



COUNCIL REGULATION (EEC) No 2913/92
of 12 October 1992
establishing the Community Customs Code

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 100a and 113 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the Community is based upon a customs union; whereas it is advisable, in the interests both of Community traders and the customs authorities, to assemble in a code the provisions of customs legislation that are at present contained in a large number of Community regulations and directives; whereas this task is of fundamental importance from the standpoint of the internal market;

Whereas such a Community Customs Code (hereinafter called 'the Code') must incorporate current customs legislation; whereas it is, nevertheless, advisable to amend that legislation in order to make it more consistent, to simplify it and to remedy certain omissions that still exist with a view to adopting complete Community legislation in this area;

Whereas, based on the concept of an internal market, the Code must contain the general rules and procedures which ensure the implementation of the tariff and other measures introduced at Community level in connection with trade in goods between the Community and third countries; whereas it must cover, among other things, the implementation of common agricultural and commercial policy measures taking into account the requirements of these common policies;

Whereas it would appear advisable to specify that this Code is applicable without prejudice to specific provisions laid down in other fields; whereas such specific rules may exist or be introduced in the context, *inter alia*, of legislation relating to agriculture, statistics, commercial policy or own resources;

Whereas, in order to secure a balance between the needs of the customs authorities in regard to ensuring the correct application of customs legislation, on the one hand, and the right of traders to be treated fairly, on the other, the said authorities must be granted, *inter alia*, extensive powers of control and the said traders a right of appeal; whereas the implementation of a customs appeals system will require the United Kingdom to introduce new administrative procedures which cannot be effected before 1 January 1995;

Whereas in view of the paramount importance of external trade for the Community, customs formalities and controls should be abolished or at least kept to a minimum;

Whereas it is important to guarantee the uniform application of this Code and to provide, to that end, for a Community procedure which enables the procedures for its implementation to be adopted within a suitable time; whereas a Customs Code Committee should be set up in order to ensure close and effective cooperation between the Member States and the Commission in this field;

⁽¹⁾ OJ No C 128, 23.5.1990, p. 1.

⁽²⁾ OJ No C 72, 18.3.1991, p. 176 and Decision of 16 September 1992 (not yet published in the Official Journal).

⁽³⁾ OJ No C 60, 8.3.1991, p. 5.

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Whereas in adopting the measures required to implement this Code, the utmost care must be taken to prevent any fraud or irregularity liable to affect adversely the General Budget of the European Communities,

HAS ADOPTED THIS REGULATION:

TITLE I
GENERAL PROVISIONS

CHAPTER 1
SCOPE AND BASIC DEFINITIONS

Article 1

Customs rules shall consist of this Code and the provisions adopted at Community level or nationally to implement them. The Code shall apply, without prejudice to special rules laid down in other fields

- to trade between the Community and third countries,
- to goods covered by the Treaty establishing the European Coal and Steel Community, the Treaty establishing the European Economic Community or the Treaty establishing the European Atomic Energy Community.

Article 2

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

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

Article 3

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1. The customs territory of the Community shall comprise:
- the territory of the Kingdom of Belgium,
 - the territory of the Kingdom of Denmark, except the Faroe Islands and Greenland,
 - the territory of the Federal Republic of Germany, except the Island of Heligoland and the territory of Büsingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation),
 - the territory of the Hellenic Republic,
 - the territory of the Kingdom of Spain, except Ceuta and Melilla,

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- the territory of the French Republic, except the overseas territories and Saint-Pierre and Miquelon and Mayotte

▼A1

- the territory of Ireland,
- the territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake

▼ A1

Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio,

- the territory of the Grand Duchy of Luxembourg,
- the territory of the Kingdom of the Netherlands in Europe,
- the territory of the Republic of Austria,
- the territory of the Portuguese Republic,

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- the territory of the Republic of Finland,

▼ A1

- the territory of the Kingdom of Sweden,
- the territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man,

▼ A2

- the territory of the Czech Republic,
- the territory of the Republic of Estonia,
- the territory of the Republic of Cyprus,
- the territory of the Republic of Latvia,
- the territory of the Republic of Lithuania,
- the territory of the Republic of Hungary,
- the territory of the Republic of Malta,
- the territory of the Republic of Poland,
- the territory of the Republic of Slovenia,
- the territory of the Slovak Republic,

▼ M5

- the territory of the Republic of Bulgaria,
- the territory of Romania.

▼ A2

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

(a) FRANCE

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

(b) CYPRUS

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

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

Article 4

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

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- (1) 'Person' means:
 - a natural person,
 - a legal person,
 - where the possibility is provided for under the rules in force, an association of persons recognized as having the capacity to perform legal acts but lacking the legal status of a legal person.
- (2) 'Persons established in the Community' means:
 - in the case of a natural person, any person who is normally resident there,
 - in the case of a legal person or an association of persons, any person that has in the Community its registered office, central headquarters or a permanent business establishment.
- (3) 'Customs authorities' means the authorities responsible *inter alia* for applying customs rules.
- (4) 'Customs office' means any office at which all or some of the formalities laid down by customs rules may be completed.

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- (4a) 'Customs office of entry' means the customs office designated by the customs authorities in accordance with the customs rules to which goods brought into the customs territory of the Community must be conveyed without delay and at which they will be subject to appropriate risk-based entry controls.
- (4b) 'Customs office of import' means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods brought into the customs territory of the Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be carried out.
- (4c) 'Customs office of export' means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods leaving the customs territory of the Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be completed.
- (4d) 'Customs office of exit' means the customs office designated by the customs authorities in accordance with the customs rules to which goods must be presented before they leave the customs territory of the Community and at which they will be subject to customs controls relating to the completion of exit formalities, and appropriate risk-based controls.

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- (5) 'Decision' means any official act by the customs authorities pertaining to customs rules giving a ruling on a particular case, such act having legal effects on one or more specific or identifiable persons; ►**M1** this term covers, *inter alia*, binding information within the meaning of Article 12. ◀
- (6) 'Customs status' means the status of goods as Community or non-Community goods.
- (7) 'Community goods' means goods:

▼M1

- wholly obtained in the customs territory of the Community under the conditions referred to in Article 23 and not incorporating goods imported from countries or territories not forming part of the customs territory of the Community. Goods obtained from goods placed under a suspensive arrangement shall not be deemed to have Community status in cases of special economic importance determined in accordance with the committee procedure,

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- imported from countries or territories not forming part of the customs territory of the Community which have been released for free circulation,
 - obtained or produced in the customs territory of the Community, either from goods referred to in the second indent alone or from goods referred to in first and second indents.
- (8) ‘Non-Community goods’ means goods other than those referred to in subparagraph 7.
- Without prejudice to Articles 163 and 164, Community goods shall lose their status as such when they are actually removed from the customs territory of the Community.
- (9) ‘Customs debt’ means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply to specific goods under the Community provisions in force.
- (10) ‘Import duties’ means:
- customs duties and charges having an effect equivalent to customs duties payable on the importation of goods,
 - ►**M1** ————— ◀ import charges introduced under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products.
- (11) ‘Export duties’ means:
- customs duties and charges having an effect equivalent to customs duties payable on the exportation of goods,
 - ►**M1** ————— ◀ export charges introduced under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products.
- (12) ‘Debtor’ means any person liable for payment of a customs debt.
- (13) ‘Supervision by the customs authorities’ means action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed.

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

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- (15) ‘Customs-approved treatment or use of goods’ means:
- (a) the placing of goods under a customs procedure;
 - (b) their entry into a free zone or free warehouse;
 - (c) their re-exportation from the customs territory of the Community;
 - (d) their destruction;
 - (e) their abandonment to the Exchequer.

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- (16) ‘Customs procedure’ means:
- (a) release for free circulation;
 - (b) transit;
 - (c) customs warehousing;
 - (d) inward processing;
 - (e) processing under customs control;
 - (f) temporary admission;
 - (g) outward processing;
 - (h) exportation.
- (17) ‘Customs declaration’ means the act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure.
- (18) ‘Declarant’ means the person making the customs declaration in his own name or the person in whose name a customs declaration is made.
- (19) ‘Presentation of goods to customs’ means the notification to the customs authorities, in the manner laid down, of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities.
- (20) ‘Release of goods’ means the act whereby the customs authorities make goods available for the purposes stipulated by the customs procedure under which they are placed.
- (21) ‘Holder of the procedure’ means the person on whose behalf the customs declaration was made or the person to whom the rights and obligations of the abovementioned person in respect of a customs procedure have been transferred.
- (22) ‘Holder of the authorization’ means the person to whom an authorization has been granted.
- (23) ‘Provisions in force’ means Community or national provisions.

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- (24) Committee procedure means either the procedure referred to in Articles 247 and 247a, or in Articles 248 and 248a.

▼ M4

- (25) ‘Risk’ means the likelihood of an event occurring, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, which
- prevents the correct application of Community or national measures, or
 - compromises the financial interests of the Community and its Member States, or
 - poses a threat to the Community's security and safety, to public health, to the environment or to consumers.
- (26) ‘Risk management’ means the systematic identification of risk and implementation of all measures necessary for limiting exposure to risk. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regular monitoring and review of the process and its outcomes, based on international, Community and national sources and strategies.

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CHAPTER 2

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

Section 1

Right of representation*Article 5*

1. Under the conditions set out in Article 64 (2) and subject to the provisions adopted within the framework of Article 243 (2) (b), any person may appoint a representative in his dealings with the customs authorities to perform the acts and formalities laid down by customs rules.

2. Such representation may be:

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

A Member State may restrict the right to make customs declarations:

- by direct representation, or
- by indirect representation,

so that the representative must be a customs agent carrying on his business in that country's territory.

3. Save in the cases referred to in Article 64 (2) (b) and (3), a representative must be established within the Community.

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

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

5. The customs authorities may require any person stating that he is acting in the name of or on behalf of another person to produce evidence of his powers to act as a representative.

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Section 1A

Authorised economic operators*Article 5a*

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

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

The status of authorised economic operator shall, subject to the rules and conditions laid down in paragraph 2, be recognised by the customs

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authorities in all Member States, without prejudice to customs controls. Customs authorities shall, on the basis of the recognition of the status of authorised economic operator and provided that the requirements relating to a specific type of simplification provided for in Community customs legislation are fulfilled, authorise the operator to benefit from that simplification.

2. The criteria for granting the status of authorised economic operator shall include:

- an appropriate record of compliance with customs requirements,
- a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls,
- where appropriate, proven financial solvency, and
- where applicable, appropriate security and safety standards.

The committee procedure shall be used to determine the rules:

- for granting the status of authorised economic operator,
- for granting authorisations for the use of simplifications,
- for establishing which customs authority is competent to grant such status and authorisations,
- for the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety, taking into account the rules for common risk management,
- for consultation with, and provision of information to, other customs authorities;

and the conditions under which:

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

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Section 2

Decisions relating to the application of customs rules*Article 6*

1. Where a person requests that the customs authorities take a decision relating to the application of customs rules that person shall supply all the information and documents required by those authorities in order to take a decision.

2. Such decision shall be taken and notified to the applicant at the earliest opportunity.

Where a request for a decision is made in writing, the decision shall be made within a period laid down in accordance with the existing provisions, starting on the date on which the said request is received by the customs authorities. Such a decision must be notified in writing to the applicant.

However, that period may be exceeded where the customs authorities are unable to comply with it. In that case, those authorities shall so inform the applicant before the expiry of the abovementioned period, stating the grounds which justify exceeding it and indicating the further

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period of time which they consider necessary in order to give a ruling on the request.

3. Decisions adopted by the customs authorities in writing which either reject requests or are detrimental to the persons to whom they are addressed shall set out the grounds on which they are based. They shall refer to the right of appeal provided for in Article 243.

4. Provision may be made for the first sentence of paragraph 3 to apply likewise to other decisions.

Article 7

Save in the cases provided for in the second subparagraph of Article 244, decisions adopted shall be immediately enforceable by customs authorities.

Article 8

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

— the applicant knew or should reasonably have known that the information was incorrect or incomplete, and

— such decision could not have been taken on the basis of correct or complete information.

2. The persons to whom the decision was addressed shall be notified of its annulment.

3. Annulment shall take effect from the date on which the annulled decision was taken.

Article 9

1. A decision favourable to the person concerned, shall be revoked or amended where, in cases other than those referred to in Article 8, one or more of the conditions laid down for its issue were not or are no longer fulfilled.

2. A decision favourable to the person concerned may be revoked where the person to whom it is addressed fails to fulfil an obligation imposed on him under that decision.

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

4. The revocation or amendment of the decision shall take effect from the date of notification. However, in exceptional cases where the legitimate interests of the person to whom the decision is addressed so require, the customs authorities may defer the date when revocation or amendment takes effect.

Article 10

Articles 8 and 9 shall be without prejudice to national rules which stipulate that decisions are invalid or become null and void for reasons unconnected with customs legislation.

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Section 3

Information*Article 11*

1. Any person may request information concerning the application of customs legislation from the customs authorities.

Such a request may be refused where it does not relate to an import or export operation actually envisaged.

2. The information shall be supplied to the applicant free of charge. However, where special costs are incurred by the customs authorities, in particular as a result of analyses or expert reports on goods, or the return of the goods to the applicant, he may be charged the relevant amount.

▼M1*Article 12*

1. The customs authorities shall issue binding tariff information or binding origin information on written request, acting in accordance with the committee procedure.

2. Binding tariff information or binding origin information shall be binding on the customs authorities as against the holder of the information only in respect of the tariff classification or determination of the origin of goods.

Binding tariff information or binding origin information shall be binding on the customs authorities only in respect of goods on which customs formalities are completed after the date on which the information was supplied by them.

In matters of origin, the formalities in question shall be those relating to the application of Articles 22 and 27.

3. The holder of such information must be able to prove that:

- for tariff purposes: the goods declared correspond in every respect to those described in the information,
- for origin purposes: the goods concerned and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the information.

4. Binding information shall be valid for a period of six years in the case of tariffs and three years in the case of origin from the date of issue. By way of derogation from Article 8, it shall be annulled where it is based on inaccurate or incomplete information from the applicant.

5. Binding information shall cease to be valid:

(a) in the case of tariff information:

- (i) where a regulation is adopted and the information no longer conforms to the law laid down thereby;
- (ii) where it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 20 (6):

- at Community level, by reason of amendments to the explanatory notes to the combined nomenclature or by a judgment of the Court of Justice of the European Communities,
- at international level, by reason of a classification opinion or an amendment of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the World Customs Organi-

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zation established in 1952 under the name ‘the Customs Cooperation Council’;

- (iii) where it is revoked or amended in accordance with Article 9, provided that the revocation or amendment is notified to the holder.

The date on which binding information ceases to be valid for the cases cited in (i) and (ii) shall be the date of publication of the said measures or, in the case of international measures, the date of the Commission communication in the ‘C’ series of the *Official Journal of the European Communities*;

- (b) in the case of origin information:

- (i) where a regulation is adopted or an agreement is concluded by the Community and the information no longer conforms to the law thereby laid down;

- (ii) where it is no longer compatible with:

- at Community level, the explanatory notes and opinions adopted for the purposes of interpreting the rules or with a judgment of the Court of Justice of the European Communities,
- at international level, the Agreement on Rules of Origin established in the World Trade Organization (WTO) or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement;

- (iii) where it is revoked or amended in accordance with Article 9, provided that the holder has been informed in advance.

The date on which binding information ceases to be valid for the cases referred to in (i) and (ii) shall be the date indicated when the abovementioned measures are published or, in the case of international measures, the date shown in the Commission communication in the ‘C’ series of the *Official Journal of the European Communities*.

6. The holder of binding information which ceases to be valid ► C2 pursuant to paragraph 5 (a) (ii) or (iii) or (b) (ii) or (iii) ◀ may still use that information for a period of six months from the date of publication or notification, provided that he concluded binding contracts for the purchase or sale of the goods in question, on the basis of the binding information, before that measure was adopted. However, in the case of products for which an import, export or advance-fixing certificate is submitted when customs formalities are carried out, the period of six months is replaced by the period of validity of the certificate.

In the case of paragraph 5 (a) (i) and b (i), the Regulation or agreement may lay down a period within which the first subparagraph shall apply.

7. The classification or determination of origin in binding information may be applied, on the conditions laid down in paragraph 6, solely for the purpose of:

- determining import or export duties,
- calculating export refunds and any other amounts granted for imports or exports as part of the common agricultural policy,
- using import, export or advance-fixing certificates which are submitted when formalities are carried out for acceptance of the customs declaration concerning the goods in question, provided that such certificates were issued on the basis of the information concerned.

In addition, in exceptional cases where the smooth operation of the arrangements laid down under the common agricultural policy may be

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jeopardized, it may be decided to derogate from paragraph 6, in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats ⁽¹⁾ and in the corresponding Articles in other regulations on the common organization of markets.

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Section 4

Other provisions**▼M4***Article 13*

1. Customs authorities may, in accordance with the conditions laid down by the provisions in force, carry out all the controls they deem necessary to ensure that customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status are correctly applied. Customs controls for the purpose of the correct application of Community legislation may be carried out in a third country where an international agreement provides for this.

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

The committee procedure shall be used for determining a common risk management framework, and for establishing common criteria and priority control areas.

Member States, in cooperation with the Commission, shall establish a computer system for the implementation of risk management.

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

4. In the context of the controls provided for in this Article, customs and other competent authorities, such as veterinary and police authorities, may communicate data received, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, between each other and to the customs authorities of the Member States and to the Commission where this is required for the purposes of minimising risk.

Communication of confidential data to the customs authorities and other bodies (e.g. security agencies) of third countries shall be allowed only in the framework of an international agreement and provided that the data protection provisions in force, in particular Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽³⁾ are respected.

⁽¹⁾ OJ No 172, 30.9.1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 3290/94 (OJ No L 349, 31.12.1994, p. 105).

⁽²⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1)

⁽³⁾ OJ L 8, 12.1.2001, p. 1.

▼B*Article 14*

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

▼M4*Article 15*

All information which is by nature confidential or which is provided on a confidential basis shall be covered by the duty of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged to do so pursuant to the provisions in force, particularly in connection with legal proceedings. Any disclosure or communication of information shall fully comply with prevailing data protection provisions, in particular Directive 95/46/EC and Regulation (EC) No 45/2001.

▼B*Article 16*

The persons concerned shall keep the documents referred to in Article 14 for the purposes of ►**M4** customs controls ◀, for the period laid down in the provisions in force and for at least three calendar years, irrespective of the medium used. That period shall run from the end of the year in which:

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

Without prejudice to the provisions of Article 221 (3), second sentence, where a check carried out by the customs authorities in respect of a customs debt shows that the relevant entry in the accounts has to be corrected, the documents shall be kept beyond the time limit provided for in the first paragraph for a period sufficient to permit the correction to be made and checked.

Article 17

Where a period, date or time limit is laid down pursuant to customs legislation for the purpose of applying legislation, such period shall not be extended and such date or time limit shall not be deferred unless specific provision is made in the legislation concerned.

▼M1*Article 18*

1. The value of the ecu in national currencies to be applied for the purposes of determining the tariff classification of goods and import duties shall be fixed once a month. The rates to be used for this

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conversion shall be those published in the *Official Journal of the European Communities* on the penultimate working day of the month. Those rates shall apply throughout the following month.

However, where the rate applicable at the start of the month differs by more than 5 % from that published on the penultimate working day before the 15th of that same month, the latter rate shall apply from the 15th until the end of the month in question.

2. The value of the ecu in national currencies to be applied within the framework of customs legislation in cases other than those referred to in paragraph 1 shall be fixed once a year. The rates to be used for this conversion shall be those published in the *Official Journal of the European Communities* on the first working day of October, with effect from 1 January of the following year. If no rate is available for a particular national currency, the rate applicable to that currency shall be that obtaining on the last day for which a rate was published in the *Official Journal of the European Communities*.

3. The customs authorities may round up or down the sum resulting from the conversion into their national currency of an amount expressed in ecus for purposes other than determining the tariff classification of goods or import or export duties.

The rounded-off amount may not differ from the original amount by more than 5 %.

The customs authorities may retain unchanged the national-currency value of an amount expressed in ecus if, at the time of the annual adjustment provided for in paragraph 2, the conversion of that amount, prior to the abovementioned rounding-off, results in a variation of less than 5 % in the national-currency value or a reduction in that value.

▼B*Article 19*

The procedure of the Committee shall be used to determine in which cases and under which conditions the application of customs legislation may be simplified.

TITLE II

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

CHAPTER 1

CUSTOMS TARIFF OF THE EUROPEAN COMMUNITIES AND TARIFF CLASSIFICATION OF GOODS

Article 20

1. Duties legally owed where a customs debt is incurred shall be based on the Customs Tariff of the European Communities.

2. The other measures prescribed by Community provisions governing specific fields relating to trade in goods shall, where appropriate, be applied according to the tariff classification of those goods.

3. The Customs Tariff of the European Communities shall comprise:

- (a) the combined nomenclature of goods;
- (b) any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and

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which is established by Community provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;

- (c) the rates and other items of charge normally applicable to goods covered by the combined nomenclature as regards:
 - customs duties; and,
 - ►**M1** ————— ◀ import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products.
- (d) the preferential tariff measures contained in agreements which the Community has concluded with certain countries or groups of countries and which provide for the granting of preferential tariff treatment;
- (e) preferential tariff measures adopted unilaterally by the Community in respect of certain countries, groups of countries or territories;
- (f) autonomous suspensive measures providing for a reduction in or relief from import duties chargeable on certain goods;
- (g) other tariff measures provided for by other Community legislation.

4. Without prejudice to the rules on flat-rate charges, the measures referred to in paragraph 3 (d), (e) and (f) shall apply at the declarant's request instead of those provided for in subparagraph (c) where the goods concerned fulfil the conditions laid down by those first-mentioned measures. An application may be made after the event provided that the relevant conditions are fulfilled.

5. Where application of the measures referred to in paragraph 3 (d), (e) and (f) is restricted to a certain volume of imports, it shall cease:

- (a) in the case of tariff quotas, as soon as the stipulated limit on the volume of imports is reached;
- (b) in the case of tariff ceilings, by ruling of the Commission.

6. The tariff classification of goods shall be the determination, according to the rules in force, of:

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

under which the aforesaid goods are to be classified.

Article 21

1. The favourable tariff treatment from which certain goods may benefit by reason of their nature or end-use shall be subject to conditions laid down in accordance with the committee procedure. Where an authorization is required Articles 86 and 87 shall apply.

2. For the purposes of paragraph 1, the expression 'favourable tariff treatment' means a reduction in or suspension of an import duty as referred to in Article 4 (10), even within the framework of a tariff quota.



CHAPTER 2
ORIGIN OF GOODS

Section 1

Non-preferential origin

Article 22

Articles 23 to 26 define the non-preferential origin of goods for the purposes of:

- (a) applying the Customs Tariff of the European Communities with the exception of the measures referred to in Article 20 (3) (d) and (e);
- (b) applying measures other than tariff measures established by Community provisions governing specific fields relating to trade in goods;
- (c) the preparation and issue of certificates of origin.

Article 23

1. Goods originating in a country shall be those wholly obtained or produced in that country.

2. The expression ‘goods wholly obtained in a country’ means:

- (a) mineral products extracted within that country;
- (b) vegetable products harvested therein;
- (c) live animals born and raised therein;
- (d) products derived from live animals raised therein;
- (e) products of hunting or fishing carried on therein;
- (f) products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country;
- (g) goods obtained or produced on board factory ships from the products referred to in subparagraph (f) originating in that country, provided that such factory ships are registered or recorded in that country and fly its flag;
- (h) products taken from the seabed or subsoil beneath the seabed outside the territorial sea provided that that country has exclusive rights to exploit that seabed or subsoil;
- (i) waste and scrap products derived from manufacturing operations and used articles, if they were collected therein and are fit only for the recovery of raw materials;
- (j) goods which are produced therein exclusively from goods referred to in subparagraphs (a) to (i) or from their derivatives, at any stage of production.

3. For the purposes of paragraph 2 the expression ‘country’ covers that country's territorial sea.

Article 24

Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture.

▼B*Article 25*

Any processing or working in respect of which it is established, or in respect of which the facts as ascertained justify the presumption, that its sole object was to circumvent the provisions applicable in the Community to goods from specific countries shall under no circumstances be deemed to confer on the goods thus produced the origin of the country where it is carried out within the meaning of Article 24.

Article 26

1. Customs legislation or other Community legislation governing specific fields may provide that a document must be produced as proof of the origin of goods.

2. Notwithstanding the production of that document, the customs authorities may, in the event of serious doubts, require any additional proof to ensure that the indication of origin does comply with the rules laid down by the relevant Community legislation.

Section 2

Preferential origin of goods*Article 27*

The rules on preferential origin shall lay down the conditions governing acquisition of origin which goods must fulfil in order to benefit from the measures referred to in Article 20(3)(d) or (e).

Those rules shall:

- (a) in the case of goods covered by the agreements referred to in Article 20 (3) (d), be determined in those agreements;
- (b) in the case of goods benefitting from the preferential tariff measures referred to in Article 20 (3) (e), be determined in accordance with the committee procedure.

CHAPTER 3

VALUE OF GOODS FOR CUSTOMS PURPOSES*Article 28*

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

Article 29

1. The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted, where necessary, in accordance with Articles 32 and 33, provided:

- (a) that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:
 - are imposed or required by a law or by the public authorities in the Community,
 - limit the geographical area in which the goods may be resold,
 - or
 - do not substantially affect the value of the goods;

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- (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
 - (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 32; and
 - (d) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes under paragraph 2.
2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related shall not in itself be sufficient grounds for regarding the transaction value as unacceptable. Where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the declarant or otherwise, the customs authorities have grounds for considering that the relationship influenced the price, they shall communicate their grounds to the declarant and he shall be given a reasonable opportunity to respond. If the declarant so requests, the communication of the grounds shall be in writing.
- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with paragraph 1 wherever the declarant demonstrates that such value closely approximates to one of the following occurring at or about the same time:
- (i) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to the Community;
 - (ii) the customs value of identical or similar goods, as determined under Article 30 (2) (c);
 - (iii) the customs value of identical or similar goods, as determined under Article 30 (2) (d).

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 32 and costs incurred by the seller in sales in which he and the buyer are not related and where such costs are not incurred by the seller in sales in which he and the buyer are related.

- (c) The tests set forth in subparagraph (b) are to be used at the initiative of the declarant and only for comparison purposes. Substitute values may not be established under the said subparagraph.
3. (a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instrument and may be made directly or indirectly.
- (b) Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 32, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by

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agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.

Article 30

1. Where the customs value cannot be determined under Article 29, it is to be determined by proceeding sequentially through subparagraphs (a), (b), (c) and (d) of paragraph 2 to the first subparagraph under which it can be determined, subject to the proviso that the order of application of subparagraphs (c) and (d) shall be reversed if the declarant so requests; it is only when such value cannot be determined under a particular subparagraph that the provisions of the next subparagraph in a sequence established by virtue of this paragraph can be applied.
2. The customs value as determined under this Article shall be:
 - (a) the transaction value of identical goods sold for export to the Community and exported at or about the same time as the goods being valued;
 - (b) the transaction value of similar goods sold for export to the Community and exported at or about the same time as the goods being valued;
 - (c) the value based on the unit price at which the imported goods for identical or similar imported goods are sold within the Community in the greatest aggregate quantity to persons not related to the sellers;
 - (d) the computed value, consisting of the sum of:
 - the cost or value of materials and fabrication or other processing employed in producing the imported goods,
 - an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Community,
 - the cost or value of the items referred to in Article 32 (1) (e).
3. Any further conditions and rules for the application of paragraph 2 above shall be determined in accordance with the committee procedure.

Article 31

1. Where the customs value of imported goods cannot be determined under Articles 29 or 30, it shall be determined, on the basis of data available in the Community, using reasonable means consistent with the principles and general provisions of:
 - the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade ►**M1** of 1994 ◀
 - Article VII of the General Agreement on Tariffs and Trade ►**M1** of 1994 ◀
 - the provisions of this chapter.
2. No customs value shall be determined under paragraph 1 on the basis of:
 - (a) the selling price in the Community of goods produced in the Community;
 - (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - (c) the price of goods on the domestic market of the country of exportation;

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- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with Article 30 (2) (d);
- (e) prices for export to a country not forming part of the customs territory of the Community;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

Article 32

1. In determining the customs value under Article 29, there shall be added to the price actually paid or payable for the imported goods:

- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (i) commissions and brokerage, except buying commissions,
 - (ii) the cost of containers which are treated as being one, for customs purposes, with the goods in question,
 - (iii) the cost of packing, whether for labour or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
 - (i) materials, components, parts and similar items incorporated in the imported goods,
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods,
 - (iii) materials consumed in the production of the imported goods,
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community and necessary for the production of the imported goods;
- (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (e) (i) the cost of transport and insurance of the imported goods, and
 - (ii) loading and handling charges associated with the transport of the imported goods
 to the place of introduction into the customs territory of the Community.

2. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

3. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

4. In this Chapter, the term 'buying commissions' means fees paid by an importer to his agent for the service of representing him in the purchase of the goods being valued.

5. Notwithstanding paragraph 1 (c):

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- (a) charges for the right to reproduce the imported goods in the Community shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and
- (b) payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the Community of the goods.

Article 33

1. Provided that they are shown separately from the price actually paid or payable, the following shall not be included in the customs value:

- (a) charges for the transport of goods after their arrival at the place of introduction into the customs territory of the Community;
- (b) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of imported goods such as industrial plant, machinery or equipment;
- (c) charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods, irrespective of whether the finance is provided by the seller or another person, provided that the financing arrangement has been made in writing and where required, the buyer can demonstrate that:
 - such goods are actually sold at the price declared as the price actually paid or payable, and
 - the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided;
- (d) charges for the right to reproduce imported goods in the Community;
- (e) buying commissions;
- (f) import duties or other charges payable in the Community by reason of the importation or sale of the goods.

Article 34

Specific rules may be laid down in accordance with the procedure of the committee to determine the customs value of carrier media for use in data processing equipment and bearing data or instructions.

*Article 35***▼M3**

Where factors used to determine the customs value of goods are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used shall be that duly published by the authorities competent in the matter.

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Such rate shall reflect as effectively as possible the current value of such currency in commercial transactions in terms of the currency of such Member State and shall apply during such period as may be determined in accordance with the procedure of the committee.

Where such a rate does not exist, the rate of exchange to be used shall be determined in accordance with the procedure of the committee.

▼B*Article 36*

1. The provisions of this chapter shall be without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use.
2. By way of derogation from Articles 29, 30 and 31, the customs value of perishable goods usually delivered on consignment may, at the request of the declarant, be determined under simplified rules drawn up for the whole Community in accordance with the committee procedure.

TITLE III

**PROVISIONS APPLICABLE TO GOODS BROUGHT INTO THE
CUSTOMS TERRITORY OF THE COMMUNITY UNTIL THEY
ARE ASSIGNED A CUSTOMS-APPROVED TREATMENT OR
USE**

CHAPTER 1

**ENTRY OF GOODS INTO THE CUSTOMS TERRITORY OF THE
COMMUNITY**

▼M4*Article 36a*

1. Goods brought into the customs territory of the Community shall be covered by a summary declaration, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory.

2. The summary declaration shall be lodged at the customs office of entry.

Customs authorities may allow the summary declaration to be lodged at another customs office, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of entry.

Customs authorities may accept, instead of the lodging of the summary declaration, the lodging of a notification and access to the summary declaration data in the economic operator's computer system.

3. The summary declaration shall be lodged before the goods are brought into the customs territory of the Community.

4. The committee procedure shall be used to establish:

- the time limit by which the summary declaration is to be lodged before the goods are brought into the customs territory of the Community,
- the rules for exceptions from, and variations to, the time limit referred to in the first indent, and
- the conditions under which the requirement for a summary declaration may be waived or adapted,

in accordance with the specific circumstances and for particular types of goods traffic, modes of transport and economic operators and where international agreements provide for special security arrangements.

Article 36b

1. The committee procedure shall be used to establish a common data set and format for the summary declaration, containing the particulars necessary for risk analysis and the proper application of customs

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controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices.

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

Customs authorities may accept paper-based summary declarations in exceptional circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using a data processing technique.

3. The summary declaration shall be lodged by the person who brings the goods, or who assumes responsibility for the carriage of the goods into the customs territory of the Community.

4. Notwithstanding the obligation of the person referred to in paragraph 3, the summary declaration may be lodged instead by:

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

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

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

Article 36c

1. The customs office of entry may waive the lodging of a summary declaration in respect of goods for which, before expiry of the time limit referred to in Article 36a(3) or (4), a customs declaration is lodged. In such case, the customs declaration shall contain at least the particulars necessary for a summary declaration and, until such time as the former is accepted in accordance with Article 63, it shall have the status of a summary declaration.

Customs authorities may allow the customs declaration to be lodged at a customs office of import different from the customs office of entry, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of entry.

2. Where the customs declaration is lodged other than by use of data processing technique, the customs authorities shall apply the same level of risk management to the data as that applied to customs declarations made using a data processing technique.

▼B*Article 37*

1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to ►**M4** customs controls ◀ in accordance with the provisions in force.

2. They shall remain under such supervision for as long as necessary to determine their customs status, if appropriate, and in the case of non-

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Community goods and without prejudice to Article 82 (1), until their customs status is changed, they enter a free zone or free warehouse or they are re-exported or destroyed in accordance with Article 182.

Article 38

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

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

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

3. Goods which, although still outside the customs territory of the Community, may be subject to ►**M4** customs controls by ◀ a Member State under the provisions in force, as a result of *inter alia* an agreement concluded between that Member State and a third country, shall be treated in the same way as goods brought into the customs territory of the Community.

4. Paragraph 1 (a) shall not preclude implementation of any provisions in force with respect to tourist traffic, frontier traffic, postal traffic or traffic of negligible economic importance, on condition that customs supervision and customs control possibilities are not thereby jeopardized.

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5. Paragraphs 1 to 4 and Articles 36a to 36c and 39 to 53 shall not apply to goods which temporarily leave the customs territory of the Community while moving between two points in that territory by sea or air, provided that the carriage is effected by a direct route and by regular air or shipping services without a stop outside the customs territory of the Community.

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6. Paragraph 1 shall not apply to goods on board vessels or aircraft crossing the territorial sea or airspace of the Member States without having as their destination a port or airport situated in those Member States.

Article 39

1. Where, by reason of unforeseeable circumstances or force majeure, the obligation laid down in Article 38 (1) cannot be complied with, the person bound by that obligation or any other person acting in his place shall inform the customs authorities of the situation without delay. Where the unforeseeable circumstances or force majeure do not result in total loss of the goods, the customs authorities shall also be informed of their precise location.

2. Where, by reason of unforeseeable circumstances or force majeure, a vessel or aircraft covered by Article 38 (6) is forced to put into port or land temporarily in the customs territory of the Community and the

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obligation laid down in Article 38 (1) cannot be complied with, the person bringing the vessel or aircraft into the customs territory of the Community or any other person acting in his place shall inform the customs authorities of the situation without delay.

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

CHAPTER 2

PRESENTATION OF GOODS TO CUSTOMS

▼M4*Article 40*

Goods entering the customs territory of the Community shall be presented to customs by the person who brings them into that territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory of the Community without a stop within this territory. The person presenting the goods shall make a reference to the summary declaration or customs declaration previously lodged in respect of the goods.

▼B*Article 41*

Article 40 shall not preclude the implementation of rules in force relating to goods:

- (a) carried by travellers;
- (b) placed under a customs procedure but not presented to customs.

Article 42

Goods may, once they have been presented to customs, and with the permission of the customs authorities, be examined or samples may be taken, in order that they may be assigned a customs-approved treatment or use. Such permission shall be granted, on request, to the person authorized to assign the goods such treatment or use.

CHAPTER 3

▼M4

UNLOADING OF GOODS PRESENTED TO CUSTOMS

▼B*Article 46*

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

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

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

Article 47

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

CHAPTER 4

OBLIGATION TO ASSIGN GOODS PRESENTED TO CUSTOMS A CUSTOMS-APPROVED TREATMENT OR USE*Article 48*

Non-Community goods presented to customs shall be assigned a customs-approved treatment or use authorized for such non-Community goods.

Article 49

1. Where goods are covered by a summary declaration, the formalities necessary for them to be assigned a customs-approved treatment or use must be carried out within:

- (a) 45 days from the date on which the summary declaration is lodged in the case of goods carried by sea;
- (b) 20 days from the date on which the summary declaration is lodged in the case of goods carried otherwise than by sea.

2. Where circumstances so warrant, the customs authorities may set a shorter period or authorize an extension of the periods referred to in paragraph 1. Such extension shall not, however, exceed the genuine requirements which are justified by the circumstances.

CHAPTER 5

TEMPORARY STORAGE OF GOODS*Article 50*

Until such time as they are assigned a customs-approved treatment or use, goods presented to customs shall, following such presentation, have the status of goods in temporary storage. Such goods shall hereinafter be described as 'goods in temporary storage'.

Article 51

1. Goods in temporary storage shall be stored only in places approved by the customs authorities under the conditions laid down by those authorities.

2. The customs authorities may require the person holding the goods to provide security with a view to ensuring payment of any customs debt which may arise under Articles 203 or 204.

Article 52

Without prejudice to the provisions of Article 42, goods in temporary storage shall be subject only to such forms of handling as are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics.

▼B*Article 53*

1. The customs authorities shall without delay take all measures necessary, including the sale of the goods, to regularize the situation of goods in respect of which the formalities necessary for them to be assigned a customs-approved treatment or use are not initiated within the periods determined in accordance with Article 49.

2. The customs authorities may, at the risk and expense of the person holding them, have the goods in question transferred to a special place, which is under their supervision, until the situation of the goods is regularized.

CHAPTER 6

PROVISIONS APPLICABLE TO NON-COMMUNITY GOODS WHICH HAVE MOVED UNDER A TRANSIT PROCEDURE*Article 54*

Article 38, with the exception of paragraph 1 (a) thereof, and Articles 39 to 53 shall not apply when goods already placed under a transit procedure are brought into the customs territory of the Community.

Article 55

Once non-Community goods which have moved under a transit procedure reach their destination in the customs territory of the Community and have been presented to customs in accordance with the rules governing transit, Article ►**M1** 42 ◀ to 53 shall apply.

CHAPTER 7

OTHER PROVISIONS*Article 56*

Where the circumstances so require, the customs authorities may have goods presented to customs destroyed. The customs authorities shall inform the holder of the goods accordingly. The costs of destroying the goods shall be borne by the holder.

Article 57

Where customs authorities find that goods have been brought unauthorized into the customs territory of the Community or have been withheld from customs surveillance, they shall take any measures necessary, including sale of the goods, in order to regularize their situation.

TITLE IV

CUSTOMS-APPROVED TREATMENT OR USE

CHAPTER 1

GENERAL*Article 58*

1. Save as otherwise provided, goods may at any time, under the conditions laid down, be assigned any customs-approved treatment or

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use irrespective of their nature or quantity, or their country of origin, consignment or destination.

2. Paragraph 1 shall not preclude the imposition of prohibitions or restrictions justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value or the protection of industrial and commercial property.

CHAPTER 2

CUSTOMS PROCEDURES

Section 1

Placing of goods under a customs procedure*Article 59*

1. All goods intended to be placed under a customs procedure shall be covered by a declaration for that customs procedure.

2. Community goods declared for an export, outward processing, transit or customs warehousing procedure shall be subject to customs supervision from the time of acceptance of the customs declaration until such time as they leave the customs territory of the Community or are destroyed or the customs declaration is invalidated.

Article 60

Insofar as Community customs legislation lays down no rules on the matter, Member States shall determine the competence of the various customs offices situated in their territory, account being taken, where applicable, of the nature of the goods and the customs procedure under which they are to be placed.

Article 61

The customs declaration shall be made:

- (a) in writing; or
- (b) using a data-processing technique where provided for by provisions laid down in accordance with the committee procedure or where authorized by the customs authorities; or
- (c) by means of a normal declaration or any other act whereby the holder of the goods expresses his wish to place them under a customs procedure, where such a possibility is provided for by the rules adopted in accordance with the committee procedure.

A. Declarations in writing**I. Normal procedure***Article 62*

1. Declarations in writing shall be made on a form corresponding to the official specimen prescribed for that purpose. They shall be signed and contain all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared.

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2. The declaration shall be accompanied by all the documents required for implementation of the provisions governing the customs procedure for which the goods are declared.

Article 63

Declarations which comply with the conditions laid down in Article 62 shall be accepted by the customs authorities immediately, provided that the goods to which they refer are presented to customs.

Article 64

1. Subject to Article 5, a customs declaration may be made by any person who is able to present the goods in question or to have them presented to the competent customs authority, together with all the documents which are required to be produced for the application of the rules governing the customs procedure in respect of which the goods were declared.

2. However,

- (a) where acceptance of a customs declaration imposes particular obligations on a specific person, the declaration must be made by that person or on his behalf;
- (b) the declarant must be established in the Community.

However, the condition regarding establishment in the Community shall not apply to persons who:

- make a declaration for transit or temporary importation;
- declare goods on an occasional basis, provided that the customs authorities consider this to be justified.

3. Paragraph 2 (b) shall not preclude the application by the Member States of bilateral agreements concluded with third countries, or customary practices having similar effect, under which nationals of such countries may make customs declarations in the territory of the Member States in question, subject to reciprocity.

Article 65

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

However, no amendment shall be permitted where authorization is requested after the customs authorities:

- (a) have informed the declarant that they intend to examine the goods; or,
- (b) have established that the particulars in question are incorrect; or,
- (c) have released the goods.

Article 66

1. The customs authorities shall, at the request of the declarant, invalidate a declaration already accepted where the declarant furnishes proof that goods were declared in error for the customs procedure covered by that declaration or that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified.

▼B

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

2. The declaration shall not be invalidated after the goods have been released, except in cases defined in accordance with the committee procedure.
3. Invalidation of the declaration shall be without prejudice to the application of the penal provisions in force.

Article 67

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

Article 68

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

- (a) examine the documents covering the declaration and the documents accompanying it. The customs authorities may require the declarant to present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration;
- (b) examine the goods and take samples for analysis or for detailed examination.

Article 69

1. Transport of the goods to the places where they are to be examined and samples are to be taken, and all the handling necessitated by such examination or taking of samples, shall be carried out by or under the responsibility of the declarant. The costs incurred shall be borne by the declarant.
2. The declarant shall be entitled to be present when the goods are examined and when samples are taken. Where they deem it appropriate, the customs authorities shall require the declarant to be present or represented when the goods are examined or samples are taken in order to provide them with the assistance necessary to facilitate such examination or taking of samples.
3. Provided that samples are taken in accordance with the provisions in force, the customs authorities shall not be liable for payment of any compensation in respect thereof but shall bear the costs of their analysis or examination.

Article 70

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

However, the declarant may request a further examination of the goods if he considers that the results of the partial examination are not valid as regards the remainder of the goods declared.

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

▼B*Article 71*

1. The results of verifying the declaration shall be used for the purposes of applying the provisions governing the customs procedure under which the goods are placed.
2. Where the declaration is not verified, the provisions referred to in paragraph 1 shall be applied on the basis of the particulars contained in the declaration.

Article 72

1. The customs authorities shall take the measures necessary to identify the goods where identification is required in order to ensure compliance with the conditions governing the customs procedure for which the said goods have been declared.
2. Means of identification affixed to the goods or means of transport shall be removed or destroyed only by the customs authorities or with their permission unless, as a result of unforeseeable circumstances or force majeure, their removal or destruction is essential to ensure the protection of the goods or means of transport.

Article 73

1. Without prejudice to Article 74, where the conditions for placing the goods under the procedure in question are fulfilled and provided the goods are not subject to any prohibitive or restrictive measures, the customs authorities shall release the goods as soon as the particulars in the declaration have been verified or accepted without verification. The same shall apply where such verification cannot be completed within a reasonable period of time and the goods are no longer required to be present for verification purposes.
2. All the goods covered by the same declaration shall be released at the same time.

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

Article 74

1. Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration shall not be released unless the customs debt has been paid or secured. However, without prejudice to paragraph 2, this provision shall not apply to the temporary importation procedure with partial relief from import duties.
2. Where, pursuant to the provisions governing the customs procedure for which the goods are declared, the customs authorities require the provision of a security, the said goods shall not be released for the customs procedure in question until such security is provided.

Article 75

Any necessary measures, including confiscation and sale, shall be taken to deal with goods which:

- (a) cannot be released because:
 - it has not been possible to undertake or continue examination of the goods within the period pre-scribed by the customs authorities for reasons attributable to the declarant; or,

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- the documents which must be produced before the goods can be placed under the customs procedure requested have not been produced; or,
 - payments or security which should have been made or provided in respect of import duties or export duties, as the case may be, have not been made or provided within the period prescribed; or,
 - they are subject to bans or restrictions;
- (b) are not removed within a reasonable period after their release.

II. Simplified procedures*Article 76*

1. In order to simplify completion of formalities and procedures as far as possible while ensuring that operations are conducted in a proper manner, the customs authorities shall, under conditions laid down in accordance with the committee procedure, grant permission for:

- (a) the declaration referred to in Article 62 to omit certain of the particulars referred to in paragraph 1 of that Article for some of the documents referred to in paragraph 2 of that Article not to be attached thereto;
- (b) a commercial or administrative document, accompanied by request for the goods to be placed under the customs procedure in question, to be lodged in place of the declaration referred to in Article 62;
- (c) the goods to be entered for the procedure in question by means of an entry in the records; in this case, the customs authorities may waive the requirement that the declarant presents the goods to customs.

The simplified declaration, commercial or administrative document or entry in the records must contain at least the particulars necessary for identification of the goods. Where the goods are entered in the records, the date of such entry must be included.

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

3. Supplementary declarations and the simplified declarations referred to in subparagraphs 1 (a), (b) and (c), shall be deemed to constitute a single, indivisible instrument taking effect on the date of acceptance of the simplified declarations; in the cases referred to in subparagraph 1 (c), entry in the records shall have the same legal force as acceptance of the declaration referred to in Article 62.

4. Special simplified procedures for the Community transit procedure shall be laid down in accordance with the committee procedure.

B. Other declarations*Article 77*

►**M3** 1. ◀ Where the customs declaration is made by means of a data-processing technique within the meaning of Article 61 (b), or by an oral declaration or any other act within the meaning of Article 61 (c), Articles 62 to 76 shall apply *mutatis mutandis* without prejudice to the principles set out therein.

▼M3

2. Where the customs declaration is made by means of a data-processing technique, the customs authorities may allow accompanying

▼M3

documents referred to in Article 62(2) not to be lodged with the declaration. In this case the documents shall be kept at the customs authorities' disposal.

▼B**C. Post-clearance examination of declarations***Article 78*

1. The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.
2. The customs authorities may, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes. Those authorities may also examine the goods where it is still possible for them to be produced.
3. Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularize the situation, taking account of the new information available to them.

Section 2

Release for free circulation*Article 79*

Release for free circulation shall confer on non-Community goods the customs status of Community goods.

It shall entail application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due.

Article 80

1. By way of derogation from Article 67, provided that the import duty chargeable on the goods is one of the duties referred to in the first indent of Article 4 (10) and that the rate of duty is reduced after the date of acceptance of the declaration for release for free circulation but before the goods are released, the declarant may request application of the more favourable rate.
2. Paragraph 1 shall not apply where it has not been possible to release the goods for reasons attributable to the declarant alone.

Article 81

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

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consignment on the basis of the tariff classification of the goods which are subject to the highest rate of import duty.

Article 82

1. Where goods are released for free circulation at a reduced or zero rate of duty on account of their end-use, they shall remain under customs supervision. Customs supervision shall end when the conditions laid down for granting such a reduced or zero rate of duty cease to apply, where the goods are exported or destroyed or where the use of the goods for purposes other than those laid down for the application of the reduced or zero rate of duty is permitted subject to payment of the duties due.

2. Articles 88 and 90 shall apply *mutatis mutandis* to the goods referred to in paragraph 1.

Article 83

Goods released for free circulation shall lose their customs status as Community goods where:

- (a) the declaration for release for free circulation is invalidated after release ► **M1** ————— ◀, or
- (b) the imported duties payable on those goods are repaid or remitted:
 - under the inward processing procedure in the form of the drawback system;
 - or
 - in respect of defective goods or goods which fail to comply with the terms of the contract, pursuant to Article 238; or
 - in situations of the type referred to in Article 239 where repayment or remission is conditional upon the goods being exported or re-exported or being assigned an equivalent customs-approved treatment or use.

Section 3

Suspensive arrangements and customs procedures with economic impact**A. Provisions common to several procedures***Article 84*

1. In Articles 85 to 90:
 - (a) where the term ‘procedure’ is used, it is understood as applying, in the case of non-Community goods, to the following arrangements:
 - external transit;
 - customs warehousing;
 - inward processing in the form of a system of suspension;
 - processing under customs control;
 - temporary importation;
 - (b) where the term ‘customs procedure with economic impact’ is used, it is understood as applying to the following arrangements:
 - customs warehousing;
 - inward processing;

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- processing under customs control;
 - temporary importation;
 - outward processing.
2. 'Import goods' means goods placed under a suspensive procedure and goods which, under the inward processing procedure in the form of the drawback system, have undergone the formalities for release for free circulation and the formalities provided for in Article 125.
3. 'Goods in the unaltered state' means import goods which, under the inward processing procedure or the procedures for processing under customs control, have undergone no form of processing.

Article 85

The use of any customs procedure with economic impact shall be conditional upon authorization being issued by the customs authorities.

Article 86

Without prejudice to the additional special conditions governing the procedure in question, the authorization referred to in Article 85 and that referred to in Article 100 (1) shall be granted only:

- to persons who offer every guarantee necessary for the proper conduct of the operations;
- where the customs authorities can supervise and monitor the procedure without having to introduce administrative arrangements disproportionate to the economic needs involved.

Article 87

1. The conditions under which the procedure in question is used shall be set out in the authorization.
2. The holder of the authorization shall notify the customs authorities of all factors arising after the authorization was granted which may influence its continuation or content.

▼M1*Article 87a*

In the cases referred to in the second sentence of the first indent of Article 4 (7), any products or goods obtained from goods placed under a suspensive arrangement shall be considered as being placed under the same arrangement.

▼B*Article 88*

The customs authorities may make the placing of goods under a suspensive arrangement conditional upon the provision of security in order to ensure that any customs debt which may be incurred in respect of those goods will be paid.

Special provisions concerning the provision of security may be laid down in the context of a specific suspensive arrangement.

Article 89

1. A suspensive arrangement with economic impact shall be discharged when a new customs-approved treatment or use is assigned either to the goods placed under that arrangement or to compensating or processed products placed under it.

▼B

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

Article 90

The rights and obligations of the holder of a customs procedure with economic impact may, on the conditions laid down by the customs authorities, be transferred successively to other persons who fulfil any conditions laid down in order to benefit from the procedure in question.

B. External transit**I. General provisions***Article 91*

1. The external transit procedure shall allow the movement from one point to another within the customs territory of the Community of:

(a) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures;

▼M2

(b) Community goods, in cases and on conditions determined in accordance with the committee procedure, in order to prevent products covered by or benefiting from export measures from either evading or benefiting unjustifiably from such measures.

▼B

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

- (a) under the external Community transit procedure; or
- (b) under cover of a TIR carnet (TIR Convention) provided that such movement:
 - (1) began or is to end outside the Community; or
 - (2) relates to consignments of goods which must be unloaded in the customs territory of the Community and which are conveyed with goods to be unloaded in a third country; or
 - (3) is effected between two points in the Community through the territory of a third country;
- (c) under cover of an ATA carnet ► **M1** ————— ◀ used as a transit document; or
- (d) under cover of the Rhine Manifest (Article 9 of the revised Convention for the Navigation of the Rhine); or
- (e) under cover of the form 302 provided for in the Convention between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951; or
- (f) by post (including parcel post).

3. The external transit procedure shall apply without prejudice to the specific provisions applicable to the movement of goods placed under a customs procedure with economic impact.

▼M2*Article 92*

1. The external transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.

▼ M2

2. The customs authorities shall discharge the procedure when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and those available to the customs office of destination, that the procedure has ended correctly.

▼ B

II. Specific provisions relating to external Community transit

Article 93

The external Community transit procedure shall apply to goods passing through the territory of a third country only if:

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

▼ M2

Article 94

1. The principal shall provide a guarantee in order to ensure payment of any customs debt or other charges which may be incurred in respect of the goods.

2. The guarantee shall be either:

- (a) an individual guarantee covering a single transit operation; or
- (b) a comprehensive guarantee covering a number of transit operations where the principal has been authorised to use such a guarantee by the customs authorities of the Member State where he is established.

3. The authorisation referred to in paragraph 2(b) shall be granted only to persons who:

- (a) are established in the Community;
- (b) are regular users of Community transit procedures or who are known to the customs authorities to have the capacity to fulfil their obligations in relation to these procedures, and
- (c) have not committed serious or repeated offences against customs or tax laws.

4. Persons who satisfy the customs authorities that they meet higher standards of reliability may be authorised to use a comprehensive guarantee for a reduced amount or to have a guarantee waiver. The additional criteria for this authorisation shall include:

- (a) the correct use of the Community transit procedures during a given period;
- (b) cooperation with the customs authorities, and
- (c) in respect of the guarantee waiver, a good financial standing which is sufficient to fulfil the commitments of the said persons.

The detailed rules for authorisations granted under this paragraph shall be determined in accordance with the committee procedure.

5. The guarantee waiver authorised in accordance with paragraph 4 shall not apply to external Community transit operations involving goods which, as determined in accordance with the committee procedure, are considered to present increased risks.

6. In line with the principles underlying paragraph 4, recourse to the comprehensive guarantee for a reduced amount may, in the case of external Community transit, be temporarily prohibited by the

▼M2

committee procedure as an exceptional measure in special circumstances.

7. In line with the principles underlying paragraph 4, recourse to the comprehensive guarantee may, in the case of external Community transit, be temporarily prohibited by the committee procedure in respect of goods which, under the comprehensive guarantee, have been identified as being subject to large-scale fraud.

Article 95

1. Except in cases to be determined where necessary in accordance with the committee procedure, no guarantee need be furnished for:

- (a) journeys by air;
- (b) the carriage of goods on the Rhine and the Rhine waterways;
- (c) carriage by pipeline;
- (d) operations carried out by the railway companies of the Member States.

2. The cases in which the furnishing of a guarantee in respect of the carriage of goods on waterways other than those referred to in paragraph (b) may be waived shall be determined in accordance with the committee procedure.

▼B*Article 96*

1. The principal shall be the one of under the external Community transit procedure. He shall be responsible for:

- (a) production of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification;
- (b) observance of the provisions relating to the Community transit procedure.

2. Notwithstanding the principal's obligations under paragraph 1, a carrier or recipient of goods who accepts goods knowing that they are moving under Community transit shall also be responsible for production of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification.

▼M2*Article 97*

1. The detailed rules for the operation of the procedure and the exemptions shall be determined in accordance with the committee procedure.

2. Provided that the implementation of Community measures applying to goods is guaranteed:

- (a) Member States have the right, by bilateral or multilateral arrangement, to establish between themselves simplified procedures consistent with criteria to be set according to the circumstances and applying to certain types of goods traffic or specific undertakings;
- (b) each Member State shall have the right to establish simplified procedures in certain circumstances for goods not required to move in the territory of another Member State.

3. Simplified procedures established under paragraph 2 shall be communicated to the Commission.

▼B**C. Customs warehouses***Article 98*

1. The customs warehousing procedure shall allow the storage in a customs warehouse of:
 - (a) non-Community goods, without such goods being subject to import duties or commercial policy measures;
 - (b) Community goods, where Community legislation governing specific fields provides that their being placed in a customs warehouse shall attract the application of measures normally attaching to the export of such goods.
2. Customs warehouse means any place approved by and under the supervision of the customs authorities where goods may be stored under the conditions laid down.
3. Cases in which the goods referred to in paragraph 1 may be placed under the customs warehousing procedure without being stored in a customs warehouse shall be determined in accordance with the committee procedure.

Article 99

A customs warehouse may be either a public warehouse or a private warehouse.

‘Public warehouse’ means a customs warehouse available for use by any person for the warehousing of goods;

‘private warehouse’ means a customs warehouse reserved for the warehousing of goods by the warehousekeeper.

The warehousekeeper is the person authorized to operate the customs warehouse.

The depositor shall be the person bound by the declaration placing the goods under the customs warehousing procedure or to whom the rights and obligations of such a person have been transferred.

Article 100

1. Operation of a customs warehouse shall be subject to the issue of an authorization by the customs authorities, unless the said authorities operate the customs warehouse themselves.
2. Any person wishing to operate a customs warehouse must make a request in writing containing the information required for granting the authorization, in particular demonstrating that an economic need for warehousing exists. The authorization shall lay down the conditions for operating the customs warehouse.
3. The authorization shall be issued only to persons established in the Community.

Article 101

The warehousekeeper shall be responsible for:

- (a) ensuring that while the goods are in the customs warehouse they are not removed from customs supervision;
- (b) fulfilling the obligations that arise from the storage of goods covered by the customs warehousing procedure; and

▼B

- (c) complying with the particular conditions specified in the authorization.

Article 102

1. By way of derogation from Article 101, where the authorization concerns a public warehouse, it may provide that the responsibilities referred to in Article 101 (a) and/or (b) devolve exclusively upon the depositor.
2. The depositor shall at all times be responsible for fulfilling the obligations arising from the placing of goods under the customs warehousing procedure.

Article 103

The rights and obligations of a warehousekeeper may, with the agreement of the customs authorities, be transferred to another person.

Article 104

Without prejudice to Article 88, the customs authorities may demand that the warehousekeeper provide a guarantee in connection with the responsibilities specified in Article 101.

Article 105

The person designated by the customs authorities shall keep stock records of all the goods placed under the customs warehousing procedure in a form approved by those authorities. Stock records are not necessary where a public warehouse is operated by the customs authorities.

Subject to the application of Article 86 the customs authorities may dispense with stock records where the responsibilities referred to in Article 101 (a) and/or (b) lie exclusively with the depositor and the goods are placed under that procedure on the basis of a written declaration forming part of the normal procedure or an administrative document in accordance with Article 76 (1) (b).

Article 106

1. Where an economic need exists and customs supervision is not adversely affected thereby, the customs authorities may allow:
 - (a) Community goods other than those referred to in Article 98 (1) (b) to be stored on the premises of a customs warehouse;
 - (b) non-Community goods to be processed on the premises of a customs warehouse under the inward processing procedure, subject to the conditions provided for by that procedure. The formalities which may be dispensed with in a customs warehouse shall be determined in accordance with the committee procedure;
 - (c) non-Community goods to be processed on the premises of a customs warehouse under the procedure for processing under customs control, subject to the conditions provided for by that procedure. The formalities which may be dispensed with in a customs warehouse shall be determined in accordance with the committee procedure.
2. In the cases referred to in paragraph 1, the goods shall not be subject to the customs warehousing procedure.
3. The customs authorities may require the goods referred to in paragraph 1 to be entered in the stock records provided for in Article 105.

▼B*Article 107*

Goods placed under the customs warehousing procedure shall be entered in the stock records provided for in Article 105 as soon as they are brought into the customs warehouse.

Article 108

1. There shall be no limit to the length of time goods may remain under the customs warehousing procedure.

However, in exceptional cases, the customs authorities may set a time limit by which the depositor must assign the goods a new customs-approved treatment or use.

2. Specific time limits for certain goods referred to in Article 98 (1) (b) covered by the common agricultural policy may be laid down in accordance with the committee procedure.

Article 109

1. Import goods may undergo the usual forms of handling intended to preserve them, improve their appearance or marketable quality or prepare them for distribution or resale.

A list of cases in which those forms of handling shall be prohibited for goods covered by the common agricultural policy may be drawn up if this is necessary to ensure the smooth operation of the common organization of markets.

2. Community goods referred to in Article 98 (1) (b) which are placed under the customs warehousing procedure and are covered by the common agricultural policy may undergo only the forms of handling expressly stipulated for such goods.

3. The forms of handling provided for in the first subparagraph of paragraph 1 and in paragraph 2 must be authorized in advance by the customs authorities, which shall lay down the conditions under which they may take place.

4. The lists of the forms of handling referred to in paragraphs 1 and 2 shall be established in accordance with the committee procedure.

Article 110

Where circumstances so warrant, goods placed under the customs warehousing procedure may be temporarily removed from the customs warehouse. Such removal must be authorized in advance by the customs authorities, who shall stipulate the conditions on which it may take place.

While they are outside the customs warehouse the goods may undergo the forms of handling referred to in Article 109 on the conditions set out therein.

Article 111

The customs authorities may allow goods placed under the customs warehousing procedure to be transferred from one customs warehouse to another.

Article 112

1. Where a customs debt is incurred in respect of import goods and the customs value of such goods is based on a price actually paid or payable which includes the cost of warehousing and of preserving goods while they remain in the warehouse, such costs need not be

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included in the customs value if they are shown separately from the price actually paid or payable for the goods.

2. Where the said goods have undergone the usual forms of handling within the meaning of Article 109, the nature of the goods, the customs value and the quantity to be taken into account in determining the amount of import duties shall, at the request of the declarant, be those which would be taken into account for the goods, at the time referred to in Article 214, if they had not undergone such handling. However, derogations from this provision may be adopted under the committee procedure.

▼M1

3. Where import goods are released for free circulation in accordance with Article 76 (1) (c), the nature of the goods, the customs value and the quantity to be taken into account for the purposes of Article 214 shall be those applicable to the goods at the time when they were placed under the customs-warehousing procedure.

The first subparagraph shall apply provided that the rules of assessment relating to those goods were ascertained or accepted at the time when the goods were placed under the customs-warehousing procedure, unless the declarant requests their application at the time when the customs debt is incurred.

The first subparagraph shall apply without prejudice to a post-clearance examination within the meaning of Article 78.

▼B*Article 113*

Community goods referred to in Article 98 (1) (b) which are covered by the common agricultural policy and are placed under the customs warehousing procedure must be exported or be assigned a treatment or use provided for by the Community legislation governing specific fields referred to in that Article.

D. Inward processing**I. General***Article 114*

1. Without prejudice to Article 115, the inward processing procedure shall allow the following goods to be used in the customs territory of the Community in one or more processing operations:

- (a) non-Community goods intended for re-export from the customs territory of the Community in the form of compensating products, without such goods being subject to import duties or commercial policy measures;
- (b) goods released for free circulation with repayment or remission of the import duties chargeable on such goods if they are exported from the customs territory of the Community in the form of compensating products.

2. The following expressions shall have the following meanings:

- (a) suspension system: the inward processing relief arrangements as provided for in paragraph 1 (a);
- (b) drawback system: the inward processing relief arrangements as provided for in paragraph 1 (b);
- (c) processing operations:
 - the working of goods, including erecting or assembling them or fitting them to other goods,

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- the processing of goods,
and
 - the repair of goods, including restoring them and putting them in order;
 - the use of certain goods defined in accordance with the committee procedure which are not to be found in the compensating products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process;
- (d) compensating products: all products resulting from processing operations;
- (e) equivalent goods: Community goods which are used instead of the import goods for the manufacture of compensating products;
- (f) rate of yield: the quantity or percentage of compensating products obtained from the processing of a given quantity of import goods.

Article 115

1. Where the conditions laid down in paragraph 2 are fulfilled, and subject to paragraph 4, the customs authorities shall allow:

- (a) compensating products to be obtained from equivalent goods;
- (b) compensating products obtained from equivalent goods to be exported from the Community before importation of the import goods.

2. Equivalent goods must be of the same quality and have the same characteristics as the import goods. However, in specific cases determined in accordance with the committee procedure, equivalent goods may be allowed to be at a more advanced stage of manufacture than the import goods.

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

▼M3

4. Measures aimed at prohibiting, imposing certain conditions for or facilitating recourse to paragraph 1 may be adopted in accordance with the committee procedure.

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5. Where paragraph 1 (b) is applied and the compensating products would be liable to export duties if they were not being exported or re-exported under an inward processing operation, the holder of the authorization shall provide a security to ensure payment of the duties should the import goods not be imported within the period prescribed.

II. Grant of the authorization

Article 116

The authorization shall be issued at the request of the person who carries out processing operations or who arranges for them to be carried out.

Article 117

The authorization shall be granted only:

- (a) to persons established in the Community. However, the authorization may be granted to persons established outside the Community in respect of imports of a non-commercial nature;

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- (b) where, without prejudice to the use of the goods referred to in the last indent of Article 114 (2) (c) final indent, the import goods can be identified in the compensating products or, in the case referred to in Article 115, where compliance with the conditions laid down in respect of equivalent goods can be verified;
- (c) where the inward processing procedure can help create the most favourable conditions for the export or re-export of compensating products, provided that the essential interests of Community producers are not adversely affected (economic conditions).
►M3 The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the committee procedure. ◀

III. Operation of the procedure

Article 118

1. The customs authorities shall specify the period within which the compensating products must have been exported or re-exported or assigned another customs-approved treatment or use. That period shall take account of the time required to carry out the processing operations and dispose of the compensating products.

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

For reasons of simplification, it may be decided that a period which commences in the course of a calendar month or quarter shall end on the last day of a subsequent calendar month or quarter respectively.

3. Where Article 115 (1) (b) applies, the customs authorities shall specify the period within which the non-Community goods must be declared for the procedure. That period shall run from the date of acceptance of the export declaration, relating to the compensating products obtained from the corresponding equivalent goods.

4. Specific time limits may be laid down in accordance with the committee procedure for certain processing operations or for certain import goods.

Article 119

1. The customs authorities shall set either the rate of yield of the operation or where appropriate, the method of determining such rate. The rate of yield shall be determined on the basis of the actual circumstances in which the processing operation is, or is to be, carried out.

2. Where circumstances so warrant and, in particular, in the case of processing operation customarily carried out under clearly defined technical conditions involving goods of substantially uniform characteristics and resulting in the production of compensating products of uniform quality, standard rates of yield may be set in accordance with the committee procedure on the basis of actual data previously ascertained.

Article 120

The cases in which and the conditions under which goods in the unaltered state or compensating products shall be considered to have been released for free circulation may be determined in accordance with the committee procedure.

▼B*Article 121*

1. Subject to Article 122, where a customs debt is incurred, the amount of such debt shall be determined on the basis of the taxation elements appropriate to the import goods at the time of acceptance of the declaration of placing of these goods under the inward processing procedure.
2. If at the time referred to in paragraph 1 the import goods fulfilled the conditions to qualify for preferential tariff treatment within tariff quotas or ceilings, they shall be eligible for any preferential tariff treatment existing in respect of identical goods at the time of acceptance of the declaration of release for free circulation.

Article 122

By way of derogation from Article 121, compensating products:

- (a) shall be subject to the import duties appropriate to them where:
 - they are released for free circulation and appear on the list adopted in accordance with the committee procedure, to the extent that they are in proportion to the exported part of the compensating products not included in that list. However, the holder of the authorization may ask for the duty on those products to be assessed in the manual referred to in Article 121,
 - they are subject to charges established under the common agricultural policy, and provisions adopted in accordance with the committee procedure so provide;
- (b) shall be subject to import duties calculated in accordance with the rules applicable to the customs procedure in question or to free zones or free warehouses where they have been placed under a suspensive arrangement or in a free zone or free warehouse;

However,

 - the person concerned may request that duty be assessed in accordance with Article 121;
 - in cases where the compensating products have been assigned a customs-approved treatment or use referred to above other than processing under customs control, the amount of the import duty levied shall be at least equal to the amount calculated in accordance with Article 121;
- (c) may be made subject to the rules governing assessment of duty laid down under the procedure for processing under customs control where the import goods could have been placed under that procedure;
- (d) shall enjoy favourable tariff treatment owing to the special use for which they are intended, where provision is made for such treatment in the case of identical imported goods;
- (e) shall be admitted free of import duty where such duty-free provision is made in the case of identical goods imported in accordance with Article 184.

IV. Processing operations outside the customs territory of the Community

Article 123

1. Some or all of the compensating products or goods in the unaltered state may be temporarily exported for the purpose of further processing outside the customs territory of the Community if the

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customs authority so authorizes, in accordance with the conditions laid down in the outward processing provisions.

2. Where a customs debt is incurred in respect of reimported products, the following shall be charged:

- (a) import duties on the compensating products or goods in the unaltered state referred to in paragraph 1, calculated in accordance with Articles 121 and 122; and
- (b) import duties on products reimported after processing outside the customs territory of the Community, the amount of which shall be calculated in accordance with the provisions relating to the outward processing procedure, on the same conditions as would have applied had the products exported under the latter procedure been released for free circulation before such export took place.

V. Special provisions relating to the drawback system

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Article 124

1. The drawback system may be used for all goods. It shall not, however, be usable where, at the time the declaration of release for free circulation is accepted:

- the import goods are subject to quantitative import restrictions,
- a tariff measure within quotas is applied to the import goods,
- the import goods are subject to presentation of an import or export licence or certificate in the framework of the common agricultural policy, or
- an export refund or tax has been set for the compensating products.

2. Moreover, no reimbursement of import duties under the drawback system shall be possible if, at the time the export declaration for the compensating products is accepted, these products are subject to presentation of an import or export licence or certificate in the framework of the common agricultural policy or an export refund or tax has been set for them.

3. Derogations from paragraphs 1 and 2 may be laid down in accordance with the committee procedure.

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Article 125

1. The declaration of release for free circulation shall indicate that the drawback system is being used and shall provide particulars of the authorization.

2. At the request of the customs authorities, the said authorization shall be attached to the declaration of release for free circulation.

Article 126

Under the drawback system, Article 115 (1) (b), (3) and (5), Article 118 (3), Articles 120 and 121, Article 122 (a), second indent, and (c), and Article 129 shall not apply.

Article 127

Temporary exportation of compensating products carried out as provided for in Article 123 (1) shall not be considered to be exportation within the meaning of Article 128 except where such products are not reimported into the Community within the period prescribed.

▼B*Article 128***▼M1**

1. The holder of the authorization may ask for the import duty to be repaid or remitted where he can establish to the satisfaction of the customs authorities that import goods released for free circulation under the drawback system in the form of compensating products or goods in the unaltered state have been either:

— exported, or

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— placed, with a view to being subsequently re-exported, under the transit procedure, the customs-warehousing procedure, the temporary importation procedure or the inward-processing procedure (suspensive arrangement), or in a free zone or free warehouse,

provided that all conditions for use of the procedure have also been fulfilled.

2. For the purposes of being assigned a customs-approved treatment or use referred to in the second indent of paragraph 1, compensating products or goods in the unaltered state shall be considered to be non-Community goods.

3. The period within which the application for repayment must be made shall be determined in accordance with the committee procedure.

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4. Without prejudice to point (b) of Article 122, where compensating products or goods in the unaltered state placed under a customs procedure or in a free zone or free warehouse in accordance with paragraph 1 are released for free circulation, the amount of import duties repaid or remitted shall be considered to constitute the amount of the customs debt.

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5. For the purpose of determining the amount of import duties to be repaid or remitted, the first indent of Article 122 (a) shall apply *mutatis mutandis*.

VI. Other provisions

Article 129

The inward processing procedure, applying the suspension system shall also apply in order that the compensating products may qualify for exemption from the export duties to which identical products obtained from Community goods instead of import goods would be liable.

E. Processing under customs control

Article 130

The procedure for processing under customs control shall allow non-Community goods to be used in the customs territory of the Community in operations which alter their nature or state, without their being subject to import duties or commercial policy measures, and shall allow the products resulting from such operations to be released for free circulation at the rate of import duty appropriate to them. Such products shall be termed processed products.

▼ M3*Article 131*

The cases in and specific conditions under which the procedure for processing under customs control may be used shall be determined in accordance with the committee procedure.

▼ B*Article 132*

Authorization for processing under customs control shall be granted at the request of the person who carries out the processing or arranges for it to be carried out.

Article 133

Authorization shall be granted only:

- (a) to persons established in the Community;
- (b) where the import goods can be identified in the processed products;
- (c) where the goods cannot be economically restored after processing to their description or state as it was when they were placed under the procedure;
- (d) where use of the procedure cannot result in circumvention of the effect of the rules concerning origin and quantitative restrictions applicable to the imported goods;
- (e) where the necessary conditions for the procedure to help create or maintain a processing activity in the Community without adversely affecting the essential interests of Community producers of similar goods (economic conditions) are fulfilled. ► M3 The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the committee procedure. ◀

Article 134

Article 118 (1), (2) and (4) and Article 119 shall apply *mutatis mutandis*.

Article 135

Where a customs debt is incurred in respect of goods in the unaltered state or of products that are at an intermediate stage of processing as compared with that provided for in the authorization, the amount of that debt shall be determined on the basis of the items of charge elements appropriate to the import goods at the time of acceptance of the declaration relating to the placing of the goods under the procedure for processing under customs control.

Article 136

1. Where the import goods qualified for preferential tariff treatment when they were placed under the procedure for processing under customs control, and such preferential tariff treatment is applicable to products identical to the processed products released for free circulation, the import duties to which the processed products are subject shall be calculated by applying the rate of duty applicable under that treatment.

2. If the preferential tariff treatment referred to in paragraph 1 in respect of the import goods is subject to tariff quotas or tariff ceilings, the application of the rate of duty referred to in paragraph 1 in respect of the processed products shall also be subject to the condition that the said preferential tariff treatment is applicable to the import goods at the time of acceptance of the declaration of release for free circulation. In this case, the quantity of import goods actually used in the manufacture of the processed products released for free circu-

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lation shall be charged against the tariff quotas or ceilings in force at the time of acceptance of the declaration of release for free circulation and no quantities shall be counted against tariff quotas or ceilings opened in respect of products identical to the processed products.

F. Temporary importation*Article 137*

The temporary importation procedure shall allow the use in the customs territory of the Community, with total or partial relief from import duties and without their being subject to commercial policy measures, of non-Community goods intended for re-export without having undergone any change except normal depreciation due to the use made of them.

Article 138

Authorization for temporary importation shall be granted at the request of the person who uses the goods or arranges for them to be used.

Article 139

The customs authorities shall refuse to authorize use of the temporary importation procedure where it is impossible to ensure that the import goods can be identified.

However, the customs authorities may authorize use of the temporary importation procedure without ensuring that the goods can be identified where, in view of the nature of the goods or of the operations to be carried out, the absence of identification measures is not liable to give rise to any abuse of the procedure.

Article 140

1. The customs authorities shall determine the period within which import goods must have been re-exported or assigned a new customs-approved treatment or use. Such period must be long enough for the objective of authorized use to be achieved.

2. Without prejudice to the special periods laid down in accordance with Article 141, the maximum period during which goods may remain under the temporary importation procedure shall be 24 months. The customs authorities may, however, determine shorter periods with the agreement of the person concerned.

3. However, where exceptional circumstances so warrant, the customs authorities may, at the request of the person concerned and within reasonable limits, extend the periods referred to in paragraphs 1 and 2 in order to permit the authorized use.

Article 141

The case and the special conditions under which the temporary importation procedure may be used with total relief from import duties shall be determined in accordance with the committee procedure.

▼M3*Article 142*

1. Use of the temporary importation procedure with partial relief from import duties shall be granted in respect of goods which are not covered by the provisions adopted in accordance with Article 141 or which are covered by such provisions but do not fulfil all the conditions

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laid down therein for the grant of temporary importation with total relief.

2. The list of goods in respect of which the temporary importation procedure with partial relief from import duties may not be used and the conditions subject to which the procedure may be used shall be determined in accordance with the committee procedure.

▼B*Article 143*

1. The amount of import duties payable in respect of goods placed under the temporary importation procedure with partial relief from import duties shall be set at 3 %, for every month or fraction of a month during which the goods have been placed under the temporary importation procedure with partial relief, of the amount of duties which would have been payable on the said goods had they been released for free circulation on the date on which they were placed under the temporary importation procedure.

2. The amount of import duties to be charged shall not exceed that which would have been charged if the goods concerned had been released for free circulation on the date on which they were placed under the temporary importation procedure, leaving out of account any interest which may be applicable.

3. Transfer of the rights and obligations deriving from the temporary importation procedure pursuant to Article 90 shall not mean that the same relief arrangements must be applied to each of the periods of use to be taken into consideration.

4. Where the transfer referred to in paragraph 3 is made with partial relief for both persons authorized to use the procedure during the same month, the holder of the initial authorization shall be liable to pay the amount of import duties due for the whole of that month.

Article 144

1. Where a customs debt is incurred in respect of import goods, the amount of such debt shall be determined on the basis of the taxation elements appropriate to those goods at the time of acceptance of the declaration of their placing under the temporary importation procedure. However, where the provisions of Article 141 so provide, the amount of the debt shall be determined on the basis of the taxation elements appropriate to the goods in question at the time referred to in Article 214.

2. Where, for a reason other than the placing of goods under the temporary importation procedure with partial relief from import duties, a customs debt is incurred in respect of goods placed under the said procedure, the amount of that debt shall be equal to the difference between the amount of duties calculated pursuant to paragraph 1 and that payable pursuant to Article 143.

G. Outward processing**I. General***Article 145*

1. The outward processing procedure shall, without prejudice to the provisions governing specific fields relating to the standard exchange system laid down in Articles 154 to 159 or to Article 123, allow Community goods to be exported temporarily from the customs territory of the Community in order to undergo processing operations

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and the products resulting from those operations to be released for free circulation with total or partial relief from import duties.

2. Temporary exportation of Community goods shall entail the application of export duties, commercial policy measures and other formalities for the exit of Community goods from the customs territory of the Community.

3. The following definitions shall apply:

- (a) 'temporary export goods' means goods placed under the outward processing procedure;
- (b) 'processing operations' means the operations referred to in Article 114 (2) (c), first, second and third indents;
- (c) 'compensating products' means all products resulting from processing operations;
- (d) 'rate of yield' means the quantity or percentage of compensating products obtained from the processing of a given quantity of temporary export goods.

Article 146

1. The outward processing procedure shall not be open to Community goods:

- whose export gives rise to repayment or remission of import duties,
- which, prior to export, were released for free circulation with total relief from import duties by virtue of end use, for as long as the conditions for granting such relief continue to apply,
- whose export gives rise to the granting of export refunds or in respect of which a financial advantage other than such refunds is granted under the common agricultural policy by virtue of the export of the said goods.

2. However, derogations from the second indent of paragraph 1 may be determined in accordance with the committee procedure.

II. Grant of the authorization*Article 147*

1. Authorization to use the outward processing procedure shall be issued at the request of the person who arranges for the processing operations to be carried out.

2. By way of derogation from paragraph 1, authorization to use the outward processing procedure may be granted to another person in respect of goods of Community origin within the meaning of Title II, Chapter 2, Section 1, where the processing operation consists in incorporating those goods into goods obtained outside the Community and imported as compensating products, provided that use of the procedure helps to promote the sale of export goods without adversely affecting the essential interests of Community producers of products identical or similar to the imported compensating products.

The cases in which and the arrangements under which the preceding subparagraph shall apply shall be determined in accordance with the committee procedure.

Article 148

Authorization shall be granted only:

- (a) to persons established in the Community;

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- (b) where it is considered that it will be possible to establish that the compensating products have resulted from processing of the temporary export goods.

The cases in which derogations from this subparagraph may apply and the conditions under which such derogations shall apply shall be determined in accordance with the committee procedure;

- (c) where authorization to use the outward processing procedure is not liable seriously to harm the essential interests of Community processors (economic conditions).

III. Operation of the procedure

Article 149

1. The customs authorities shall specify the period within which the compensating products must be reimported into the customs territory of the Community. They may extend that period on submission of a duly substantiated request by the holder of the authorization.

2. The customs authorities shall set either the rate of yield of the operation or, where necessary, the method of determining that rate.

Article 150

1. The total or partial relief from import duties provided for in Article 151 (1) shall be granted only where the compensating products are declared for release for free circulation in the name of or on behalf of:

- (a) the holder of the authorization, or
- (b) any other person established in the Community provided that that person has obtained the consent of the holder of the authorization and the conditions of the authorization are fulfilled.

2. The total or partial relief from import duties provided for in Article 151 shall not be granted where one of the conditions or obligations relating to the outward processing procedure is not fulfilled, unless it is established that the failures have no significant effect on the correct operation of the said procedure.

Article 151

1. The total or partial relief from import duties provided for in Article 145 shall be effected by deducting from the amount of the import duties applicable to the compensating products released for free circulation the amount of the import duties that would be applicable on the same date to the temporary export goods if they were imported into the customs territory of the Community from the country in which they underwent the processing operation or last processing operation.

2. The amount to be deducted pursuant to paragraph 1 shall be calculated on the basis of the quantity and nature of the goods in question on the date of acceptance of the declaration placing them under the outward processing procedure and on the basis of the other items of charge applicable to them on the date of acceptance of the declaration relating to the release for free circulation of the compensating products.

The value of the temporary export goods shall be that taken into account for those goods in determining the customs value of the compensating products in accordance with Article 32 (1) (b) (i) or, if the value cannot be determined in that way, the difference between the customs value of the compensating products and the processing costs determined by reasonable means.

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However,

- certain charges determined in accordance with the committee procedure shall not be taken into account in calculating the amount to be deducted;
 - where, prior to being placed under the outward processing procedure, the temporary export goods were released for free circulation at a reduced rate by virtue of their end use, and for as long as the conditions for granting the reduced rate continue to apply, the amount to be deducted shall be the amount of import duties actually levied when the goods were released for free circulation.
3. Where temporary export goods could qualify on their release for free circulation for a reduced or zero rate of duty by virtue of their end use, that rate shall be taken into account provided that the goods underwent operations consistent with such an end-use in the country where the processing operation or last such operation took place.
 4. Where compensating products qualify for a preferential tariff measure within the meaning of Article 20 (3) (d) or (e) and the measure exists for goods falling within the same tariff classification as the temporary export goods, the rate of import duty to be taken into account in establishing the amount to be deducted pursuant to paragraph 1 shall be that which would apply if the temporary export goods fulfilled the conditions under which that preferential measure may be applied.
 5. This Article shall be without prejudice to the application of provisions, adopted or liable to be adopted in the context of trade between the Community and third countries, which provide for relief from import duties in respect of certain compensating products.

Article 152

1. Where the purpose of the processing operation is the repair of the temporary export goods, they shall be released for free circulation with total relief from import duties where it is established to the satisfaction of the customs authorities that the goods were repaired free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect.
2. Paragraph 1 shall not apply where account was taken of the defect at the time when the goods in question were first released for free circulation.

Article 153

Where the purpose of the processing operation is the repair of temporary export goods and such repair is carried out in return for payment, the partial relief from import duties provided for in Article 145 shall be granted by establishing the amount of the duties applicable on the basis of the taxation elements pertaining to the compensating products on the date of acceptance of the declaration of release for free circulation of those products and taking into account as the customs value an amount equal to the repair costs, provided that those costs represent the only consideration provided by the holder of the authorization and are not influenced by any links between that holder and the operator.

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By way of derogation from Article 151, the committee procedure may be used to determine the cases in and specific conditions under which goods may be released for free circulation following an outward-processing operation, with the cost of the processing operation being taken as the basis for assessment for the purpose of applying the Customs Tariff of the European Communities.

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IV. Outward-processing with use of the standard exchange system

Article 154

1. Under the conditions laid down in this Section IV which are applicable in addition to the preceding provisions, the standard exchange system shall permit an imported product, hereinafter referred to as a 'replacement product', to replace a compensating product.
2. The customs authorities shall allow the standard exchange system to be used where the processing operation involves the repair of Community goods other than those subject to the common agricultural policy or to the specific arrangements applicable to certain goods resulting from the processing of agricultural products.
3. Without prejudice to Article 159, the provisions applicable to compensating products shall also apply to replacement products.
4. The customs authorities shall, under the conditions they lay down, permit replacement products to be imported before the temporary export goods are exported (prior importation).

In the event of prior importation of a replacement, security shall be provided to cover the amount of the import duties.

Article 155

1. Replacement products shall have the same tariff classification, be of the same commercial quality and possess the same technical characteristics as the temporary export goods had the latter undergone the repair in question.
2. Where the temporary export goods have been used before export, the replacement products must also have been used and may not be new products.

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

Article 156

Standard exchange shall be authorized only where it is possible to verify that the conditions laid down in Article 155 are fulfilled.

Article 157

1. In the case of prior importation, the export goods shall be temporarily exported within a period of two months from the date of acceptance by the customs authorities of the declaration relating to the release of the replacement products for free circulation.
2. However, where exceptional circumstances so warrant, the customs authorities may, at the request of the person concerned, extend within reasonable limits the period referred to in paragraph 1.

Article 158

In the case of prior importation and where Article 151 is applied, the amount to be deducted shall be determined on the basis of the items of charge applicable to the temporary export goods on the date of acceptance of the declaration placing them under the procedure.

▼B*Article 159*

Article 147 (2) and Article 148 (b) shall not apply in the context of standard exchange.

V. Other provision

Article 160

The procedures provided for within the framework of out-ward processing shall also be applicable for the purposes of implementing non-tariff common commercial policy measures.

Section 4

Export*Article 161*

1. The export procedure shall allow Community goods to leave the customs territory of the Community.

Exportation shall entail the application of exit formalities including commercial policy measures and, where appropriate, export duties.

2. With the exception of goods placed under the out-ward processing procedure or a transit procedure pursuant to Article 163, and without prejudice to Article 164, all Community goods intended for export shall be placed under the export procedure.

3. Goods dispatched to Helgoland shall not be considered to be exports from the customs territory of the Community.

4. The case in which and the conditions under which goods leaving the customs territory of the Community are not subject to an export declaration shall be determined in accordance with the committee procedure.

5. The export declaration must be lodged at the customs office responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment. Derogations shall be determined in accordance with the committee procedure.

Article 162

Release for export shall be granted on condition that the goods in question leave the customs territory of the Community in the same condition as when the export declaration was accepted.

Section 5

Internal transit*Article 163*

1. The internal transit procedure shall, under the conditions laid down in paragraphs 2 to 4, allow the movement of Community goods from one point to another within the customs territory of the Community passing through the territory of a third country without any change in their customs status. This provision shall be without prejudice to the application of Article 91 (1) (b).

2. The movement referred to in paragraph 1 may take place either:

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- (a) under the internal Community transit procedure, provided that such a possibility is provided for in an international agreement;
 - (b) under cover of a TIR carnet (TIR Convention);
 - (c) under cover of an ATA carnet ► **M1** ————— ◀ used as a transit document;
 - (d) under cover of a Rhine Manifest (Article 9 of the Revised Convention for the Navigation of the Rhine);
 - (e) under cover of form 302 as provided for in the agreement between the States party to the North Atlantic Treaty on the status of their forces, signed in London on 19 June 1951, or
 - (f) by post (including parcel post).
3. In the case referred to in paragraph 2 (a), Articles 92, 94, 95, 96 and 97 shall apply *mutatis mutandis*.
4. In the cases referred to in paragraph 2 (b) to (f) goods shall keep their customs status only if that status is established under the conditions and in the form prescribed by the provisions adopted in accordance with the committee procedure.

Article 164

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

Article 165

The internal Community transit procedure shall also apply where a Community provision makes express provision for its application.

CHAPTER 3

OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE

Section 1

Free zones and free warehouses**A. General***Article 166*

Free zones and free warehouses shall be parts of the customs territory of the Community or premises situated in that territory and separated from the rest of it in which:

- (a) Community goods are considered, for the purpose of import duties and commercial policy import measures, as not being on Community customs territory, provided they are not released for free circulation or placed under another customs procedure or used or consumed under conditions other than those provided for in customs regulations;
- (b) Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attaching to the export of goods.

▼B*Article 167*

1. Member States may designate parts of the customs territory of the Community as free zones or authorize the establishment of free warehouses.
2. Member States shall determine the area covered by each zone. Premises which are to be designated as free warehouses must be approved by Member States.

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3. Free zones with the exception of those designated in accordance with Article 168a, shall be enclosed. The Member States shall define the entry and exit points of each free zone or free warehouse.

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4. The construction of any building in a free zone shall require the prior approval of the customs authorities.

*Article 168***▼M3**

1. The perimeter and the entry and exit points of free zones, except the free zones designated in accordance with Article 168a, and of free warehouses shall be subject to supervision by the customs authorities.

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2. Persons and means of transport entering or leaving a free zone or free warehouse may be subjected to a customs check.
3. Access to a free zone or free warehouse may be denied to persons who do not provide every guarantee necessary for compliance with the rules provided for in this Code.
4. The customs authorities may check goods entering, leaving or remaining in a free zone or free warehouse. To enable such checks to be carried out, a copy of the transport document, which shall accompany goods entering or leaving, shall be handed to, or kept at the disposal of, the customs authority by any person designated for this purpose by such authorities. Where such checks are required, the goods shall be made available to the customs authorities.

▼M3*Article 168a*

1. The customs authorities may designate free zones in which customs checks and formalities shall be carried out and the provisions concerning customs debt applied in accordance with the requirements of the customs warehousing procedure.

Articles 170, 176 and 180 shall not apply to the free zones thus designated.

2. References to free zones in Articles 37, 38 and 205 shall not apply to free zones referred to in paragraph 1.

▼B**B. Placing of goods in free zones or free warehouses***Article 169*

Both Community and non-Community goods may be placed in a free zone or free warehouse.

However, the customs authorities may require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them.

▼B*Article 170*

1. Without prejudice to Article 168 (4), goods entering a free zone or free warehouse need not be presented to the customs authorities, nor need a customs declaration be lodged.

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2. Goods shall be presented to the customs authorities and undergo the prescribed customs formalities where:

- (a) they have been placed under a customs procedure which is discharged when they enter a free zone or free warehouse; however, where the customs procedure in question permits exemption from the obligation to present goods, such presentation shall not be required;
- (b) they have been placed in a free zone or free warehouse on the basis of a decision to grant repayment or remission of import duties;
- (c) they qualify for the measures referred to in Article 166(b);
- (d) they enter a free zone or free warehouse directly from outside the customs territory of the Community.

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3. Customs authorities may require goods subject to export duties or to other export provisions to be notified to the customs department.

4. At the request of the party concerned, the customs authorities shall certify the Community or non-Community status of goods placed in a free zone or free warehouse.

C. Operation of free zones and free warehouses*Article 171*

1. There shall be no limit to the length of time goods may remain in free zones or free warehouses.

2. For certain goods referred to in Article 166 (b) which are covered by the common agricultural policy, specific time limits may be imposed in accordance with the committee procedure.

Article 172

1. Any industrial, commercial or service activity shall, under the conditions laid down in this Code, be authorized in a free zone or free warehouse. The carrying on of such activities shall be notified in advance to the customs authorities.

2. The customs authorities may impose certain prohibitions or restrictions on the activities referred to in paragraph 1, having regard to the nature of the goods concerned or the requirements of customs supervision.

3. The customs authorities may prohibit persons who do not provide the necessary guarantees of compliance with the provisions laid down in this Code from carrying on an activity in a free zone or free warehouse.

Article 173

Non-Community goods placed in a free zone or free warehouse may, while they remain in a free zone or free warehouse:

- (a) be released for free circulation under the conditions laid down by that procedure and by Article 178;
- (b) undergo the usual forms of handling referred to in Article 109 (1) without authorization;

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- (c) be placed under the inward processing procedure under the conditions laid down by that procedure.

However, processing operations within the territory of the old free port of Hamburg, in the free zones of the Canary Islands, Azores, Madeira and overseas departments shall not be subject to economic conditions.

However, with regard to the old free port of Hamburg, if conditions of competition in a specific economic sector in the Community are affected as a result of this derogation, the Council, acting by a qualified majority on a proposal from the Commission, shall decide that economic conditions shall apply to the corresponding economic activity within the territory of the old free port of Hamburg;

- (d) be placed under the procedure for processing under customs control under the conditions laid down by that procedure;
- (e) be placed under the temporary importation procedure under the conditions laid down by that procedure;
- (f) be abandoned in accordance with Article 182;
- (g) be destroyed, provided that the person concerned supplies the customs authorities with all the information they judge necessary.

Where goods are placed under one of the procedures referred to in (c), (d) or (e), the Member States may, in so far as is necessary to take account of the operating and customs supervision conditions of the free zones or free warehouses, adapt the control arrangements laid down.

Article 174

The Community goods referred to in Article 166 (b) which are covered by the common agricultural policy shall under-go only the forms of handling expressly prescribed for such goods in conformity with Article 109 (2). Such handling may be undertaken without authorization.

Article 175

1. Where Articles 173 and 174 are not applied, non-Community goods and the Community goods referred to in Article 166 (b) shall not be consumed or used in free zones or in free warehouses.
2. Without prejudice to the provisions applicable to supplies or stores, where the procedure concerned so provides, paragraph 1 shall not preclude the use or consumption of goods the release for free circulation or temporary importation of which would not entail application of import duties or measures under the common agricultural policy or commercial policy. In that event, no declaration of release for free circulation or temporary importation shall be required.

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

Article 176

1. All persons carrying on an activity involving the storage, working or processing, or sale or purchase, of goods in a free zone or free warehouse shall keep stock records in a form approved by the customs authorities. Goods shall be entered in the stock records as soon as they are brought into the premises of such person. The stock records must enable the customs authorities to identify the goods, and must record their movements.

▼M4

2. Where goods are transhipped within a free zone, the records relating to the operation shall be kept at the disposal of the customs authorities. The short-term storage of goods in connection with such transhipment shall be considered to be an integral part of the operation.

For goods brought into a free zone directly from outside the customs territory of the Community or out of a free zone directly leaving the customs territory of the Community, a summary declaration shall be lodged in accordance with Articles 36a to 36c or 182a to 182d, as appropriate.

▼B**D. Removal of goods from free zones or free warehouses***Article 177*

Without prejudice to special provisions adopted under customs legislation governing specific fields, goods leaving a free zone or free warehouse may be:

- exported or re-exported from the customs territory of the Community, or
- brought into another part of the customs territory of the Community.

The provisions of Title III, with the exception of Articles 48 to 53 where Community goods are concerned, shall apply to goods brought into other parts of that territory except in the case of goods which leave that zone by sea or air without being placed under a transit or other customs procedure.

Article 178

1. Where a customs debt is incurred in respect of non-Community goods and the customs value of such goods is based on a price actually paid or payable which includes the cost of warehousing or of preserving goods while they remain in the free zone or free warehouse, such costs shall not be included in the customs value if they are shown separately from the price actually paid or payable for the goods.

2. Where the said goods have undergone, in a free zone or free warehouse, one of the usual forms of handling within the meaning of Article 109 (1), the nature of the goods, the customs value and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant and provided that such handling was covered by an authorization granted in accordance with paragraph 3 of that Article, be those which would be taken into account in respect of those goods, at the time referred to in Article 214, had they not undergone such handling. Derogations from this provision may, however, be determined in accordance with the committee procedure.

Article 179

1. Community goods referred to in Article 166 (b) which are covered by the common agricultural policy and are placed in a free zone or free warehouse shall be assigned a treatment or use provided for by the rules under which they are eligible, by virtue of their being placed in a free zone or free warehouse, for measures normally attaching to the export of such goods.

2. Should such goods be returned to another part of the customs territory of the Community, or if no application for their assignment to a treatment or use referred to in paragraph 1 has been made by the expiry of the period prescribed pursuant to Article 171 (2), the customs authorities shall take the measures laid down by the relevant legislation

▼B

governing specific fields relating to failure to comply with the specified treatment or use.

Article 180

1. Where goods are brought into or returned to another part of the customs territory of the Community or placed under a customs procedure, the certificate referred to in Article 170 (4) may be used as proof of the Community or non-Community status of such goods.

2. Where it is not proved by the certificate or other means that the goods have Community or non-Community status, the goods shall be considered to be:

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

▼M4*Article 181*

The customs authorities shall satisfy themselves that the rules governing exportation, outward processing, re-exportation, suspensive procedures or the internal transit procedure, as well as the provisions of Title V, are respected where goods are to leave the customs territory of the Community from a free zone or free warehouse.

▼B

Section 2

Re-exportation, destruction and abandonment*Article 182*

1. Non-Community goods may be:

- re-exported from the customs territory of the Community;
- destroyed;
- abandoned to the exchequer where national legislation makes provision to that effect.

2. Re-exportation shall, where appropriate, involve application of the formalities laid down for goods leaving, including commercial policy measures.

Cases in which non-Community goods may be placed under a suspensive arrangement with a view to non-application of commercial policy measures on exportation may be determined in accordance with the committee procedure.

3. ►**M1** Save in cases determined in accordance with the committee procedure, ►**M4** ————— ◀ destruction shall be the subject of prior notification of the customs authorities. ◀ The customs authorities shall prohibit re-exportation should the formalities or measures referred to in the first subparagraph of paragraph 2 so provide. Where goods are placed under an economic customs procedure when on Community customs territory are intended for re-exportation, a customs declaration within the meaning of Articles 59 to 78 shall be lodged. In such cases, Article 161 (4) and (5) shall apply.

Abandonment shall be put into effect in accordance with national provisions.

4. Destruction or abandonment shall not entail any expense for the exchequer.

▼B

5. Any waste or scrap resulting from destruction shall be assigned a customs-approved treatment or use prescribed for non-Community goods.

It shall remain under customs supervision until the time laid down in Article 37 (2).

TITLE V

GOODS LEAVING THE CUSTOMS TERRITORY OF THE COMMUNITY**▼M4***Article 182a*

1. Goods leaving the customs territory of the Community, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory, shall be covered either by a customs declaration or, where a customs declaration is not required, a summary declaration.

2. The committee procedure shall be used to establish:

- the time limit by which the customs declaration or a summary declaration is to be lodged at the customs office of export before the goods are brought out of the customs territory of the Community,
- the rules for exceptions from and variations to the time limit referred to above,
- the conditions under which the requirement for a summary declaration may be waived or adapted, and
- the cases in which and the conditions under which goods leaving the customs territory of the Community are not subject to either a customs declaration or a summary declaration,

in accordance with the specific circumstances and for particular types of goods traffic, modes of transport and economic operators and where international agreements provide for special security arrangements.

Article 182b

1. Where goods leaving the customs territory of the Community are assigned to a customs approved treatment or use for the purpose of which a customs declaration is required under the customs rules, this customs declaration shall be lodged at the customs office of export before the goods are to be brought out of the customs territory of the Community.

2. Where the customs office of export is different from the customs office of exit, the customs office of export shall immediately communicate or make available electronically the necessary particulars to the customs office of exit.

3. The customs declaration shall contain at least the particulars necessary for the summary declaration referred to in Article 182d(1).

4. Where the customs declaration is made other than by use of a data processing technique, the customs authorities shall apply the same level of risk management to the data as that applied to customs declarations made using a data processing technique.

Article 182c

1. Where goods leaving the customs territory of the Community are not assigned to a customs approved treatment or use for which a

▼M4

customs declaration is required, a summary declaration shall be lodged at the customs office of exit before the goods are to be brought out of the customs territory of the Community.

2. Customs authorities may allow the summary declaration to be lodged at another customs office, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of exit.

3. Customs authorities may accept, instead of the lodging of a summary declaration, the lodging of a notification and access to the summary declaration data in the economic operator's computer system.

Article 182d

1. The committee procedure shall be used to establish a common data set and format for the summary declaration, containing the particulars necessary for risk analysis and the proper application of customs controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices.

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

Customs authorities may accept paper-based summary declarations in exceptional circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using a data processing technique.

3. The summary declaration shall be lodged by:

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

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

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

▼B*Article 183*

Goods leaving the customs territory of the Community shall be subject to customs supervision. They may be the subject of checks by the customs authorities in accordance with the provisions in force. They shall leave the said territory using, where appropriate, the route determined by the customs authorities and in accordance with the procedures laid down by those authorities.



TITLE VI
PRIVILEGED OPERATIONS

CHAPTER 1
RELIEFS FROM CUSTOMS DUTY

Article 184

The Council shall, acting by a qualified majority on a proposal from the Commission, determine the cases in which, on account of special circumstances, relief from import duties or export duties shall be granted where goods are released for free circulation or exported.

CHAPTER 2
RETURNED GOODS

Article 185

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

However:

- the three-year period may be exceeded in order to take account of special circumstances;
- where, prior to their exportation from the customs territory of the Community, the returned goods had been released for free circulation at reduced or zero import duty because of their use for a particular purpose exemption from duty under paragraph 1 shall be granted only if they are to be re-imported for the same purpose.

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

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

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

Article 186

The relief from import duties provided for in Article 185 shall be granted only if goods are reimported in the state in which they were exported. The circumstances in which and the conditions under which this requirement may be waived shall be determined in accordance with the procedure of the committee.

▼B*Article 187*

Articles 185 and 186 shall apply *mutatis mutandis* to compensating products originally exported or re-exported subsequent to an inward processing procedure.

The amount of import duty legally owed shall be determined on the basis of the rules applicable under the inward processing procedure, the date of re-export being regarded as the date of release for free circulation.

CHAPTER 3

PRODUCTS OF SEA-FISHING AND OTHER PRODUCTS TAKEN FROM THE SEA*Article 188*

Without prejudice to Article 23 (1) (f), the following shall be exempt from import duties when they are released for free circulation:

- (a) products of sea-fishing and other products taken from the territorial sea of a third country by vessels registered or recorded in a Member State and flying the flag of that state;
- (b) products obtained from products referred to in (a) on board factory-ships fulfilling the conditions laid down in that subparagraph.

TITLE VII

CUSTOMS DEBT

CHAPTER 1

SECURITY TO COVER CUSTOMS DEBT*Article 189*

1. Where, in accordance with customs rules, the customs authorities require security to be provided in order to ensure payment of a customs debt, such security shall be provided by the person who is liable or who may become liable for that debt.

2. The customs authorities shall require only one security to be provided in respect of one customs debt.

Where security is provided under a customs procedure which may be used for specific goods in several Member States, that security shall, as laid down in the provisions adopted under the committee procedure, be valid in the Member States concerned.

3. The customs authorities may authorize the security to be provided by a person other than the person from whom it is required.

4. Where the person who has incurred or who may incur a customs debt is a public authority, no security shall be required.

5. The customs authorities may waive the requirement for provision of security where the amount to be secured does not exceed ECU 500.

Article 190

1. Where customs legislation provides that the provision of security is optional, such security shall be required at the discretion of the customs authorities in so far as they consider that a customs debt which has been or may be incurred is not certain to be paid within the prescribed period.

▼B

Where the security referred to in the preceding subparagraph is not required, the customs authorities may nevertheless require from the person referred to in Article 189 (1) an undertaking to comply with the obligations which that person is legally obliged to fulfil.

2. The security referred to in the first subparagraph of paragraph 1 shall be required:
 - at the time of application of the rules requiring such security to be provided, or
 - at any subsequent time when the customs authorities find that the customs debt which has been or may be incurred is not certain to be paid within the prescribed period.

Article 191

At the request of the person referred to in Article 189 (1) or (3), the customs authorities shall allow comprehensive security to be provided to cover two or more operations in respect of which a customs debt has been or may be incurred.

*Article 192***▼M2**

1. Where customs legislation makes it compulsory for security to be provided, and subject to the specific provisions laid down for transit in accordance with the committee procedure, the customs authorities shall fix the amount of such security at a level equal to:

▼B

- the precise amount of the customs debt or debts in question where that amount can be established with certainty at the time when the security is required,
- in other cases the maximum amount, as estimated by the customs authorities, of the customs debt or debts which have been or may be incurred.

Where comprehensive security is provided for customs debts which vary in amount over time, the amount of such security shall be set at a level enabling the customs debts in question to be covered at all times.

2. Where customs legislation provides that the provision of security is optional and the customs authorities require security to be provided, the amount of the security shall be fixed by those authorities so as not to exceed the level provided for in paragraph 1.
3. The circumstances in which and the conditions under which a flat-rate security may be provided shall be determined in accordance with the procedure of the committee.

Article 193

Security may be provided by either:

- a cash deposit, or
- a guarantor.

Article 194

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

The following shall be deemed equivalent to a cash deposit:

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- submission of a cheque the payment of which is guaranteed by the institution on which it is drawn in any manner acceptable to the customs authorities,
 - submission of any other instrument recognized by those authorities as a means of payment.
2. Security in the form of a cash deposit or payment deemed equivalent to a cash deposit shall be given in accordance with the provisions in force in the Member State in which the security is required.

Article 195

The guarantor shall undertake in writing to pay jointly and severally with the debtor the secured amount of a customs debt which falls to be paid.

The guarantor must be a third person established in the Community and approved by the customs authorities of the Member State.

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

Article 196

The person required to provide security shall be free to choose between the types of security laid down in Article 193.

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

Article 197

1. Where the rules adopted in accordance with the committee procedure so provide, the customs authorities may accept types of security other than those referred to in Article 193 where they provide equivalent assurance that the customs debt will be paid.

The customs authorities shall refuse the security proposed by the debtor where they do not consider that such security is certain to ensure payment of the customs debt.

2. Subject to the reservation referred to in the second subparagraph of paragraph 1, the customs authorities may accept a cash deposit without the conditions laid down in Article 194 (1) being fulfilled.

Article 198

Where the customs authorities establish that the security provided does not ensure, or is no longer certain or sufficient to ensure, payment of the customs debt within the prescribed period, they shall require the person referred to in Article 189 (1), at his option, to provide additional security or to replace the original security with a new security.

Article 199

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

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

Article 200

Provisions derogating from those contained in this chapter shall, where necessary, be adopted in accordance with committee procedure in order to take account of international conventions.

CHAPTER 2

INCURRENCE OF A CUSTOMS DEBT*Article 201*

1. A customs debt on importation shall be incurred through:
 - (a) the release for free circulation of goods liable to import duties, or
 - (b) the placing of such goods under the temporary importation procedure with partial relief from import duties.
2. A customs debt shall be incurred at the time of acceptance of the customs declaration in question.
3. The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor.

Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part of the duties legally owed not being collected, the persons 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, may also be considered debtors in accordance with the national provisions in force.

Article 202

1. A customs debt on importation shall be incurred through:
 - (a) the unlawful introduction into the customs territory of the Community of goods liable to import duties, or
 - (b) the unlawful introduction into another part of that territory of such goods located in a free zone or free warehouse.

For the purpose of this Article, unlawful introduction means any introduction in violation of the provisions of Articles 38 to 41 and the second indent of Article 177.

2. The customs debt shall be incurred at the moment when the goods are unlawfully introduced.
3. The debtors shall be:
 - the person who introduced such goods unlawfully,
 - any persons who participated in the unlawful introduction of the goods and who were aware or should reasonably have been aware that such introduction was unlawful, and
 - any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been introduced unlawfully.

▼B*Article 203*

1. A customs debt on importation shall be incurred through:
 - the unlawful removal from customs supervision of goods liable to import duties.
2. The customs debt shall be incurred at the moment when the goods are removed from customs supervision.
3. The debtors shall be:
 - the person who removed the goods from customs supervision,
 - any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,
 - any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision, and
 - where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.

Article 204

1. A customs debt on importation shall be incurred through:
 - (a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or
 - (b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods,

in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.
3. The debtor shall be the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed, or to comply with the conditions governing the placing of the goods under that procedure.

Article 205

1. A customs debt on importation shall be incurred through:
 - the consumption or use, in a free zone or a free warehouse, of goods liable to import duties, under conditions other than those laid down by the legislation in force.

Where goods disappear and where their disappearance cannot be explained to the satisfaction of the customs authorities, those authorities may regard the goods as having been consumed or used in the free zone or the free warehouse.

▼B

2. The debt shall be incurred at the moment when the goods are consumed or are first used under conditions other than those laid down by the legislation in force.

3. The debtor shall be the person who consumed or used the goods and any persons who participated in such consumption or use and who were aware or should reasonably have been aware that the goods were being consumed or used under conditions other than those laid down by the legislation in force.

Where customs authorities regard goods which have disappeared as having been consumed or used in the free zone or the free warehouse and it is not possible to apply the preceding paragraph, the person liable for payment of the customs debt shall be the last person known to these authorities to have been in possession of the goods.

Article 206

1. By way of derogation from Articles 202 and 204 (1) (a), no customs debt on importation shall be deemed to be incurred in respect of specific goods where the person concerned proves that the non-fulfilment of the obligations which arise from:

- the provisions of Articles 38 to 41 and the second indent of Article 177, or
- keeping the goods in question in temporary storage, or
- the use of the customs procedure under which the goods have been placed,

results from the total destruction or irretrievable loss of the said goods as a result of the actual nature of the goods or unforeseeable circumstances or *force majeure*, or as a consequence of authorization by the customs authorities.

For the purposes of this paragraph, goods shall be irretrievably lost when they are rendered unusable by any person.

2. Nor shall a customs debt on importation be deemed to be incurred in respect of goods released for free circulation at a reduced or zero rate of import duty by virtue of their end-use, where such goods are exported or re-exported with the permission of the customs authorities.

Article 207

Where, in accordance with Article 206 (1), no customs debt is deemed to be incurred in respect of goods released for free circulation at a reduced or zero rate of import duty on account of their end-use, any scrap or waste resulting from such destruction shall be deemed to be non-Community goods.

Article 208

Where in accordance with Article 203 or 204 a customs debt is incurred in respect of goods released for free circulation at a reduced rate of import duty on account of their end-use, the amount paid when the goods were released for free circulation shall be deducted from the amount of the customs debt.

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

Article 209

1. A customs debt on exportation shall be incurred through:

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- the exportation from the customs territory of the Community, under cover of a customs declaration, of goods liable to export duties.
2. The customs debt shall be incurred at the time when such customs declaration is accepted.
 3. The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the declaration is made shall also be a debtor.

Article 210

1. A customs debt on exportation shall be incurred through:
 - the removal from the customs territory of the Community of goods liable to export duties without a customs declaration.
2. The customs debt shall be incurred at the time when the said goods actually leave that territory.
3. The debtor shall be:
 - the person who removed the goods, and
 - any persons who participated in such removal and who were aware or should reasonably have been aware that a customs declaration had not been but should have been lodged.

Article 211

1. A customs debt on exportation shall be incurred through:
 - failure to comply with the conditions under which the goods were allowed to leave the customs territory of the Community with total or partial relief from export duties.
2. The debt shall be incurred at the time when the goods reach a destination other than that for which they were allowed to leave the customs territory of the Community with total or partial relief from export duties or, should the customs authorities be unable to determine that time, the expiry of the time limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled.
3. The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the declaration is made shall also be a debtor.

Article 212

The customs debt referred to in Articles 201 to 205 and 209 to 211 shall be incurred even if it relates to goods subject to measures of prohibition or restriction on importation or exportation of any kind whatsoever. However, no customs debt shall be incurred on the unlawful introduction into the customs territory of the Community of counterfeit currency or of narcotic drugs and psychotropic substances which do not enter into the economic circuit strictly supervised by the competent authorities with a view to their use for medical and scientific purposes. For the purposes of criminal law as applicable to customs offences, the customs debt shall nevertheless be deemed to have been incurred where, under a Member State's criminal law, customs duties provide the basis for determining penalties, or the existence of a customs debt is grounds for taking criminal proceedings.

▼M3*Article 212a*

Where customs legislation provides for favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or

▼M3

partial exemption from import or export duties pursuant to Articles 21, 82, 145 or 184 to 187, such favourable tariff treatment, relief or exemption shall also apply in cases where a customs debt is incurred pursuant to Articles 202 to 205, 210 or 211, on condition that the behaviour of the person concerned involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied.

▼B*Article 213*

Where several persons are liable for payment of one customs debt, they shall be jointly and severally liable for such debt.

Article 214

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

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

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

3. Compensatory interest shall be applied, in the circumstances and under the conditions to be defined in the provisions adopted under the committee procedure, in order to prevent the wrongful acquisition of a financial advantage through deferment of the date on which the customs debt was incurred or entered in the accounts.

▼M2*Article 215*

1. A customs debt shall be incurred:

- at the place where the events from which it arises occur,
- if it is not possible to determine that place, at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred,
- if the goods have been entered for a customs procedure which has not been discharged, and the place cannot be determined pursuant to the first or second indent within a period of time determined, if appropriate, in accordance with the committee procedure, at the place where the goods were either placed under the procedure concerned or were introduced into the Community customs territory under that procedure.

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

▼M2

3. The customs authorities referred to in Article 217(1) are those of the Member State where the customs debt is incurred or is deemed to have been incurred in accordance with this Article.

▼M3

4. If a customs authority finds that a customs debt has been incurred under Article 202 in another Member State and the amount of that debt is lower than EUR 5 000, the debt shall be deemed to have been incurred in the Member State where the finding was made.

▼B*Article 216*

1. In so far as agreements concluded between the Community and certain third countries provide for the granting on importation into those countries of preferential tariff treatment for goods originating in the Community within the meaning of such agreements, on condition that, where they have been obtained under the inward processing procedure, non-Community goods incorporated in the said originating goods are subject to payment of the import duties payable thereon, the validation of the documents necessary to enable such preferential tariff treatment to be obtained in third countries shall cause a customs debt on importation to be incurred.

2. The moment when such customs debt is incurred shall be deemed to be the moment when the customs authorities accept the export declaration relating to the goods in question.

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

4. The amount of the import duties corresponding to this customs debt shall be determined under the same conditions as in the case of a customs debt resulting from the acceptance, on the same date, of the declaration for release for free circulation of the goods concerned for the purpose of terminating the inward processing procedure.

CHAPTER 3

RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT

Section 1

Entry in the accounts and communication of the amount of duty to the debtor*Article 217*

1. Each and every amount of import duty or export duty resulting from a customs debt, hereinafter called 'amount of duty', shall be calculated by the customs authorities as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium (entry in the accounts).

The first subparagraph shall not apply:

(a) where a provisional anti-dumping or countervailing duty has been introduced;

▼M1

(b) where the amount of duty legally due exceeds that determined on the basis of binding information;

▼B

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

▼B

The customs authorities may discount amounts of duty which, under Article 221 (3), could not be communicated to the debtor after the end of the time allowed.

2. The Member States shall determine the practical procedures for the entry in the accounts of the amounts of duty. Those procedures may differ according to whether or not, in view of the circumstances in which the customs debt was incurred, the customs authorities are satisfied that the said amounts will be paid.

Article 218

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

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

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

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

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

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

Article 219

1. The time limits for entry in the accounts laid down in Article 218 may be extended:

- (a) for reasons relating to the administrative organization of the Member States, and in particular where accounts are centralized, or
- (b) where special circumstances prevent the customs authorities from complying with the said time limits.

Such extended time limit shall not exceed 14 days.

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

Article 220

1. Where the amount of duty resulting from a customs debt has not been entered in the accounts in accordance with Articles 218 and 219 or

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has been entered in the accounts at a level lower than the amount legally owed, the amount of duty to be recovered or which remains to be recovered shall be entered in the accounts within two days of the date on which the customs authorities become aware of the situation and are in a position to calculate the amount legally owed and to determine the debtor (subsequent entry in the accounts). That time limit may be extended in accordance with Article 219.

2. Except in the cases referred to in the second and third subparagraphs of Article 217 (1), subsequent entry in the accounts shall not occur where:

(a) the original decision not to enter duty in the accounts or to enter it in the accounts at a figure less than the amount of duty legally owed was taken on the basis of general provisions invalidated at a later date by a court decision;

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(b) the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

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

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

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

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

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(c) the provisions adopted in accordance with the committee procedure exempt the customs authority from the subsequent entry in the accounts of amounts of duty less than a certain figure.

Article 221

1. As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures.

2. Where the amount of duty payable has been entered, for guidance, in the customs declaration, the customs authorities may specify that it shall not be communicated in accordance with paragraph 1 unless the amount of duty indicated does not correspond to the amount determined by the authorities.

Without prejudice to the application of the second subparagraph of Article 218 (1), where use is made of the possibility provided for in the preceding subparagraph, release of the goods by the customs autho-

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rities shall be equivalent to communication to the debtor of the amount of duty entered in the accounts.

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3. Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. This period shall be suspended from the time an appeal within the meaning of Article 243 is lodged, for the duration of the appeal proceedings.

4. Where the customs debt is the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the amount may, under the conditions set out in the provisions in force, be communicated to the debtor after the expiry of the three-year period referred to in paragraph 3.

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Section 2

Time limit and procedures for payment of the amount of duty*Article 222*

1. Amounts of duty communicated in accordance with Article 221 shall be paid by debtors within the following periods:

- (a) if the person is not entitled to any of the payment facilities laid down in Articles 224 to 229, payment shall be made within the period prescribed.

Without prejudice to the second paragraph of Article 244, that period shall not exceed ten days following communication to the debtor of the amount of duty owed and, in the case of aggregation of entries in the accounts under the conditions laid down in the second subparagraph of Article 218 (1), it shall be so fixed as not to enable the debtor to obtain a longer period for payment than if he had been granted deferred payment.

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

Extension of the period may also be granted by the customs authorities at the request of the debtor where the amount of duty to be paid results from action for post-clearance recovery. Without prejudice to Article 229 (a), such extensions shall not exceed the time necessary for the debtor to take the appropriate steps to discharge his obligation;

- (b) if the person is entitled to any of the payment facilities laid down in Articles 224 to 229, payment shall be made no later than the expiry of the period or periods specified in relation to those facilities.

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

- where an application for remission of duty is made in accordance with Article 236, 238 or 239, or
- where goods are seized with a view to subsequent confiscation in accordance with the second indent of point (c) or with point (d) of Article 233, or
- where the customs debt was incurred under Article 203 and there is more than one debtor.

▼B*Article 223*

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

Article 224

Provided the amount of duty payable by the person concerned relates to goods declared for a customs procedure which entails the obligation to pay such duty, the customs authorities shall, at that person's request, grant deferment of payment of that amount under the conditions laid down in Articles 225, 226 and 227.

Article 225

The granting of deferment of payment shall be conditional on the provision of security by the applicant.

In addition, the granting of deferment of payment may give rise to the charging of incidental expenses for the opening of files or for services rendered.

Article 226

The customs authorities shall decide which of the following procedures must be used when granting deferment of payment:

- (a) separately in respect of each amount of duty entered in the accounts under the conditions laid down in the first subparagraph of Article 218 (1) or in Article 220 (1);
- or
- (b) globally in respect of all amounts of duty entered in the accounts under the conditions laid down in the first subparagraph of Article 218 (1) during a period fixed by the customs authorities not exceeding 31 days; or
- (c) globally in respect of all amounts of duty forming a single entry in accordance with the second subparagraph of Article 218 (1).

Article 227

1. The period for which payment is deferred shall be 30 days. It shall be calculated as, follows:

- (a) where payment is deferred in accordance with Article 226 (a), the period shall be calculated from the day following the date on which the amount of duty is entered in the accounts by the customs authorities.

Where Article 219 is applied, the period of 30 days calculated in accordance with the first subparagraph shall be reduced by the number of days corresponding to the period in excess of two days used to enter the amount in the accounts;

- (b) where payment is deferred in accordance with Article 226 (b), the period shall be calculated from the day following the date on which the aggregation period expires. It shall be reduced by the number of days corresponding to half the number of days in the aggregation period;
- (c) where payment is deferred in accordance with Article 226 (c), the period shall be calculated from the day following the expiry date of the period during which the goods in question were released. It shall

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be reduced by the number of days corresponding to half the number of days in the period concerned.

2. Where the number of days in the periods referred to in paragraph 1 (b) and (c) is an odd number, the number of days to be deducted from the 30-day period pursuant to paragraph 1 (b) and (c) shall be equal to half the next lowest even number.
3. To simplify matters, where the periods referred to in paragraph 1 (b) and (c) are a calendar week or a calendar month, Member States may provide that the amount of duty in respect of which payment has been deferred shall be paid:
 - (a) if the period is a calendar week, on the Friday of the fourth week following that calendar week;
 - (b) if the period is a calendar month, by the sixteenth day of the month following that calendar month.

Article 228

1. Deferment of payment shall not be granted in respect of amounts of duty which, although relating to goods entered for a customs procedure which entails the obligation to pay such duty, are entered in the accounts in accordance with the provisions in force concerning acceptance of incomplete declarations, because the declarant has not, by the time of expiry of the period set, provided the information necessary for the definitive valuation of the goods for customs purposes or has not supplied the particulars or the document missing when the incomplete declaration was accepted.
2. However, deferment of payment may be granted in the cases referred to in paragraph 1 where the amount of duty to be recovered is entered in the accounts before the expiry of a period of 30 days from the date on which the amount originally charged was entered in the accounts or, if it was not entered in the accounts, from the date on which the declaration relating to the goods in question was accepted. The duration of the deferment of payment granted in such circumstances shall not extend beyond the date of expiry of the period which, pursuant to Article 227, was granted in respect of the amount of duty originally fixed, or which would have been granted had the amount of duty legally due been entered in the accounts when the goods in question were declared.

Article 229

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

The granting of such payment facilities shall:

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

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

▼B*Article 230*

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

Article 231

An amount of duty owed may be paid by a third person instead of the debtor.

Article 232

1. Where the amount of duty due has not been paid within the prescribed period:

- (a) the customs authorities shall avail themselves of all options open to them under the legislation in force, including enforcement, to secure payment of that amount.

Special provisions may be adopted, in accordance with committee procedure, in respect of guarantors within the framework of the transit procedure;

- (b) interest on arrears shall be charged over and above the amount of duty. The rate of interest on arrears may be higher than the rate of credit interest. It may not be lower than that rate.

2. The customs authorities may waive collection of interest on arrears:

- (a) where, because of the situation of the debtor, it would be likely to create serious economic or social difficulties;
- (b) where the amount does not exceed a level fixed in accordance with the committee procedure, or
- (c) if the duty is paid within five days of the expiry of the period prescribed for payment.

3. The customs authorities may fix:

- (a) minimum periods for calculation of interest;
- (b) minimum amounts payable as interest on arrears.

CHAPTER 4

EXTINCTION OF CUSTOMS DEBT

Article 233

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

- (a) by payment of the amount of duty;
- (b) by remission of the amount of duty;
- (c) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties:

- the customs declaration is invalidated ► **M1** ————— ◀,
- the goods, before their release, are either seized and simultaneously or subsequently confiscated, destroyed on the instructions of the customs authorities, destroyed or abandoned in accordance with Article 182, or destroyed or irretrievably lost

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as a result of their actual nature or of unforeseeable circumstances or force majeure;

- (d) where goods in respect of which a customs debt is incurred in accordance with Article 202 are seized upon their unlawful introduction and are simultaneously or subsequently confiscated.

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

Article 234

A customs debt, as referred to in Article 216, shall also be extinguished where the formalities carried out in order to enable the preferential tariff treatment referred to in Article 216 to be granted are cancelled.

CHAPTER 5

REPAYMENT AND REMISSION OF DUTY*Article 235*

The following definitions shall apply:

- (a) 'repayment' means the total or partial refund of import duties or export duties which have been paid;
- (b) 'remission' means either a decision to waive all or part of the amount of a customs debt or a decision to render void an entry in the accounts of all or part of an amount of import or export duty which has not been paid.

Article 236

1. Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220 (2).

Import duties or export duties shall be remitted in so far as it is established that when they were entered in the accounts the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220 (2).

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.

2. Import duties or export duties shall be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor.

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

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

▼B*Article 237*

Import duties or export duties shall be repaid where a customs declaration is invalidated and the duties have been paid. Repayment shall be granted upon submission of an application by the person concerned within the periods laid down for submission of the application for invalidation of the customs declaration.

Article 238

1. Import duties shall be repaid or remitted in so far as it is established that the amount of such duties entered in the accounts relates to goods placed under the customs procedure in question and rejected by the importer because at the point in time referred to in Article 67 they are defective or do not comply with the terms of the contract on the basis of which they were imported.

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

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

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

At the request of the person concerned, the customs authorities shall permit the goods to be destroyed ►C1 or to be placed, with a view to re-export, under the ◀ external transit procedure or the customs warehousing procedure or in a free zone or free warehouse, instead of being exported.

For the purposes of being assigned one of the customs-approved treatments or uses provided for in the preceding subparagraph, the goods shall be deemed to be non-Community goods.

3. Import duties shall not be repaid or remitted in respect of goods which, before being declared to customs declaration, were imported temporarily 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.

4. Import duties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within twelve months from the date on which the amount of those duties was communicated to the debtor.

However, the customs authorities may permit this period to be exceeded in duly justified exceptional cases.

Article 239

1. Import duties or export duties may be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238:

- to be determined in accordance with the procedure of the committee;
- resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied and the procedures to be followed to that end shall be defined in accordance with the committee procedure. Repayment or remission may be made subject to special conditions.

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2. Duties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within 12 months from the date on which the amount of the duties was communicated to the debtor.

However, the customs authorities may permit this period to be exceeded in duly justified exceptional cases.

Article 240

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

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

Article 241

Repayment by the competent authorities of amounts of import duties or export duties or of credit interest or interest on arrears collected on payment of such duties shall not give rise to the payment of interest by those authorities. However, interest shall be paid:

- where a decision to grant a request for repayment is not implemented within three months of the date of adoption of that decision,
- where national provisions so stipulate.

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

Article 242

Where a customs debt has been remitted or the corresponding amount of duty repaid in error, the original debt shall again become payable. Any interest paid under Article 241 must be reimbursed.

TITLE VIII

APPEALS*Article 243*

1. Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.

Any person who has applied to the customs authorities for a decision relating to the application of customs legislation and has not obtained a ruling on that request within the period referred to in Article 6 (2) shall also be entitled to exercise the right of appeal.

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

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

▼B*Article 244*

The lodging of an appeal shall not cause implementation of the disputed decision to be suspended.

The customs authorities shall, however, suspend implementation of such decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

Where the disputed decision has the effect of causing import duties or export duties to be charged, suspension of implementation of that decision shall be subject to the existence or lodging of a security. However, such security need not be required where such a requirement would be likely, owing to the debtor's circumstances, to cause serious economic or social difficulties.

Article 245

The provisions for the implementation of the appeals procedure shall be determined by the Member States.

Article 246

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

TITLE IX

FINAL PROVISIONS

CHAPTER 1

CUSTOMS CODE COMMITTEE**▼M3***Article 247*

The measures necessary for the implementation of this Regulation, including implementation of the Regulation referred to in Article 184, except for Title VIII and subject to Articles 9 and 10 of Regulation (EEC) No 2658/87 ⁽¹⁾ and to Article 248 of this Regulation shall be adopted in accordance with the regulatory procedure referred to in Article 247a(2) in compliance with the international commitments entered into by the Community.

Article 247a

1. The Commission shall be assisted by a Customs Code Committee (hereinafter referred to as 'the Committee').

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

▼ **M3***Article 248*

The measures necessary for implementing Articles 11, 12 and 21 shall be adopted in accordance with the management procedure referred to in Article 248a(2).

Article 248a

1. The Commission shall be assisted by a Customs Code Committee, hereinafter referred to as 'the Committee'.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

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

3. The Committee shall adopt its rules of procedure.

Article 249

The Committee may examine any question concerning customs legislation which is raised by its chairman, either on his own initiative or at the request of a Member State's representative.

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CHAPTER 2

LEGAL EFFECTS IN A MEMBER STATE OF MEASURES TAKEN, DOCUMENTS ISSUED AND FINDINGS MADE IN ANOTHER MEMBER STATE

Article 250

Where a customs procedure is used in several Member States,

- the decisions, identification measures taken or agreed on, and the documents issued by the customs authorities of one Member State shall have the same legal effects in other Member States as such decisions, measures taken and documents issued by the customs authorities of each of those Member States;
- the findings made at the time controls are carried out by the customs authorities of a Member State shall have the same conclusive force in the other Member States as the findings made by the customs authorities of each of those Member States.

CHAPTER 3

OTHER FINAL PROVISIONS*Article 251*

1. The following Regulations and Directives are hereby repealed:
 - Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods ⁽¹⁾, as last amended by Regulation (EEC) No 456/91 ⁽²⁾;
 - Council Regulation (EEC) No 754/76 of 25 March 1976 on the customs treatment applicable to goods returned to the customs territory of the Community ⁽³⁾, as last amended by Regulation (EEC) No 1147/86 ⁽⁴⁾;

⁽¹⁾ OJ No L 148, 28.6.1968, p. 1.

⁽²⁾ OJ No L 54, 28.2.1991, p. 4.

⁽³⁾ OJ No L 89, 2.4.1976, p. 1.

⁽⁴⁾ OJ No L 105, 22.4.1986, p. 1.

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- Council Regulation (EEC) No 2779/78 of 23 November 1978 on the procedure for applying the European unit of account (EUA) to legal acts adopted in the customs sphere ⁽¹⁾, as amended by Regulation (EEC) No 289/84 ⁽²⁾;
- Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties ⁽³⁾, as last amended by Regulation (EEC) No 1854/89 ⁽⁴⁾;
- Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties ⁽⁵⁾, as last amended by Regulation (EEC) No 1854/89 ⁽⁶⁾;
- Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation ⁽⁷⁾, as last amended by Directive 90/504/EEC ⁽⁸⁾;
- Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes ⁽⁹⁾, as last amended by the Regulation (EEC) No 4046/89 ⁽¹⁰⁾;
- Council Directive 81/177/EEC of 24 February 1981 on the harmonization of procedures for the export of Community goods ⁽¹¹⁾, as last amended by Regulation (EEC) No 1854/89 ⁽¹²⁾;
- Council Regulation (EEC) No 3599/82 of 21 December 1982 on temporary importation arrangements ⁽¹³⁾, as last amended by Regulation (EEC) No 1620/85 ⁽¹⁴⁾;
- Council Regulation (EEC) No 2763/83 of 26 September 1983 on arrangements permitting goods to be processed under customs control before being put into free circulation ⁽¹⁵⁾, as last amended by Regulation (EEC) No 720/91 ⁽¹⁶⁾;
- Council Regulation (EEC) No 2151/84 of 23 July 1984 on the customs territory of the Community ⁽¹⁷⁾, as last amended by the Act of Accession of Spain and Portugal;
- Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements ⁽¹⁸⁾;
- Council Regulation (EEC) No 3632/85 of 12 December 1985 defining the conditions under which a person may be permitted to make a customs declaration ⁽¹⁹⁾;
- Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system ⁽²⁰⁾;
- Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs

⁽¹⁾ OJ No L 333, 30.11.1978, p. 5.

⁽²⁾ OJ No L 33, 4.2.1984, p. 2.

⁽³⁾ OJ No L 175, 12.7.1979, p. 1.

⁽⁴⁾ OJ No L 186, 30.6.1989, p. 1.

⁽⁵⁾ OJ No L 197, 3.8.1979, p. 1.

⁽⁶⁾ OJ No L 186, 30.6.1989, p. 1.

⁽⁷⁾ OJ No L 205, 13.8.1979, p. 19.

⁽⁸⁾ OJ No L 281, 12.10.1990, p. 28.

⁽⁹⁾ OJ No L 134, 31.5.1980, p. 1.

⁽¹⁰⁾ OJ No L 388, 30.12.1989, p. 24.

⁽¹¹⁾ OJ No L 83, 30.3.1981, p. 40.

⁽¹²⁾ OJ No L 186, 30.6.1989, p. 1.

⁽¹³⁾ OJ No L 376, 31.12.1982, p. 1.

⁽¹⁴⁾ OJ No L 155, 14.6.1985, p. 54.

⁽¹⁵⁾ OJ No L 272, 5.10.1985, p. 1.

⁽¹⁶⁾ OJ No L 78, 26.3.1991, p. 9.

⁽¹⁷⁾ OJ No L 197, 27.7.1984, p. 1.

⁽¹⁸⁾ OJ No L 188, 20.7.1985, p. 1.

⁽¹⁹⁾ OJ No L 350, 27.12.1985, p. 1.

⁽²⁰⁾ OJ No L 212, 2.8.1986, p. 1.

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- debt ⁽¹⁾, as last amended by Regulation (EEC) No 4108/88 ⁽²⁾;
- Council Regulation (EEC) No 1031/88 of 18 April 1988 determining the persons liable for payment of a customs debt ⁽³⁾, as last amended by Regulation (EEC) No 1716/90 ⁽⁴⁾;
 - Council Regulation (EEC) No 1970/88 of 30 June 1988 concerning triangular traffic under the outward processing relief arrangements and the standard exchange system ⁽⁵⁾;
 - Council Regulation (EEC) No 2503/88 of 25 July 1988 on customs warehouses ⁽⁶⁾, as amended by Regulation (EEC) No 2561/90 ⁽⁷⁾;
 - Council Regulation (EEC) No 2504/88 of 25 July 1988 on freezones and free ware-houses ⁽⁸⁾, as amended by Regulation (EEC) No 1604/92 ⁽⁹⁾;
 - Council Regulation (EEC) No 4151/88 of 21 December 1988 laying down the provisions applicable to goods brought into the customs territory of the Community ⁽¹⁰⁾;
 - Council Regulation (EEC) No 1854/89 of 14 June 1989 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt ⁽¹¹⁾;
 - Council Regulation (EEC) No 1855/89 of 14 June 1989 on the temporary importation of means of transport ⁽¹²⁾;
 - Council Regulation (EEC) No 3312/89 of 30 October 1989 on the temporary importation of containers ⁽¹³⁾;
 - Council Regulation (EEC) No 4046/89 of 21 December 1989 on the security to be given to ensure payment of a customs debt ⁽¹⁴⁾;
 - Council Regulation (EEC) No 1715/90 of 20 June 1990 on the information provided by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature ⁽¹⁵⁾;
 - Council Regulation (EEC) No 2726/90 of 17 September 1990 on Community transit ⁽¹⁶⁾ ► **M1** ————— ◀,
 - Council Regulation (EEC) No 717/91 of 21 March 1991 concerning the Single Administrative Document ⁽¹⁷⁾;
 - Council Regulation (EEC) No 719/91 of 21 March 1991 on the use in the Community of TIR carnets and ATA carnets as transit documents ⁽¹⁸⁾.

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

⁽¹⁾ OJ No L 201, 22.7.1987, p. 15.

⁽²⁾ OJ No L 361, 29.12.1988, p. 2.

⁽³⁾ OJ No L 102, 21.4.1988, p. 5.

⁽⁴⁾ OJ No L 160, 26.6.1990, p. 6.

⁽⁵⁾ OJ No L 174, 6.7.1988, p. 1.

⁽⁶⁾ OJ No L 225, 15.8.1988, p. 1.

⁽⁷⁾ OJ No L 246, 10.9.1990, p. 1.

⁽⁸⁾ OJ No L 225, 15.8.1988, p. 8.

⁽⁹⁾ OJ No L 173, 26.6.1992, p. 30.

⁽¹⁰⁾ OJ No L 367, 31.12.1988, p. 1.

⁽¹¹⁾ OJ No L 186, 30.6.1989, p. 1.

⁽¹²⁾ OJ No L 186, 30.6.1989, p. 8.

⁽¹³⁾ OJ No L 321, 4.11.1989, p. 5.

⁽¹⁴⁾ OJ No L 388, 30.12.1989, p. 1.

⁽¹⁵⁾ OJ No L 160, 26.6.1990, p. 1.

⁽¹⁶⁾ OJ No L 262, 26.9.1990, p. 1.

⁽¹⁷⁾ OJ No L 78, 26.3.1991, p. 1.

⁽¹⁸⁾ OJ No L 78, 26.3.1991, p. 6.

▼B*Article 252*

1. Articles 141, 142 and 143 of Council Regulation (EEC) No 918/83 ⁽¹⁾ are hereby repealed.
2. Council Regulation (EEC) No 2658/87 ⁽²⁾, as last amended by Regulation (EEC) No 3492/91 ⁽³⁾, is hereby amended as follows:
 - ‘(a) Article 8 is hereby amended as follows: The following words shall be inserted after the word “committee”: “provided for in Article 247 of the Community Customs Code”.
 - (b) The introductory sentence in Article 10 (1) is hereby amended as follows: “The representative of the Commission shall submit to the committee provided for in Article 247 of the Community Customs Code a draft...”.
 - (c) Articles 7 and 11 are hereby repealed.’

Article 253

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

It shall apply from 1 January 1994.

Title VIII shall not apply to the United Kingdom until 1 January 1995.

However, Article 161 and, in so far as they concern re-exportation, Articles 182 and 183 shall apply from 1 January 1993. In so far as the said Articles make reference to provisions in this Code and until such time as such provisions enter into force, the references shall be deemed to allude to the corresponding provisions in the Regulations and Directives listed in Article 251.

Before 1 October 1993, the Council shall, on the basis of a Commission progress report on discussions regarding the consequences to be drawn from the monetary conversion rate used for the application of common agricultural policy measures, review the problem of trade in goods between the Member States in the context of the internal market. This report shall be accompanied by Commission proposals if any, on which the Council shall take a decision in accordance with the provisions of the Treaty.

Before 1 January 1998, the Council shall, on the basis of a Commission report, review this Code with a view to making such adaptations as may appear necessary taking into account in particular the achievement of the internal market. This report shall be accompanied by proposals, if any, on which the Council shall take a decision in accordance with the provisions of the Treaty.

⁽¹⁾ OJ No L 105, 23.4.1983, p. 1.

⁽²⁾ OJ No L 256, 7.9.1987, p. 1.

⁽³⁾ OJ No L 328, 30.11.1991, p. 80.