

Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (repealed)

PART IV

**CUSTOMS DEBT**

TITLE I

**SECURITY**

*Article 857*

1 The types of security other than cash deposits or guarantors, within the meaning of Articles 193, 194 and 195 of the Code, and the cash deposit or the submission of securities for which Member States may opt even if they do not comply with the conditions laid down in Article 194 (1) of the Code, shall be as follows:

- a the creation of a mortgage, a charge on land, an antichresis or other right deemed equivalent to a right pertaining to immovable property;
- b the cession of a claim, the pledging, with or without surrendering possession, of goods, securities or claims or, in particular, a savings bank book or entry in the national debt register;
- c the assumption of joint contractual liability for the full amount of the debt by a third party approved for that purpose by the customs authorities and, in particular, the lodging of a bill of exchange the payment of which is guaranteed by such third party;
- d a cash deposit or security deemed equivalent thereto in a currency other than that of the Member State in which the security is given;
- e participation, subject to payment of a contribution, in a general guarantee scheme administered by the customs authorities.

2 The circumstances in which and the conditions under which recourse may be had to the types of security referred to in paragraph 1 shall be determined by the customs authorities.

*Article 858*

Where security is given by making a cash deposit, no interest thereon shall be payable by the customs authorities.

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## TITLE II

### INCURRENCE OF THE DEBT

#### CHAPTER 1

#### **Failures which have no significant effect on the operation of temporary storage or of the customs procedure**

##### *Article 859*

The following failures shall be considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question within the meaning of Article 204 (1) of the Code, provided:

- they do not constitute an attempt to remove the goods unlawfully from customs supervision,
- they do not imply obvious negligence on the part of the person concerned, and
- all the formalities necessary to regularize the situation of the goods are subsequently carried out:
  1. exceeding the time limit allowed for assignment of the goods to one of the customs-approved treatments or uses provided for under the temporary storage or customs procedure in question, where the time limit would have been extended had an extension been applied for in time;
  2. [<sup>F1</sup>in the case of goods placed under a transit procedure, failure to fulfil one of the obligations entailed by the use of that procedure, where the following conditions are fulfilled:
    - (a) the goods entered for the procedure were actually presented intact at the office of destination;
    - (b) the office of destination has been able to ensure that the goods were assigned a customs-approved treatment or use or were placed in temporary storage at the end of the transit operation;
    - (c) where the time limit set under Article 356 has not been complied with and paragraph 3 of that Article does not apply, the goods have nevertheless been presented at the office of destination within a reasonable time;]
  3. in the case of goods placed in temporary storage or under the customs warehousing procedure, handling not authorized in advance by the customs authorities, provided such handling would have been authorized if applied for;
  4. in the case of goods placed under the temporary importation procedure, use of the goods otherwise than as provided for in the authorization, provided such use would have been authorized under that procedure if applied for;
  5. in the case of goods in temporary storage or placed under a customs procedure, unauthorized movement of the goods, provided the goods can be presented to the customs authorities at their request;

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6. [F2:in the case of goods in temporary storage or entered for a customs procedure, removal of the goods from the customs territory of the Community or their introduction into a free zone of control type I within the meaning of Article 799 or into a free warehouse without completion of the necessary formalities;]
7. [F1:in the case of goods or products physically transferred within the meaning of Articles 296, 297 or 511, failure to fulfil one of the conditions under which the transfer takes place, where the following conditions are fulfilled:
  - (a) the person concerned can demonstrate, to the satisfaction of the customs authorities, that the goods or products arrived at the specified premises or destination and, in cases of transfer based on Articles 296, 297, 512(2) or 513, that the goods or products have been duly entered in the records of the specified premises or destination, where those Articles require such entry in the records;
  - (b) where a time limit set in the authorisation was not observed, the goods or products nevertheless arrived at the specified premises or destination within a reasonable time;]
8. [F3:in the case of goods eligible on release for free circulation for the total or partial relief from import duties referred to in Article 145 of the Code, the existence of one of the situations referred to in Article 204 (1) (a) or (b) of the Code while the goods concerned are in temporary storage or under another customs procedure before being released for free circulation;]
9. [F2:in the framework of inward processing and processing under customs control, exceeding the time-limit allowed for submission of the bill of discharge, provided the limit would have been extended had an extension been applied for in time;]
10. [F4:exceeding the time-limit allowed for temporary removal from a customs warehouse, provided the limit would have been extended had an extension been applied for in time.]

#### Textual Amendments

- F1** Substituted by [Commission Regulation \(EC\) No 444/2002 of 11 March 2002 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code and Regulations \(EC\) No 2787/2000 and \(EC\) No 993/2001 \(Text with EEA relevance\).](#)
- F2** Substituted by [Commission Regulation \(EC\) No 993/2001 of 4 May 2001 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\).](#)
- F3** Inserted by [Commission Regulation \(EC\) No 1427/97 of 23 July 1997 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code.](#)
- F4** Inserted by [Commission Regulation \(EC\) No 993/2001 of 4 May 2001 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\).](#)

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#### *Article 860*

The customs authorities shall consider a customs debt to have been incurred under Article 204 (1) of the Code unless the person who would be the debtor establishes that the conditions set out in Article 859 are fulfilled.

#### *Article 861*

The fact that the failures referred to in Article 859 do not give rise to a customs debt shall not preclude the application of provisions of criminal law in force or of provisions allowing cancellation and withdrawal of authorizations issued under the customs procedure in question.

### CHAPTER 2

#### **Natural wastage**

#### *Article 862*

1 For the purposes of Article 206 of the Code, the customs authorities shall, at the request of the person concerned, take account of the quantities missing wherever it can be shown that the losses observed result solely from the nature of the goods and not from any negligence or manipulation on the part of that person.

2 In particular, negligence or manipulation shall mean any failure to observe the rules for transporting, storing, handling, working or processing the goods in question imposed by the customs authorities or by normal practice.

#### *Article 863*

The customs authorities may waive the obligation for the person concerned to show that the goods were irretrievably lost for reasons inherent in their nature where they are satisfied that there is no other explanation for the loss.

#### *Article 864*

The national provisions in force in the Member States concerning standard rates for irretrievable loss due to the nature of the goods themselves shall be applied where the person concerned fails to show that the real loss exceeds that calculated by application of the standard rate for the goods in question.

### [<sup>F5</sup>CHAPTER 3

#### **Goods in special situations]**

#### *Article 865*

The presentation of a customs declaration for the goods in question, or any other act having the same legal effects, and the production of a document for endorsement by the competent authorities, shall be considered as removal of goods from customs supervision within the meaning of Article 203 (1) of the Code, where these acts have the effect of wrongly conferring on them the customs status of Community goods.

[<sup>F6</sup>However, in the case of airline companies authorised to use a simplified transit procedure with the use of an electronic manifest, the goods shall not be considered to

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have been removed from customs supervision if, at the initiative or on behalf of the person concerned, they are treated in accordance with their status as non-Community goods before the customs authorities find the existence of an irregular situation and if the behaviour of the person concerned does not suggest any fraudulent dealing]

#### Textual Amendments

- F6** Inserted by [Commission Regulation \(EC\) No 1677/98 of 29 July 1998 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\).](#)

#### *Article 866*

Without prejudice to the provisions laid down concerning prohibitions or restrictions which may be applicable to the goods in question, where a customs debt on importation is incurred pursuant to Articles 202, 203, 204 or 205 of the Code and the import duties have been paid, those goods shall be deemed to be Community goods without the need for a declaration for entry into free circulation.

#### *Article 867*

The confiscation of goods pursuant to Article 233 (c) and (d) of the Code shall not affect the customs status of the goods in question.

#### *[<sup>F5</sup>Article 867a*

1 Non-Community goods which have been abandoned to the Exchequer or seized or confiscated shall be considered to have been entered for the customs warehousing procedure.

2 The goods referred to in paragraph 1 may be sold by the customs authorities only on the condition that the buyer immediately carries out the formalities to assign them a customs-approved treatment or use.

Where the sale is at a price inclusive of import duties, the sale shall be considered as equivalent to release for free circulation, and the customs authorities themselves shall calculate the duties and enter them in the accounts.

In these cases, the sale shall be conducted according to the procedures in force in the Member States.

3 Where the administration decides to deal with the goods referred to in paragraph 1 otherwise than by sale, it shall immediately carry out the formalities to assign them one of the customs-approved treatments or uses laid down in Article 4 (15) (a), (b), (c) and (d) of the code.]

#### Textual Amendments

- F5** Inserted by [Commission Regulation \(EC\) No 3665/93 of 21 December 1993 amending Commission Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community customs code.](#)

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### TITLE III

#### [<sup>F7</sup>RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT]

##### Article 868

Member States need not enter in the accounts amounts of duty of less than ECU 10.

There shall be no post-clearance recovery of import duties or export duties where the amount per recovery action is less than ECU 10.

##### Article 869

The customs authorities shall themselves decide not to enter uncollected duties in the accounts:

- (a) in cases in which preferential tariff treatment has been applied in the context of a tariff quota, a tariff ceiling or other arrangements when entitlement to this treatment had been ended at the time of acceptance of the customs declaration without that fact having been published in the *Official Journal of the European Communities* before the release for free circulation of the goods in question or, where such fact is not published, having been made known in an appropriate manner in the Member State concerned, the person liable for payment 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;
- (b) [<sup>F8</sup>in cases in which they consider that the conditions laid down in Article 220(2)(b) of the Code are fulfilled, except those in which the dossier must be transmitted to the Commission pursuant to Article 871. However, where Article 871(2), second indent, is applicable, the customs authorities may not adopt a decision waiving entry in the accounts of the duties in question until the end of a procedure initiated in accordance with Articles 871 to 876.]
- (c) [<sup>F9</sup>. . . . .]

[<sup>F10</sup>Where a request is submitted for repayment or remission under Article 236 of the Code in conjunction with Article 220(2)(b) of the Code, subparagraph (b) of the first paragraph of this Article and Articles 871 to 876 shall apply *mutatis mutandis*.

For the purposes of applying the above paragraphs the Member States shall give each other mutual assistance, particularly where an error by the customs authorities of a Member State other than the one responsible for taking the decision is concerned.]

#### Textual Amendments

- F8** Substituted by Commission Regulation (EC) No 1335/2003 of 25 July 2003 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (Text with EEA relevance).
- F9** Deleted by Commission Regulation (EC) No 1335/2003 of 25 July 2003 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (Text with EEA relevance).
- F10** Inserted by Commission Regulation (EC) No 1335/2003 of 25 July 2003 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (Text with EEA relevance).

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### *F<sup>8</sup> Article 870*

1 Each Member State shall hold at the disposal of the Commission a list of the cases in which the following provisions have been applied:

- Article 869(a),
- Article 236 of the Code in conjunction with Article 220(2)(b) of the Code, where no communication is required under paragraph 2,
- Article 869(b), where no communication is required under paragraph 2.

2 Each Member State shall communicate to the Commission a list of the cases in which the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is more than EUR 50 000, and the provisions of Article 236 of the Code in conjunction with Article 220(2)(b) of the Code or of Article 869(b) have been applied, giving a short summary of each case. This communication shall be forwarded during the first and third quarters of each year for all cases in which it was decided not to enter the uncollected duties in the accounts during the preceding half-year.

#### **Textual Amendments**

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

### *Article 871*

1 The customs authority shall transmit the case to the Commission to be settled under the procedure laid down in Articles 872 to 876 where it considers that the conditions laid down in Article 220(2)(b) of the Code are fulfilled and:

- it considers that the Commission has committed an error within the meaning of Article 220(2)(b) of the Code,
- the circumstances of the case are related to the findings of a Community investigation carried out under Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>(1)</sup> or under any other Community legislation or any agreement concluded by the Community with a country or group of countries in which provision is made for carrying out such Community investigations, or
- the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is EUR 500 000 or more.

2 However, the cases referred to in paragraph 1 shall not be transmitted where:

- the Commission has already adopted a decision under the procedure provided for in Articles 872 to 876 on a case involving comparable issues of fact and of law,
- the Commission is already considering a case involving comparable issues of fact and of law.

3 The dossier submitted to the Commission shall contain all the information required for full consideration. It shall include detailed information on the behaviour of the operator concerned, and in particular on his professional experience, good faith and diligence. This assessment shall be accompanied by all information that may demonstrate that the operator acted in good faith. The dossier shall also include a statement, signed by the applicant for repayment

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or remission, certifying that he has read the dossier and either stating that he has nothing to add or listing all the additional information that he considers should be included.

4 As soon as it receives the dossier the Commission shall inform the Member State concerned accordingly.

5 Should it be found that the information supplied by the Member State is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may request that additional information be supplied.

6 Where one of the following situations occurs the Commission shall return the dossier to the customs authority and the procedure referred to in Articles 872 to 876 shall be deemed never to have been initiated:

- the dossier shows that there is a disagreement between the customs authority that has transmitted the dossier and the person who signed the statement referred to in paragraph 3 as regards the account of the facts,
- the dossier is obviously incomplete since it contains nothing that would justify its consideration by the Commission,
- under paragraphs 1 and 2, the dossier should not be transmitted,
- the existence of a customs debt has not been established,
- new information relating to the dossier and of a nature to alter substantially its presentation of the facts or legal assessment has been transmitted by the customs authority to the Commission while it is considering the dossier.

#### Textual Amendments

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

#### *Article 872*

The Commission shall send to the Member States a copy of the dossier referred to in Article 871(3) within 15 days of the date on which it received that dossier.

Consideration of the case in question shall be included as soon as possible on the agenda of a meeting of the group of experts provided for in Article 873.]

#### Textual Amendments

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

#### *[<sup>F6</sup>Article 872a*

Where, at any time in the procedure provided for in Articles 872 and 873, the Commission intends to take a decision unfavourable towards the person concerned by the case presented, it shall communicate its objections to him/her in writing, together with all the documents on which it bases those objections. The person concerned by the case submitted to the Commission shall express his/her point of view in writing within a period of one month from the date on which the objections were sent. If he/she does



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not give a point of view within that period, he/she shall be deemed to have waived the right to express a position.]

#### Textual Amendments

- F6** Inserted by [Commission Regulation \(EC\) No 1677/98 of 29 July 1998 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\).](#)

#### *F<sup>8</sup>* Article 873

After consulting a group of experts composed of representatives of all Member States, meeting within the framework of the Committee to consider the case in question, the Commission shall decide whether the circumstances under consideration are such that the duties in question need not be entered in the accounts.

That decision shall be taken within nine months of the date on which the dossier referred to in Article 871(3) is received by the Commission. However, where the declaration or detailed assessment of the operator's behaviour referred to in Article 871(3) is not included in the dossier, the nine months shall be counted only from the date of receipt of these documents by the Commission. The Commission shall notify the customs authority and the person concerned accordingly.

Where the Commission has found it necessary to ask for additional information from the Member State in order to reach its decision, the nine months shall be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information. The Commission shall notify the person concerned of the extension of the procedure.

Where the Commission conducts investigations itself in order to reach a decision, the nine months shall be extended by the time necessary to complete the investigations. Such an extension shall not exceed nine months. The Commission shall notify the customs authority and the person concerned of the dates on which investigations are opened and closed.

Where the Commission has notified the person concerned of its objections in accordance with Article 872a, the period of nine months shall be extended by one month.

#### Textual Amendments

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\).](#)

#### Article 874

The Member State concerned shall be notified of the decision referred to in Article 873 as soon as possible and in any event within one month of the expiry of the period specified in that Article.

The Commission shall notify the Member States of the decisions it has adopted in order to help customs authorities to reach decisions in situations involving comparable issues of fact and law.

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#### Textual Amendments

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

#### Article 875

Where it is established by the decision referred to in Article 873 that the circumstances under consideration are such that the duties in question need not be entered in the accounts, the Commission may specify the conditions under which the Member States may refrain from post-clearance entry in the account in cases involving comparable issues of fact and of law.]

#### Textual Amendments

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

#### Article 876

If the Commission fails to take a decision within the period referred to in Article 873 or fails to notify a decision to the Member State concerned within the period referred to in Article 874, the customs authorities of that Member State shall not enter the duties in question in the accounts.

#### [<sup>F7</sup> Article 876a

1 The customs authorities shall suspend the debtor's obligation to pay the duties until such time as they have taken a decision on the request, provided that, where the goods are no longer under customs supervision, security is lodged for the amount of those duties, and that:

- a in cases where a request for invalidation of a declaration has been presented, this request is likely to be met;
- b in cases where a request has been presented for remission pursuant to Article 236 in conjunction with Article 220 (2) (b) of the Code or pursuant to Article 238 or Article 239, the customs authorities consider that the conditions laid down in the relevant provision may be regarded as having been fulfilled;
- c in cases other than those referred to under (b), a request has been presented for remission pursuant to Article 236 of the Code and the conditions referred to in the second paragraph of Article 244 of the Code have been fulfilled.

It shall not be necessary to require a security where such requirement would be likely, owing to the debtor's circumstances, to cause serious economic or social difficulties.

2 In cases where goods in one of the circumstances referred to in the second indent of Article 233 (c) or in Article 233 (d) of the Code are seized, the customs authorities shall suspend the debtor's obligation to pay the duties if they consider that the conditions for confiscation may be regarded as having been fulfilled.

[ Where a customs debt is incurred under Article 203 of the Code, the customs authorities shall suspend the obligation of the person referred to in the fourth indent of paragraph 3 of that Article to pay the duties where at least one other debtor has been identified and the

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amount of the duties has also been communicated to him in accordance with Article 221 of the Code.

The suspension may be granted only on the condition that the person referred to in the fourth indent of Article 203(3) of the Code is not also covered by one of the other indents of the said paragraph and has not been obviously negligent in fulfilling his obligations.

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

The suspension shall be conditional on the lodging by the person for whose benefit it is granted of a valid security for the amount of the duties at stake, except where such a security covering the whole amount of duties at stake already exists and the guarantor has not been released from his undertakings. 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.]]

#### Textual Amendments

- F11** Inserted by [Commission Regulation \(EC\) No 881/2003 of 21 May 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\).](#)

#### Textual Amendments

- F7** Inserted by [Commission Regulation \(EC\) No 12/97 of 18 December 1996 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code.](#)

## TITLE IV

### REPAYMENT OR REMISSION OF IMPORT OR EXPORT DUTIES

#### CHAPTER 1

#### General provisions

##### *Article 877*

- 1 For the purposes of this Title:
  - a *customs office of entry in the accounts* means: the customs office where the import or export duties whose repayment or remission is requested were entered in the accounts;
  - b *decision-making customs authority* means: the customs authority competent to decide on an application for repayment or remission of import or export duties in the Member State where the duties concerned were entered in the accounts;
  - c *supervising customs office* means: the customs office having jurisdiction over the goods which gave rise to entry in the accounts of the import or export duties whose repayment or remission is requested, the said office carrying out certain checks required for appraisal of the application;

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d *implementing customs office* means: the customs office which adopts the measures necessary to ensure that the decision to repay or remit the import or export duties is correctly implemented.

2 The functions of office of entry in the accounts, decision-making customs authority, supervising customs office and implementing customs office may be carried out wholly or in part by the same customs office

## CHAPTER 2

### Implementing provisions relating to Articles 236 to 239 of the Code

#### Section 1

#### **Application**

##### *Article 878*

1 Application for repayment or remission of import or export duties, hereinafter referred to as 'application for repayment or remission', shall be made by the person who paid or is liable to pay those duties, or the persons who have taken over his rights and obligations.

Application for repayment or remission may also be made by the representative of the person or persons referred in the first subparagraph.

2 Without prejudice to Article 882, application for repayment or remission shall be made, in one original and one copy, on a form conforming to the specimen and provisions in Annex 111.

However, application for repayment or remission may also be made, at the request of the person or persons referred to in paragraph 1, on plain paper, provided it contains the information appearing in the said Annex.

##### *Article 879*

1 Applications for repayment or remission, accompanied by the documents referred to in Article 6 (1) of the Code, must be lodged with the customs office of entry in the accounts, unless the customs authorities designate another office for this purpose; the said office shall transmit it immediately after acceptance to the decision-making customs authority if it is not itself designated as such.

2 The customs office referred to in paragraph 1 shall enter the date of receipt on the original and the copy of the application. It shall return the copy to the applicant.

Where the second subparagraph of Article 878 (2) is applied, the said customs office shall acknowledge receipt in writing to the applicant.

##### *Article 880*

Without prejudice to any specific provisions adopted in this connection under the common agricultural policy, an application relating to goods in respect of which an import or export licence or advance fixing certificate was produced when the relevant customs declaration was lodged must also be accompanied by certification issued by the authorities responsible for issuing such licence or certificate attesting that the necessary steps have been taken to cancel the effects of the said licence or certificate.

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Such certification shall not be required, however:

- where the customs authority to which the application is submitted itself issued the licence or certificate in question,
- where the ground relied upon in support of the application is a substantive error that has no effect on the attribution of the licence or certificate in question.

#### *Article 881*

1 The customs office referred to in Article 879 may accept an application not containing all the information provided for on the form referred to in Article 878 (2). However, the application must contain at least the information to be entered in boxes 1 to 3 and 7.

2 Where paragraph 1 is applied, the said customs office shall set a time limit for the supply of any missing particulars and/or documents.

3 Where the time limit set by the customs office pursuant to paragraph 2 is not observed, the application shall be considered to have been withdrawn.

The applicant shall be informed of this immediately.

#### *Article 882*

1 For returned goods on which export duties were levied at the time of their export from the customs territory of the Community, repayment or remission of these duties shall be subject to the presentation to the customs authorities of a request accompanied by:

- a the document issued as evidence of payment, where the amounts concerned have already been collected;
- b the original, or the copy certified by the customs office of reimportation, of the declaration for free circulation relating to the returned goods.

This document shall bear one of the following endorsements made by the customs office of reimportation:

- Mercancías de retorno en aplicación de la letra (b) del apartado 2 del artículo 185 del Código,
- Returvarer i henhold til kodeksens artikel 185, stk. 2, litra (b),
- Rückwaren gemäß Artikel 185 Absatz 2 Buchstabe (b) des Zollkodex,
- Εμπορεύματα επανεισαγόμενα κατ' εφαρμογή του άρθρου 185 παράγραφος 2 στοιχείο (β) του κώδικα,
- Goods admitted as returned goods under Article 185 (2) (b) of the Code,
- Marchandises en retour en application de l'article 185 paragraphe 2 point (b) du code,
- Merci in reintroduzione in applicazione dell'articolo 185, paragrafo 2, lettera (b) del codice,
- Goederen die met toepassing van artikel 185, lid 2, onder (b), van het Wetboek kunnen worden toegelaten als terugkerende goederen,
- Mercadorias de retorno por aplicação da alínea (b) do n<sup>o</sup> 2 do artigo 185<sup>o</sup> do código,
- [<sup>F12</sup>Yhteisön tullikoodeksin 185 artiklan 2 kohdan b alakohdan mukaista palautustavaraa —Returvaror enligt artikel 185.2 (b) i gemenskapens tullkod,
- Returvaror enligt artikel 185.2 b i gemenskapens tullkodex]<sup>F13</sup>,]]
- [<sup>F14</sup>Vráčené zboží podle čl. 185 odst. 2 písm. b) kodexu,
- Seadustiku artikli 185(2)(b) alusel tagasitoodud kaubaks tunnistatud kaup,

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- Preces atzītas par atpakaļievestām saskaņā ar Kodeksa 185. panta 2. punkta b) apakšpunktu,
  - Prekēs iveztos kaip gražintos prekės vadovaujantis Kodekso 185 straipsnio 2 dalies b punktu,
  - A Vámkódex 185. cikke (2) bekezdésének b) pontja értelmében tértiáruként behozott áruk,
  - Oggetti mdahhla bhala oggetti miġjuba lura taht Artikolu 185(2)(b) tal-Kodiċi,
  - Towary dopuszczone jako towary powracające zgodnie z art. 185 ust. 2 lit. b) Kodeksu,
  - Blago se ponovno uvažá v skladu s členom 185(2)(b) Zakonika,
  - Vrátény tovar podľa článku 185 ods. 2 písm. b) colného zákonníka;]
- c the copy of the export declaration returned to the exporter at the time of completion of the export formalities for the goods, or a copy thereof certified by the customs office of exportation.

Where the decision-making customs authority is already in possession of the particulars contained in one or more of the declarations referred to at (a), (b) or (c) above, the declaration or declarations concerned need not be produced.

2 The request referred to in paragraph 1 must be lodged with the customs office referred to in Article 879 within 12 months of the date of acceptance of the export declaration.

#### Textual Amendments

- F12** Inserted by [Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded \(94/C 241/08\)](#).
- F13** Substituted by [Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded](#).
- F14** Inserted by [Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded](#).

## Section 2

### Procedure for granting repayment or remission

#### Article 883

The decision-making customs authority may authorize completion of the customs formalities to which any repayment or remission may be subject before it has ruled on the application for repayment or remission. Such authorization shall be entirely without prejudice to its decision on the application.

#### Article 884

Without prejudice to Article 883 and until a decision has been taken on the application for repayment or remission, the goods in respect of which repayment or remission of

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duties has been requested may not be transferred to a location other than that specified in the said application unless the applicant notifies in advance the customs office referred to in Article 879, which shall in turn inform the decision-making customs authority.

#### *Article 885*

1 Where an application for repayment or remission relates to a case where supplementary information must be obtained or where the goods must be examined in order to ensure that the conditions for repayment or remission laid down in the Code and in this Title are satisfied, the decision-making customs authority shall adopt the measures necessary to that end, if necessary by requesting the assistance of the supervising customs office, specifying the nature of the information to be obtained or of the checks to be carried out.

The supervising customs office shall comply promptly with this request and shall forward the information obtained and the results of the checks carried out to the decision-making customs authority.

2 Where the application relates to goods which are situated in a Member State other than that in which the import or export duties were entered in the accounts, the provisions of Chapter 4 of this Title shall apply.

#### *Article 886*

1 When the decision-making customs authority possesses all the necessary particulars, it shall give its decision in writing on the application for repayment or remission in accordance with Article 6 (2) and (3) of the Code.

2 Where the application is approved, the decision shall include all the particulars necessary for its implementation.

Depending on the circumstances, some or all of the following particulars shall appear in the decision:

- a the information necessary for identifying the goods to which it applies;
- b the grounds for repayment or remission of the import or export duties and a reference to the corresponding article of the Code and, where appropriate, the corresponding article of this Title;
- c the use to which the goods may be put or the destination to which they may be sent, depending on the possibilities available in the particular case under the Code and where appropriate on the basis of a specific authorization by the decision-making customs authority;
- d the time limit for completion of the formalities to which repayment or remission of the import or export duties is subject;
- e a statement indicating that the import or export duties will not be repaid or remitted until the implementing customs office has informed the decision-making customs authority that the formalities to which repayment or remission is subject have been completed;
- f particulars of any requirements to which the goods remain subject pending implementation of the decision;
- g a notice informing the recipient that he must give the original of the decision to the implementing customs office of his choice when presenting the goods.

#### *Article 887*

1 The implementing customs office shall take steps to ensure:  
— where appropriate, that the requirements referred to in Article 886 (2) (f) are met,

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— that in all cases the goods are actually used in the manner or sent to the destination specified in the decision to repay or remit import or export duties.

2 Where the decision specifies that the goods may be placed in a customs warehouse, a free zone or a free warehouse, and the recipient avails himself of this opportunity, the necessary formalities must be carried out with the implementing customs office.

3 Where the decision to repay or remit duties specifies a use to which the goods are to be put or a destination to which they are to be sent which can be established only in a Member State other than that in which the implementing customs office is located, proof of compliance shall be furnished by production of a control copy T 5 issued and used in accordance with the provisions of [<sup>F15</sup>Articles 912a to 912g], and of this Article.

The control copy T 5 must contain the following:

- a box 33 shall contain the combined nomenclature code of the goods;
- b box 103 shall indicate in words the net quantity of the goods;
- c box 104 shall contain, as appropriate, either the words ‘exit from the customs territory of the Community’, or one of the following under the heading ‘other’:
  - Delivery free of charge to the following charity ...,
  - Destruction under customs supervision,
  - Entry for the following customs procedure ...,
  - Placing in a free zone or free warehouse;
- d box 106 shall contain reference particulars of the decision granting repayment or remission of duties;
- e box 107 shall contain the words ‘Articles 877 to 912 of Regulation (EEC) No 2454/93’.

4 The supervising customs office which establishes or on whose responsibility it is established that the goods have actually been used for the purpose specified or have arrived at the prescribed destination shall complete the box entitled ‘Control of use and/or destination’ of the control document by entering a cross against ‘have received the use and/or destination declared overleaf’ and giving the relevant date.

5 When the implementing customs office has satisfied itself that the conditions set out in paragraph 1 are fulfilled, it shall send a certificate to that effect to the decision-making customs authority.

#### Textual Amendments

**F15** Substituted by [Commission Regulation \(EC\) No 1602/2000 of 24 July 2000 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

#### Article 888

A decision-making customs authority having approved an application for repayment or remission of duties shall repay or remit such duty only after receiving the certificate referred to in Article 887 (5).

#### Article 889

1 Where the request for repayment or remission is based on the existence, at the time when the declaration of release for free circulation was accepted, of a reduced or zero rate of import duty on the goods under a tariff quota, a tariff ceiling or other preferential tariff



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arrangements, repayment or remission shall be granted only on condition that, at the time of lodging the application for repayment or remission accompanied by the necessary documents:

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

If the conditions laid down in the preceding paragraph are not fulfilled, repayment or remission shall nevertheless be granted where the failure to apply the reduced or zero rate of duty to the goods was the result of an error on the part of the customs authorities themselves and the declaration for free circulation contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate.

[<sup>F162</sup> Each Member State shall keep at the disposal of the Commission a list of the cases in which the provisions of the second subparagraph of paragraph 1 have been applied]

#### Textual Amendments

**F16** Inserted by [Commission Regulation \(EC\) No 75/98 of 12 January 1998 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code.](#)

#### Article 890

[<sup>F17</sup>The decision-making customs authority shall grant repayment or remission when:

- (a) the request is accompanied with a certificate of origin, a movement certificate, a certificate of authenticity, an internal Community transit document or with any other appropriate document, indicating that the imported goods were eligible, at the time of acceptance of the declaration for free circulation, for Community treatment, preferential tariff treatment or favourable tariff treatment by reason of the nature of goods;
- (b) the document thus produced refers specifically to the goods in question;
- (c) all the conditions relating to acceptance of the said document are fulfilled;
- (d) all the other conditions for the granting of the Community treatment, a preferential tariff treatment or of a favourable tariff treatment by reason of the nature of goods are fulfilled.]

[<sup>F18</sup>Repayment or remission shall take place upon presentation of the goods. Where the goods cannot be presented to the implementing customs office, the decision-making customs authority shall grant repayment or remission only where it has information showing unequivocally that the certificate or document produced post-clearance applies to the said goods.]

#### Textual Amendments

**F17** Substituted by [Commission Regulation \(EC\) No 881/2003 of 21 May 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\).](#)

**F18** Substituted by [Commission Regulation \(EC\) No 46/1999 of 8 January 1999 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code.](#)

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#### Article 891

Repayment or remission of duty shall not be granted where certificates for the advance fixing of levies are presented in support of the application.

#### Article 892

Import duties shall not be repaid or remitted under Article 238 of the Code where:

- the defective nature of the goods was taken into consideration in drawing up the terms of the contract, in particular the price, under which the goods were entered for a customs procedure involving the obligation to pay import duties,
- the goods are sold by the importer after it has been ascertained that they are defective or do not comply with the terms of the contract.

#### Article 893

1 Without prejudice to Article 900 (1) (c), the decision-making customs authority shall set a deadline, no later than two months from the date of notification of the decision to repay or remit import duties or export duties, for completion of the customs formalities to which the repayment or remission of duties is subject.

2 Failure to observe the deadline referred to in paragraph 1 shall result in loss of entitlement to repayment or remission except where the person concerned by the decision proves that he was prevented from meeting this deadline by unforeseeable circumstances or *force majeure*.

#### Article 894

Where destruction of the goods authorized by the decision-making customs authority produces waste or scrap, such waste or scrap shall be regarded as non-Community goods once a decision has been taken accepting the application for repayment or remission.

#### Article 895

Where the authorization referred to in the second subparagraph of Article 238 (2) (b) of the Code is granted, the customs authorities shall take all necessary steps to ensure that goods placed in a customs warehouse, free zone or free warehouse may subsequently be recognized as non-Community goods.

#### Article 896

1 Goods which, under the common agricultural policy, are entered for a customs procedure involving the obligation to pay import duties under an import licence or advance fixing certificate shall benefit from Articles 237, 238 and 239 of the Code only where the customs office referred to in Article 879 is satisfied that the necessary steps have been taken by the competent authorities to cancel the effects with regard to the certificate under which the importation took place.

2 Paragraph 1 shall also apply in the case of re-exportation, placing in a customs warehouse, free zone or free warehouse, or destruction of the goods.

#### Article 897

Where it is not the complete article that is exported, re-exported or destroyed or assigned to another authorized customs treatment or use, but one or more parts or components of that article, the amount to be repaid or remitted shall be the difference between the amount of import duties on the complete article and the amount of import duties which

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would have been chargeable on the remainder of the article if the latter had been entered in the unaltered state for a customs procedure involving the obligation to pay such duties on the date on which the complete article was so entered.

#### *Article 898*

The amount referred to in Article 240 of the Code is hereby set at ECU 10.

### CHAPTER 3

#### **Specific provisions relating to the application of Article 239 of the Code**

##### Section 1

#### **Decisions to be taken by the customs authorities of the Member States**

##### *F<sup>8</sup>* Article 899

1 Where the decision-making customs authority establishes that an application for repayment or remission submitted to it under Article 239(2) of the Code:

- is based on grounds corresponding to one of the circumstances referred to in Articles 900 to 903, and that these do not result from deception or obvious negligence on the part of the person concerned, it shall repay or remit the amount of import or export duties concerned,
- is based on grounds corresponding to one of the circumstances referred to in Article 904, it shall not repay or remit the amount of import or export duties concerned.

2 In other cases, except those in which the dossier must be submitted to the Commission pursuant to Article 905, the decision-making customs authority shall itself decide to grant repayment or remission of the import or export duties where there is a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

Where Article 905(2), second indent, is applicable, the customs authorities may not decide to authorise repayment or remission of the duties in question until the end of a procedure initiated in accordance with Articles 906 to 909.

3 For the purposes of Article 239(1) of the Code and of this Article, ‘the person concerned’ shall mean the person or persons referred to in Article 878(1) or their representatives, and any other person who was involved with the completion of the customs formalities relating to the goods concerned or gave the instructions necessary for the completion of these formalities.

4 For the purposes of applying paragraphs 1 and 2 the Member States shall give each other mutual assistance, particularly where an error by the customs authorities of a Member State other than that responsible for taking the decision is concerned.]

#### **Textual Amendments**

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

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### Article 900

- 1 Import duties shall be repaid or remitted where:
  - a non-Community goods placed under a customs procedure involving total or partial relief from import duties or goods released for free circulation with favourable tariff treatment by reason of their end-use are stolen, provided that the goods are recovered promptly and placed again in their original customs situation in the state they were in when they were stolen;
  - b non-Community goods are inadvertently withdrawn from the customs procedure involving total or partial relief from the said duties under which they had been placed, provided that, as soon as the error is found, they are placed again in their original customs situation in the state they were in when they were withdrawn;
  - c it is impossible to operate the mechanism for opening the means of transport on which goods previously released for free circulation are located and accordingly to unload them on arrival at their destination, provided that they are immediately re-exported;
  - d goods originally released for free circulation are subsequently returned to their non-Community supplier, under the outward processing arrangements, to enable him — free of charge — to eliminate defects existing prior to the release of the goods (even if found after release of the goods) or to bring them into line with the provisions of the contract under which they were released for free circulation, and the said supplier decides to keep the goods permanently because he is unable to remedy the defects or because it would not be economic to do so;
  - e it is found, when the customs authorities decide on post-clearance entry in the accounts of import duties actually due on goods released for free circulation with full relief from such duties, that the goods in question have been re-exported from the customs territory of the Community without customs supervision, provided it is established that the substantive conditions laid down in the Code for the repayment or remission of such import duties would actually have been met at the time of re-exportation if the amount had been levied when the goods were released for free circulation;
  - f a judicial body has forbidden the marketing of an item previously entered for a customs procedure obliging the person concerned to pay import duties under normal conditions, and the said item is re-exported from the customs territory of the Community or destroyed under the control of the customs authorities, provided it is established that the item in question has not actually been used in the Community;
  - g the goods have been entered for a customs procedure involving the obligation to pay such duties by a declarant empowered to do so on his own initiative and, through no fault of the declarant, it has not been possible to deliver them to the consignee;
  - h the goods have been addressed to the consignee in error by the consignor;
  - i the goods are found to be unsuitable for the use for which the consignee intended them because of an obvious factual error in his order;
  - j after having been released for a customs procedure involving the obligation to pay import duties, the goods are found not to have complied, at the time of their release, with the rules in force concerning their use or marketing and therefore cannot be used for the purpose intended by the consignee;
  - k the use of the goods by the consignee for the purpose intended is prevented or substantially restricted as a result of measures of general scope taken, after the date of release for a customs procedure involving the obligation to pay import duties, by an authority or other body having the appropriate power of decision;
  - l total or partial import duty relief applied for by the person concerned in accordance with existing provisions cannot, through no fault of the person concerned, be granted by

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- the customs authorities, who shall accordingly enter in the accounts the import duties which have become due;
- m the goods reached the consignee after the binding delivery dates stipulated in the contract under which they were entered for a customs procedure involving the obligation to pay import duties;
- n it has not been possible to sell the goods in the customs territory of the Community and they are delivered free of charge to charities:
- carrying out their activities in a third country, provided that they are represented in the Community,
  - or
  - carrying out their activities in the customs territory of the Community, provided that they are eligible for relief in the case of importation for free circulation of similar goods from third countries.
- [<sup>F19</sup>o the customs debt has been incurred otherwise than under Article 201 of the Code and the person concerned is able to produce a certificate of origin, a movement certificate, an internal Community transit document or other appropriate document showing that if the imported goods had been entered for free circulation they would have been eligible for Community treatment or preferential tariff treatment, provided the other conditions referred to in Article 890 were satisfied.]

[<sup>F17</sup>2 Repayment or remission of import duties in the cases referred to in paragraph 1(c) and (f) to (n) shall, except where the goods are destroyed by order of a public authority or delivered free of charge to charities carrying out their activities in the Community, be conditional upon their re-export from the customs territory of the Community under the supervision of the customs authorities.

If requested, the decision-making authority shall permit re-export of the goods to be replaced by their destruction or by placing them under the external Community transit procedure, under the customs warehousing arrangements, or in a free zone or free warehouse.

Goods to be assigned one of these treatments shall be considered to be non-Community goods.

In this case, the customs authorities shall take all requisite measures to ensure that the goods placed in a customs warehouse, in a free zone or in a free warehouse may later be recognised as non-Community goods.]

<sup>F20</sup>3 . . . . .

4 In addition, the supervising customs office must be satisfied that the goods have been neither used nor sold before their re-exportation.

**Textual Amendments**

- F17** Substituted by [Commission Regulation \(EC\) No 881/2003 of 21 May 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).
- F19** Inserted by [Commission Regulation \(EC\) No 3254/94 of 19 December 1994 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community customs code](#).

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**F20** Deleted by Commission Regulation (EC) No 881/2003 of 21 May 2003 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (Text with EEA relevance).

### Article 901

- 1 Import duties shall be repaid or remitted where:
  - a goods entered in error for a customs procedure involving the obligation to pay import duties have been re-exported from the customs territory of the Community without having been previously entered for the customs procedure under which they should have been placed, provided the other conditions laid down in Article 237 of the Code have been met;
  - b the goods have been re-exported or destroyed in accordance with Article 238 (2) (b) of the Code without customs supervision, provided the other conditions laid down in the said Article have been met;
  - c the goods have been re-exported or destroyed without customs supervision in accordance with Article 900 (1) (c) and (f) to (n), provided the other conditions laid down in Article 900 (2) and (4) have been met.
- 2 Repayment or remission of import duties in the circumstances referred to in paragraph 1 shall be conditional on:
  - a production of all the evidence needed to enable the decision-making customs authority to satisfy itself that the goods in respect of which repayment or remission is requested:
    - have actually been re-exported from the customs territory of the Community, or
    - have been destroyed under the supervision of authorities or persons empowered to certify such destruction officially;
  - b the return to the decision-making customs authority of any document certifying the Community status of the goods in question under cover of which the said goods may have left the customs territory of the Community, or the presentation of whatever evidence the said authority considers necessary to satisfy itself that the document in question cannot be used subsequently in connection with any importation of goods into the Community.

### Article 902

- 1 For the purposes of Article 901 (2):
  - a the evidence needed to enable the decision-making customs authority to satisfy itself that the goods in respect of which repayment or remission is requested have actually been re-exported from the customs territory of the Community shall consist of the presentation by the applicant of:
    - the original or a certified copy of the declaration for export of the goods from the customs territory of the Community,
    - and
    - certification by the customs office through which the goods actually left the customs territory of the Community.

Where such certification cannot be produced, proof that the goods have left the customs territory of the Community may be presented in the form of:

- certification by the customs office in the third country of destination confirming that the goods have arrived, or

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- the original or a certified copy of the customs declaration for the goods made in the third country of destination.

These documents must be accompanied by administrative and commercial documentation enabling the decision-making customs authority to check that the goods exported from the customs territory of the Community are the same as those which had been declared for a customs procedure involving the obligation to pay import duties, namely:

- the original or a certified copy of the declaration for the said procedure,  
and
  - where this is considered necessary by the decision-making customs authority, commercial or administrative documents (such as invoices, dispatch details, transit documents or health certificates) containing a full description of the goods (trade description, quantities, marks and other identifying particulars) which were presented with the declaration for the said procedure or with the declaration for export from the customs territory of the Community or the customs declaration made for the goods in the third country of destination, as the case may be;
- b The evidence needed to enable the decision-making customs authority to satisfy itself that the goods in respect of which repayment or remission is requested have actually been destroyed under the supervision of authorities or persons authorized to certify officially such destruction shall consist of the presentation by the applicant of:
- a report or declaration of destruction drawn up by the authorities under whose supervision the goods were destroyed, or a certified copy thereof, or
  - a certificate drawn up by the person authorized to certify destruction, accompanied by evidence of his authority.

These documents shall contain a sufficiently full description of the destroyed goods (trade description, quantities, marks and other identifying particulars) to enable the customs authorities to satisfy themselves, by means of comparison with the particulars given in the declaration for a customs procedure involving the obligation to pay import duties and the accompanying commercial documents (invoices, dispatch details, etc.), that the destroyed goods are those which had been declared for the said procedure.

- 2 Where the evidence referred to in paragraph 1 is insufficient to allow the decision-making customs authority to take a decision on the case submitted to it in full knowledge of the facts, or where certain evidence is not available, such evidence may be supplemented or replaced by any other documents considered necessary by the said authority.

#### *Article 903*

- 1 For returned goods in respect of which an export duty was levied when they were exported from the customs territory of the Community, entry for free circulation shall give the right to repayment of the amounts levied.

- 2 Paragraph 1 shall apply only to goods which are in one of the situations referred to in Article 844.

It must be proved to the satisfaction of the customs office where the goods are declared for release for free circulation that the goods are in one of the situations referred to in Article 185 (2) (b) of the Code.

- 3 Paragraph 1 shall apply even where the returned goods constitute only a proportion of the goods previously exported from the customs territory of the Community.

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### Article 904

Import duties shall not be repaid or remitted where the only grounds relied on in the application for repayment or remission are, as the case may be:

- (a) re-export from the customs territory of the Community of goods previously entered for a customs procedure involving the obligation to pay import duties, for reasons other than those referred to in Article 237 or 238 of the Code or in Article 900 or 901, notably failure to sell;
- (b) destruction, for any reason whatsoever, save in the cases expressly provided for by Community legislation, of goods entered for a customs procedure involving the obligation to pay import duties after their release by the customs authorities;
- (c) presentation, for the purpose of obtaining preferential tariff treatment of goods declared for free circulation, of documents subsequently found to be forged, falsified or not valid for that purpose, even where such documents were presented in good faith.

#### *[<sup>F10</sup> Article 904a*

1 When no communication is required under paragraph 2, each Member State shall hold at the disposal of the Commission the list of the cases in which Article 899(2) was applied.

2 Each Member State shall communicate to the Commission a list of the cases in which it has applied the provisions of Article 899(2) and the amount repaid or remitted in respect of one or more import or export operations but in consequence of a single special situation is more than EUR 50 000, giving a short summary of each case. This communication shall be forwarded during the first and third quarters of each year for all cases in which it was decided to repay or remit duties during the preceding half-year.]

#### **Textual Amendments**

**F10** Inserted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

### Section 2

#### **Decisions to be taken by the Commission**

#### *[<sup>F8</sup> Article 905*

1 Where the application for repayment or remission submitted under Article 239(2) of the Code is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which the decision-making customs authority belongs shall transmit the case to the Commission to be settled under the procedure laid down in Articles 906 to 909 where:

- the authority considers that a special situation is the result of the Commission failing in its obligations,
- the circumstances of the case are related to the findings of a Community investigation carried out under Regulation (EC) No 515/97, or under any other Community legislation or any agreement concluded by the Community with countries or groups of



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- countries in which provision is made for carrying out such Community investigations, or
- the amount for which the person concerned may be liable in respect of one or more import or export operations but in consequence of a single special situation is EUR 500 000 or more.

The term ‘the person concerned’ shall be interpreted in the same way as in Article 899.

- 2 However, the cases referred to in paragraph 1 shall not be transmitted where:
- the Commission has already adopted a decision under the procedure provided for in Articles 906 to 909 on a case involving comparable issues of fact and of law,
  - the Commission is already considering a case involving comparable issues of fact and of law.

3 The dossier submitted to the Commission shall contain all the information required for full consideration. It shall include detailed information on the behaviour of the operator concerned, and in particular on his professional experience, good faith and diligence. This assessment shall be accompanied by all information that may demonstrate that the operator acted in good faith. The dossier shall also include a statement, signed by the applicant for repayment or remission, certifying that he has read the dossier and either stating that he has nothing to add or listing all the additional information that he considers should be included.

4 As soon as it receives the dossier the Commission shall inform the Member State concerned accordingly.

5 Should it be found that the information supplied by the Member State is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may request that additional information be supplied.

6 Where one of the following situations occurs the Commission shall return the dossier to the customs authority and the procedure referred to in Articles 906 to 909 shall be deemed never to have been initiated:

- the dossier shows that there is a disagreement between the customs authority that has transmitted the dossier and the person who signed the statement referred to in paragraph 3 as regards the account of the facts,
- the dossier is obviously incomplete since it contains nothing that would justify its consideration by the Commission,
- under paragraphs 1 and 2, the dossier should not be transmitted,
- the existence of a customs debt has not been established,
- new information relating to the dossier and of a nature to alter substantially its presentation of the facts or legal assessment has been transmitted by the customs authority to the Commission while it is considering the dossier.

#### **Textual Amendments**

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

#### *Article 906*

The Commission shall forward to the Member States a copy of the dossier referred to in Article 905(3) within 15 days of the date on which it received that dossier.

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Consideration of the case in question shall be included as soon as possible on the agenda of a meeting of the group of experts provided for in Article 907.]

#### Textual Amendments

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\).](#)

#### *f<sup>6</sup>Article 906a*

Where, at any time in the procedure provided for in Articles 906 and 907, the Commission intends to take a decision unfavourable towards the applicant for repayment or remission, it shall communicate its objections to him/her in writing, together with all the documents on which it bases those objections. The applicant for repayment or remission shall express his/her point of view in writing within a period of one month from the date on which the objections were sent. If he/she does not give his/her point of view within that period, he/she shall be deemed to have waived the right to express a position.]

#### Textual Amendments

- F6** Inserted by [Commission Regulation \(EC\) No 1677/98 of 29 July 1998 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\).](#)

#### *f<sup>8</sup>Article 907*

After consulting a group of experts composed of representatives of all Member States, meeting within the framework of the Committee to consider the case in question, the Commission shall decide whether or not the situation which has been considered justifies repayment or remission.

That decision shall be taken within nine months of the date on which the case referred to in Article 905(3) is received by the Commission. However, where the declaration or detailed assessment of the operator's behaviour referred to in Article 905(3) is not included in the dossier, the nine months shall be counted only from the date of receipt of these documents by the Commission. The customs authority and the person applying for repayment or remission shall be notified accordingly.

Where the Commission has found it necessary to ask for additional information from the Member State in order to reach its decision, the nine months shall be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information. The person applying for repayment or remission shall be notified of the extension.

Where the Commission conducts investigations itself in order to reach its decision, the nine months shall be extended by the time necessary to complete the investigations. Such an extension shall not exceed nine months. The customs authority and the person applying for repayment or remission shall be notified of the dates on which investigations are opened and closed.

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Where the Commission has notified the person applying for repayment or remission of its objections in accordance with Article 906a, the period of nine months shall be extended by one month.

**Textual Amendments**

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

*Article 908*

1 The Member State concerned shall be notified of the decision referred to in Article 907 as soon as possible and in any event within one month of the expiry of the period specified in that Article.

The Commission shall notify the Member States of the decisions it has adopted in order to help customs authorities to reach decisions on cases involving comparable issues of fact and law.

2 The decision-making authority shall decide whether to grant or refuse the application made to it on the basis of the Commission's decision notified in accordance with paragraph 1.

3 Where it is established by the decision referred to in Article 907 that the circumstances under consideration justify repayment or remission, the Commission may specify the conditions under which the Member States may repay or remit duties in cases involving comparable issues of fact and of law.]

**Textual Amendments**

- F8** Substituted by [Commission Regulation \(EC\) No 1335/2003 of 25 July 2003 amending Regulation \(EEC\) No 2454/93 laying down provisions for the implementation of Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code \(Text with EEA relevance\)](#).

*Article 909*

If the Commission fails to take a decision within the time limit set in Article 907, or fails to notify a decision to the Member State in question within the time limit set in Article 908, the decision-making customs authority shall grant the application.

CHAPTER 4

**Administrative assistance between the Customs authorities of the Member States**

*Article 910*

In the cases referred to in Article 885 (2), the decision-making customs authority shall send the supervising customs office two copies of its request made out in writing on a form conforming to the model in Annex 112. The request shall be accompanied by originals or copies of the application for repayment or remission and of all documents necessary to enable the supervising customs office to obtain the information or carry out the checks requested.

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### *Article 911*

1 Within two weeks of the date of receipt of the request the supervising customs office shall obtain the information or carry out the checks requested by the decision-making customs authority. It shall enter the results obtained in the portion of the original of the document referred to in Article 910 reserved for that purpose and shall return the said document to the decision-making customs authority together with all the documents forwarded to it.

2 Where it is unable to obtain the information or carry out the checks requested within the two-week period referred to in paragraph 1, the supervising customs office shall acknowledge receipt of the request submitted to it within that period by returning to the decision-making customs authority the copy of the document referred to in Article 910 duly annotated.

### *Article 912*

The implementing customs office shall send the certificate referred to in Article 887 (5) to the decision-making customs authority on a form conforming to the specimen in Annex 113.

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(1) [<sup>F8</sup>OJ L 82, 22.3.1997, p. 1.]

.....  
**Textual Amendments**

**F8** Substituted by Commission Regulation (EC) No 1335/2003 of 25 July 2003 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (Text with EEA relevance).

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**Changes to legislation:**

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