

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

TITLE III

**CUSTOMS DEBT AND GUARANTEES**

CHAPTER I

*Incurrence of a customs debt*

*Section 1*

***Customs debt on import***

*Article 77*

**Release for free circulation and temporary admission**

1 A customs debt on import shall be incurred through the placing of non-Union goods liable to import duty under either of the following customs procedures:

- a release for free circulation, including under the end-use provisions;
- b temporary admission with partial relief from import duty.

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

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

Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part of the import duty 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 shall also be a debtor.

*Article 78*

**Special provisions relating to non-originating goods**

1 Where a prohibition of drawback of, or exemption from, import duty applies to non-originating goods used in the manufacture of products for which a proof of origin is issued or made out in the framework of a preferential arrangement between the Union and certain countries or territories outside the customs territory of the Union or groups of such countries or territories, a customs debt on import shall be incurred in respect of those non-originating goods, through the acceptance of the re-export declaration relating to the products in question.

2 Where a customs debt is incurred pursuant to paragraph 1, the amount of import duty corresponding to that debt shall be determined under the same conditions as in the case of a

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customs debt resulting from the acceptance, on the same date, of the customs declaration for release for free circulation of the non-originating goods used in the manufacture of the products in question for the purpose of ending the inward processing procedure.

3 Article 77(2) and (3) shall apply. However, in the case of non-Union goods as referred to in Article 270 the person who lodges the re-export declaration shall be the debtor. In the event of indirect representation, the person on whose behalf the declaration is lodged shall also be a debtor.

### Article 79

#### Customs debt incurred through non-compliance

1 For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

- a one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;
- b one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union;
- c a condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty.

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

- a the moment when the obligation the non-fulfilment of which gives rise to the customs debt is not met or ceases to be met;
- b the moment when a customs declaration is accepted for the placing of goods under a customs procedure where it is established subsequently that a condition governing the placing of the goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

3 In cases referred to under points (a) and (b) of paragraph 1, the debtor shall be any of the following:

- a any person who was required to fulfil the obligations concerned;
- b any person who was aware or should reasonably have been aware that an obligation under the customs legislation was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation, or who participated in the act which led to the non-fulfilment of the obligation;
- c any person who acquired or held the goods in question and who was aware or should reasonably have been aware at the time of acquiring or receiving the goods that an obligation under the customs legislation was not fulfilled.

4 In cases referred to under point (c) of paragraph 1, the debtor shall be the person who is required to comply with the conditions governing the placing of the goods under a customs procedure or the customs declaration of the goods placed under that customs procedure or the granting of a duty exemption or reduced rate of import duty by virtue of the end-use of the goods.

Where a customs declaration in respect of one of the customs procedures referred to in point (c) of paragraph 1 is drawn up, and any information required under the customs legislation relating to the conditions governing the placing of the goods under that customs procedure is given to the customs authorities, which leads to all or part of the

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import duty not being collected, the person who provided the information required to draw up the customs declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

#### *Article 80*

##### **Deduction of an amount of import duty already paid**

1 Where a customs debt is incurred, pursuant to Article 79(1) in respect of goods released for free circulation at a reduced rate of import duty on account of their end-use, the amount of import duty paid when the goods were released for free circulation shall be deducted from the amount of import duty corresponding to the customs debt.

The first subparagraph shall apply where a customs debt is incurred in respect of scrap and waste resulting from the destruction of such goods.

2 Where a customs debt is incurred, pursuant to Article 79(1) in respect of goods placed under temporary admission with partial relief from import duty, the amount of import duty paid under partial relief shall be deducted from the amount of import duty corresponding to the customs debt.

#### *Section 2*

##### **Customs debt on export**

#### *Article 81*

##### **Export and outward processing**

1 A customs debt on export shall be incurred through the placing of goods liable to export duty under the export procedure or the outward processing procedure.

2 The customs debt shall be incurred at the time of acceptance of the customs declaration.

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

Where a customs declaration is drawn up on the basis of information which leads to all or part of the export duty not being collected, the person who provided the information required for the declaration and who knew, or who should reasonably have known, that such information was false shall also be a debtor.

#### *Article 82*

##### **Customs debt incurred through non-compliance**

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

- a one of the obligations laid down in the customs legislation for the exit of the goods;
- b the conditions under which the goods were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty.

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- 2 The time at which the customs debt is incurred shall be one of the following:
- a the moment at which the goods are actually taken out of the customs territory of the Union without a customs declaration;
  - b the moment at which the goods reach a destination other than that for which they were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty;
  - c should the customs authorities be unable to determine the moment referred to in point (b), the expiry of the time-limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled.
- 3 In cases referred to under point (a) of paragraph 1, the debtor shall be any of the following:
- a any person who was required to fulfil the obligation concerned;
  - b any person who was aware or should reasonably have been aware that the obligation concerned was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation;
  - c any person who participated in the act which led to the non-fulfilment of the obligation and who was aware or should reasonably have been aware that a customs declaration had not been lodged but should have been.
- 4 In cases referred to under point (b) of paragraph 1, the debtor shall be any person who is required to comply with the conditions under which the goods were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty.

### *Section 3*

#### ***Provisions common to customs debts incurred on import and export***

### *Article 83*

#### **Prohibitions and restrictions**

- 1 The customs debt on import or export shall be incurred even if it relates to goods which are subject to measures of prohibition or restriction on import or export of any kind.
- 2 However, no customs debt shall be incurred on either of the following:
- a the unlawful introduction into the customs territory of the Union of counterfeit currency;
  - b the introduction into the customs territory of the Union of narcotic drugs and psychotropic substances other than where strictly supervised by the competent authorities with a view to their use for medical and scientific purposes.
- 3 For the purposes of penalties as applicable to customs offences, the customs debt shall nevertheless be deemed to have been incurred where, under the law of a Member State, import or export duty or the existence of a customs debt provide the basis for determining penalties.

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#### Article 84

##### Several debtors

Where several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they shall be jointly and severally liable for payment of that amount.

#### Article 85

##### General rules for calculating the amount of import or export duty

1 The amount of import or export duty shall be determined on the basis of those rules for calculation of duty which were applicable to the goods concerned at the time at which the customs debt in respect of them was incurred.

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

However, where the information available to the customs authorities enables them to establish that the customs debt had been incurred prior to the time at which they reached that conclusion, the customs debt shall be deemed to have been incurred at the earliest time that such a situation can be established.

#### Article 86

##### Special rules for calculating the amount of import duty

1 Where costs for storage or usual forms of handling have been incurred within the customs territory of the Union in respect of goods placed under a customs procedure or in temporary storage, such costs or the increase in value shall not be taken into account for the calculation of the amount of import duty where satisfactory proof of those costs is provided by the declarant.

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

2 Where the tariff classification of goods placed under a customs procedure changes as a result of usual forms of handling within the customs territory of the Union, the original tariff classification for the goods placed under the procedure shall be applied at the request of the declarant.

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

4 In specific cases, the amount of import duty shall be determined in accordance with paragraphs 2 and 3 of this Article without a request of the declarant in order to avoid the circumvention of tariff measures referred to in point (h) of Article 56(2).

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5 Where a customs debt is incurred for processed products resulting from the outward processing procedure or replacement products as referred to in Article 261(1), the amount of import duty shall be calculated on the basis of the cost of the processing operation undertaken outside the customs territory of the Union.

6 Where the customs legislation provides for a favourable tariff treatment of goods, or for relief or total or partial exemption from import or export duty pursuant to points (d) to (g) of Article 56(2), Articles 203, 204, 205 and 208 or Articles 259 to 262 of this Regulation or pursuant to Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty<sup>(1)</sup> such favourable tariff treatment, relief or exemption shall also apply in cases where a customs debt is incurred pursuant to Articles 79 or 82 of this Regulation, on condition that the failure which led to the incurrence of a customs debt did not constitute an attempt at deception.

#### *Article 87*

### **Place where the customs debt is incurred**

1 A customs debt shall be incurred at the place where the customs declaration or the re-export declaration referred to in Articles 77, 78 and 81 is lodged.

In all other cases, the place where a customs debt is incurred shall be the place where the events from which it arises occur.

If it is not possible to determine that place, the customs debt shall be incurred at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred.

2 If the goods have been placed under a customs procedure which has not been discharged or when a temporary storage did not end properly, and the place where the customs debt is incurred cannot be determined pursuant to the second or third subparagraphs of paragraph 1 within a specific time-limit, the customs debt shall be incurred at the place where the goods were either placed under the procedure concerned or were introduced into the customs territory of the Union under that procedure or were in temporary storage.

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

4 If a customs authority establishes that a customs debt has been incurred under Article 79 or Article 82 in another Member State and the amount of import or export duty corresponding to that debt is lower than EUR 10 000, the customs debt shall be deemed to have been incurred in the Member State where the finding was made.

#### *Article 88*

### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine:

- (a) the rules for the calculation of the amount of import or export duty applicable to goods for which a customs debt is incurred in the context of a special procedure, which supplement the rules laid down in Articles 85 and 86;

- (b) the cases referred to in Article 86(4);
- (c) the time-limit referred to in Article 87(2).

## CHAPTER 2

### ***Guarantee for a potential or existing customs debt***

#### *Article 89*

#### **General provisions**

1 This Chapter shall apply to guarantees both for customs debts which have been incurred and for those which may be incurred, unless otherwise specified.

2 Where the customs authorities require a guarantee for a potential or existing customs debt to be provided, that guarantee shall cover the amount of import or export duty and the other charges due in connection with the import or export of the goods where:

- a the guarantee is used for the placing of goods under the Union transit procedure; or
- b the guarantee may be used in more than one Member State.

A guarantee which may not be used outside the Member State where it is required shall be valid only in that Member State and shall cover at least the amount of import or export duty.

3 Where the customs authorities require a guarantee to be provided, it shall be required from the debtor or the person who may become the debtor. They may also permit the guarantee to be provided by a person other than the person from whom it is required.

4 Without prejudice to Article 97, the customs authorities shall require only one guarantee to be provided in respect of specific goods or a specific declaration.

The guarantee provided for a specific declaration shall apply to the amount of import or export duty corresponding to the customs debt and other charges in respect of all goods covered by or released against that declaration, whether or not that declaration is correct.

If the guarantee has not been released, it may also be used, within the limits of the secured amount, for the recovery of amounts of import or export duty and other charges payable following post-release control of those goods.

5 Upon application by the person referred to in paragraph 3 of this Article, the customs authorities may, in accordance with Article 95(1), (2) and (3), authorise the provision of a comprehensive guarantee to cover the amount of import or export duty corresponding to the customs debt in respect of two or more operations, declarations or customs procedures.

6 The customs authorities shall monitor the guarantee.

7 No guarantee shall be required from States, regional and local government authorities or other bodies governed by public law, in respect of the activities in which they engage as public authorities.

8 No guarantee shall be required in any of the following situations:

- a goods carried on the Rhine, the Rhine waterways, the Danube or the Danube waterways;
- b goods carried by a fixed transport installation;

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- c in specific cases where goods are placed under the temporary admission procedure;
- d goods placed under the Union transit procedure using the simplification referred to in point (e) of Article 233(4) and carried by sea or air between Union ports or between Union airports.

9 The customs authorities may waive the requirement for provision of a guarantee where the amount of import or export duty to be secured does not exceed the statistical value threshold for declarations laid down in Article 3(4) of Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries<sup>(2)</sup>.

#### *Article 90*

### **Compulsory guarantee**

1 Where it is compulsory for a guarantee to be provided, the customs authorities shall fix the amount of such guarantee at a level equal to the precise amount of import or export duty corresponding to the customs debt and of other charges where that amount can be established with certainty at the time when the guarantee is required.

Where it is not possible to establish the precise amount, the guarantee shall be fixed at the maximum amount, as estimated by the customs authorities, of import or export duty corresponding to the customs debt and of other charges which have been or may be incurred.

2 Without prejudice to Article 95 where a comprehensive guarantee is provided for the amount of import or export duty corresponding to customs debts and other charges which vary in amount over time, the amount of such guarantee shall be set at a level enabling the amount of import or export duty corresponding to customs debts and other charges to be covered at all times.

#### *Article 91*

### **Optional guarantee**

Where the provision of a guarantee is optional, such guarantee shall in any case be required by the customs authorities if they consider that the amount of import or export duty corresponding to a customs debt and other charges are not certain to be paid within the prescribed period. Its amount shall be fixed by those authorities so as not to exceed the level referred to in Article 90.

#### *Article 92*

### **Provision of a guarantee**

- 1 A guarantee may be provided in one of the following forms:
- a by a cash deposit or by any other means of payment recognised by the customs authorities as being equivalent to a cash deposit, made in euro or in the currency of the Member State in which the guarantee is required;
  - b by an undertaking given by a guarantor;
  - c by another form of guarantee which provides equivalent assurance that the amount of import or export duty corresponding to the customs debt and other charges will be paid.



2 A guarantee in the form of a cash deposit or any other equivalent means of payment shall be given in accordance with the provisions in force in the Member State in which the guarantee is required.

Where a guarantee is given by making a cash deposit or any other equivalent means of payment, no interest thereon shall be payable by the customs authorities.

### *Article 93*

#### **Choice of guarantee**

The person required to provide a guarantee may choose between the forms of guarantee laid down in Article 92(1).

However, the customs authorities may refuse to accept the form of guarantee chosen where it is incompatible with the proper functioning of the customs procedure concerned.

The customs authorities may require that the form of guarantee chosen be maintained for a specific period.

### *Article 94*

#### **Guarantor**

1 The guarantor referred to in point (b) of Article 92(1) shall be a third person established in the customs territory of the Union. The guarantor shall be approved by the customs authorities requiring the guarantee, unless the guarantor is a credit institution, financial institution or insurance company accredited in the Union in accordance with Union provisions in force.

2 The guarantor shall undertake in writing to pay the secured amount of import or export duty corresponding to a customs debt and other charges.

3 The customs authorities may refuse to approve the guarantor or the type of guarantee proposed where either does not appear certain to ensure payment within the prescribed period of the amount of import or export duty corresponding to the customs debt and of other charges.

### *Article 95*

#### **Comprehensive guarantee**

1 The authorisation referred to in Article 89(5) shall be granted only to persons who satisfy all of the following conditions:

- a they are established in the customs territory of the Union;
- b they fulfil the criteria laid down in point (a) of Article 39;
- c they are regular users of the customs procedures involved or operators of temporary storage facilities or they fulfil the criteria laid down in point (d) of Article 39.

2 Where a comprehensive guarantee is to be provided for customs debts and other charges which may be incurred, an economic operator may be authorised to use a comprehensive guarantee with a reduced amount or to have a guarantee waiver, provided that he or she fulfils the criteria laid down in points (b) and (c) of Article 39.

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3 Where a comprehensive guarantee is to be provided for customs debts and other charges which have been incurred, an authorised economic operator for customs simplification shall, upon application, be authorised to use a comprehensive guarantee with a reduced amount.

4 The comprehensive guarantee with a reduced amount referred to in paragraph 3 shall be equivalent to the provision of a guarantee.

#### *Article 96*

### **Temporary prohibitions relating to the use of comprehensive guarantees**

1 In the context of special procedures or temporary storage, the Commission may decide to temporarily prohibit recourse to any of the following:

- a the comprehensive guarantee for a reduced amount or a guarantee waiver referred to in Article 95(2);
- b the comprehensive guarantee referred to in Article 95, in respect of goods which have been identified as being subject to large-scale fraud.

2 Where point (a) or point (b) of paragraph 1 of this Article applies, recourse to the comprehensive guarantee for a reduced amount or a guarantee waiver or recourse to the comprehensive guarantee referred to in Article 95 may be authorised where the person concerned fulfils either of the following conditions:

- a that person can show that no customs debt has arisen in respect of the goods in question in the course of operations which that person has undertaken in the two years preceding the decision referred to in paragraph 1;
- b where customs debts have arisen in the two years preceding the decision referred to in paragraph 1, the person concerned can show that those debts were fully paid by the debtor or debtors or the guarantor within the prescribed time-limit.

To obtain authorisation to use a temporarily prohibited comprehensive guarantee, the person concerned must also fulfil the criteria laid down in points (b) and (c) of Article 39.

#### *Article 97*

### **Additional or replacement guarantee**

Where the customs authorities establish that the guarantee provided does not ensure, or is no longer certain or sufficient to ensure, payment within the prescribed period of the amount of import or export duty corresponding to the customs debt and other charges, they shall require any of the persons referred to in Article 89(3) either to provide an additional guarantee or to replace the original guarantee with a new guarantee, according to his choice.

#### *Article 98*

### **Release of the guarantee**

1 The customs authorities shall release the guarantee immediately when the customs debt or liability for other charges is extinguished or can no longer arise.

2 Where the customs debt or liability for other charges has been extinguished in part, or may arise only in respect of part of the amount which has been secured, a corresponding part

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of the guarantee shall be released accordingly at the request of the person concerned, unless the amount involved does not justify such action.

#### *Article 99*

### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine:

- (a) the specific cases, referred to in point (c) of Article 89(8), where no guarantee is required for goods placed under the temporary admission procedure;
- (b) the form of the guarantee, referred to in point (c) of Article 92(1), and the rules concerning the guarantor referred to in Article 94;
- (c) the conditions for the granting of an authorisation to use a comprehensive guarantee with a reduced amount or to have a guarantee waiver referred to in Article 95(2);
- (d) time-limits for the release of a guarantee.

#### *Article 100*

### **Conferral of implementing powers**

- 1 The Commission shall specify, by means of implementing acts, the procedural rules:
  - a for determining the amount of the guarantee, including the reduced amount referred to in Article 95(2) and (3);
  - b regarding the provision and the monitoring of the guarantee referred to in Article 89, the revocation and cancellation of the undertaking given by the guarantor referred to in Article 94, and the release of the guarantee referred to in Article 98;
  - c regarding the temporary prohibitions referred to in Article 96.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

- 2 The Commission shall adopt the measures referred to in Article 96 by means of implementing acts.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

On imperative grounds of urgency relating to such measures, duly justified by the need to rapidly enhance the protection of the financial interests of the Union and of its Member States, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 285(5).

Where the opinion of the committee referred to in Article 285(1) is to be obtained by written procedure, Article 285(6) shall apply.

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## CHAPTER 3

### ***Recovery, payment, repayment and remission of the amount of import or export duty***

#### *Section 1*

#### ***Determination of the amount of import or export duty, notification of the customs debt and entry in the accounts***

##### *Article 101*

#### **Determination of the amount of import or export duty**

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

2 Without prejudice to Article 48, the customs authorities may accept the amount of import or export duty payable determined by the declarant.

3 Where the amount of import or export duty payable does not result in a whole number, that amount may be rounded.

Where the amount referred in the first subparagraph is expressed in euros, rounding may not be more than a rounding up or down to the nearest whole number.

A Member State whose currency is not the euro may either apply mutatis mutandis the provisions of the second subparagraph or derogate from that subparagraph, provided that the rules applicable on rounding do not have a greater financial impact than the rule set out in the second subparagraph.

##### *Article 102*

#### **Notification of the customs debt**

1 The customs debt shall be notified to the debtor in the form prescribed at the place where the customs debt is incurred, or is deemed to have been incurred in accordance with Article 87.

The notification referred to in the first subparagraph shall not be made in any of the following cases:

- a where, pending a final determination of the amount of import or export duty, a provisional commercial policy measure taking the form of a duty has been imposed;
- b where the amount of import or export duty payable exceeds that determined on the basis of a decision made in accordance with Article 33;
- c where the original decision not to notify the customs debt or to notify it with an amount of import or export duty at a figure less than the amount of import or export duty payable was taken on the basis of general provisions invalidated at a later date by a court decision;
- d where the customs authorities are exempted under the customs legislation from notification of the customs debt.

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2 Where the amount of import or export duty payable is equal to the amount entered in the customs declaration, release of the goods by the customs authorities shall be equivalent to notifying the debtor of the customs debt.

3 Where paragraph 2 does not apply, the customs debt shall be notified to the debtor by the customs authorities when they are in a position to determine the amount of import or export duty payable and take a decision thereon.

However, where the notification of the customs debt would prejudice a criminal investigation, the customs authorities may defer that notification until such time as it no longer prejudices the criminal investigation.

4 Provided that payment has been guaranteed, the customs debt corresponding to the total amount of import or export duty relating to all the goods released to one and the same person during a period fixed by the customs authorities may be notified at the end of that period. The period fixed by the customs authorities shall not exceed 31 days.

#### *Article 103*

#### **Limitation of the customs debt**

1 No customs debt shall be notified to the debtor after the expiry of a period of three years from the date on which the customs debt was incurred.

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

3 The periods laid down in paragraphs 1 and 2 shall be suspended where:

- a an appeal is lodged in accordance with Article 44; such suspension shall apply from the date on which the appeal is lodged and shall last for the duration of the appeal proceedings; or
- b the customs authorities communicate to the debtor, in accordance with Article 22(6), the grounds on which they intend to notify the customs debt; such suspension shall apply from the date of that communication until the end of the period within which the debtor is given the opportunity to express his or her point of view.

4 Where a customs debt is reinstated pursuant to Article 116(7), the periods laid down in paragraphs 1 and 2 shall be considered as suspended from the date on which the application for repayment or remission was submitted in accordance with Article 121, until the date on which the decision on the repayment or remission was taken.

#### *Article 104*

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

1 The customs authorities referred to in Article 101 shall enter in their accounts, in accordance with the national legislation, the amount of import or export duty payable as determined in accordance with that Article.

The first subparagraph shall not apply in cases referred to in the second subparagraph of Article 102(1).

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2 The customs authorities need not enter in the accounts amounts of import or export duty which, pursuant to Article 103, correspond to a customs debt which could no longer be notified to the debtor.

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

### *Article 105*

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

1 Where a customs debt is incurred as a result of the acceptance of the customs declaration of goods for a customs procedure, other than temporary admission with partial relief from import duty, or of any other act having the same legal effect as such acceptance, the customs authorities shall enter the amount of import or export duty payable in the accounts within 14 days of the release of the goods.

However, provided that payment has been guaranteed, the total amount of import or export duty relating to all the goods released to one and the same person during a period fixed by the customs authorities, which may not exceed 31 days, may be covered by a single entry in the accounts at the end of that period. Such entry in the accounts shall take place within 14 days of the expiry of the period concerned.

2 Where goods may be released subject to certain conditions which govern either the determination of the amount of import or export duty payable or its collection, entry in the accounts shall take place within 14 days of the day on which the amount of import or export duty payable is determined or the obligation to pay that duty is fixed.

However, where the customs debt relates to a provisional commercial policy measure taking the form of a duty, the amount of import or export duty payable shall be entered in the accounts within two months of the date of publication in the *Official Journal of the European Union* of the Regulation establishing the definitive commercial policy measure.

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

4 Paragraph 3 shall apply with regard to the amount of import or export duty to be recovered or which remains to be recovered where the amount of import or export duty payable has not been entered in the accounts in accordance with paragraphs 1, 2 and 3, or has been determined and entered in the accounts at a level lower than the amount payable.

5 The time-limits for entry in the accounts laid down in paragraphs 1, 2 and 3 shall not apply in unforeseeable circumstances or in cases of force majeure.

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

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## *Article 106*

### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the cases referred to in point (d) of Article 102(1) where the customs authorities are exempted from notification of the customs debt.

## *Article 107*

### **Conferral of implementing powers**

The Commission shall adopt, by means of implementing acts, measures to ensure mutual assistance between the customs authorities in case of incurrence of a customs debt.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

## *Section 2*

### ***Payment of the amount of import or export duty***

## *Article 108*

### **General time-limits for payment and suspension of the time-limit for payment**

1 Amounts of import or export duty, corresponding to a customs debt notified in accordance with Article 102, shall be paid by the debtor within the period prescribed by the customs authorities.

Without prejudice to Article 45(2), that period shall not exceed 10 days following notification to the debtor of the customs debt. In the case of aggregation of entries in the accounts under the conditions laid down in the second subparagraph of Article 105(1), it shall be so fixed as not to enable the debtor to obtain a longer period for payment than if he or she had been granted deferred payment in accordance with Article 110.

The customs authorities may extend that period upon application by the debtor where the amount of import or export duty payable has been determined in the course of post-release control as referred to in Article 48. Without prejudice to Article 112(1), such extensions shall not exceed the time necessary for the debtor to take the appropriate steps to discharge his or her obligation.

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

3 The time-limit for payment of the amount of import or export duty corresponding to a customs debt shall be suspended in any of the following cases:

- a where an application for remission of duty is made in accordance with Article 121;
- b where goods are to be confiscated, destroyed or abandoned to the State;

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- c where the customs debt was incurred pursuant to Article 79 and there is more than one debtor.

#### *Article 109*

##### **Payment**

- 1 Payment shall be made in cash or by any other means with similar discharging effect, including by adjustment of a credit balance, in accordance with national legislation.
- 2 Payment may be made by a third person instead of the debtor.
- 3 The debtor may in any case pay all or part of the amount of import or export duty without awaiting expiry of the period he or she has been granted for payment.

#### *Article 110*

##### **Deferment of payment**

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

- (a) separately in respect of each amount of import or export duty entered in the accounts in accordance with the first subparagraph of Article 105(1), or Article 105(4);
- (b) globally in respect of all amounts of import or export duty entered in the accounts in accordance with the first subparagraph of Article 105(1) during a period fixed by the customs authorities and not exceeding 31 days;
- (c) globally in respect of all amounts of import or export duty forming a single entry in accordance with the second subparagraph of Article 105(1).

#### *Article 111*

##### **Periods for which payment is deferred**

- 1 The period for which payment is deferred under Article 110 shall be 30 days.
- 2 Where payment is deferred in accordance with point (a) of Article 110, the period shall begin on the day following that on which the customs debt is notified to the debtor.
- 3 Where payment is deferred in accordance with point (b) of Article 110, the period shall begin on the day following that on which the aggregation period ends. It shall be reduced by the number of days corresponding to half the number of days covered by the aggregation period.
- 4 Where payment is deferred in accordance with point (c) of Article 110, the period shall begin on the day following the end of the period fixed for release of the goods in question. It shall be reduced by the number of days corresponding to half the number of days covered by the period concerned.
- 5 Where the number of days in the periods referred to in paragraphs 3 and 4 is an odd number, the number of days to be deducted from the 30-day period pursuant to those paragraphs shall be equal to half the next lowest even number.



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6 Where the periods referred to in paragraphs 3 and 4 are weeks, Member States may provide that the amount of import or export duty in respect of which payment has been deferred is to be paid on the Friday of the fourth week following the week in question at the latest.

If those periods are months, Member States may provide that the amount of import or export duty in respect of which payment has been deferred is to be paid by the 16th day of the month following the month in question.

#### *Article 112*

### **Other payment facilities**

1 The customs authorities may grant the debtor payment facilities other than deferred payment on condition that a guarantee is provided.

2 Where facilities are granted pursuant to paragraph 1, credit interest shall be charged on the amount of import or export duty.

For a Member State whose currency is the euro, the rate of credit interest shall be equal to the interest rate as published in the *Official Journal of the European Union*, C series, which the European Central Bank applied to its main refinancing operations, on the first day of the month in which the due date fell, increased by one percentage point.

For a Member State whose currency is not the euro, the rate of credit interest shall be equal to the rate applied on the first day of the month in question by the National Central Bank for its main refinancing operations, increased by one percentage point, or, for a Member State for which the National Central Bank rate is not available, the most equivalent rate applied on the first day of the month in question on the Member State's money market, increased by one percentage point.

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

4 The customs authorities shall refrain from charging credit interest where the amount for each recovery action is less than EUR 10.

#### *Article 113*

### **Enforcement of payment**

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

#### *Article 114*

### **Interest on arrears**

1 Interest on arrears shall be charged on the amount of import or export duty from the date of expiry of the prescribed period until the date of payment.

For a Member State whose currency is the euro, the rate of interest on arrears shall be equal to the interest rate as published in the *Official Journal of the European Union*, C

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series, which the European Central Bank applied to its main refinancing operations, on the first day of the month in which the due date fell, increased by two percentage points.

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

2 Where the customs debt is incurred on the basis of Article 79 or 82, or where the notification of the customs debt results from a post-release control, interest on arrears shall be charged over and above the amount of import or export duty, from the date on which the customs debt was incurred until the date of its notification.

The rate of interest on arrears shall be set in accordance with paragraph 1.

3 The customs authorities may refrain from charging interest on arrears where it is established, on the basis of a documented assessment of the situation of the debtor, that to charge it would create serious economic or social difficulties.

4 The customs authorities shall refrain from charging interest on arrears where the amount for each recovery action is less than EUR 10.

#### *Article 115*

#### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the rules for the suspension of the time-limit for payment of the amount of import or export duty corresponding to a customs debt referred to in Article 108(3) and the period of suspension.

#### *Section 3*

#### **Repayment and remission**

#### *Article 116*

#### **General provisions**

1 Subject to the conditions laid down in this Section, amounts of import or export duty shall be repaid or remitted on any of the following grounds:

- a overcharged amounts of import or export duty;
- b defective goods or goods not complying with the terms of the contract;
- c error by the competent authorities;
- d equity.

Where an amount of import or export duty has been paid and the corresponding customs declaration is invalidated in accordance with Article 174, that amount shall be repaid.

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2 The customs authorities shall repay or remit the amount of import or export duty referred to in paragraph 1 where it is EUR 10 or more, except where the person concerned requests the repayment or remission of a lower amount.

3 Where the customs authorities consider that repayment or remission should be granted on the basis of Article 119 or 120, the Member State concerned shall transmit the file to the Commission for decision in any of the following cases:

- a where the customs authorities consider that the special circumstances are the result of the Commission failing in its obligations;
- b where the customs authorities consider that the Commission committed an error within the meaning of Article 119;
- c where the circumstances of the case relate to the findings of a Union investigation carried out under Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>(9)</sup>, or under any other Union legislation or any agreement concluded by the Union with countries or groups of countries in which provision is made for carrying out such Union investigations;
- d where the amount for which the person concerned may be liable in respect of one or more import or export operations equals or exceeds EUR 500 000 as a result of an error or special circumstances.

Notwithstanding the first subparagraph, files shall not be transmitted in either of the following situations:

- a where the Commission has already adopted a decision on a case involving comparable issues of fact and of law;
- b where the Commission is already considering a case involving comparable issues of fact and of law.

4 Subject to the rules of competence for a decision, where the customs authorities themselves discover within the periods referred to in Article 121(1) that an amount of import or export duty is repayable or remissible pursuant to Articles 117, 119 or 120 they shall repay or remit on their own initiative.

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

6 Repayment shall not give rise to the payment of interest by the customs authorities concerned.

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

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

7 Where the customs authorities have granted repayment or remission in error, the original customs debt shall be reinstated insofar as it is not time-barred under Article 103.

In such cases, any interest paid under the second subparagraph of paragraph 5 shall be reimbursed.

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### *Article 117*

#### **Overcharged amounts of import or export duty**

1 An amount of import or export duty shall be repaid or remitted insofar as the amount corresponding to the customs debt initially notified exceeds the amount payable, or the customs debt was notified to the debtor contrary to points (c) or (d) of Article 102(1).

2 Where the application for repayment or remission is based on the existence, at the time when the declaration for release for free circulation was accepted, of a reduced or zero rate of import duty on the goods under a tariff quota, a tariff ceiling or other favourable tariff measures, repayment or remission shall be granted provided that, at the time of lodging the application accompanied by the necessary documents, either of the following conditions are fulfilled:

- a in the case of a tariff quota, its volume has not been exhausted;
- b in other cases, the rate of duty normally due has not been re-established.

### *Article 118*

#### **Defective goods or goods not complying with the terms of the contract**

1 An amount of import duty shall be repaid or remitted if the notification of the customs debt relates to goods which have been rejected by the importer because, at the time of release, they were defective or did not comply with the terms of the contract on the basis of which they were imported.

Defective goods shall be deemed to include goods damaged before their release.

2 Notwithstanding paragraph 3, repayment or remission shall be granted provided the goods have not been used, except for such initial use as may have been necessary to establish that they were defective or did not comply with the terms of the contract and provided they are taken out of the customs territory of the Union.

3 Repayment or remission shall not be granted where:

- a the goods, before being released for free circulation, were placed under a special procedure for testing, unless it is established that the fact that the goods were defective or did not comply with the terms of the contract could not normally have been detected in the course of such tests;
- b the defective nature of the goods was taken into consideration in drawing up the terms of the contract, in particular the price, before the goods were placed under a customs procedure involving the incurrance of a customs debt; or
- c the goods are sold by the applicant after it has been ascertained that they are defective or do not comply with the terms of the contract.

4 Instead of being taken out of the customs territory of the Union, and upon application by the person concerned, the customs authorities shall authorise that the goods be placed under the inward processing procedure, including for destruction, or the external transit, the customs warehousing or the free zone procedure.

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## Article 119

### **Error by the competent authorities**

1 In cases other than those referred to in the second subparagraph of Article 116(1) and in Articles 117, 118 and 120, an amount of import or export duty shall be repaid or remitted where, as a result of an error on the part of the competent authorities, the amount corresponding to the customs debt initially notified was lower than the amount payable, provided the following conditions are met:

- a the debtor could not reasonably have detected that error; and
- b the debtor was acting in good faith.

2 Where the conditions laid down in Article 117(2) are not fulfilled, repayment or remission shall be granted where failure to apply the reduced or zero rate of duty was as a result of an error on the part of the customs authorities and the customs declaration for release for free circulation contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate.

3 Where the preferential treatment of the goods is granted on the basis of a system of administrative cooperation involving the authorities of a country or territory outside the customs territory of the Union, the issue of a certificate by those authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of point (a) of paragraph 1.

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

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

The debtor may not rely on a plea of good faith if the Commission has published a notice in the *Official Journal of the European Union* stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country or territory.

## Article 120

### **Equity**

1 In cases other than those referred to in the second subparagraph of Article 116(1) and in Articles 117, 118 and 119 an amount of import or export duty shall be repaid or remitted in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor.

2 The special circumstances referred to in paragraph 1 shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such

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circumstances, he or she would not have suffered disadvantage by the collection of the amount of import or export duty.

### *Article 121*

#### **Procedure for repayment and remission**

1 Applications for repayment or remission in accordance with Article 116 shall be submitted to the customs authorities within the following periods:

- a in the case of overcharged, amounts of import or export duty, error by the competent authorities or equity, within three years of the date of notification of the customs debt;
- b in the case of defective goods or goods not complying with the terms of the contract, within one year of the date of notification of the customs debt;
- c in the case of invalidation of a customs declaration, within the period specified in the rules applicable to invalidation.

The period specified in points (a) and (b) of the first subparagraph shall be extended where the applicant provides evidence that he or she was prevented from submitting an application within the prescribed period as a result of unforeseeable circumstances or force majeure.

2 Where the customs authorities are not in a position, on the basis of the grounds adduced, to grant repayment or remission of an amount of import or export duty, it is required to examine the merits of an application for repayment or remission in the light of the other grounds for repayment or remission referred to in Article 116.

3 Where an appeal has been lodged under Article 44 against the notification of the customs debt, the relevant period specified in the first subparagraph of paragraph 1 shall be suspended, from the date on which the appeal is lodged, for the duration of the appeal proceedings.

4 Where a customs authority grants repayment or remission in accordance with Articles 119 and 120, the Member State concerned shall inform the Commission thereof.

### *Article 122*

#### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, laying down the rules with which it has to comply when taking a decision referred to in Article 116(3) and in particular on the following:

- (a) the conditions for the acceptance of the file;
- (b) the time-limit to take a decision and the suspension of that time-limit;
- (c) the communication of the grounds on which the Commission intends to base its decision, before taking a decision which would adversely affect the person concerned;
- (d) the notification of the decision;
- (e) the consequences of a failure to take a decision or to notify such decision.

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### *Article 123*

#### **Conferral of implementing powers**

1 The Commission shall specify, by means of implementing acts, the procedural rules for:

- a repayment and remission, as referred to in Article 116;
- b informing the Commission in accordance with Article 121(4) and the information to be provided.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

2 The Commission shall adopt the decision referred to in Article 116(3) by means of implementing acts.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 285(2).

Where the opinion of the committee referred to in Article 285(1) is to be obtained by written procedure, Article 285(6) shall apply.

### *CHAPTER 4*

#### ***Extinguishment of a customs debt***

### *Article 124*

#### **Extinguishment**

1 Without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished in any of the following ways:

- a where the debtor can no longer be notified of the customs debt, in accordance with Article 103;
- b by payment of the amount of import or export duty;
- c subject to paragraph 5, by remission of the amount of import or export duty;
- d where, in respect of goods declared for a customs procedure entailing the obligation to pay import or export duty, the customs declaration is invalidated;
- e where goods liable to import or export duty are confiscated or seized and simultaneously or subsequently confiscated;
- f where goods liable to import or export duty are destroyed under customs supervision or abandoned to the State;
- g where the disappearance of the goods or the non-fulfilment of obligations arising from the customs legislation results from the total destruction or irretrievable loss of those goods as a result of the actual nature of the goods or unforeseeable circumstances or force majeure, or as a consequence of instruction by the customs authorities; for the purpose of this point, goods shall be considered as irretrievably lost when they have been rendered unusable by any person;

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- h where the customs debt was incurred pursuant to Article 79 or 82 and where the following conditions are fulfilled:
    - (i) the failure which led to the incurrence of a customs debt had no significant effect on the correct operation of the customs procedure concerned and did not constitute an attempt at deception;
    - (ii) all of the formalities necessary to regularise the situation of the goods are subsequently carried out;
  - i where goods released for free circulation duty-free, or at a reduced rate of import duty by virtue of their end-use, have been exported with the permission of the customs authorities;
  - j where it was incurred pursuant to Article 78 and where the formalities carried out in order to enable the preferential tariff treatment referred to in that Article to be granted are cancelled;
  - k where, subject to paragraph 6, the customs debt was incurred pursuant to Article 79 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been taken out of the customs territory of the Union.
- 2 In the cases referred to in point (e) of paragraph 1, the customs debt shall, nevertheless, for the purposes of penalties applicable to customs offences, be deemed not to have been extinguished where, under the law of a Member State, import or export duty or the existence of a customs debt provide the basis for determining penalties.
- 3 Where, in accordance with point (g) of paragraph 1, a customs debt is extinguished in respect of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, any scrap or waste resulting from their destruction shall be deemed to be non-Union goods.
- 4 The provisions in force pertaining to standard rates for irretrievable loss due to the nature of goods shall apply where the person concerned fails to show that the real loss exceeds that calculated by applying the standard rate for the goods in question.
- 5 Where several persons are liable for payment of the amount of import or export duty corresponding to the customs debt and remission is granted, the customs debt shall be extinguished only in respect of the person or persons to whom the remission is granted.
- 6 In the case referred to in point (k) of paragraph 1, the customs debt shall not be extinguished in respect of any person or persons who attempted deception.
- 7 Where the customs debt was incurred pursuant to Article 79, it shall be extinguished with regard to the person whose behaviour did not involve any attempt at deception and who contributed to the fight against fraud.

#### *Article 125*

#### **Application of penalties**

Where the customs debt is extinguished on the basis of point (h) of Article 124(1), Member States shall not be precluded from the application of penalties for failure to comply with the customs legislation.



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### *Article 126*

#### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the list of failures with no significant effect on the correct operation of the customs procedure concerned and to supplement point (i) of point (h) of Article 124(1).

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- (1) OJ L 324, 10.12.2009, p. 23.
- (2) OJ L 152, 16.6.2009, p. 23
- (3) OJ L 82, 22.3.1997, p. 1.