far as it is considered necessary, special rules can be laid down in the implementing provisions (see general introduction to Title III, point 3, last indent).

Place of incurrence

Article 54 (formerly Article 215 (1), (2) & (4))

In order to remedy an anomaly, former Article 215 (3) has been moved to Article 55 [also former 217] to which it is clearly related. With a view to simplifying the collection procedure where a customs debt is incurred as a result of an irregularity committed in another Member State, the threshold under which the debt shall be deemed to have been incurred in the Member State where the irregularity was discovered has been increased from € 5,000 to € 100,000.

CHAPTER 3. RECOVERY AND PAYMENT OF DUTY, REPAYMENT AND REMISSION OF DUTY

Section 1: Determination, notification to the debtor and entry in the accounts of the amount of duty to the debtor

The main amendments in this section are based on the idea that it appears appropriate to break the link currently existing between the entry in the accounts and the notification of the amount of duty. Indeed, the corresponding provisions refer to acts which can be separated and moreover ought to be treated separately (as they involve different actors). Entry in the accounts is an act that affects the relationships between the Member States and the Community while the notification of the amount of the debt concerns the relationship between the debtor and the competent customs authorities.

Together with this change, in general, the time limit for entry in the accounts has been extended from 2 days to 14 days.

Determination of the amount of duty

Article 55 (formerly Article 217(1) + 215(3))

Former Article 217 (1) has been amended so as to include the substance of former Article 215 (3).

Notification of the debt

Article 56 (formerly Article 221) [Previously Article59 in REV4]

Paragraph 1 [former Article 221(1)] contains the principle that an amount of duty has to be notified. It is also made clear that the determination of the amount of duty, and the notification of this amount to the debtor, constitute a 'decision' as defined in Article 4 (24).

This principle is not applicable in certain cases listed in the second subparagraph [former Article 217(1), 2nd indent and Article 220(2)(a) and (c)]. In letter (a), the wording of former Article 217(1), 2nd subparagraph, letter (a) has been made more general, so as to cover, for example, provisional safeguard

measures in the form of a duty. In letter (e), the scope of former Article 220 (2) (c) has been extended by removing the words "less than a certain figure", so as to ensure that current subparagraph a) of Article 869 CCIP continues to have a legal basis in the future.

Paragraph 2 corresponds to former Article 221 (2); it has been amended in order to remove the mention of the outdated practice of entering the duty amount “for guidance”. It is proposed to make it a general provision stating that once the amount of duty payable has been entered in the customs declaration, it need not be notified unless the amount entered does not correspond to the amount determined by the authorities.

Paragraph 3 implements, for the purpose of recovery, the principle inserted in Article 11(4) concerning the right to be heard before taking a decision which would adversely affect the person concerned.

As a consequence, before notifying the decision concerned, the customs authorities should, as soon as they become aware of the situation, advise the debtor of their intention to recover the debt, of the amount of duty to be recovered and of the reasons justifying the recovery. The period following this advice, during which the debtor would have the opportunity to make his views known, would be determined in accordance with the committee procedure. Upon expiry of this period and examination of the case, the debtor would be notified of the decision determining the amount of duty to be recovered.

Paragraph 5 takes account of the fact that experience has shown that the effectiveness of Article 67 [former Article 242] may be jeopardised where the examination of a repayment or remission claim that subsequently needs to be reconsidered has originally taken a long period of time. For that purpose, it is proposed to provide for a suspension of the three-year prescription period, where a customs debt again becomes payable by virtue of Article 67 (4), for the duration of the repayment or remission procedure.

Former Article 221 (5) does not specify (and therefore leaves it to national law to specify) the length of the extended prescription period where the customs debt is the result of an act liable to give rise to criminal court proceedings. Given the great differences between Member States’ current provisions in this respect (from no extension to thirty years) and in order to create a level playing field, a ten year prescription period is proposed.

Entry in the accounts

Article 57 (formerly Articles 217 + 220(2)(a) and (c) + 219(2)) [Previously Article 55 in REV4]

Paragraph 1 [former Article 217(1)] contains the principle that an amount of duty has to be entered in the accounts and gives the exceptions to this principle.

Current Article 219(1) is no more necessary as in general the time limit for entry in the accounts is extended to 14 days. Current Article 219(2) is inserted as Article 57(2).

Time of entry in the accounts

Article 58 (formerly Articles 218 + 220(1)) [Previously Articles 56 & 57 in REV4]

The time limit in paragraphs (1), (2), (3) and (4) has been extended to 14 days, so as to be more practical. The only exception is paragraph (1), 2nd subparagraph (former Article 218(1), 2nd subparagraph) where the time limit is not amended. In paragraph (2), second subparagraph, a more general wording has been adopted, in line with the change mentioned under Article 56, above.

Paragraph 4 corresponds to former Article 220(1). Indeed it appears coherent to have all the provisions concerning the time of entry in the accounts in the same article, all the more as the provisions of former Article 220(2) are dispatched in other Articles.

To summarize:

- paragraph 1 corresponds to the general rule concerning the incurrence of a customs debt on importation through the acceptance of a customs declaration,

- paragraph 2 corresponds to special conditions concerning to debts incurred in the same situation as in paragraph 1 (incomplete declarations for instance),

- paragraph 3 corresponds to other cases of incurrence of a customs debt (for instance under Article 46: non compliance with customs rules),

- paragraph 4 covers situations where, in full or in part, the amount determined has not been entered in the accounts; this concerns cases of subsequent entry in the accounts.

Article 59 [BLANK} [**The Articles will be re-numbered in the final version]**

Section 2: Time limit and procedure for payment of duty

General time limits for payment, supervision of payment

Article 60 (formerly Article 222)

At the third indent of paragraph (2), it is proposed to extend the scope of suspension to all cases of incurrence of a customs debt on importation other than following the submission of a declaration or notification, in order to allow for the possibility of recovery of the debt, in the first instance, from the person(s) who deliberately infringed the customs rules (see Article 51).

Payment

Article 61 was formerly Articles 223 & 231

Deferment of payment

Article 62 (formerly Articles 224 to 226)

It is proposed to abolish the possibility of charging fees for the granting of deferment of payment. Such a step appears particularly appropriate in the context of modernisation and trade facilitation. This also ensures coherence with the authorization procedures under Articles 10 and 114, for which no fees may be charged either. Article 22 specifies the cases in which fees may be charged or costs recovered by the customs authorities.

Time limits for deferred payment

Article 63 was formerly Article 227

Missing information on customs value

Article 64 was formerly Article 228

Other payment facilities

Article 65 (formerly Articles 229 & 230)

The introduction of the EUR has been taken into account.

For the implementation of letter (a), an article will be inserted in the IP providing that where no guarantee is requested the customs authorities hold at the disposal of the Commission the relevant documentation justifying the waiver of the provision of a guarantee.

Enforcement of payment, arrears

Article 66 (formerly Articles 232 & 214 (3))

It is proposed to further harmonize the rules on interest on arrears by limiting, to one percentage point, the amount by which it may exceed the rate of credit interest. Paragraphs (2) and (3) of former Article 232 have been merged. Former paragraphs (2) (c) and (3) therefore become superfluous.

In the light of the Hannl judgement of the European Court of Justice on 16 October 2003 (case C-91/02) and in order to prevent the wrongful acquisition of a financial advantage through deferment of the date on which the customs debt was determined and entered in the accounts, a new paragraph (2) has been added. This paragraph entitles Member States to charge interest on arrears over and above the amount of duty where a customs debt is incurred under Articles 46 [former Articles 202, 203, 204, ex205, ex206] or 49 [former Articles 210, 211] or where the amount of a customs debt is entered in the accounts pursuant to Article 58 [former Article 220 (1)]. In such cases, the rate of interest on arrears should be the same as the one applicable in case of late payment.

The periods for which interest on arrears shall be charged have been clarified in all cases, in paragraphs 1 (b) and 2.

Section 3: Repayment and remission of duty

General provisions

Article 67 (formerly Articles 235, 240, 241 & 242)

The definitions of repayment and remission have been simplified and aligned on order to clarify that these are the actions rather than the decision to take them. The rule relating to a decision to repay or remit are largely transferred to the implementing provisions in paragraph (2).

Currently, interest shall only be paid where a decision to grant a request for repayment is not implemented within three months of the date of its adoption and national provisions so stipulate. It appears appropriate, in paragraph (3), to harmonize further the treatment of such situations by removing the reference to national provisions. Accordingly, operators in all Member States would be entitled to the payment of interest in case of late implementation of a decision granting repayment in all cases where delay exceeds three months. This will not, however, prevent Member States from commencing the payment of interest on repayments prior to the expiry of the three months time limit where their national provisions allow or demand this. In such cases, it will not be the decision to grant the request that gives rise to the payment of interest, but the national provision itself. Paragraph (4) of this Article is a re-worded version of former Article 242 so as to take account of new Article 59 [former Article 221 (4)] (see above).

Repayment of overcharged duties

Article 68 (formerly Article 236)

The first and second subparagraph of former paragraph (1) have been merged. In the third subparagraph, the extensive reference to "deliberate action" has been replaced with a more precise and restrictive reference to "deception". This is in line with the announced objective to ensure that customs duties are repaid wherever they have been overcharged as a result of an error.

Invalidation of a customs declaration

Article 69 was formerly Article 237

Defective goods

Article 70 (formerly Article 238)

The current mention “with a view to re-export”, in former Article 238 (2) (b), has been deleted in order to align the text of Article 70 on that of Article 900 (2) CCIP as amended by Regulation (EC) No 881/2003.

The last subparagraph of former Article 238 (2) (b) has been deleted as redundant. Indeed, in accordance with new Article 85 [former Article 83], goods released for free circulation will automatically lose their customs status as Community goods where they have been placed under one of the special procedures mentioned in paragraph (2) (b).

Former Article 238(3) will be inserted in the Implementing Provisions.

At paragraph (3), the time limit has been increased to three years, in order to align it on Articles 68 (2) and 71 (3), and language in common with Article 68 [former Article 236] has been adopted ("duly justified exceptional cases" being replaced by "unforeseeable circumstances or *force majeure*").

Equity

Article 71 (formerly Articles 220 (2)(b) & 239)

The provisions of former Article 239 have been merged with those of former Article 220 (2) (b). This approach aims at streamlining and rationalising the current procedures concerning non-recovery and repayment/remission of duties. Indeed, if these provisions are currently the subject of separate Articles, it is mostly for historical reasons. They were originally part of distinct Regulations, dealing respectively with post-clearance recovery of import or export duties and repayment or remission of import or export duties.

However, these provisions are very close in their purpose and functions. In practice, almost all recent applications for waiver of post-clearance entry in the accounts were also lodged under former Article 239 (“in the alternative”, i.e. should the application under former Article 220 (2) (b) be unsuccessful). As a result, these two procedures can no longer be clearly distinguished from an accounting point of view. For example, despite the provisions of former Article 220 (2) (b), the customs debt is often provisionally entered in the accounts pending the outcome of the non-recovery case. Conversely, an “alternative examination” (i.e. under new Article 71) may be carried out in a non-recovery case despite the fact that the debt was not previously entered in the accounts.

The two procedures have also been brought closer by the Court of Justice’s and the Court of First Instance’s case-law, which has made clear that they both protect persons liable to a customs debt from inequity. The main difference between the two provisions may be found in the degree of potential “unfairness” they are meant to remedy: former Article 220 (2) (b) protects traders’ legitimate expectations (in particular that customs authorities do not commit “active errors” when applying customs law); former Article 239, corresponding to a slightly lower standard of rights also deserving protection, is meant to remedy cases where traders are placed in a special situation, in relation to other traders carrying out the same activity, as a result of which they would incur a prejudice going beyond the normal commercial risk.

With a view to bringing both types of provisions into line, the existing exception from the rule concerning the subsequent entry in the accounts (according to which no entry needs to be registered pending the outcome of the examination of a non-recovery case) has been removed. As explained above, this principle is no longer consistently applied as a suspension of the debtor's obligation to pay duty (in accordance with the provisions of Article 60 [former Article 222] (2)] may be granted and have in practice the same effect. Accordingly, such amounts will in the future be entered in the

accounts. However, in order to safeguard the specific nature of non-recovery cases (stemming from the above-mentioned higher degree of potential unfairness that the collection of duties would entail in presence of an active error on the part of customs authorities), Article 876a CCIP will be amended with a view to providing that the suspension of the debtor's obligation to pay duty shall not be made in situations which have been dealt with under former Article 220 (2) (b), conditional upon the lodging of a guarantee.

In this context, it has also been found appropriate to clarify that debtors should lodge an application in all cases, including those corresponding to current non recovery cases. However, in order to avoid that the proposed merger diminishes the rights of certain debtors, the time-limit for lodging applications has been aligned on the most extensive one (namely three years from the date on which the amount of the duties was communicated to the debtor, as provided for under Article 68 [former Article 236]. With the same goal, the possibility for customs authorities to act on their own initiative has been introduced also for cases of repayment/remission. This provision, likely to be applied in all clear-cut cases (where an error on the part of customs authorities will clearly appear to exist), will relieve debtors from the obligation to lodge an application. Given the above-mentioned need to successively examine cases under the non-recovery provisions and, in case of rejection, under the repayment/remission provisions, this possibility has not been restricted to circumstances falling under new Article 71 (1) (a) but extended, in paragraph (1)(b) to situations falling under former Article 239.

Finally it has to be noted that one condition of former Article 220 (2) (b), namely that the debtor must have “complied with all the provisions laid down by the legislation in force as regards the customs declaration”, has been deleted. Indeed, this provision creates implementation difficulties with no obvious added value; as it stands, it is only applied in cases where the non-compliance (with all the provisions laid down by the legislation in force as regards the customs declaration) is clearly linked to the incurrence of the customs debt. In such cases, the debtor is in general found to have been negligent (in so far as he did not detect the error) and the existing final condition can therefore be considered as redundant. Hence the proposal to delete it in new Article 71 (1) (a).

Under new paragraph (3), in order to ensure parallelism with Article 59 (4) [former 221 (3)], it is proposed, where an appeal within the meaning of Article 15 [former 243] is lodged, to extend the period during which repayment or remission applications may be submitted for the duration of the appeal proceedings.

In view of the definition of 'debtor' in Article 4 (22), the term 'person liable' has been replaced by 'debtor' for the sake of coherence.

CHAPTER 4 EXTINCTION OF A CUSTOMS DEBT

Article 72 (formerly Articles 150 (2), ex 204, 205, 206, 207, 212a, 233 & 234)

It appears more logical, simpler and more respectful of the chronology, to move chapter 4 “extinction of the customs debt”, currently located between the chapters dealing respectively with recovery and with repayment/remission of duties, to the end of the Title.

All cases of relief for customs debts incurred as a result of a failure to comply with the customs rules (former Articles 204-207 and 212a) have been grouped together..

The main change concerns the fact that the provisions of former Article 204 (1) (‘unless it is established that those failures have no significant effect on the correct operation’) have been extended to all types of failures to comply with customs rules that may result in the incurrence of a customs debt. This will resolve a large number of minor offences in which no deception is involved, such as the

obligation to declare goods in accordance with the facts, and which have no significant effect on the correct operation of the rule concerned (e.g. a larger quantity than declared for transit has been transported and a customs debt is incurred for the non-declared part, but the error is corrected by the debtor upon the arrival of the goods), as well as certain irregularities for which currently the rules on the repayment or remission of import duties (former Article 239) must be used. Furthermore, the references to 'obvious negligence' currently contained in former Article 212a has been deleted in order to base the granting of the relevant favourable tariff treatment, relief or exemption only on objective criteria, other than in cases of deception.

At the same time, former Article 233 has been revised with a view to:

- clarifying, in Article 72 (1) (b) that where, in accordance with Article 71, duties are repaid or remitted, the customs debt shall be extinguished only in so far as the beneficiary of the repayment or remission decision is concerned. In other words, in case of several debtors, the extinction stemming from the repayment or remission decision is limited in scope and has in particular no impact on the liability of debtors other than the beneficiaries of the repayment or remission decision, given that the individual situation of the debtor must be taken into account;
- solving problems that currently occur in certain remission cases relating notably to transit. For that purpose, it is proposed to provide for the customs debt to be extinguished not only where the goods are confiscated, destroyed or abandoned but also, vis-à-vis debtors whose behaviour did not involve any deception, where evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been exported (Article 72 (2) (e) (i));
- supporting the fight against fraud by allowing the extinction of a customs debt incurred during a controlled delivery performed to identify criminals (Article 72 (2) (e) (ii));
- removing the additional condition “before their release” where it is provided for the customs debt to be extinguished in respect of goods declared for a customs procedure entailing the obligation to pay duties where the goods are either seized and simultaneously or subsequently confiscated, destroyed on the instructions of the customs authorities, destroyed or abandoned in accordance with Article 106 [former 182], or destroyed or irretrievably lost as a result of their actual nature or of unforeseeable circumstances or *force majeure*.
- merging second indent of point (c) with point (d) of former Article 233, the scope of Article 72 (1) (a) (iii) thus being extended;
- covering all cases of incurrence of a customs debt other than following the submission of a declaration. The additional condition “seized upon their unlawful introduction” of former Article 233 (d) becomes redundant as a result of the grouping, in Article 46, of the situations covered by former Articles 202 (1), 203 (1) and 204 (1) (a) under the single concept of "non-fulfilment of obligations".

Finally, former Article 234 has been moved so as to become Article 72 (2) (f) and former Article 207 moved as well so as to become Article 72 (3).

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

General introduction

The new Title IV is based on former Title III (Provisions applicable to goods brought into the customs territory of the Community until they are assigned a customs-approved treatment or use), and incorporates the security-related changes to the Customs Code proposed in Communication COM (2003) 452 final, 24.07.2003. It does, however, further integrate and consolidate these changes, notably in respect of the determination, under the committee procedure, of data sets for pre-arrival declarations, which is now within Article 5 (2), and the rules for the exchange of messages between customs offices (included in Article 73).

The provisions on temporary storage (former Articles 50 - 53) have been moved to Title VIII, Special Procedures, as temporary storage will become a customs procedure for the sake of simplification of terminology.

Chapter 1, Pre-arrival declaration (Articles 73 to 75) reflect the proposals on security-related changes to the Customs Code (COM (2003) 452 final, 24.07.2003).

The main innovation of the proposals is that whereas currently the summary declaration or the customs declaration must be lodged only when the goods are presented to customs, that declaration must now be presented before the goods arrive. This will allow for the pre-screening of cargo and an early initiation of the required level of response should the need arise. Pre-arrival declarations are already required by some Member States and some of the Community's main trading partners.

The Customs Code provides for a general framework and leaves the practical application of summary declarations, the format and the time limits within which they must be presented, to the implementing provisions and the competent customs authorities in order to strike the right balance between increased security and trade facilitation. These provisions take into account the various types of transport and traffic, international agreements and provide for exceptions.

Further amendment is made to the proposals in this modernization, taking into account the general introduction of electronic declarations, electronic exchange of data between customs authorities, notably the Import Control System (ICS), and the creation of common portals/ single window. Consequently, the place where the pre-arrival declaration shall be 'lodged' will be laid down in the implementing provisions, in order to be able to follow developments with regard to a single access point, as will the detailed rules for the exchange of messages between customs offices (see Article 5 (2)).

CHAPTER 1: PRE-ARRIVAL DECLARATION

Obligation to lodge a pre-arrival declaration

Articles 73 was formerly Article 36a

Lodgement and responsible person

Articles 74 was formerly Article 36b

It is clarified in Article 74 (3) (a) that, as under former Article 44 (2) (b), the importer /consignee can make the pre-arrival declaration.

The terminology in paragraph (5) has been aligned with Article 94.

Customs declaration replacing summary declaration

Articles 75 was formerly Article 36c

CHAPTER 2: ARRIVAL OF GOODS

Section 1: Entry of goods into the customs territory of the Community

Customs supervision

Article 76 (formerly Articles 37 & 42).

Article 76 (1): The words "control by the customs authorities" replaced with "customs controls", in line with new definition in Article 4 (4). The exemption of free zones from customs supervision in former Article 37 (2) has been deleted, given that free zones become a customs procedure and are subjected to customs controls at entry (Articles 79 and 132) and with regard to records (Article 115).

A new paragraph (3) has been added to allow for the examination of goods provided for under former Article 42.

Paragraph 4 creates the obligation for any person removing goods from customs supervision to be authorized to do so. Unauthorized removal will lead to the incurrence of a customs debt under Article 46 (1) (a).

Conveyance to the appropriate place

Article 77 (formerly Article 38).

In paragraph (3), the words "control by the customs authorities" replaced with "customs controls", in line with new definition in Article 4 (4).

In paragraph (4), the term "postal traffic" has been replaced by "letters, postcards and printed matter", in order to take account of the privatization of postal services. Other consignments will be subjected to the normal rules, notwithstanding the possibility of using the special transit procedures stipulated in Articles 122 (2) (f) and 125 (2) (f). The term "traffic of negligible economic importance" has been deleted, given that different interpretations of the expression have led to distortions within the single market (use as additional means of duty relief).

Paragraph (5) has been amended to maintain exemption of regular air or shipping services from the requirement for a summary declaration. Former Article 38 (2nd sub paragraph) has been deleted as regular shipping services can not, by definition, call at free zones or third country ports.

Paragraph (6) is aligned with Article 73 (1).

Conveyance under special circumstances

Article 78 was formerly Article 39

Section 2: Presentation of goods to customs

Article 79 (formerly Articles 40 & 41).

The wording of former Article 40 privileges free zones in that in certain cases no presentation of the goods to customs and no summary declaration is required. The purpose of the amendment is to close this security loophole. Authorized operators may, however, be relieved from the requirement to present the goods to customs, provided they have lodged the declaration stipulated under Articles 73 and 74.

Paragraphs (1) & (2) have been re-drafted in order to clarify the obligations and the person(s)

responsible for notifying customs of the arrival of the goods and making them available for controls.

In paragraph (3), a new requirement is included for presentation to include reference to the prior summary declaration.

In paragraph (4), a further exception with regard to letters, postcards and printed matter has been added in line with the modification to Article 77 (4).

[The provisions on the summary declaration (currently Articles 43 to 45) have been displaced to Articles 73 to 75 [formerly 36a to 36c] given that they must normally be lodged before the arrival of the goods. Consequently, former Articles 43 to 45 are deleted].

Section 3: Unloading and examination of goods

Article 80 (formerly Articles 46 and 47)

These former Articles were related and have been integrated into one Article. It has been clarified that the provision of former Article 47 applies to goods 'presented to customs', given that goods for which a pre-arrival declaration has been lodged may still be on the move.

Section 4: Obligation to place non-Community goods under a customs procedure

Article 81 (formerly Articles 48 & 49).

As under former Article 48, non-Community goods must be placed under a customs procedure but this is not necessary if the goods are destroyed or abandoned to the Exchequer (Article 106).

The deadlines for assigning the goods to a customs procedure (former Article 49) are removed as temporary storage will itself be a special procedure (see Articles 126 and 130). Former Articles 50 to 53 are therefore redundant.

The obligation to lodge a summary declaration immediately where no prior declaration has been lodged is intended to address exceptional circumstances where no pre-arrival declaration has been lodged in respect of the goods concerned, e.g. un-manifested or over-landed goods are discovered and presented after arrival or where the circumstances covered by Article 78 apply.

Section 5: Goods which have moved under a transit procedure

Waiver for goods arriving under transit

Article 82 was formerly Article 54

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

Article 83 (formerly Article 55)

It has been clarified that this Article applies to non-Community goods arriving under a transit procedure starting within the customs territory of the Community as well as one starting outside it.

[Former Articles 56 & 57 have been integrated into new Article 106, in Title V, Chapter 4, 'Disposal of goods'.]

TITLE V: GENERAL RULES ON CUSTOMS STATUS AND CUSTOMS PROCEDURE

General introduction

This Title covers the following parts:

(1) the status of goods;

(2) general provisions on entering goods for a customs procedure; and

(3) the lodging and further treatment of normal and simplified customs declarations. (As part of the simplification of customs legislation, all types of customs treatment (formerly called "temporary storage", "customs procedure" or "other customs approved treatment or use"), with the exception of 'abandonment' and destruction following arrival (Article 106), shall be covered by the term ‘customs procedure’.

The rule is to lodge a customs declaration. The exception from the general rules for customs procedures is the cases in which no customs declaration is required, e.g. entry into a free zone, or exit of goods only transiting through the Community.

The rule that acts performed by national administrations in the context of a customs procedure are valid throughout the Community (formerly Article 250) has been inserted in Articles 10 (6), 97, 100 & 101. The reference to 'Member States' has been replaced by 'customs territory of the Community', given that this term is, in certain cases greater (e.g. the inclusion of Monaco) and, in other cases, more restrictive (e.g. the exclusion of Gibraltar), than ' Member States' and reflects the territorial scope for the application of the Customs Code. The reference to a 'customs procedure' has also become superfluous under the new formulation.

Under the new rules, samples taken or verification results obtained under one procedure (e.g. customs warehousing) can be used under a subsequent procedure (e.g. release for free circulation), without excluding the possibility of taking samples or verifying the goods again.

Two other major changes concern:

- the electronic declaration being the normal form of a customs declaration, and
- the alignment of the former variants of simplified declaration procedures, including local clearance.

CHAPTER 1: STATUS OF THE GOODS

Assumption of Community status

Article 84 (ex Article 313 CCIP)

This Article has been transferred to the CC from the CCIP because it sets the principle of the status of Community goods. The detailed rules will continue to be laid down in the implementing provisions.

Loss of Community status

Article 85 (formerly Article 83)

This Article has been completed in order to cover cases formerly mentioned elsewhere in the Customs Code (e.g. former Article 4 (8), 2nd sub-paragraph) or in the implementing provisions (e.g. 534 (3) and 542 (2) & (3) CCIP) in which Community goods lose their customs status and become non-Community goods.

The innovation lies in the fact that the change of status of Community goods is generated by the fact

- that where Article 86 or internal transit does not apply, goods leave the customs territory (but not because of a repayment or remission of duties); or
- that goods are placed under external transit, storage or inward processing (but not because of the fiction that, for the purposes of placing them under the procedure, they are non-Community goods, as in former Articles 128 (2) and 238 (2) (b)).

Where the latter goods are subsequently released for free circulation, the rules for returned goods (Article 108) shall apply.

Goods leaving the customs territory temporarily

Article 86 (formerly Article 164)

This Article is included here because the stipulated maintenance of the status of Community goods does not require the use of a customs procedure.

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

Article 87 (formerly Article 58)

The definition of the term 'prohibitions and restrictions' is now included in Article 1.

CHAPTER 3: CUSTOMS DECLARATION

Section 1: General provisions

Declaration, supervision of Community goods

Article 88 (formerly Article 59)

In paragraph (1) it has been clarified that no customs declaration is necessary when goods are placed in a free zone. This is a consequence of the fact that free zones will, in future, be a customs procedure for which the waiver of a declaration is to be maintained.

Paragraph (2) has been amended in order to take account of the changes in the customs procedures (e.g. Community goods will no longer be under customs warehousing) and to add abandonment (Article 106), which is another option.

Competent customs offices

Article 89 (formerly Article 60)

In paragraph (1), the reference to 'customs' legislation has been deleted, given that other Community legislation (e.g. on CITES goods) also lays down special rules on the competence of customs offices. A reference to opening hours and the flow of international traffic has been added in order to prevent restrictive practices.

In paragraph (2), the requirements for the roles of customs offices in respect of customs declarations to be determined under the committee procedure is consolidated in this one Article. The term 'made available' is in line with Article 90 (a) and, solely in respect of documents, with former Article 77 (2).

Types of customs declaration

Article 90 (formerly Article 61 and ex Article 77).

Where a customs declaration is required, electronic declarations shall become the rule. However,

exceptions are admitted, notably with regard to

- procedures based on international agreements (e.g. Carnets TIR or ATA) for which no computerised system exists yet,
- travellers and small consignments, and
- other cases laid down in the implementing provisions.

These provisions can allow Member States to accept paper-based declarations provided that the authorities enter the data into the electronic system themselves, where such data is needed in other Member States (e.g. export declaration concerning an exit from the customs territory of the Community in another Member State).

Where a simplified declaration has been authorized, access to the declarant's electronic system may replace the transmission of the electronic declaration (see explanation to Article 104), without prejudice to the legal obligations of the declarant or his representative (Article 8) and provided the required data elements and documents are available.

Section 2: Normal declaration

Content, supporting documents

Article 91 (formerly Article 62 , ex 76 (1)(a) and 77).

In paragraph (1), the reference to a 'form' has been deleted and the word 'signed' has been replaced by 'authenticated' in order to take account of electronic declarations.

In paragraph (2) it has been clarified that documents need not 'accompany' the declaration, but that it is sufficient if they are 'available to the customs authorities' i.e. at the customs authorities' disposal [former Article 77 (2)]. Cases in which a full declaration is lodged, but a document is missing, are dealt with here instead of being considered as a 'simplified declaration' (former Article 76 (1)(a)). Detailed rules on the availability of the documents will be laid down in implementing provisions. Given that Articles 90 and 91 deal explicitly with electronic declarations and electronic documents, the former Article 77 is not needed. Articles 22 (3) (c) and 22a of the 6th VAT Directive contain similar provisions.

Acceptance

Article 92 (formerly Article 63)

The Kyoto Convention (General Annex, Chapter III, Standards 21 and 25) favours the lodging, registering and checking of the goods declaration prior to the arrival of the goods. The new wording of this Article creates the possibility to introduce such a solution for appropriate cases. It allows furthermore to dissociate the place where the declaration is submitted from the place where the goods are physically located (e.g. another Member State than that where the declaration is lodged), as stipulated by the Kyoto Convention (General Annex, Chapter III, Standards 7 and 20). The implementation of this solution requires an electronic link between the Member States concerned.

Declarant

Article 93 (formerly Article 64)

In order to favour pre-arrival declarations, a declaration can be made by persons who 'will be able' to present the goods and the corresponding documents to customs (paragraph (1)). A reference to Article 9 [formerly Article 5] is no longer necessary, given that the restriction concerning the territory of certain Member States (former Article 5 (2) 2nd subparagraph) will no longer exist.

Paragraph (3) provides for the possibility that persons established outside the Community customs territory may be allowed, permitted or authorized by the customs authorities to make a customs declaration, in cases other than where this is presently possible (transit, temporary admission or occasional declarations). Indeed, in an electronic environment, access to information is more important than the question of where the person lodging the declaration is physically located. Nevertheless, in order to avoid abuse and the risk that no person is available for the payment of a customs debt, the cases concerned and the requirements should be laid down in the implementing provisions.

Amendment

Article 94 (formerly Article 65)

In the second subparagraph the possibility of derogations has been introduced in order to comply with the Kyoto Convention (General Annex, Chapter II, Standards 28 and 29).

The word 'authorized' has been replaced with the word 'permitted', as no authorization as defined in Articles 10 and 114 is needed.

Invalidation

Article 95 (formerly Article 66)

This Article has been redrafted in order to relax the unnecessary restrictions formerly imposed on invalidation.

In paragraph (3) a reference to administrative penalties has been introduced in order to achieve coherence with Article 50 and the newly created Article 19. [Note: This reference already existed in the former Article 66 in versions of the Code other than in English, e.g. German].

Date for the application of customs rules and other formalities

Article 96 (formerly Article 67)

A reference to formalities other than those under customs provisions has been included, in line with Articles 106 (2) and 155 (1).

Verification

Article 97 (formerly Article 68 + ex Article 250).

Paragraph 1 has been modernized in line with the principle of electronic declarations and/or supporting documents.

In paragraph (2) the provisions governing the acceptance of findings made by customs authorities in another Member State (formerly contained in Article 250) have been incorporated at their systematically appropriate place. [The former Article 250 can therefore be deleted].

Examination of the goods, samples

Article 98 (formerly Article 69)

In the second sentence of paragraph (2) of the English version, the word 'shall' has been replaced by the word 'may' (in other versions , e.g. German, 'may' is already used). It may be necessary to lay down, in the implementing provisions, the cases in which the customs authorities may request the presence of the declarant (or his representative), given that the declarant (or his representative) may often be located in a different place from the place where the goods are presented and examined or samples are taken.

Partial examination and samples

Article 99 (formerly Article 70).

Paragraph (1) has been revised to clarify the application to samples as well as to partial examination and, following the judgement of the European Court of Justice in case C-290/01 of 4 March, 2004, to define better the rules for re-examination or further sampling, including the burden of proof, where the goods have been released.

Results of the verification

Article 100 (formerly Article 71 + ex Article 250).

In paragraph (1) the provisions governing the verification results established by customs authorities in another Member State (formerly contained in Article 250 of the present Code) have been incorporated at their systematically appropriate place. [The former Article 250 can therefore be deleted].

Identification measures

Article 101 (formerly Article 72 + ex Article 250).

In paragraph (1) the provisions governing the acceptance of identification measures taken by customs authorities in another Member State (formerly contained in Article 250) have been incorporated at their systematically appropriate place. [The former Article 250 can therefore be deleted]. Furthermore, it has been clarified that economic operators can be authorized to take identification measures (see Articles 399 (c) and 408 (1) (a) CCIP).

Release of the goods

Articles 102 (formerly Article 73)

New paragraph (3) provides for release of goods at a place other than that where the customs declaration has been accepted, in line with the concept of centralized clearance. See explanation to Article 92.

Guarantee

Article 103 was formerly Article 74.

Section 3: Simplified declaration

Simplified declaration and supplementary declaration

Article 104 (formerly Article 76)

The former simplified declaration and local clearance procedure need to be merged for the following reasons:

- under the former simplified declaration procedure the customs debt is incurred at the place where the simplified declaration is lodged (this may be at the border customs office), and not at the place where the trader is established. Furthermore, the wording of former Article 76 (1) (b) does not foresee the possibility of waiving the requirement to present the goods to customs (as under former Article 76 (1) (c));
- under the former local clearance procedure (former Article 76 (1) (c)) it is, in practice, almost impossible for the goods to be released for the customs procedure by a border customs office, because this office is not aware that the relevant declaration has been made in the records of the authorization holder; therefore a transit procedure is normally used. Where entry in the records is made by electronic means, or alternatively, access to the authorization holder's records can

replace the electronic declaration or notification, the competent border customs office can receive an electronic copy or advice as well and use of a transit procedure can thus be avoided. However, electronic access to the trader's records should not waive the legal obligations of the declarant or compromise the necessary exchange of data between customs offices.

The merger of the two procedures combines their advantages, largely avoids their disadvantages and allows the implementation of centralized clearance. The only difference between the incomplete and the simplified declaration is that the former is applied on a case-by-case basis (and does not need, therefore, a prior authorization procedure) whereas the latter needs to be authorized in advance and can then be applied systematically by authorized economic operators (See Article 10). The new wording of these rules is in conformity with the Kyoto Convention (General Annex, Chapter 3, Standards 32 and 41).

The harmonized summary/simplified declaration will avoid the need for an additional simplified declaration in cases where all of the data required for the placing of the goods under the procedure is available.

The general standards for such authorizations will be laid down in accordance with Article 10, and additional requirements for the simplified declaration in the implementing provisions to Article 104.

Paragraph (3) has been extended to define the tax point where declaration is made by entry in the trader's records. This, together with Articles 92 (2) and 102 (3) provides the basis for the introduction of "centralized clearance", under which an authorized economic operator can lodge his summary and/or customs declaration in electronic form from his premises, irrespective of the Member State in which the goods are entering into or leaving the Community. This simplification also provides that the collection and the repayment/remission of import duties will, in principle, be handled by the customs office responsible for the place where the importer/exporter is established and keeps his customs records. Under this arrangement the goods need not be moved to the place where the authorized trader is established but can be delivered direct to the point of sale, including in another Member State. This will provide for multi-national companies to conduct all of their EU business with one office. The present 'Single European Authorization' (SEA) for release for free circulation will therefore no longer be necessary.

Paragraph (5) is added to allow for amendment and invalidation to apply to simplified declarations in the same way as for standard ones.

Consignments falling within different tariff headings

Article 105 (formerly Article 81) [Previously Article 107 in REV4]

During the consultation on this modernized Code, traders have asked to extend the facilitation of former Article 81 to other procedures, notably exports, so as to avoid each item having to be classified individually in order to establish the highest rate of duty. Furthermore, the current system does not work where specific and ad valorem duties need to be compared. The new text extends the facilitation to other procedures but maintains the necessary safeguard that not less the amount of duties due is collected.

At the same time, the proposed text aligns the customs and the statistical rules, notably with regard to the use of aggregate sub-headings. (see Articles 16- 29 of Reg [EC] No 1917/2000 - OJ 2000 No L 229, p. 14). The implementing provisions will lay down certain conditions for the use of the simplifications.

CHAPTER 4 DISPOSAL OF GOODS

Article 106 (formerly Articles 56, 57, 75, 78 (3) + ex 182) [Previously Article 105 in REV4]

This Article brings together all of the circumstances which may result in the destruction of goods or their disposal by the customs authorities, other than destruction under the inward processing procedure.

Destruction and abandonment primarily concerns non-Community goods which have been brought into the customs territory of the Community but can also concern Community goods under the end-use procedure or goods for which entry to free circulation or another procedure is invalidated. That is why it is considered that, logically, the best place for these arrangements is under the heading 'General rules on customs procedure'.

In order to create a level playing field throughout the Community, the restriction in former Article 182 (1) and (3) that national legislation must provide for and regulate abandonment to the Exchequer has been lifted. Certain detailed provisions (such as the prior notification rule contained in former paragraph (2)) have been deleted as it is proposed that the details will be laid down in the implementing provisions (as currently for destruction, see Article 842 CCIP).

TITLE VI: RELEASE FOR FREE CIRCULATION

General introduction

As release for free circulation is one of the most important customs procedures (even mentioned in Articles 23 (2) and 24 of the EC Treaty) it is considered appropriate to devote a separate Title to this procedure, as it is for export (Title IX).

Scope

Article 107 (formerly Article 79) [Previously Article 106 in REV4]

After "application of commercial policy measures", it has been added "in so far as they do not have to be applied at an earlier stage". This is due to the fact that in certain cases such measure may be applicable at an earlier stage, e.g. to goods in transit (see ECJ preliminary ruling of 7 January 2004, in case C-60/02, "Landesgericht Eisenstadt"). In line with Article 10 (3) of the 6th VAT Directive and Article 5 of Directive 92/12/EEC, as well as Articles 23, 24 EC Treaty it has been clarified that at release for free circulation VAT and excise duties become chargeable where provided for under the provisions in force.

Article 866 CCIP has been included here as paragraph (3), being more proper to the Code than the CCIP.

[The former Article 80 has been deleted because it is considered that with electronic declarations and short release times becoming the rule, the need for dealing with customs duty changes between the lodging of a declaration and the release of the goods has disappeared; where goods cannot be released immediately for free circulation, temporary storage can be used and will lead to the same result as former Article 80. Former Article 81 now becomes Article 107, which provides for its application beyond release for free circulation].

TITLE VII: RELIEF FROM IMPORT DUTIES

General introduction

This Title deals with goods released for free circulation under special circumstances, except for goods placed under the end-use provisions covered by Title VIII (Special procedures), in view of the fact that such goods remain under customs supervision.

CHAPTER 1 RETURNED GOODS

Scope

Articles 108 (formerly Article 185)

Paragraph (3) has been added to clarify the position of Community goods placed under external transit, storage or inward processing and subsequently released for free circulation. See also the explanation to Article 85.

Processing of goods outside the customs territory

Article 109 (formerly Article 186)

Goods previously placed under inward processing

Article 110 (formerly Article 187)

The text of former Article 187 (1) has been aligned with the new terminology and a paragraph (3) has been added in order to avoid abuse of prior exportation under the inward processing equivalent system.

CHAPTER 2 PRODUCTS OF SEA-FISHING AND OTHER PRODUCTS TAKEN FROM THE SEA

Article 111 (formerly Article 188)

A new paragraph has been added so that specific provisions may be established in accordance with the committee procedure - for example, in the case of dual registrations/chartering, which may allow vessels to benefit from more than one quota, i.e. both in the Community and the third country.

CHAPTER 3 RELIEF FROM IMPORT DUTIES ON ACCOUNT OF SPECIAL CIRCUMSTANCES

Article 112 (formerly Article 184)

In order to cover in the Customs Code all autonomous customs legislation which is not part of the customs tariff, it is proposed that the rules governing relief on account of special circumstances, insofar as import duties are concerned (export duties will be covered by Article 160) shall be determined in accordance with the committee procedure. The implementing provisions will be inserted in the recast version of Regulation (EC) No 2454/93. They will correspond to the provisions of former Council Regulation (EEC) No 918/83 - OJ 1983 No L 105, p. 1, setting up a Community system of reliefs from customs duty. This is a more transparent approach than laying down some provisions in a Council/Parliament Regulation and others in an implementing Regulation (see current implementing regulations 2288/83, 2289/83 2290/83 and 3915/88). The same approach has been followed in the past with regard to temporary admission with total duty relief (see former Article 141).

TITLE VIII: SPECIAL PROCEDURES

General introduction

The grouping together and alignment of the former suspensive procedures, i.e. external transit, customs warehousing, inward processing suspension system, processing under customs control, temporary importation (see former Article 84 (1)(a)) with internal transit, temporary storage, free zones, inward processing drawback system, outward processing and end-use, within four special procedures (transit, storage, use and processing) is one of the key features of the simplification and modernisation of the Customs Code. This solution provides the following advantages:

- The new structure takes into account the interests of operators. If they are interested in transport, storage, use or processing of non-Community goods, the choice of the right special procedure is very simple.
- Customs law becomes less complex so that less training and less programming effort are required.
- Less errors and consequently less post-clearance recoveries and refunds with the associated handling costs will occur.
- It will be possible to have a large set of common rules for all special procedures (e.g. with regard to guarantee, application and authorization, use of equivalent goods), and only a small set of special rules which are maintained because of duly justified economic reasons.
- The alignment of similar procedures has made it possible to merge inward processing (suspension system) with processing under customs control and to abandon the inward processing drawback system, given that the intention of re-exportation is no longer necessary.
- The alignment of temporary storage with customs warehousing means that the current deadline for assigning non-Community goods a customs-approved treatment or use (see former Article 49) can be lifted and the incurrence of a customs debt because of a missed deadline (see former Article 204 (1) (a)) be avoided.
- The granting of authorizations for several special procedures with a single guarantee and a single supervising customs office (single window, one-stop-shop) is facilitated.
- The rules on the incurrence of a customs debt can be simplified; the basic principle being that the goods placed under a special procedure (or the products made therefrom) are assessed according to the nature, tariff classification, import duty rate and customs value at the time the customs debt is incurred. In few cases in which this is economically justified (e.g. inward processing) the nature, tariff classification (but not the duty rate) and customs value of the goods placed under a special procedure at the time they were placed under that procedure are taken into account at the request of the declarant if he provides sufficient proof (see Article 53). The same principles apply with regard to usual forms of handling.

It should be noted that the numerous special rules of the former Customs Code regarding these procedures (e.g. with respect to the basis of assessment in case a customs debt is incurred) are not required under the Kyoto Convention. They are in fact the result of the harmonisation of pre-existing national procedures of the Member States which have been maintained as a compromise at the expense of clarity and simplicity. With the constant reduction of import duty rates, the shift of focus to non-tariff-related tasks, and the call for trade facilitation, time has now come for a radical simplification of these rules which are fully understood only by a few experts, but which create a large overhead both for customs administrations and economic operators.

Given that several of these procedures normally also suspend VAT and excise duties, a reference to this legislation has been introduced where appropriate, so that in the authorization or release process the tax requirements (including the need for a guarantee) are duly taken into account. Quite often the amount of tax suspended is higher than that of import duty, a fact which is not reflected in the former Customs Code.

CHAPTER 1 GENERAL PROVISIONS

Scope of Title VIII

Article 113 (formerly Article 84)

Paragraph (1) lays down four special types of procedure covering all possible cases which might occur other than release for free circulation and export. The current complication introduced by the distinction between

- customs procedure,
- other customs-approved treatment or use, and
- temporary storage

will not exist anymore. Article 4 (12) [formerly (15) & (16)] has been amended accordingly.

Application and Authorization

Article 114 (formerly Articles 85, 86, 87, 88, 94, 95, 100, 104, 116,117, 132, 133, 138, 147,148)

This Article integrates the authorization requirements covered by former Articles 85 to 88 and 100, including the requirement for the operator of a storage facility to be authorized and to provide a guarantee, together with those related to authorization to use the former suspensive procedures. The use of a special procedure – apart from temporary storage, transit and free zones - will continue to be dependent on an authorization. The former temporary storage (requiring no authorization) is now embedded in the storage procedure but the lack of customs declaration makes it necessary to introduce a special solution (see Article 130 (1)).

The use of a special procedure is not restricted to Authorized Economic Operators (AEO), and the granting of an authorization under this Article does not grant that status. However, should the holder of an authorization under this Article also wish to use simplified declarations, he must be authorized to do so under Article104, i.e. he must hold or be granted the status of AEO in accordance with Article 10.

In paragraph (2) the term ‘special conditions’ used in former Article 86 has been replaced by ‘the customs rules', as defined in Article 2 (1). This covers, *inter alia*, international agreements such as the TIR, ATA and Istanbul Conventions. The Customs Code implementing provisions may also contain special rules on the granting of authorizations, including provisions on cases in which the guarantee in accordance with Article 38 [formerly 94, 192] is mandatory or may not be requested. [Note: The apparent restriction, in paragraph (2) 1st indent in Rev3 of this draft Code, of the use of temporary admission to persons established outside of the Community has been corrected.]

In paragraph (3), the criteria for determining the customs authority competent for the granting of the authorization have been taken over from Articles 292 (5) and 500 (2) CCIP. Where necessary – as in the case of temporary admission (see Article500 (2) CCIP) - different rules can be adopted.

In paragraph (5), a reference to single authorizations and/or integrated authorizations is introduced (the application and authorization form in Annex 67 CCIP already provides for this). As the use of special procedures is not restricted to AEO (see above), single and /or integrated authorizations for the use of

these procedures may continue to be granted to any trader within the rules laid down in Articles 292 (5), (6) and 500, 501 CCIP.

In order to achieve a uniform application in cases where the essential interests of Community producers might be adversely affected, an examination under the committee procedure is stipulated in paragraph (6), based on the model in Articles 502 to 504 CCIP.

Records

Article 115 (ex former Articles 105, 106 (3), 107 & 176)

No change in substance (See also Articles 515, 516, 528-530, 803, 804, 806 & 807 CCIP).

End or discharge of a special procedure

Article 116 (formerly Articles 89 & 92)

This Article defines when and how a special procedure ends and is discharged.

Transit is different from the other special procedures in that it only deals with the movement of goods from point A to point B, whereas the other special procedures require, in most cases, another procedure (e.g. release for free circulation, export or other formalities (re-export)) to follow, although in fact, another procedure must normally follow external transit.

In order to cover these differences, the following solution is proposed in paragraph (1):

- As today (see former Article 92), external transit ends when the goods placed under the procedure and the relevant data are available at the customs office of destination. Subsequently, the goods must be assigned to a new customs procedure. Where no specific request is made, the goods will, as today, be assigned automatically to temporary storage (see Articles 83 and 130 (1)).
- As today (see former Article 89) any other special procedure ends or, as in the case of outward processing, is discharged when the goods placed under the procedure or the processed products are assigned to a subsequent customs procedure, apart from cases where this is not necessary (destruction, end-use, abandonment to the Exchequer).

Transfer of rights and obligations

Article 117 (formerly Articles 90 & 103)

The scope of this Article has been extended to all special procedures (i.e. also to holders of goods under the free zone, temporary storage or end-use procedure) except transit. The transfer of the rights and obligations of a warehouse-keeper, stipulated in former Article 103, can be deleted, as any transfer of the operation of a warehouse or storage facility must require the new operator to be authorized in his own right.

Movement of goods

Article 118 (formerly Articles 91 (3) & 111)

This Article deals with the movement of goods, other than those placed under transit or outward processing, within the customs territory of the Community as the movement of goods is not covered by Article 117 (See Articles 511 and 512 CCIP). The movement of goods under transit and outward processing is governed by the rules for those procedures.

Usual forms of handling

Article 119 (formerly Articles 109 & 173 (b))

The text of this Article has been simplified in three aspects:

- The term 'usual forms of handling' is sufficiently defined within the Article, so that implementing provisions should only be adopted where a need arises.
- As under the former free zone and free warehouse arrangements, there should be no requirement of a prior authorization for usual forms of handling.
- The usual forms of handling admitted for goods covered by agricultural policy measures are laid down in agricultural legislation (e.g. Article 29 (4) of Regulation 800/1999), so that the reference to the Customs Code implementing provisions in former Article 109 (1) can be deleted (see also Article 2 (1) second sentence).

Equivalent goods

Article 120 (formerly ex Articles 114 & 115)

Paragraph (2) extends the rules on equivalence to end-use and outward processing in order to provide for more flexibility in the production process. The detailed rules will be laid down in the implementing provisions.

Paragraph (6) reflects the few cases for which equivalence is admitted under temporary admission (see Articles 556, 557 (3) and 584 CCIP).

Implementing provisions

Article 121 (formerly Articles 97, 98 (3), 109 (1) & (4), 115 (2) & (4), 117 (c), 118 (4), 120, 124 (3), 128 (3), 131, 133 (e), 142 (2) 146 (2) and 148 (b))

This new Article replaces references to the creation of implementing provisions formerly scattered throughout the various different procedures, including the provisions to be introduced in order to avoid the circumvention of commercial or agricultural policy measures, and for the examination of economic conditions under special procedures. Where an examination of the economic conditions is necessary, it will take place at Community level (see Article 114 (6), 2nd sentence).

CHAPTER 2 TRANSIT

Section 1: External transit

Scope

Article 122 (formerly Article 91)

The reference to Community goods in former Article 91 (1) (b) has been modified, given that Community goods which are placed under the T1 procedure will change their status to non-Community goods, in accordance with Article 85 (1) (b).

Two further references or clarifications have been inserted in paragraph (1):

- the suspension of VAT at importation and excise duty, as provided for under Articles 7 (3) and 10 (3) of the 6th VAT Directive and Article 5 (2) of Directive 92/12/EEC; and
- the fact that only those commercial policy measures are suspended which do not refer to entry into the Community (this principle is currently laid down in Article 509 (1) CCIP with regard to customs procedures with economic impact; special rules may of course apply to goods only

transiting the Community).

In paragraph (2), references to the Community and third countries have been replaced by references to movements within or outside of the customs territory of the Community.

In paragraph (2) (b), the former reference to unloading has been deleted, as research has shown that this provision for TIR, which allowed the use of TIR for intra Community movements, pre-dates the completion of the single market and is inconsistent with both the single market and the TIR Convention.

In paragraph (2) (f), the meaning of movement 'by post' has been clarified in order to take account of the privatisation of postal services.

Goods passing through the territory of a third country

Article 123 (was formerly Article 93)

The term 'third country' has been replaced (see the explanation to Article 122 (2)).

Obligations of the holder of the external Community transit procedure

Article 124 (formerly Articles 95, 96)

In paragraph (1) (c) a reference to the guarantee requirements has been introduced, given that former Article 94 has been transferred to the general rules concerning the guarantee for a customs debt (Article 38) and that Article 114 (2) deals with guarantees only in the context of the granting of an authorization (which is not needed for a transit procedure where no simplifications apply).

[Former Article 92 has been included in Article 116 and former Article 94 in Article 38; guarantee waivers stipulated in former Article 95 will be covered under implementing provisions to Article 124 (1) (c). Former Article 97 is covered by Articles 25 and 121, simplified national procedures being replaced by Community rules, where necessary].

Section 2: Internal transit

Scope of internal transit

Article 125 (formerly Articles 163 & 165)

The reference to external transit in former Article 163 (1) has been deleted, given that, under the new rules, Community goods placed under external transit will have the status of non-Community goods (see explanation to Article 122). With regard to the replacement of the term 'third country' and to movement 'by post', also see explanation to Article 122.

[Former Article 164 has been transferred to Article 86].

CHAPTER 3 STORAGE

Section 1: Common provisions

This Section brings together the provisions relating to the three elements of the storage procedure, i.e. temporary storage, customs warehousing and free zones and integrates the common rules.

Scope

Article 126 (formerly Articles 98 & 166)

Under paragraph (1) (a) references or clarifications have been inserted relating to the suspension of

- excise duty provided for under Article 5 (2) of Directive 92/12/EEC,

- VAT at importation provided for under Articles 7(3) and 10(3) of the 6th VAT Directive, and
- commercial policy measures.

In Article 85 (1) (b) it has been clarified that placing Community goods under customs warehousing changes their status to non-Community goods. The reference to Community goods in former Article 98 (1) (b) has therefore been modified.

A final subparagraph makes it clear that any suspension of measures under paragraph (1) (a) does not apply to any measure relating to entry into the Community (this principle is currently laid down in Article 509 (1) CCIP).

Responsibilities of the holder of the authorization or procedure

Article 127 (formerly Articles 101 & 102)

These provisions now apply to temporary storage as well as warehousing. As no authorization is required to use the temporary storage procedure, the 'depositor' (normally the summary declarant) is the 'holder of the procedure', whereas the temporary storage operator, who must be authorized under Article 114, is the 'holder of the authorization'.

Period for discharge and temporary removal

Article 128 (formerly Articles 108, 110, & 171)

Special rules for agricultural products are laid down in agricultural legislation and not the Customs Code implementing provisions. A reference to these special rules (former Article 108 (2)) is not necessary because they are directly applicable (see Article 2 (1), second sentence).

Former Article 110, second subparagraph (concerning usual forms of handling of temporarily removed goods) will now be covered by Article 119, which will apply to the goods as long as they remain under the customs warehousing procedure.

Paragraphs (1) and (2) will also apply to goods in temporary storage, as an important objective of the reform is to avoid the incurrence of a customs debt because a time limit (as laid down in former Article 49) has been exceeded.

Community goods and processing activities

Article 129 (formerly Article106)

Following the modification in Article 85 (b) according to which goods placed under customs warehousing have the status of non-Community goods, the reference to Community goods in paragraph (1) (a) can be simplified.

Due to the amalgamation of the former inward processing and processing under customs control procedures, the text of former Article 106 (1) (b) & (c) can be merged (now paragraph (1) (b)).

The requirement for stock records addressed in former Article 106 (3) is now covered by Article 115.

[Former Article 113 has been deleted, since its content is already covered by Article 2(1), second sentence.]

Section 2: Temporary storage

Article 130 (formerly Articles 50 to 53)

As under the former Article 50, non-Community goods will be placed under the procedure by the fact that they have been presented to customs, in accordance with Articles 79 (1) [former 40], 81 (2) and 83

[formerly 55].

As under the former rules for temporary storage, no authorization or declaration is required. The summary declaration stipulated under former Article 43, but now required before arrival under Article 73 (2) or, exceptionally, immediately upon arrival, under Article 81 (3), will be regarded as the customs declaration, even if it has been lodged by a person, e.g. the importer/agent, other than the person who presented the goods to customs, e.g. the carrier.

The main advantage of this reform is that the automatic incurrence of a customs debt after a specific deadline (former Article 49) can be avoided. The customs authorities will no longer need to regularize situations in which no customs declaration has been made within the prescribed timeframe, except in cases in which no summary declaration is made or no person can be identified as having control of the goods.

The fact that the keeper of the storage facility charges for the storage will, in most cases, lead to the goods being placed under another procedure or being transferred to another person.

In order to allow for customs controls, goods under the storage procedure must be entered in the records of the storage operator (Article 115).

Section 3: Customs warehousing

Types of customs warehouses

Article 131 (formerly Article 99)

The term "ware-housekeeper" is no longer necessary, given that the authorization of the operator of storage facilities is covered by Article 114 (1); "depositor" had been replaced by "holder of the procedure". This modification contributes to a consistent terminology throughout all customs procedures.

Section 4: Free zones

Designation of free zones

Article 132 (formerly Articles 167 (1)–(3) & 168 (1) & (2))

In paragraphs (1) to (3), a reference to the customs authorities has been inserted in order to avoid that free zones can only be established and regulated by a legal act of the Member State concerned. Furthermore, it is not necessary to distinguish between free zones and free warehouses. Therefore, existing free warehouses will be considered as 'small' free zones. The reference to former Article 168a and the Article itself (control type II free zones) has been deleted, given that the requirements formerly fulfilled by such zones can be satisfied under the provisions for customs warehousing and temporary storage.

Buildings and activities in free zones

Article 133 was formerly Articles 167 (4) & 172

Other customs procedures

Article 134 (formerly Article 173)

Given the liberalisation of the economic conditions examination for inward processing (see explanation to Articles 114, 121 & 162) there is no need anymore for special rules for free zones in specific areas (former Article 173 (c)). Furthermore, Article 299 EC Treaty offers the possibility of specific measures with regard to overseas free zones. Due to the regrouping of procedures, the text of former

Article 173 could be shortened.

Presentation of goods and their placement under the procedure

Articles 135 (formerly ex Articles 169 & 170)

The rules relating to pre-arrival declaration and presentation also apply to freezones, in accordance with the security-related changes to the Customs Code proposed in Communication COM (2003) 452 final, 24.07.2003. The exemption of free zones from customs supervision in former Article 37 (2) has been deleted (see Article 76), given that free zones become a customs procedure and are subjected to customs controls at entry (Articles 79 and 132) and with regard to records (Article 115).

Community goods in free zones

Article 136 (formerly ex Articles 169 & 170)

Given that goods placed in a free zone are, in principle, to be considered as non-Community goods (see explanation to Article 85), only a proof of Community status is necessary. Where goods are released for free circulation, or placed under the processing or use procedure, they are not under the free zone procedure (this conforms with former Article 173).

Consumption or processing of non-Community goods

Articles 137 was formerly Article 175

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

Articles 138 (formerly Articles 177 and 181)

Rules relating to pre-departure declaration now apply to freezones, in accordance with the security-related changes to the Customs Code proposed in Communication COM (2003) 452 final, 24.07.2003.

Status of returned goods

Article 139 was formerly Article 180.

[Former Articles 174 and 179 have been deleted because specific references to agricultural legislation are not necessary (see Article 2 (1), second sentence).]

CHAPTER 4 SPECIFIC USE

Section 1: Temporary admission

Scope

Article 140 (formerly ex Articles 137 & 139)

In paragraph (1) references or clarifications have been inserted relating to the suspension of

- excise duty provided for under Article 5 (2) of Directive 92/12/EEC,
- VAT at importation provided for under Articles 7(3) and 10(3) of the 6th VAT Directive, and
- commercial policy measures

A final subparagraph makes it clear that any suspension of measures under paragraph (1) (a) does not apply to any measure relating to entry into the Community (this principle is currently laid down in Article 509 (1) CCIP).

Period during which goods may remain under temporary admission

Article 141 (formerly Article 140)

Paragraph (1) takes account of the fact that temporary admission is ended by placing the goods under a new customs procedure (see Article 116 (2)). Paragraph (2) deals only with the maximum period; shorter periods can be laid down in the implementing provisions (Article 121).

Situations covered by temporary admission

Article 142 (formerly Articles 141, 142)

Criteria for the adoption of the implementing provisions have been added.

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

Article 143 was formerly Article 143(1) & (2)

[Former Article 144 (1) is now covered by Articles 52 and 53.]

Section 2: End-use

Article 144 (formerly Article 82)

The possibility of ending the procedure through abandonment to the Exchequer has been added.

CHAPTER 5 PROCESSING

Section 1: General provisions and definitions

Article 145 (formerly ex Article 114),

The term ‘customs procedure with economic impact’ (formerly Article 84 (1)(b)) has been lifted in that there is no use for this term any more once customs procedures have been rearranged according to whether they concern (see Article 4 (12))

- release for free circulation,
- special procedures, or
- export.

This change is only of an editorial nature, and does not necessarily affect the functioning of the individual procedure as such (though attempts are also made to achieve more harmonisation across the current procedures).

In paragraph (1), the term ‘processed products’ replaces the term 'compensating products' used in former Articles 114 (2)(d) and 145 (3)(c) .

In paragraph (2), the term 'processing operations' (contained in former Article 114 (2)(c) and referred to in former Article 145 (3)(b)) has been extended to cover destruction as well, given that destruction (former Article 182) will be included in the processing procedure, except where destruction is carried out under customs supervision (Article106)..

Paragraph (3) contains the definition for the 'rate of yield', formerly laid down in Articles 114 (2)(f) and 145 (3)(d).

Rate of yield

Article 146 (formerly Article 119)

Former Article 119 (2), allowing the determination of standard rates of yield, has been deleted, given

that a system which does not react efficiently to technological changes can no longer be justified.

Section 2: Inward processing

The withdrawal of the inward processing drawback system makes the use of the distinguishing term 'suspension system' unnecessary.

Scope

Article 147 (formerly ex Articles 114, 130)

In paragraph (1) references or clarifications have been inserted relating to the suspension of

- excise duty provided for under Article 5 (2) of Directive 92/12/EEC,
- VAT at importation provided for under Articles 7(3) and 10(3) of the 6th VAT Directive, and
- commercial policy measures.

A final subparagraph makes it clear that any suspension of measures under paragraph (1) (a) does not apply to any measure relating to entry into the Community (this principle is currently laid down in Article 509 (1) CCIP). [The definitions contained in former Article 114 (2) have been transferred to Articles 113(2) and 145, insofar as they are still needed.]

Period for discharge

Article 148 (formerly Article 118)

In paragraph (1) a reference to destruction has been included, given that this ends the procedure, where no waste remains.

Temporary export

Article 149 (formerly Article 123)

The possibility of combining inward and outward processing is maintained. The complicated rules on the calculation of the customs debt laid down in former Article 123 (2) are deleted. Instead, the simpler rules of Articles 52 (1) and 53 (3) apply.

[With the withdrawal of the inward processing drawback system, former Articles 124 to 129 have been deleted. Former Article 129 has also been deleted, given that this provision has been without practical relevance.]

Section 3: Outward processing

Scope

Article 150 (formerly Articles 145, 146, 149, 150, 151 & 153(2))

In order to simplify outward processing, the value added method is stipulated as the only method for calculating partial debt relief. Where the re-imported products are subject to specific duties, the implementing provisions will determine the calculation method in accordance with Article 121. The complicated rules of former Article 151 can therefore be deleted.

[Former Article 147 is not necessary anymore as any person who fulfils the conditions stipulated in Art 114 (2) may apply for an authorization.]

Repaired goods

Article 151 was formerly Article 152

Standard exchange system

Article 152 was formerly Articles 154, 155 & 156

Prior importation

Article 153 (formerly Articles 154 (4) & 157)

The special rule for the calculation of the customs debt (former Article 158) has been replaced by the general rules (Articles 52, 53).

[Former Articles 158 &159 will be covered by implementing provisions; former Article 160 can be deleted because outward processing applied to non-tariff measures is covered by other Community rules, in particular Regulation (EC) No 3036/94- OJ 1994 No L 322, p.1 (See Article 2 (1)).]

TITLE IX: DEPARTURE OF GOODS FROM THE CUSTOMS TERRITORY OF THE COMMUNITY

General Introduction

The new Title IX (Departure of goods from the customs territory of the Community) includes the principle of a pre-departure declaration introduced under the proposals for a Regulation amending the Community Customs Code (COM (2003) 452 final).

These Articles correspond with Articles 73 to 75 (pre-departure declarations) and the comments to those Articles apply, generally, to these. The main difference is the following:

– On importation, the first customs office confronted with the goods is the office of entry (i.e. the first office passed after the goods have crossed the Community frontier); this office must therefore receive the pre-arrival declaration in order to be able to decide whether security checks are necessary. This will normally be a summary declaration, but may be replaced the customs declaration. This mirrors present practice, apart from in the timing of the summary declaration.

– On exportation, however, the first customs office confronted with the goods is the office of export (i.e. the office responsible for the place where the exporter is established or where the goods are packed or loaded for export [formerly Article 161 (5)]). In this case, this must normally be the customs declaration (complete simplified or incomplete) or, for non-Community goods, a re-export notification.; this again mirrors current practice apart from in timing of lodgement. Summary declarations are only needed where neither a customs declaration nor a notification is required, so no additional declaration will be required from Community exporters.

Further amendment is made to the proposals for pre-departure declarations in this modernization, taking into account the general introduction of electronic declarations, electronic exchange of data between customs authorities, notably the Export Control System (ECS), and the future creation of common portals/ single window. The detailed rules for the exchange of messages between customs offices under ECS will be laid down in the implementing provisions (see Article 5 (2)).

As in the former Article 182, a special Article for re-export of non-Community goods destined to leave the Community is maintained, although these will be subject to the same rules as for the export Community goods, apart from the fact that a re-export notification will be required instead of a customs declaration. This is in line with

- the security-related changes to the Customs Code, which do not differentiate between Community or non-Community goods in the context of a threat to security, and
- the fact that the former rules on re-exportation (of non-Community goods) already refer, in many cases, to the rules for exportation (see former Article 182 (3) (3rd sentence)). The structure of the Customs Code can be simplified by stipulating the same basic rules for all types of goods, and by providing for the possibility of exceptions where necessary (e.g. for goods only transiting through the Community).

Title IX will also include the provisions for exportation and relief from export duty on account of special circumstances. As part of the simplification of customs legislation, the new Title regroups most of those parts of former Title IV (Customs-approved treatment or use) which deal with goods exported from the Community either provisionally or permanently, but the provisions relating to outward processing are now covered by Title VIII (Special procedures), in view of the requirement for authorization and because of the fact that this procedure mirrors inward processing..

Furthermore, a more explicit link to Community VAT and excise legislation has been introduced, given the impact of customs legislation on such taxes, and the need for appropriate customs controls in order to ensure the correct application of such legislation.

CHAPTER 1 GOODS LEAVING THE CUSTOMS TERRITORY

Obligation to lodge a pre-departure declaration

Article 154 (formerly Articles 161 (4) & (5), 182a & b + ex c)

The former Articles have been consolidated, in order to clarify the requirements of pre-departure declarations and that use of the export procedure relates only to Community goods being exported from the Community. Reference to 're-export' is maintained in respect of non-Community goods destined to leave the Community, given that non-Community goods are often already under a customs procedure, such as external transit, warehousing or inward processing, and cannot, therefore be placed under the export procedure as well. However, a pre-departure declaration will still be required and, in this respect, non-Community goods will be subject to the same rules as Community goods, apart from the fact that a re-export notification or summary declaration will be required instead of a customs declaration.

Former Article 161 (4)& (5), relating to the detailed rules for lodgement of declarations will be incorporated in the implementing provisions (see last indent to paragraph (4)).

Formalities and customs supervision

Article 155 (formerly Articles ex 161, 162 & 183)

In paragraph (1) it has been clarified that export or re-export may involve

- repayment or remission of import duties (see Articles 153 [formerly 128] (1), 70 [formerly 238] (2)(b) and 71 [formerly 239]),
- exemption from VAT (see Article 15 of the 6th VAT Directive) and excise duty (see Article 5 of Directive 92/12/EEC), and
- the application of agricultural (e.g. export refunds) and security (e.g. control of dual-use items) policy measures.

Paragraph (2) clarifies that export and re-export is normally a two-step procedure; the first step is the export declaration or notification and export control, normally at the place where the exporter is established, while the second is the supervision of the actual exit of the goods from the customs territory of the Community (see Article 793 CCIP).

CHAPTER 2 EXPORT

Export procedure

Article 156 (formerly Articles ex 161 (1) & (2))

Paragraph (1) has been aligned with Article 155, given that the content of former Article 161 (1) 2nd paragraph has been incorporated into Article 155 (1).

In paragraph (2) it has been clarified that use of the export procedure is not required for goods placed under end-use or outward processing, as well as for goods placed under internal transit or leaving the customs territory of the Community temporarily, in accordance with Article 86. Former Article 161 (3) has been deleted as the case of goods dispatched to Heligoland can be dealt with under Article 154 (4) [formerly Article 161 (4)].

Paragraph (3) clarifies that goods placed end-use or outward processing are exported under the formalities laid down in the implementing provisions for these procedures, as today (see Arts. 298 and 589 (2) CCIP).

Non-Community Goods

Article 157 (Formerly Article 182 & ex 182c)

Further amendment is made to the proposals for pre-departure declarations in this modernization, to maintain reference to 're-export', for clarity so that 'export procedure' is used only for the exportation of Community goods (see explanation to Article 154). Non-Community goods destined to leave the Community will be subject to the same rules as Community goods, but a re-export notification will be required instead of a customs declaration . (Consignments of goods re-exported, e.g. ex warehouse, are already subject to the requirement at least of notification to customs, under former Article 182 (3)).The re-export notification will have the same content, and be treated in the same way, as a customs declaration. In certain cases, as today, no such notification will be necessary, but a summary declaration will then be required (see Article 158).

Summary declaration

Article 158 (formerly Articles 182c & d)

The former Articles have been consolidated. This will apply only when neither a customs declaration nor a re-export notification are required. The provisions for the exporter /consignor to make the pre-departure summary declaration, and for its subsequent amendment, are maintained.

A common use of this will be for transhipments and re-exports from freezones and from temporary storage at ports /airports etc. In such cases, however, the import summary declaration will normally serve as the export one as well. The current regulations that privilege free zones in that in certain cases no presentation of the goods to customs and no summary declaration, for either import or re-export, is required is obviously an unacceptable loophole in terms of security and safety.

Temporary export

Article 159

The purpose of this new Article is to cover certain cases of temporary export (notably under the ATA carnet system) which are dealt with in the CCIP but without a formal basis in the former Code

CHAPTER 3 RELIEF FROM EXPORT DUTIES ON ACCOUNT OF SPECIAL CIRCUMSTANCES

Article 160 (formerly Article 184)

Chapter 3 of Title IX contains only one Article. It foresees that the cases in which and the conditions under which relief from export duties shall be granted, shall be determined in accordance with the committee procedure. The implementing provisions will be inserted in the recast version of Regulation 2454/93. They will correspond to the relevant provisions of former Council Regulation No 918/83 of 28.3.1983 setting up a Community system of reliefs from customs duty. The reasons for referring the details to the implementing provisions are set out in the explanation to Article 112.

TITLE X: FINAL PROVISIONS

Under the new Title X (formerly Titles VIII, Appeals, and IX, Final provisions) the following amendments are proposed:

1. It is suggested to transform the regulatory committee to a management committee and to reduce the period in Council from three months to one month in order to optimise the efficiency of the Customs Code Committee in an enlarged Community. This corresponds with request by traders and third countries to provide for a more prompt resolution of cases in which a divergent interpretation of the Community custom rules has been identified.

2. The committee procedure is extended to the adoption of explanatory notes and guidelines (Articles 247 and 248). This approach has been used successfully in the context of the explanatory notes to the Combined Nomenclature (Articles 9 and 10 of Regulation 2658/87). It will allow for the general replacement of national instructions interpreting the Community customs rules.

Article 161 (formerly Articles 247a, 248a, 249)

With the incorporation of Regulation 918/83 (duty reliefs) in the Community Customs Code the reference to it can be deleted.

Article 162 (formerly Articles 117 (c), 133 (e), 247, 247 (a) & 248)

Due to the incorporation, in Article 26, of former Articles 20 & 21, and the absence of rules relating to the end-use of specific goods in the Customs Code implementing provisions (they are incorporated in Regulation 2658/87), the reference to former Article 21 can be deleted.

The provision has been extended, in paragraph (2), to define other applications of the procedure.

The first indent provides for a formal legal basis for explanatory notes and guidelines; these are already used (see, for example, OJ 2001 No C 269, p.1 and OJ 2002 No C 228, p. 6) but without clear rules for their adoption.

The second indent provides for the adoption of rules for the examination of economic conditions which has formerly been left, in principle, to Member States (see former Articles 117 (c) and 133 (e), and, in respect of examination at Community level, Articles 503 and 504 CCIP).

The third indent allows for an efficient decision-making process in cases where the position of the Community is to be established, e.g. in the WTO and WCO Valuation committees. This provision follows the model in Article 9 (1) (g) of Regulation (EEC) No 2658/87 – OJ 1987 No L 256, p. 1 and reflects current practice.

The fourth indent has been introduced in order to allow for a more widespread application of the rules currently laid down in Article 9 CCIP. These rules allow the Commission to request the revocation or amendment, by a Member State, of a classification or origin decision in cases where divergent decisions by Member States have been brought to its attention. This is applied where other means, such as a classification Regulation or adoption of explanatory notes, are not used.

The last indent is in line with the Council Resolution on creating a simple and paperless environment for customs and trade.

Paragraph 4 has been included in order to ensure respect of the Article 1 during the committee procedure, notably with reference to partnership with economic operators, and to ensure transparency in the determination of implementing regulations.

Article 169 (formerly Article 251 & 252)

The repealed Regulations are incorporated in the Customs Code.

Article 170 (formerly Article 253)

The date of applicability of the new Community Customs Code must take into account the need of amending the former implementing provisions. This will require approximately one year from the time the final version of the new Customs Code is more or less known. Once this stage has been reached, the date of applicability can be laid down definitively.

Annexe 1

CORRELATION TABLE 1: New > Former

New Article	Former Articles	New	Former
1	new	47	143(2), ex 144(2), 208
2	1, 2	48	209
3	3	49	210, 211
4	4	50	212
5	new + 15, 36(b)(1),182(d)(1)	51	, 213
6	new	52	121, 122, ex 144, 214(1) &(2)
7	11	53	112, 121, 122, 135, 136, ex 144, 178
8	14 + 199CCIP	54	215 (1)(2)(4)
9	5	55	217, 215(3)
10	5a	56	221
11	6, 7, ex 10, ex 250	57	217, 220 (2) a & c, 219 (2)
12	8	58	218, 220(1)
13	9	59	-
14	12	60	222
15	243	61	223, 231
16	244	62	224, 225, 226
17	245	63	227
18	246	64	228
19	new	65	229, 230
20	13, ex 78, Reg 3925/91	66	232, 214 (3)
21	16	67	235, 240, 241, 242
22	11 (2),	68	236
23	18, 35	69	237
24	17	70	238
25	19	71	220(2)b, 239
26	20, 21	72	various –see explanation
27	22	73	36a, (43)
28	23, 24	74	36b, (44)
29	26	75	36c, (45)
30	27	76	37, 42
31	28, 36	77	38
32	29, 32	78	39
33	30, 32(1)(e)	79	40, 41
34	31	80	46, 47
35	189, 191, 192 (3),	81	48, 49
36	192(1)	82	54
37	190, 192(2)	83	55
38	94 (3) to (7)	84	Ex Article 313 CCIP
39	193, 196, 197(1)	85	83
40	194, 197(2)	86	164
41	195	87	58
42	198	88	59
43	199	89	60
44	201	90	61, ex 77
45	216	91	62, 76(1)a, 77
46	202, 203, ex 204, ex 205, ex 206	92	63

New Article	Former Article	New	Former
93	64	142	141, 142
94	65	143	143 (1) & (2)
95	66	144	82
96	67	145	ex 114
97	68, ex 250	146	119
98	69	147	130, ex 114
99	70	148	118
100	71, ex 250	149	123
101	72, ex 250	150	145, 146, 149, 150, 151, 153(2)
102	73	151	152
103	74	152	154, 155, 156
104	76	153	154 (4), 157
105	81	154	182a, 182b, ex 182c, 161(4) & (5),
106	56, 57, 75, 78(3), ex 182	155	ex 161,162,183
107	79 + Article 866 CCIP	156	161(1), (2)
108	185	157	182, ex 182c
109	186	158	ex 182c,182d
110	187	159	new
111	188	160	184 + Reg. 918/83
112	184 + Reg. 918/83	161	247a, 248a, 249
113	84	162	117 (c), 133 (e), 247, 247a, 248
114	Various – see explanation	163	251, 252
115	105, 106 (3), 107, 176	164	253
116	89, 92		
117	90, 103		
118	91(3), 111		
119	109, 173(b)		
120	ex 114, ex 115		
121	Various – see explanation		
122	91		
123	93		
124	95, 96		
125	163, 165		
126	98, 166		
127	101, 102		
128	108,110, 171		
129	106		
130	50 to 53		
131	99		
132	167(1) – (3), 168 (1)&(2)		
133	167 (4), 172		
134	173		
135	ex 169, 170		
136	169, ex 170		
137	175		
138	177,181		
139	180		
140	137, 139		
141	140		

Correlation Table 2: Former > New			
Former Article	**New Article**	**Former Article**	**New Article**
1	2	44	74, See Art 79
2	2	45	75, See Art 79
3	3	46	80
4	4	47	80
5	9	48	81
5a	10	49	See Arts 81, 129
6	11	50	130
7	11	51	130
8	12	52	130
9	13	53	130
10	11	54	82
11	7, 22	55	83
12	14	56	106
13	20	57	106
14	8	58	87
15	5	59	88
16	21	60	89
17	24	61	90
18	23	62	91
19	25	63	92
20	26	64	93
21	26	65	94
22	27	66	95
23	28	67	96
24	28	68	97
25	See Article 28	69	98
26	29	70	99
27	30	71	100
28	31	72	101
29	32	73	102
30	33	74	103
31	34	75	106
32	32 (4)	76	91, 104
33	See Article 31	77	90, 91
34	See Article 31	78	20, 106
35	23	79	107
36	31	80	See Article107
36a	73	81	105
36b	5, 74	82	144
36c	75	83	85
37	76	84	113
38	77	85	114
39	78	86	114
40	79	87	114
41	79	88	114
42	76	89	116
43	73, See Art 79	90	117

Former Article	New Article	Former Article	New Article
91	118, 122	141	142
92	116	142	142, (2)= 121
93	123	143	47, 143
94	38, 114	144	47, 52, 53
95	114, 124	145	150
96	124	146	150, (2) =121
97	121	147	114
98	126, (3) = 121	148	114, (b) = 121
99	131	149	150
100	114	150	72, 150
101	127	151	150
102	127	152	151
103	117	153	150
104	114	154	152,153, 161 (4)
105	115	155	152
106	115, 129	156	152
107	115	157	153
108	128	158	See Article 153
109	119, (1) & (4) = 121	159	See Article 153
110	128	160	See Article 153
111	118	161	154, 155, 156
112	53	162	155 (2)
113	See Article 129	163	125
114	120, 145, 147	164	86
115	120, (2) & (4) = 121,	165	125
116	114	166	126
117	114, (c) = 121 & 162	167	132, 133
118	148, (4) = 121	168, 168a	132
119	146	169	135, 136
120	121	170	135, 136
121	52, 53	171	128
122	52, 53	172	133
123	149	173	119, 134
124	Deleted - see Title VIII	174	Deleted - see Article 139
125	Deleted- see Title VIII	175	137
126	Deleted- see Title VIII	176	115
127	Deleted- see Title VIII	177	138
128	Deleted- see Title VIII	178	53
129	Deleted- see Title VIII	179	Deleted - see Article 139
130	147	180	139
131	121	181	138
132	114	182	106, 157,158
133	114, (e) = 121+162	182a	154
134	Deleted	182b	154,158
135	53	182c	154, 157,158
136	53	182d	5, 158
137	140	183	155
138	114	184	112, 160
139	140	185	108
140	141	186	109

Former Article	New Article	Former Article	New Article
187	110	235	67
188	111	236	68
189	35	237	69
190	37	238	70
191	35	239	71
192	35, 36, 37	240	67
193	39	241	67
194	40	242	67
195	41	243	15
196	39	244	16
197	39, 40	245	17
198	42	246	18
199	43	247	162
200	35	247a	161, 162
201	44	248	162
202	46	248a	161
203	46	249	161
204	46, 72	250	11, 97, 100, 101
205	46, 72	251	163
206	46, 72	252	163
207	72	253	164
208	47		
209	48		
210	49		
211	49		
212	50		
212a	72		
213	51		
214	52, 66		
215	54, (3) = 55		
216	45		
217	55, 57		
218	58		
219	57		
220	57, 58, 71		
221	59		
222	60		
223	61		
224	62		
225	62		
226	62		
227	63		
228	64		
229	65		
230	65		
231	61		
232	66		
233	72		
234	72		