

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 952/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 9 October 2013

laying down the Union Customs Code

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 114 and 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) A number of amendments are to be made to Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) ⁽³⁾. In the interests of clarity, that Regulation should be recast.

(2) It is appropriate to ensure that Regulation (EC) No 450/2008 is consistent with the Treaty on the Functioning of the European Union (TFEU), in particular Articles 290 and 291 thereof. It is also appropriate that the Regulation take account of the evolution of Union law and that some of its provisions are adapted in order to facilitate their application.

(3) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(4) In particular, when preparing and drawing up delegated acts, the Commission should ensure that Member States' experts and the business community are consulted in a transparent manner, and well in advance.

(5) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in order: to specify the format and code of the common data requirements for the purpose of the exchange of information between the customs authorities and between economic operators and customs authorities and the storage of such information and the procedural rules on the exchange and storage of information which can be made by means other than electronic data-processing techniques; to adopt decisions allowing one or several Member States to use means for the exchange and storage of information other than electronic data-processing techniques; to specify the customs authority which is responsible for the registration of economic operators and of other persons; to specify the technical arrangements for developing, maintaining and employing electronic systems; to specify the procedural rules on the conferral and proving of the entitlement for a customs representative to provide services in a Member State other than the one where he or she is established; the procedural rules on the submission and acceptance of an application for a decision relating to the application of the customs legislation, and on the taking and the monitoring of such a decision; the procedural rules on the annulment,

⁽¹⁾ OJ C 229, 31.7.2012, p. 68.

⁽²⁾ Position of the European Parliament of 11 September 2013 (not yet published in the Official Journal) and decision of the Council of 27 September 2013.

⁽³⁾ OJ L 145, 4.6.2008, p. 1.

revocation and amendment of favourable decisions; the procedural rules on the use of a decision relating to binding information after it ceases to be valid or is revoked; the procedural rules on the notification to the customs authorities that the taking of such decisions is suspended and on the withdrawal of such suspension; to adopt decisions requesting Member States to revoke decisions relating to binding information; to adopt the modalities for the application of the criteria for the granting of the status of authorised economic operator; to adopt measures to ensure uniform application of customs controls, including the exchange of risk information and analysis,

common risk criteria and standards, control measures and priority control areas; to determine the ports or airports where customs controls and formalities are to be carried out on cabin and hold baggage; to lay down the rules on currency conversion; to adopt measures on the uniform management of tariff quota and tariff ceilings and the management of the surveillance of the release for free circulation or export of goods; to adopt measures to determine the tariff classification of goods; to specify the procedural rules on the provision and the verification of the proof of non-preferential origin; the procedural rules on the facilitation of the establishment in the Union of the preferential origin of goods; to adopt measures to determine the origin of specific goods; the granting of a temporary derogation from the rules on preferential origin of goods benefiting from preferential measures adopted unilaterally by the Union; the determination of the origin of specific goods;

to specify the procedural rules on the determination of the customs value of goods; to specify the procedural rules on the provision of a guarantee, the determination of its amount, its monitoring and release and the revocation and cancellation of an undertaking given by a guarantor; to specify the procedural rules regarding temporary prohibitions of the use of comprehensive guarantees; to adopt measures to ensure mutual assistance between the customs authorities in the event of the incurrence of a customs debt; to specify the procedural rules on repayment and remission of an amount of import or export duty and the information to be provided to the Commission; to adopt decisions on repayment or remission of an amount of import or export duty; to specify the procedural rules on the lodging, amendment and invalidation of an entry summary declaration; to specify the time-limit within which a risk analysis is to be carried out on the basis of the entry summary declaration; to specify the procedural rules on the notification of arrival of sea-going vessels and aircraft and on the conveyance of goods to the appropriate place; to specify the procedural rules on the presentation of goods to customs; the procedural rules on the lodging, amendment and invalidation of the temporary storage declaration and on the movement of goods in temporary storage; the procedural rules for the provision and verification of the proof of the customs status of Union goods; the procedural rules on the determination of competent customs offices and on the lodging of the customs declaration where other

means than electronic data processing techniques are used; the procedural rules on the lodging of a standard customs declaration and on the making available of supporting documents; the procedural rules on the lodging of a simplified declaration and a supplementary declaration; the procedural rules on the lodging of a customs declaration prior to the presentation of goods to customs, the acceptance of the customs declaration and the amendment of the customs declaration after the release of the goods; to adopt measures for the determination of the tariff subheading of the goods which are subject to the highest rate of import or export duty where a consignment is made of goods falling under different tariff subheadings; to specify the procedural rules on centralised clearance and on the waiver from the obligation for goods to be presented in that context; the procedural rules on entry in the declarant's records; the procedural rules on the customs formalities and controls to be carried out by the holder of the authorisation in the context of self-assessment; to adopt measures on the verification of the customs declaration, the examination and sampling of goods and the results of the verification;

the procedural rules on the disposal of goods; the procedural rules on the provision of information establishing that the conditions for relief from import duty for returned goods are fulfilled and on the provision of evidence that the conditions for relief from import duty for products of sea-fishing and other products taken from the sea are fulfilled; the procedural rules on the examination of the economic conditions in the context of special procedures; the procedural rules on the discharge of a special procedure; the procedural rules on the transfer of rights and obligations and the movement of goods in the context of special procedures; the procedural rules on the use of equivalent goods in the context of special procedures; the procedural rules for the application of the provisions of international transit instruments in the customs territory of the Union; the procedural rules on the placing of goods under the Union transit procedure and on the end of that procedure, on the operation of the simplifications of that procedure and on the customs supervision of goods passing through the territory of a country or territory outside the customs territory of the Union under the external Union transit procedure; the procedural rules on the placing of goods under the customs warehousing or free zone procedure; to lay down the time-limit within which risk analysis is to be carried out on the basis of the pre-departure declaration; to specify the procedural rules on the exit of goods;

the procedural rules on the lodging, amendment and invalidation of the exit summary declaration; the procedural rules on the lodging, amendment and invalidation of the re-export notification; to adopt a work programme supporting the development of related electronic systems and governing the setting up of transitional periods; to adopt decisions authorising Member States to test simplifications in the application of the customs legislation, especially when those simplifications are information technology (IT) related. Those powers

- should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ⁽¹⁾.
- (6) Considering the cooperation which is needed between the Member States and the Commission to develop, maintain and employ the electronic systems required for the implementation of the Union Customs Code (the Code), the Commission should not adopt the work programme supporting that development and governing the setting up of transitional periods where no opinion is delivered by the committee examining the draft implementing act.
- (7) The advisory procedure should be used for the adoption of: decisions allowing one or several Member States to use means for the exchange and storage of information other than electronic data-processing techniques, given that those decisions do not affect all Member States; decisions requesting Member States to revoke decisions relating to binding information, given that those decisions affect only one Member State and aim at ensuring compliance with the customs legislation; decisions on repayment or remission of an amount of import or export duty given that those decisions directly affect the applicant for that repayment or remission.
- (8) In duly justified cases, where imperative grounds of urgency so require, the Commission should adopt immediately applicable implementing acts relating to: measures to ensure uniform application of customs controls, including the exchange of risk information and analysis, common risk criteria and standards, control measures and priority control areas; the determination of the tariff classification of goods; the determination of the origin of specific goods; measures temporarily prohibiting the use of comprehensive guarantees.
- (9) The Union is based upon a customs union. It is advisable, in the interests both of economic operators and of the customs authorities in the Union, to assemble current customs legislation in a code. Based on the concept of an internal market, that code should contain the general rules and procedures which ensure the implementation of the tariff and other common policy measures introduced at Union level in connection with trade in goods between the Union and countries or territories outside the customs territory of the Union, taking into account the requirements of those common policies. Customs legislation should be better aligned on the provisions relating to the collection of import charges without change to the scope of the tax provisions in force.
- (10) In order to ensure effective administrative simplification, the views of economic operators should be taken into account when the customs legislation is further modernised.
- (11) In accordance with the Commission Communication of 9 August 2004 entitled "Protecting the Communities' financial interests - Fight against fraud - Action Plan for 2004-2005", it is appropriate to adapt the legal framework for the protection of the financial interests of the Union.
- (12) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽²⁾ was based upon integration of the customs procedures applied separately in the respective Member States during the 1980s. That Regulation has been repeatedly and substantially amended since its introduction, in order to address specific problems such as the protection of good faith or the taking into account of security requirements. Further amendments to that Regulation were introduced by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 ⁽³⁾ - and subsequently included in Regulation (EC) No 450/2008 - as a consequence of the important legal changes which have occurred in recent years, at both Union and international level, such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003, 2005 and 2011 Acts of Accession, as well as the amendment to the International Convention on the simplification and harmonisation of customs procedures (the Revised Kyoto Convention), the Union's accession to which was approved by Council Decision 2003/231/EC of 17 March 2003 ⁽⁴⁾.
- (13) It is appropriate to introduce in the Code a legal framework for the application of certain provisions of the customs legislation to trade in Union goods between parts of the customs territory to which the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽⁵⁾ or Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty ⁽⁶⁾ apply and parts of that territory where those provisions do not apply, or to trade between parts where those provisions do not apply. Considering the fact that the goods concerned are Union goods and considering the fiscal nature of the measures at stake in that intra-Union trade, it is justified to introduce, appropriate simplifications to the customs formalities to be applied to those goods.

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

⁽²⁾ OJ L 302, 19.10.1992, p. 1.

⁽³⁾ OJ L 117, 4.5.2005, p. 13.

⁽⁴⁾ OJ L 86, 3.4.2003, p. 21.

⁽⁵⁾ OJ L 347, 11.12.2006, p. 1.

⁽⁶⁾ OJ L 9, 14.1.2009, p. 12.

- (14) In order to take into account the special fiscal regime of certain parts of the customs territory of the Union, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the customs formalities and controls to be applied to the trade in Union goods between those parts and the rest of the customs territory of the Union.
- (15) The facilitation of legitimate trade and the fight against fraud require simple, rapid and standard customs procedures and processes. It is therefore appropriate, in line with the Commission Communication of 24 July 2003 entitled "A simple and paperless environment for customs and trade", to simplify customs legislation, to allow the use of modern tools and technology and to promote further the uniform application of customs legislation and modernised approaches to customs control, thus helping to ensure the basis for efficient and simple clearance procedures. Customs procedures should be merged or aligned and the number of procedures reduced to those that are economically justified, with a view to increasing the competitiveness of business.
- (16) The completion of the internal market, the reduction of barriers to international trade and investment and the reinforced need to ensure security and safety at the external borders of the Union have transformed the role of customs authorities giving them a leading role within the supply chain and, in their monitoring and management of international trade, making them a catalyst to the competitiveness of countries and companies. The customs legislation should therefore reflect the new economic reality and the new role and mission of customs authorities.
- (17) The use of information and communication technologies, as laid down in Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade⁽¹⁾, is a key element in ensuring trade facilitation and, at the same time, the effectiveness of customs controls, thus reducing costs for business and risk for society. It is therefore necessary to establish in the Code the legal framework within which that Decision can be implemented, in particular the legal principle that all customs and trade transactions are to be handled electronically and that information and communication systems for customs operations are to offer, in each Member State, the same facilities to economic operators.
- (18) In order to ensure a paperless environment for customs and trade, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of common data requirements for the purpose of the exchange and storage of information using electronic data processing techniques, cases where other means may be used for such exchange and storage and registration of persons. Means other than electronic data processing techniques could be used in particular on a transitional basis, where the necessary electronic systems are not yet operational, but not beyond 31 December 2020. Insofar as centralised clearance is concerned, those transitional measures would consist, until the necessary electronic systems are operational, in maintaining the procedure currently known as the 'single authorisation for simplified procedures'.
- (19) Use of information and communication technologies should be accompanied by harmonised and standardised application of customs controls by the Member States, to ensure an equivalent level of customs control throughout the Union so as not to give rise to anti-competitive behaviour at the various Union entry and exit points.
- (20) In the interests of facilitating business, while at the same time providing for the proper levels of control of goods brought into or taken out of the customs territory of the Union, it is desirable that the information provided by economic operators be shared, taking account of the relevant data-protection provisions, between customs authorities and with other agencies involved in that control. Those controls should be harmonised, so that the economic operator need give the information only once and that goods are controlled by those authorities at the same time and at the same place.
- (21) In the interests of facilitating business, all persons should continue to have the right to appoint a representative in their dealings with the customs authorities. However, it should no longer be possible for that right of representation to be reserved under a law laid down by one of the Member States. Furthermore, a customs representative who complies with the criteria for the granting of the status of authorised economic operator for customs simplifications should be entitled to provide his or her services in a Member State other than the Member State where he or she is established. As a general rule, a customs representative should be established in the customs territory of the Union. That obligation should be waived where the customs representative acts on behalf of persons who are not required to be established within the customs territory of the Union or in other justified cases.
- (22) All decisions relating to the application of the customs legislation, including to binding information, should be covered by the same rules. Any such decisions should be valid throughout the Union and should be capable of being annulled, amended except where otherwise stipulated, or revoked where they do not conform to the customs legislation or its interpretation.

⁽¹⁾ OJ L 23, 26.1.2008, p. 21.

- (23) The streamlining of customs procedures within an electronic environment requires the sharing of responsibilities between the customs authorities of different Member States. It is necessary to ensure an appropriate level of effective, dissuasive and proportionate penalties throughout the internal market.
- (24) Compliant and trustworthy economic operators should enjoy the status of 'authorised economic operator' subject to the granting of an authorisation for customs simplifications or an authorisation for security and safety, or both. Depending on the type of authorisation granted, authorised economic operators should be able to take maximum advantage of widespread use of customs simplifications or benefit from facilitations relating to security and safety. They should also be given more favourable treatment in respect of customs controls, such as fewer physical and document-based controls.
- (25) Compliant and trustworthy economic operators should benefit from international mutual recognition of the status of 'authorised economic operator'.
- (26) In order to secure a balance between, on the one hand, the need for customs authorities to ensure the correct application of the customs legislation and, on the other, the right of economic operators to be treated fairly, the customs authorities should be granted extensive powers of control and economic operators a right of appeal.
- (27) In accordance with the Charter of Fundamental Rights of the European Union, it is necessary, in addition to the right of appeal against any decision taken by the customs authorities, to provide for the right of every person to be heard before any decision is taken which would adversely affect him or her. However, restrictions to that right may be justified in particular where the nature or the level of the threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers so requires.
- (28) In order to minimise the risk to the Union, its citizens and its trading partners, the harmonised application of customs controls by the Member States should be based upon a common risk management framework and an electronic system for its implementation. The establishment of a risk management framework common to all Member States should not prevent them from controlling goods by random checks.
- (29) In order to ensure a consistent and equal treatment of persons concerned by customs formalities and controls, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of determining other cases where the customs representative is not obliged to be established in the customs territory of the Union and rules relating to decisions taken by the customs authorities, including those relating to binding information, authorised economic operator and simplifications.
- (30) It is necessary to establish the factors on the basis of which import or export duty and other measures in respect of trade in goods are applied. It is also appropriate to lay down more detailed provisions for issuing proofs of origin in the Union, where the exigencies of trade so require.
- (31) In order to supplement the factors on the basis of which import or export duty and other measures are applied, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of rules on origin of goods.
- (32) It is desirable to group together all cases of incurrence of a customs debt on import, other than following the submission of a customs declaration for release for free circulation or temporary admission with partial relief, in order to avoid difficulties in determining the legal basis on which the customs debt was incurred. The same should apply in cases of incurrence of a customs debt on export.
- (33) It is appropriate to establish the place where the customs debt is incurred and where the import or export duty should be recovered.
- (34) The rules for special procedures should allow for the use of a single guarantee for all categories of special procedures and for that guarantee to be comprehensive, covering a number of transactions.
- (35) A comprehensive guarantee with a reduced amount, including for customs debts and other charges which have been incurred, or a comprehensive guarantee with a guarantee waiver, should be authorised under certain conditions. A comprehensive guarantee with a reduced amount for customs debts and other charges which have been incurred should be equivalent to the provision of a guarantee for the whole amount of import or export duty payable, in particular for the purposes of the release of the goods concerned and of the entry in the accounts.

- (36) In order to ensure better protection of the financial interests of the Union and of the Member States, a guarantee should cover non-declared or incorrectly declared goods included in a consignment or in a declaration for which it is provided. For the same reason, the undertaking of the guarantor should also cover amounts of import or export duty which fall to be paid following post-release controls.
- (37) In order to safeguard the financial interests of the Union and of the Member States and to curb fraudulent practices, arrangements involving graduated measures for the application of a comprehensive guarantee are advisable. Where there is an increased risk of fraud it should be possible to prohibit temporarily the application of the comprehensive guarantee, taking account of the particular situation of the economic operators concerned.
- (38) It is appropriate to take account of the good faith of the person concerned in cases where a customs debt is incurred through non-compliance with the customs legislation and to minimise the impact of negligence on the part of the debtor.
- (39) In order to protect the financial interests of the Union and of the Member States and to supplement the rules concerning the customs debt and the guarantees, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the place of incurrance of the customs debt, the calculation of the amount of import and export duty, the guarantee of that amount and the recovery, repayment, remission and extinguishment of the customs debt.
- (40) It is necessary to lay down the principle of how to determine the customs status of Union goods and the circumstances pertaining to the loss of such status, and to provide a basis for determining when that status remains unaltered in cases where goods are temporarily taken out of the customs territory of the Union.
- (41) In order to ensure free movement of Union goods in the customs territory of the Union and customs treatment of non-Union goods brought into that territory, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the determination of the customs status of goods, the loss of the customs status of Union goods, the preservation of that status for goods temporarily leaving the customs territory of the Union and the duty relief for returned goods.
- (42) It is appropriate, where an economic operator has provided, in advance, the information necessary for risk-based controls on the admissibility of the goods, to ensure that quick release of goods is then the rule. Fiscal and trade policy controls should primarily be performed by the customs office competent in respect of the premises of the economic operator.
- (43) The rules for customs declarations and for the placing of goods under a customs procedure should be modernised and streamlined, in particular by requiring that, as a rule, customs declarations be made electronically and by providing for only one type of simplified declaration and for the possibility to lodge a customs declaration in the form of an entry in the declarant's records.
- (44) Since the Revised Kyoto Convention favours the lodging, registering and checking of the customs declaration prior to the arrival of the goods and, furthermore, the dissociation of the place where the declaration is lodged from the place where the goods are physically located, it is appropriate to provide for centralised clearance at the place where the economic operator is established.
- (45) It is appropriate to lay down at Union level the rules governing the destruction or disposal otherwise of goods by the customs authorities, since these are matters which previously required national legislation.
- (46) In order to supplement the rules regarding the placing of goods under a customs procedure and ensure equal treatment of the persons concerned, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the rules relating to the customs declaration and the release of goods.
- (47) It is appropriate to lay down common and simple rules for the special procedures, supplemented by a small set of rules for each category of special procedure, in order to make it simple for the operator to choose the right procedure, to avoid errors and to reduce the number of post-release recoveries and repayments.
- (48) The granting of authorisations for several special procedures with a single guarantee and a single supervising customs office should be facilitated and there should be simple rules on the incurrance of a customs debt in these cases. The basic principle should be that goods placed under a special procedure, or the products made from them, are to be assessed at the time when the customs debt is incurred. However, it should also be possible, where economically justified, to assess the goods at the time when they were placed under a special procedure. The same principles should apply to usual forms of handling.

- (49) In view of increased security-related measures, the placing of goods into free zones should become a customs procedure and the goods should be subject to customs controls at entry and with regard to records.
- (50) Given that the intention of re-export is no longer necessary, the inward processing suspension procedure should be merged with processing under customs control and the inward processing drawback procedure abandoned. This single inward processing procedure should also cover destruction, except where destruction is carried out by, or under the supervision of, customs.
- (51) In order to supplement the rules on special procedures and ensure equal treatment of the persons concerned, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the rules relating to cases where goods are placed under special procedures, movements, usual forms of handling and equivalence of those goods and discharge of those procedures.
- (52) Security-related measures relating to Union goods taken out of the customs territory of the Union should apply equally to the re-export of non-Union goods. The same rules should apply to all types of goods, with the possibility of exceptions where necessary, such as for goods only transiting through the customs territory of the Union.
- (53) In order to ensure the customs supervision of goods brought into and taken out of the customs territory of the Union and the application of security-related measures, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the rules relating to entry summary declaration and pre-departure declarations.
- (54) In order to explore further customs and trade facilitation, in particular by making use of the most recent tools and technology, Member States should be authorised, under certain conditions and upon application, to test for a limited period of time simplifications in the application of the customs legislation. That possibility should not jeopardise the application of the customs legislation or create new obligations for economic operators, who may take part in these tests on a purely voluntary basis.
- (55) In accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union (TEU), it is necessary and appropriate, for the achievement of the basic objectives of enabling the customs union to function effectively and implementing the common commercial policy, to lay down the general rules and procedures applicable to goods brought into or taken out of the customs territory of the Union. In accordance with the first subparagraph of Article 5(4) TEU, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (56) In order to simplify and rationalise customs legislation, a number of provisions contained in autonomous Union acts have, for the sake of transparency, been incorporated into the Code. Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing⁽¹⁾, Regulation (EEC) No 2913/92, Council Regulation (EC) No 1207/2001 of 11 June 2001 on procedures to facilitate the issue or the making out in the Community of proofs of origin and the issue of certain approved exporter authorisations under the provisions governing preferential trade between the European Community and certain countries⁽²⁾, and Regulation (EC) No 450/2008 should therefore be repealed.
- (57) The provisions of this Regulation setting out the delegation of power and the conferral of implementing powers and the provisions on charges and costs should apply from the date of entry into force of this Regulation. The other provisions should apply from 1 June 2016.
- (58) This Regulation should be without prejudice to existing and future Union rules on access to documents adopted in accordance with Article 15(3) TFEU. It should also be without prejudice to national rules on access to documents.
- (59) The Commission should make every effort to ensure that the delegated and implementing acts provided for in this Regulation enter into force sufficiently in advance of the application date of the Code to allow its timely implementation by Member States,

HAVE ADOPTED THIS REGULATION:

⁽¹⁾ OJ L 374, 31.12.1991, p. 4.

⁽²⁾ OJ L 165, 21.6.2001, p. 1.

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TITLE I

GENERAL PROVISIONS

CHAPTER 1

Scope of the customs legislation, mission of customs and definitions

Article 1

Subject matter and scope

1. This Regulation establishes the Union Customs Code (the Code), laying down the general rules and procedures applicable to goods brought into or taken out of the customs territory of the Union.

Without prejudice to international law and conventions and Union legislation in other fields, the Code shall apply uniformly throughout the customs territory of the Union.

2. Certain provisions of the customs legislation may apply outside the customs territory of the Union within the framework of legislation governing specific fields or of international conventions.

3. Certain provisions of the customs legislation, including the simplifications for which it provides, shall apply to the trade in Union goods between parts of the customs territory of the Union to which the provisions of Directive 2006/112/EC or of Directive 2008/118/EC apply and parts of that territory where those provisions do not apply, or to trade between parts of that territory where those provisions do not apply.

Article 2

Delegation of power

The Commission shall be empowered to adopt delegated acts in accordance with Article 284 specifying the provisions of the customs legislation and the simplifications thereof with respect to the customs declaration, the proof of the customs status, the use of the internal Union transit procedure insofar as it does not affect a proper application of the fiscal measures at stake, which apply to the trade in Union goods referred to in Article 1(3). Those acts may address particular circumstances pertaining to the trade in Union goods involving only one Member State.

Article 3

Mission of customs authorities

Customs authorities shall be primarily responsible for the supervision of the Union's international trade, thereby contributing to fair and open trade, to the implementation of the external aspects of the internal market, of the common trade policy and of the other common Union policies having a bearing on trade, and to overall supply chain security. Customs authorities shall put in place measures aimed, in particular, at the following:

(a) protecting the financial interests of the Union and its Member States;

(b) protecting the Union from unfair and illegal trade while supporting legitimate business activity;

(c) ensuring the security and safety of the Union and its residents, and the protection of the environment, where appropriate in close cooperation with other authorities; and

(d) maintaining a proper balance between customs controls and facilitation of legitimate trade.

Article 4

Customs territory

1. The customs territory of the Union shall comprise the following territories, including their territorial waters, internal waters and airspace:

— the territory of the Kingdom of Belgium,

— the territory of the Republic of Bulgaria,

— the territory of the Czech Republic,

— 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 Republic of Estonia,

— the territory of Ireland,

— the territory of the Hellenic Republic,

— the territory of the Kingdom of Spain, except Ceuta and Melilla,

— the territory of the French Republic, except the French overseas countries and territories to which the provisions of Part Four of the TFEU apply,

- the territory of the Republic of Croatia,
- the territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio,
- the territory of the Republic of Cyprus, in accordance with the provisions of the 2003 Act of Accession,
- the territory of the Republic of Latvia,
- the territory of the Republic of Lithuania,
- the territory of the Grand Duchy of Luxembourg,
- the territory of Hungary,
- the territory of Malta,
- the territory of the Kingdom of the Netherlands in Europe,
- the territory of the Republic of Austria,
- the territory of the Republic of Poland,
- the territory of the Portuguese Republic,
- the territory of Romania,
- the territory of the Republic of Slovenia,
- the territory of the Slovak Republic,
- the territory of the Republic of Finland,
- the territory of the Kingdom of Sweden, and
- the territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man.

2. The following territories, including their territorial waters, internal waters and airspace, situated outside the territory of the Member States shall, taking into account the conventions and treaties applicable to them, be considered to be part of the customs territory of the Union:

(a) FRANCE

The territory of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (*Journal officiel de la République française* (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).

Article 5

Definitions

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

- (1) "customs authorities" means the customs administrations of the Member States responsible for applying the customs legislation and any other authorities empowered under national law to apply certain customs legislation;
- (2) "customs legislation" means the body of legislation made up of all of the following:
 - (a) the Code and the provisions supplementing or implementing it adopted at Union or national level;
 - (b) the Common Customs Tariff;
 - (c) the legislation setting up a Union system of reliefs from customs duty;
 - (d) international agreements containing customs provisions, insofar as they are applicable in the Union;

- (3) "customs controls" means specific acts performed by the customs authorities in order to ensure compliance with the customs legislation and other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside that territory, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure;
- (4) "person" means a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts;
- (5) "economic operator" means a person who, in the course of his or her business, is involved in activities covered by the customs legislation;
- (6) "customs representative" means any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities;
- (7) "risk" means the likelihood and the impact of an event occurring, with regard to the entry, exit, transit, movement or end-use of goods moved between the customs territory of the Union and countries or territories outside that territory and to the presence within the customs territory of the Union of non-Union goods, which would:
- (a) prevent the correct application of Union or national measures;
 - (b) compromise the financial interests of the Union and its Member States; or
 - (c) pose a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers;
- (8) "customs formalities" means all the operations which must be carried out by a person and by the customs authorities in order to comply with the customs legislation;
- (9) "entry summary declaration" means the act whereby a person informs the customs authorities, in the prescribed form and manner and within a specific time-limit, that goods are to be brought into the customs territory of the Union;
- (10) "exit summary declaration" means the act whereby a person informs the customs authorities, in the prescribed form and manner and within a specific time-limit, that goods are to be taken out of the customs territory of the Union;
- (11) "temporary storage declaration" means the act whereby a person indicates, in the prescribed form and manner, that goods are in temporary storage;
- (12) "customs declaration" means the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied;
- (13) "re-export declaration" means the act whereby a person indicates, in the prescribed form and manner, a wish to take non-Union goods, with the exception of those under the free zone procedure or in temporary storage, out of the customs territory of the Union;
- (14) "re-export notification" means the act whereby a person indicates, in the prescribed form and manner, a wish to take non-Union goods which are under the free zone procedure or in temporary storage out of the customs territory of the Union;
- (15) "declarant" means the person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, an exit summary declaration, a re-export declaration or a re-export notification in his or her own name or the person in whose name such a declaration or notification is lodged;
- (16) "customs procedure" means any of the following procedures under which goods may be placed in accordance with the Code:
- (a) release for free circulation;
 - (b) special procedures;
 - (c) export;
- (17) 'temporary storage' means the situation of non-Union goods temporarily stored under customs supervision in the period between their presentation to customs and their placing under a customs procedure or re-export;

- (18) "customs debt" means the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force;
- (19) "debtor" means any person liable for a customs debt;
- (20) "import duty" means customs duty payable on the import of goods;
- (21) "export duty" means customs duty payable on the export of goods;
- (22) "customs status" means the status of goods as Union or non-Union goods;
- (23) "Union goods" means goods which fall into any of the following categories:
- (a) goods wholly obtained in the customs territory of the Union and not incorporating goods imported from countries or territories outside the customs territory of the Union;
 - (b) goods brought into the customs territory of the Union from countries or territories outside that territory and released for free circulation;
 - (c) goods obtained or produced in the customs territory of the Union, either solely from goods referred to in point (b) or from goods referred to in points (a) and (b);
- (24) "non-Union goods" means goods other than those referred to in point 23 or which have lost their customs status as Union goods;
- (25) "risk management" means the systematic identification of risk, including through random checks, and the implementation of all measures necessary for limiting exposure to risk;
- (26) "release of goods" means the act whereby the customs authorities make goods available for the purposes specified for the customs procedure under which they are placed;
- (27) "customs supervision" means action taken in general by the customs authorities with a view to ensuring that customs legislation and, where appropriate, other provisions applicable to goods subject to such action are observed;
- (28) "repayment" means the refunding of an amount of import or export duty that has been paid;
- (29) "remission" means the waiving of the obligation to pay an amount of import or export duty which has not been paid;
- (30) "processed products" means goods placed under a processing procedure which have undergone processing operations;
- (31) "person established in the customs territory of the Union" means:
- (a) in the case of a natural person, any person who has his or her habitual residence in the customs territory of the Union;
 - (b) in the case of a legal person or an association of persons, any person having its registered office, central headquarters or a permanent business establishment in the customs territory of the Union;
- (32) "permanent business establishment" means a fixed place of business, where both the necessary human and technical resources are permanently present and through which a person's customs-related operations are wholly or partly carried out;
- (33) "presentation of goods to customs" means the notification to the customs authorities of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities and the availability of those goods for customs controls;
- (34) "holder of the goods" means the person who is the owner of the goods or who has a similar right of disposal over them or who has physical control of them;
- (35) "holder of the procedure" means:
- (a) the person who lodges the customs declaration, or on whose behalf that declaration is lodged; or
 - (b) the person to whom the rights and obligations in respect of a customs procedure have been transferred;

(36) "commercial policy measures" means non-tariff measures established, as part of the common commercial policy, in the form of Union provisions governing international trade in goods;

issues a bill of lading or air waybill for the actual carriage of the goods into the customs territory of the Union;

(37) "processing operations" means any of the following:

(a) the working of goods, including erecting or assembling them or fitting them to other goods;

(b) the processing of goods;

(c) the destruction of goods;

(d) the repair of goods, including restoring them and putting them in order;

(e) the use of goods which are not to be found in the processed products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process (production accessories);

(b) in the context of exit, the person who takes the goods, or who assumes responsibility for the carriage of the goods, out of the customs territory of the Union. However:

(i) in the case of combined transportation, where the active means of transport leaving the customs territory of the Union is only transporting another means of transport which, after the arrival of the active means of transport at its destination, will move by itself as an active means of transport, 'carrier' means the person who will operate the means of transport which will move by itself once the means of transport leaving the customs territory of the Union has arrived at its destination;

(ii) in the case of maritime or air traffic under a vessel-sharing or contracting arrangement, "carrier" means the person who concludes a contract, and issues a bill of lading or air waybill, for the actual carriage of the goods out of the customs territory of the Union;

(38) "rate of yield" means the quantity or percentage of processed products obtained from the processing of a given quantity of goods placed under a processing procedure;

(41) "buying commission" means a fee paid by an importer to an agent for representing him or her in the purchase of goods being valued.

(39) "decision" means any act by the customs authorities pertaining to the customs legislation giving a ruling on a particular case, and having legal effects on the person or persons concerned;

CHAPTER 2

Rights and obligations of persons with regard to the customs legislation

Section 1

Provision of information

Article 6

Means for the exchange and storage of information and common data requirements

(40) "carrier" means:

(a) in the context of entry, the person who brings the goods, or who assumes responsibility for the carriage of the goods, into the customs territory of the Union. However,

(i) in the case of combined transportation, "carrier" means the person who operates the means of transport which, once brought into the customs territory of the Union, moves by itself as an active means of transport;

(ii) in the case of maritime or air traffic under a vessel-sharing or contracting arrangement, "carrier" means the person who concludes a contract and

1. All exchanges of information, such as declarations, applications or decisions, between customs authorities and between economic operators and customs authorities, and the storage of such information, as required under the customs legislation, shall be made using electronic data-processing techniques.

2. Common data requirements shall be drawn up for the purpose of the exchange and storage of information referred to in paragraph 1.

3. Means for the exchange and storage of information, other than the electronic data-processing techniques referred to in paragraph 1, may be used as follows:

- (a) on a permanent basis where duly justified by the type of traffic or where the use of electronic data-processing techniques is not appropriate for the customs formalities concerned;
- (b) on a temporary basis, in the event of a temporary failure of the computerised system of the customs authorities or of the economic operators.

4. By way of derogation from paragraph 1, the Commission may adopt in exceptional cases decisions allowing one or several Member States to use means for the exchange and storage of information other than electronic data-processing techniques.

Such a decision on a derogation shall be justified by the specific situation of the Member State requesting it and the derogation shall be granted for a specific period of time. The derogation shall be reviewed periodically and may be extended for further specific periods of time upon further application by the Member State to which it is addressed. It shall be revoked where no longer justified.

The derogation shall not affect the exchange of information between the Member State to which it is addressed and other Member States nor the exchange and storage of information in other Member States for the purpose of the application of the customs legislation.

Article 7

Delegation of power

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

- (a) the common data requirements referred to in Article 6(2), taking into account the need to accomplish the customs formalities laid down in the customs legislation and the nature and purpose of the exchange and storage of information referred to in Article 6(1);
- (b) the specific cases where means for the exchange and storage of information, other than electronic data-processing techniques, may be used in accordance with point (a) of Article 6(3);
- (c) the type of information and the particulars that are to be contained in the records referred to in Articles 148(4) and 214(1).

Article 8

Conferral of implementing powers

1. The Commission shall specify, by means of implementing acts:
 - (a) where necessary, the format and code of the common data requirements referred to in Article 6(2);
 - (b) the procedural rules on the exchange and storage of information which can be made by means other than the electronic data-processing techniques referred to in Article 6(3).

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

2. The Commission shall adopt the decisions on derogations referred to in Article 6(4) by means of implementing acts.

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

Article 9

Registration

1. Economic operators established in the customs territory of the Union shall register with the customs authorities responsible for the place where they are established.
2. In specific cases, economic operators which are not established in the customs territory of the Union shall register with the customs authorities responsible for the place where they first lodge a declaration or apply for a decision.
3. Persons other than economic operators shall not be required to register with the customs authorities unless otherwise provided.

Where persons referred to in the first subparagraph are required to register, the following shall apply:

- (a) where they are established in the customs territory of the Union, they shall register with the customs authorities responsible for the place where they are established;

(b) where they are not established in the customs territory of the Union, they shall register with the customs authorities responsible for the place where they first lodge a declaration or apply for a decision.

4. In specific cases, the customs authorities shall invalidate the registration.

Article 10

Delegation of power

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

(a) the cases referred to in Article 9(2), where economic operators which are not established in the customs territory of the Union are required to register with the customs authorities;

(b) the cases referred to in the first subparagraph of Article 9(3), where persons other than economic operators are required to register with the customs authorities;

(c) the cases referred to in Article 9(4) where the customs authorities invalidate a registration.

Article 11

Conferral of implementing powers

The Commission shall specify, by means of implementing acts, the customs authority responsible for the registration referred to in Article 9.

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

Article 12

Communication of information and data protection

1. All information acquired by the customs authorities in the course of performing their duty which is by its nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. Except as provided for in Article 47(2), such information shall not be disclosed by the competent authorities without the express permission of the person or authority that provided it.

Such information may, however, be disclosed without permission where the customs authorities are obliged or authorised to do so pursuant to the provisions in force, particularly in respect of data protection, or in connection with legal proceedings.

2. Confidential information referred to in paragraph 1 may be communicated to the customs authorities and other competent authorities of countries or territories outside the customs territory of the Union for the purpose of customs cooperation with those countries or territories in the framework of an international agreement or Union legislation in the area of the common commercial policy.

3. Any disclosure or communication of information as referred to in paragraphs 1 and 2 shall ensure an adequate level of data protection in full compliance with data protection provisions in force.

Article 13

Exchange of additional information between customs authorities and economic operators

1. Customs authorities and economic operators may exchange any information not specifically required under the customs legislation, in particular for the purpose of mutual cooperation in the identification and counteraction of risk. That exchange may take place under a written agreement and may include access to the computer systems of economic operators by the customs authorities.

2. Any information provided by one party to the other in the course of the cooperation referred to in paragraph 1 shall be confidential unless both parties agree otherwise.

Article 14

Provision of information by the customs authorities

1. Any person may request information concerning the application of the customs legislation from the customs authorities. Such a request may be refused where it does not relate to an activity pertaining to international trade in goods that is actually envisaged.

2. Customs authorities shall maintain a regular dialogue with economic operators and other authorities involved in international trade in goods. They shall promote transparency by making the customs legislation, general administrative rulings and application forms freely available, wherever practical without charge, and through the Internet.

Article 15

Provision of information to the customs authorities

1. Any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time-limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls.

2. The lodging of a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification by a person to the customs authorities, or the submission of an application for an authorisation or any other decision, shall render the person concerned responsible for all of the following:

- (a) the accuracy and completeness of the information given in the declaration, notification or application;
- (b) the authenticity, accuracy and validity of any document supporting the declaration, notification or application;
- (c) where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations.

The first subparagraph shall also apply to the provision of any information in any other form required by, or given to, the customs authorities.

Where the declaration or notification is lodged, the application is submitted, or information is provided, by a customs representative of the person concerned, as referred to in Article 18, that customs representative shall also be bound by the obligations set out in the first subparagraph of this paragraph.

Article 16

Electronic systems

1. Member States shall cooperate with the Commission to develop, maintain and employ electronic systems for the exchange of information between customs authorities and with the Commission and for the storage of such information, in accordance with the Code.
2. Member States to which a derogation has been granted in accordance with Article 6(4) shall not be required to develop, maintain and employ within the scope of that derogation the electronic systems referred to in paragraph 1 of this Article.

Article 17

Conferral of implementing powers

The Commission shall specify, by means of implementing acts, the technical arrangements for developing, maintaining and employing the electronic systems referred to in Article 16(1).

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

Section 2

Customs representation

Article 18

Customs representative

1. Any person may appoint a customs representative.

Such representation may be either direct, in which case the customs representative shall act in the name of and on behalf of another person, or indirect, in which case the customs representative shall act in his or her own name but on behalf of another person.

2. A customs representative shall be established within the customs territory of the Union.

Except where otherwise provided, that requirement shall be waived where the customs representative acts on behalf of persons who are not required to be established within the customs territory of the Union.

3. Member States may determine, in accordance with Union law, the conditions under which a customs representative may provide services in the Member State where he or she is established. However, without prejudice to the application of less stringent criteria by the Member State concerned, a customs representative who complies with the criteria laid down in points (a) to (d) of Article 39 shall be entitled to provide such services in a Member State other than the one where he or she is established.

4. Member States may apply the conditions determined in accordance with the first sentence of paragraph 3 to customs representatives not established within the customs territory of the Union.

Article 19

Empowerment

1. When dealing with the customs authorities, a customs representative shall state that he or she is acting on behalf of the person represented and shall specify whether the representation is direct or indirect.

Persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf.

2. The customs authorities may require persons stating that they are acting as a customs representative to provide evidence of their empowerment by the person represented.

In specific cases, the customs authorities shall not require such evidence to be provided.

3. The customs authorities shall not require a person acting as a customs representative, carrying out acts and formalities on a regular basis, to produce on every occasion evidence of empowerment, provided that such person is in a position to produce such evidence on request by the customs authorities.

Article 20

Delegation of power

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

- (a) the cases where the waiver referred to in the second subparagraph of Article 18(2) does not apply;
- (b) the cases where the evidence of empowerment referred to in the first subparagraph of Article 19(2) is not required by the customs authorities.

Article 21

Conferral of implementing powers

The Commission shall specify, by means of implementing acts, the procedural rules on the conferral and proving of the entitlement referred to in Article 18(3).

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

Section 3

Decisions relating to the application of the customs legislation

Article 22

Decisions taken upon application

1. Where a person applies for a decision relating to the application of the customs legislation, that person shall supply all the information required by the competent customs authorities in order to enable them to take that decision.

A decision may also be applied for by, and taken with regard to, several persons, in accordance with the conditions laid down in the customs legislation.

Except where otherwise provided, the competent customs authority shall be that of the place where the applicant's main accounts for customs purposes are held or accessible, and where at least part of the activities to be covered by the decision are to be carried out.

2. Customs authorities shall, without delay and at the latest within 30 days of receipt of the application for a decision, verify whether the conditions for the acceptance of that application are fulfilled.

Where the customs authorities establish that the application contains all the information required in order for them to be able to take the decision, they shall communicate its acceptance to the applicant within the period specified in the first subparagraph.

3. The competent customs authority shall take a decision as referred to in paragraph 1, and shall notify the applicant without delay, and at the latest within 120 days of the date of acceptance of the application, except where otherwise provided

Where the customs authorities are unable to comply with the time-limit for taking a decision, they shall inform the applicant of that fact before the expiry of that time-limit, stating the reasons and indicating the further period of time which they consider necessary in order to take a decision. Except where otherwise provided, that further period of time shall not exceed 30 days.

Without prejudice to the second subparagraph, the customs authorities may extend the time-limit for taking a decision, as laid down in the customs legislation, where the applicant requests an extension to carry out adjustments in order to ensure the fulfilment of the conditions and criteria. Those adjustments and the further period of time necessary to carry them out shall be communicated to the customs authorities, which shall decide on the extension.

4. Except where otherwise specified in the decision or in the customs legislation, the decision shall take effect from the date on which the applicant receives it, or is deemed to have received it. Except in the cases provided for in Article 45(2), decisions adopted shall be enforceable by the customs authorities from that date.

5. Except where otherwise provided in the customs legislation, the decision shall be valid without limitation of time.

6. Before taking a decision which would adversely affect the applicant, the customs authorities shall communicate the grounds on which they intend to base their decision to the applicant, who shall be given the opportunity to express his or her point of view within a period prescribed from the date on which he or she receives that communication or is deemed to have received it. Following the expiry of that period, the applicant shall be notified, in the appropriate form, of the decision.

The first subparagraph shall not apply in any of the following cases:

- (a) where it concerns a decision referred to in Article 33(1);
- (b) in the event of refusal of the benefit of a tariff quota where the specified tariff quota volume is reached, as referred to in the first subparagraph of Article 56(4);
- (c) where the nature or the level of a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers so requires;
- (d) where the decision aims at securing the implementation of another decision for which the first subparagraph has been applied, without prejudice to the law of the Member State concerned;
- (e) where it would prejudice investigations initiated for the purpose of combating fraud;
- (f) in other specific cases.

7. A decision which adversely affects the applicant shall set out the grounds on which it is based and shall refer to the right of appeal provided for in Article 44.

Article 23

Management of decisions taken upon application

1. The holder of the decision shall comply with the obligations resulting from that decision.
2. The holder of the decision shall inform the customs authorities without delay of any factor arising after the decision was taken, which may influence its continuation or content.
3. Without prejudice to provisions laid down in other fields which specify the cases in which decisions are invalid or

become null and void, the customs authorities which took a decision may at any time annul, amend or revoke it where it does not conform to the customs legislation.

4. In specific cases the customs authorities shall carry out the following:

- (a) re-assess a decision;
- (b) suspend a decision which is not to be annulled, revoked or amended.

5. The customs authorities shall monitor the conditions and criteria to be fulfilled by the holder of a decision. They shall also monitor compliance with the obligations resulting from that decision. Where the holder of the decision has been established for less than three years, the customs authorities shall closely monitor it during the first year after the decision is taken.

Article 24

Delegation of power

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

- (a) the exceptions to the third subparagraph of Article 22(1);
- (b) the conditions for the acceptance of an application, referred to in Article 22(2);
- (c) the time-limit to take a specific decision, including the possible extension of that time-limit, in accordance with Article 22(3);
- (d) the cases, referred to in Article 22(4), where the decision takes effect from a date which is different from the date on which the applicant receives it or is deemed to have received it;
- (e) the cases, referred to in Article 22(5), where the decision is not valid without limitation of time;
- (f) the duration of the period referred to in the first subparagraph of Article 22(6);
- (g) the specific cases, referred to in point (f) of the second subparagraph of Article 22(6), where the applicant is given no opportunity to express his or her point of view;

(h) the cases and the rules for re-assessing and suspending decisions in accordance with Article 23(4);

Article 25

Conferral of implementing powers

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

- (a) the submission and the acceptance of the application for a decision, referred to in Article 22(1) and (2);
- (b) taking the decision referred to in Article 22, including, where appropriate, the consultation of the Member States concerned;
- (c) monitoring a decision, in accordance with Article 23(5).

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

Article 26

Union-wide validity of decisions

Except where the effect of a decision is limited to one or several Member States, decisions relating to the application of the customs legislation shall be valid throughout the customs territory of the Union.

Article 27

Annulment of favourable decisions

1. The customs authorities shall annul a decision favourable to the holder of the decision if all the following conditions are fulfilled:

- (a) the decision was taken on the basis of incorrect or incomplete information;
- (b) the holder of the decision knew or ought reasonably to have known that the information was incorrect or incomplete;
- (c) if the information had been correct and complete, the decision would have been different.

2. The holder of the decision shall be notified of its annulment.

3. Annulment shall take effect from the date on which the initial decision took effect, unless otherwise specified in the decision in accordance with the customs legislation.

Article 28

Revocation and amendment of favourable decisions

1. A favourable decision shall be revoked or amended where, in cases other than those referred to in Article 27:

- (a) one or more of the conditions for taking that decision were not or are no longer fulfilled; or
- (b) upon application by the holder of the decision.

2. Except where otherwise provided, a favourable decision addressed to several persons may be revoked only in respect of a person who fails to fulfil an obligation imposed under that decision.

3. The holder of the decision shall be notified of its revocation or amendment.

4. Article 22(4) shall apply to the revocation or amendment of the decision.

However, in exceptional cases where the legitimate interests of the holder of the decision so require, the customs authorities may defer the date on which revocation or amendment takes effect up to one year. That date shall be indicated in the revoking or amending decision.

Article 29

Decisions taken without prior application

Except when a customs authority acts as a judicial authority, Article 22(4), (5), (6) and (7), Article 23(3) and Articles 26, 27 and 28 shall also apply to decisions taken by the customs authorities without prior application by the person concerned.

Article 30

Limitations applicable to decisions on goods placed under a customs procedure or in temporary storage

Except where the person concerned so requests, the revocation, amendment or suspension of a favourable decision shall not affect goods which, at the moment where the revocation, amendment or suspension takes effect, have already been placed and are still under a customs procedure or in temporary storage by virtue of the revoked, amended or suspended decision.

Article 31

Delegation of power

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

- (a) the cases, referred to in Article 28(2), where a favourable decision addressed to several persons may be revoked also in respect of persons other than the person who fails to fulfil an obligation imposed under that decision;
- (b) the exceptional cases, in which the customs authorities may defer the date on which revocation or amendment takes effect in accordance with the second subparagraph of Article 28(4).

~~Article 32~~~~**Conferral of implementing powers**~~

~~The Commission shall specify, by means of implementing acts, the procedural rules for annulling, revoking or amending favourable decisions.~~

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

~~Article 33~~~~**Decisions relating to binding information**~~

~~1. The customs authorities shall, upon application, take decisions relating to binding tariff information (BTI decisions), or decisions relating to binding origin information (BOI decisions).~~

~~Such an application shall not be accepted in any of the following circumstances:~~

- (a) ~~where the application is made, or has already been made, at the same or another customs office, by or on behalf of the holder of a decision in respect of the same goods and, for BOI decisions, under the same circumstances determining the acquisition of origin;~~
- (b) ~~where the application does not relate to any intended use of the BTI or BOI decision or any intended use of a customs procedure.~~

~~2. BTI or BOI decisions shall be binding, only in respect of the tariff classification or determination of the origin of goods:~~

~~(a) on the customs authorities, as against the holder of the decision, only in respect of goods for which customs formalities are completed after the date on which the decision takes effect;~~

~~(b) on the holder of the decision, as against the customs authorities, only with effect from the date on which he or she receives, or is deemed to have received, notification of the decision.~~

~~3. BTI or BOI decisions shall be valid for a period of three years from the date on which the decision takes effect.~~

~~4. For the application of a BTI or BOI decision in the context of a particular customs procedure, the holder of the decision shall be able to prove that:~~

~~(a) in the case of a BTI decision, the goods declared correspond in every respect to those described in the decision;~~

~~(b) in the case of a BOI decision, the goods in question and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the decision.~~

~~Article 34~~~~**Management of decisions relating to binding information**~~

~~1. A BTI decision shall cease to be valid before the end of the period referred to in Article 33(3) where it no longer conforms to the law, as a result of either of the following:~~

~~(a) the adoption of an amendment to the nomenclatures referred to in points (a) and (b) of Article 56(2);~~

~~(b) the adoption of measures referred to in Article 57(4);~~

~~with effect from the date of application of such amendment or measures.~~

~~2. A BOI decision shall cease to be valid before the end of the period referred to in Article 33(3) in any of the following cases:~~

~~(a) where a regulation is adopted or an agreement is concluded by, and becomes applicable in, the Union, and the BOI decision no longer conforms to the law thereby laid down, with effect from the date of application of that regulation or agreement;~~

~~The order of application of points (c) and (d) of paragraph 2 shall be reversed if the declarant so requests.~~

~~2. The customs value, pursuant to paragraph 1, shall be:~~

~~(a) the transaction value of identical goods sold for export to the customs territory of the Union and exported at or about the same time as the goods being valued;~~

~~(b) the transaction value of similar goods sold for export to the customs territory of the Union and exported at or about the same time as the goods being valued;~~

~~(c) the value based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the customs territory of the Union in the greatest aggregate quantity to persons not related to the sellers; or~~

~~(d) the computed value, consisting of the sum of:~~

~~(i) the cost or value of materials and fabrication or other processing employed in producing the imported goods;~~

~~(ii) 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 export for export to the Union;~~

~~(iii) the cost or value of the elements referred to in point (c) of Article 71(1).~~

~~3. Where the customs value cannot be determined under paragraph 1, it shall be determined on the basis of data available in the customs territory of the Union, using reasonable means consistent with the principles and general provisions of all of the following:~~

~~(a) the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade;~~

~~(b) Article VII of the General Agreement on Tariffs and Trade;~~

~~(c) this Chapter.~~

~~Article 75~~

~~Delegation of power~~

~~The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the conditions for granting the authorisation referred to in Article 73.~~

~~Article 76~~

~~Conferral of implementing powers~~

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

~~(a) determining the customs value in accordance with Articles 70(1) and (2) and Articles 71 and 72, including those for adjusting the price actually paid or payable;~~

~~(b) the application of the conditions referred to in Article 70(3);~~

~~(c) determining the customs value referred to in Article 74.~~

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

TITLE III

CUSTOMS DEBT AND GUARANTEES

CHAPTER 1

Incurrence of a customs debt

Section 1

Customs debt on import

~~Article 77~~

Release for free circulation and temporary admission

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

(a) release for free circulation, including under the end-use provisions;

(b) temporary admission with partial relief from import duty.

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

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

Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

~~Article 78~~

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

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

~~2. Where a customs debt is incurred pursuant to paragraph 1, the amount of import duty corresponding to that debt shall be determined under the same conditions as in the case of a customs debt resulting from the acceptance, on the same date, of the customs declaration for release for free circulation of the non-originating goods used in the manufacture of the products in question for the purpose of ending the inward processing procedure.~~

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

~~Article 79~~

~~Customs debt incurred through non-compliance~~

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

(a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

(b) one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union;

(c) a condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty.

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

(a) the moment when the obligation the non-fulfilment of which gives rise to the customs debt is not met or ceases to be met;

(b) the moment when a customs declaration is accepted for the placing of goods under a customs procedure where it is established subsequently that a condition governing the placing of the goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

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

(a) any person who was required to fulfil the obligations concerned;

(b) any person who was aware or should reasonably have been aware that an obligation under the customs legislation was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation, or who participated in the act which led to the non-fulfilment of the obligation;

(c) any person who acquired or held the goods in question and who was aware or should reasonably have been aware at the time of acquiring or receiving the goods that an obligation under the customs legislation was not fulfilled.

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

Where a customs declaration in respect of one of the customs procedures referred to in point (c) of paragraph 1 is drawn up, and any information required under the customs legislation relating to the conditions governing the placing of the goods under that customs procedure is given to the customs authorities, which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the customs declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

Article 80

Deduction of an amount of import duty already paid

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

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

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

Section 2

Customs debt on export

Article 81

Export and outward processing

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

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

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

Where a customs declaration is drawn up on the basis of information which leads to all or part of the export duty not

being collected, the person who provided the information required for the declaration and who knew, or who should reasonably have known, that such information was false shall also be a debtor.

Article 82

Customs debt incurred through non-compliance

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

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

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

- (a) the moment at which the goods are actually taken out of the customs territory of the Union without a customs declaration;
- (b) the moment at which the goods reach a destination other than that for which they were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty;

(c) should the customs authorities be unable to determine the moment referred to in point (b), the expiry of the time-limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled.

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

- (a) any person who was required to fulfil the obligation concerned;
- (b) any person who was aware or should reasonably have been aware that the obligation concerned was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation;

(c) any person who participated in the act which led to the non-fulfilment of the obligation and who was aware or should reasonably have been aware that a customs declaration had not been lodged but should have been.

4. In cases referred to under point (b) of paragraph 1, the debtor shall be any person who is required to comply with the conditions under which the goods were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty.

Section 3

Provisions common to customs debts incurred on import and export

Article 83

Prohibitions and restrictions

1. The customs debt on import or export shall be incurred even if it relates to goods which are subject to measures of prohibition or restriction on import or export of any kind.

2. However, no customs debt shall be incurred on either of the following:

(a) the unlawful introduction into the customs territory of the Union of counterfeit currency;

(b) the introduction into the customs territory of the Union of narcotic drugs and psychotropic substances other than where strictly supervised by the competent authorities with a view to their use for medical and scientific purposes.

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

Article 84

Several debtors

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

Article 85

General rules for calculating the amount of import or export duty

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

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

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

Article 86

Special rules for calculating the amount of import duty

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

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

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

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

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

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

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

Article 87

Place where the customs debt is incurred

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

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

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

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

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

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

Article 88

Delegation of power

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

- (a) the rules for the calculation of the amount of import or export duty applicable to goods for which a customs debt is incurred in the context of a special procedure, which supplement the rules laid down in Articles 85 and 86;
- (b) the cases referred to in Article 86(4);
- (c) the time-limit referred to in Article 87(2).

CHAPTER 2

Guarantee for a potential or existing customs debt

Article 89

General provisions

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

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

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

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

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

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

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

⁽¹⁾ OJ L 324, 10.12.2009, p. 23.

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

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

6. The customs authorities shall monitor the guarantee.

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

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

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

9. The customs authorities may waive the requirement for provision of a guarantee where the amount of import or export duty to be secured does not exceed the statistical value threshold for declarations laid down in Article 3(4) of Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries ⁽¹⁾.

Article 90

Compulsory guarantee

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

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

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

Article 91

Optional guarantee

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

Article 92

Provision of a guarantee

1. A guarantee may be provided in one of the following forms:

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

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

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

⁽¹⁾ OJ L 152, 16.6.2009, p. 23

TITLE VII

SPECIAL PROCEDURES

CHAPTER 1

General provisions*Article 210***Scope**

Goods may be placed under any of the following categories of special procedures:

- (a) transit, which shall comprise external and internal transit;
- (b) storage, which shall comprise customs warehousing and free zones;
- (c) specific use, which shall comprise temporary admission and end-use;
- (d) processing, which shall comprise inward and outward processing.

*Article 211***Authorisation**

1. An authorisation from the customs authorities shall be required for the following:

- (a) the use of the inward or outward processing procedure, the temporary admission procedure or the end-use procedure;
- (b) the operation of storage facilities for the customs warehousing of goods, except where the storage facility operator is the customs authority itself.

The conditions under which the use of one or more of the procedures referred to in the first subparagraph or the operation of storage facilities is permitted shall be set out in the authorisation.

2. The customs authorities shall grant an authorisation with retroactive effect, where all of the following conditions are fulfilled:

- (a) there is a proven economic need;
- (b) the application is not related to attempted deception;

(c) the applicant has proven on the basis of accounts or records that:

- (i) all the requirements of the procedure are met;
- (ii) where appropriate, the goods can be identified for the period involved;
- (iii) such accounts or records allow the procedure to be controlled;

(d) all the formalities necessary to regularise the situation of the goods can be carried out, including, where necessary, the invalidation of the customs declarations concerned;

(e) no authorisation with retroactive effect has been granted to the applicant within three years of the date on which the application was accepted;

(f) an examination of the economic conditions is not required, except where an application concerns renewal of an authorisation for the same kind of operation and goods;

(g) the application does not concern the operation of storage facilities for the customs warehousing of goods;

(h) where an application concerns renewal of an authorisation for the same kind of operation and goods, the application is submitted within three years of expiry of the original authorisation.

Customs authorities may grant an authorisation with retroactive effect also where the goods which were placed under a customs procedure are no longer available at the time when the application for such authorisation was accepted.

3. Except where otherwise provided, the authorisation referred to in paragraph 1 shall be granted only to persons who satisfy all of the following conditions:

- (a) they are established in the customs territory of the Union;
- (b) they provide the necessary assurance of the proper conduct of the operations; an authorised economic operator for customs simplifications shall be deemed to fulfil this condition, insofar as the activity pertaining to the special procedure concerned is taken into account in the authorisation referred to in point (a) of Article 38(2);

(c) where a customs debt or other charges may be incurred for goods placed under a special procedure, they provide a guarantee in accordance with Article 89;

(d) in the case of the temporary admission or inward processing procedure, they use the goods or arrange for their use or they carry out processing operations on the goods or arrange for them to be carried out, respectively.

4. Except where otherwise provided and in addition to paragraph 3, the authorisation referred to in paragraph 1 shall be granted only where all of the following conditions are fulfilled:

(a) the customs authorities are able to exercise customs supervision without having to introduce administrative arrangements disproportionate to the economic needs involved;

(b) the essential interests of Union producers would not be adversely affected by an authorisation for a processing procedure (economic conditions).

5. The essential interests of Union producers shall be deemed not to be adversely affected, as referred to in point (b) of paragraph 4, except where evidence to the contrary exists or where the economic conditions are deemed to be fulfilled.

6. Where evidence exists that the essential interests of Union producers are likely to be adversely affected, an examination of the economic conditions shall take place at Union level.

Article 212

Delegation of power

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

(a) the conditions for granting the authorisation for the procedures referred to in Article 211(1);

(b) the exceptions to the conditions referred to in Article 211(3) and (4);

(c) the cases in which the economic conditions are deemed to be fulfilled as referred to in Article 211(5).

Article 213

Conferral of implementing powers

The Commission shall specify, by means of implementing acts, the procedural rules for examining the economic conditions referred to in Article 211(6).

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

Article 214

Records

1. Except for the transit procedure, or where otherwise provided, the holder of the authorisation, the holder of the procedure, and all persons carrying on an activity involving the storage, working or processing of goods, or the sale or purchase of goods in free zones, shall keep appropriate records in a form approved by the customs authorities.

The records shall contain the information and the particulars which enable the customs authorities to supervise the procedure concerned, in particular with regard to identification of the goods placed under that procedure, their customs status and their movements.

2. An authorised economic operator for customs simplifications shall be deemed to comply with the obligation laid down in paragraph 1 insofar as his or her records are appropriate for the purpose of the special procedure concerned.

Article 215

Discharge of a special procedure

1. In cases other than the transit procedure and without prejudice to Article 254, a special procedure shall be discharged when the goods placed under the procedure, or the processed products, are placed under a subsequent customs procedure, have been taken out of the customs territory of the Union, or have been destroyed with no waste remaining, or are abandoned to the State in accordance with Article 199.

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

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

4. The discharge of the procedure shall take place within a certain time-limit, unless otherwise provided.

Article 216

Delegation of power

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the time-limit referred to in Article 215(4).

Article 217

Conferral of implementing powers

The Commission shall specify, by means of implementing acts, the procedural rules for the discharge of a special procedure, referred to in Article 216.

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

Article 218

Transfer of rights and obligations

The rights and obligations of the holder of a procedure with regard to goods which have been placed under a special procedure other than transit may be fully or partially transferred to another person who fulfils the conditions laid down for the procedure concerned.

Article 219

Movement of goods

In specific cases, goods placed under a special procedure other than transit or in a free zone may be moved between different places in the customs territory of the Union.

Article 220

Usual forms of handling

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

Article 221

Delegation of power

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

(a) laying down the cases and the conditions for the movement of goods placed under a special procedure other than transit or in a free zone in accordance with Article 219;

(b) determining the usual forms of handling for goods placed under customs warehousing or a processing procedure or in a free zone as referred to in Article 220.

Article 222

Conferral of implementing powers

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

(a) transferring the rights and obligations of the holder of the procedure with regard to goods which have been placed under a special procedure other than transit in accordance with Article 218;

(b) the movement of goods placed under a special procedure other than transit or in a free zone in accordance with Article 219.

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

Article 223

Equivalent goods

1. Equivalent goods shall consist in Union goods which are stored, used or processed instead of the goods placed under a special procedure.

Under the outward processing procedure, equivalent goods shall consist in non-Union goods which are processed instead of Union goods placed under the outward processing procedure.

Except where otherwise provided, equivalent goods shall have the same eight-digit Combined Nomenclature code, the same commercial quality and the same technical characteristics as the goods which they are replacing.

2. The customs authorities shall, upon application, authorise the following, provided that the proper conduct of the procedure, in particular as regards customs supervision, is ensured:

(a) the use of equivalent goods under customs warehousing, free zones, end-use and a processing procedure;

(b) the use of equivalent goods under the temporary admission procedure, in specific cases;

- (c) in the case of the inward processing procedure, the export of processed products obtained from equivalent goods before the import of the goods they are replacing;
- (d) in the case of the outward processing procedure, the import of processed products obtained from equivalent goods before the export of the goods they are replacing.

An authorised economic operator for customs simplifications shall be deemed to fulfil the condition that the proper conduct of the procedure is ensured, insofar as the activity pertaining to the use of equivalent goods for the procedure concerned is taken into account in the authorisation referred to in point (a) of Article 38(2).

3. The use of equivalent goods shall not be authorised in any of the following cases:

- (a) where only usual forms of handling as defined in Article 220 are carried out under the inward processing procedure;
- (b) where a prohibition of drawback of, or exemption from, import duty applies to non-originating goods used in the manufacture of processed products under the inward processing procedure, for which a proof of origin is issued or made out in the framework of a preferential arrangement between the Union and certain countries or territories outside the customs territory of the Union or groups of such countries or territories;
- (c) where it would lead to an unjustified import duty advantage or where provided for in Union legislation.

4. In the case referred to in point (c) of paragraph 2, and where the processed products would be liable to export duty if they were not being exported in the context of the inward processing procedure, the holder of the authorisation shall provide a guarantee to ensure payment of the export duty should the non-Union goods not be imported within the period referred to in Article 257(3).

Article 224

Delegation of power

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

- (a) the exceptions from the third subparagraph of Article 223(1);

- (b) the conditions under which equivalent goods are used in accordance with Article 223(2);
- (c) the specific cases where equivalent goods are used under the temporary admission procedure, in accordance with point (b) of Article 223(2);
- (d) the cases where the use of equivalent goods is not authorised in accordance with point (c) of Article 223(3).

Article 225

Conferral of implementing powers

The Commission shall specify, by means of implementing acts, the procedural rules for the use of equivalent goods authorised in accordance with Article 223(2).

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

~~CHAPTER 2~~

~~Transit~~

~~Section 1~~

~~External and internal transit~~

~~Article 226~~

~~External transit~~

~~1. Under the external transit procedure, non-Union goods may be moved from one point to another within the customs territory of the Union without being subject to any of the following:~~

- ~~(a) import duty;~~
- ~~(b) other charges as provided for under other relevant provisions in force;~~
- ~~(c) commercial policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.~~

~~2. In specific cases, Union goods shall be placed under the external transit procedure.~~

~~3. Movement as referred to in paragraph 1 shall take place in one of the following ways:~~

~~3. Where goods are suitable for repeated use and the customs authorities consider it appropriate in order to avoid abuse, customs supervision shall continue for a period not exceeding two years after the date of their first use for the purposes laid down for applying the duty exemption or reduced rate of duty.~~

~~4. Customs supervision under the end-use procedure shall end in any of the following cases:~~

~~(a) where the goods have been used for the purposes laid down for the application of the duty exemption or reduced rate of duty;~~

~~(b) where the goods have been taken out of the customs territory of the Union, destroyed or abandoned to the State;~~

~~(c) where the goods have been used for purposes other than those laid down for the application of the duty exemption or reduced duty rate and the applicable import duty has been paid.~~

~~5. Where a rate of yield is required, Article 255 shall apply to the end-use procedure.~~

~~6. Waste and scrap which result from the working or processing of goods according to the prescribed end-use and losses due to natural wastage shall be considered as goods assigned to the prescribed end-use.~~

~~7. Waste and scrap resulting from the destruction of goods placed under the end-use procedure shall be deemed to be placed under the customs warehousing procedure.~~

CHAPTER 5

Processing

Section 1

General provisions

Article 255

Rate of yield

Except where a rate of yield has been specified in Union legislation governing specific fields, the customs authorities shall set either the rate of yield or average rate of yield of the processing operation or where appropriate, the method of determining such rate.

The rate of yield or average rate of yield shall be determined on the basis of the actual circumstances in which processing

operations are, or are to be, carried out. That rate may be adjusted, where appropriate, in accordance with Article 28.

Section 2

Inward processing

Article 256

Scope

~~1. Without prejudice to Article 223, under the inward processing procedure non-Union goods may be used in the customs territory of the Union in one or more processing operations without such goods being subject to any of the following:~~

~~(a) import duty;~~

~~(b) other charges as provided for under other relevant provisions in force;~~

~~(c) commercial policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.~~

~~2. The inward processing procedure may be used in cases other than repair and destruction only where, without prejudice to the use of production accessories, the goods placed under the procedure can be identified in the processed products.~~

~~In the case referred to in Article 223, the procedure may be used where compliance with the conditions laid down in respect of equivalent goods can be verified.~~

~~3. In addition to paragraphs 1 and 2, the inward processing procedure may also be used for any of the following goods:~~

~~(a) goods intended to undergo operations to ensure their compliance with technical requirements for their release for free circulation;~~

~~(b) goods which have to undergo usual forms of handling in accordance with Article 220.~~

Article 257

Period for discharge

~~1. The customs authorities shall specify the period within which the inward processing procedure is to be discharged, in accordance with Article 216.~~

~~That period shall run from the date on which the non-Union goods are placed under the procedure and shall take account of the time required to carry out the processing operations and to discharge the procedure.~~

~~2. The customs authorities may grant an extension, of reasonable duration, of the period specified pursuant to paragraph 1, upon justified application by the holder of the authorisation.~~

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

~~3. In the case of prior export in accordance with point (c) of Article 223(2), the authorisation shall specify the period within which the non-Union goods shall be declared for the inward processing procedure, taking account of the time required for procurement and transport to the customs territory of the Union.~~

~~The period referred to in the first subparagraph shall be set in months and shall not exceed six months. It shall run from the date of acceptance of the export declaration relating to the processed products obtained from the corresponding equivalent goods.~~

~~4. At the request of the holder of the authorisation, the period of six months referred to in paragraph 3 may be extended, even after its expiry, provided that the total period does not exceed 12 months.~~

Article 258

Temporary re-export for further processing

Upon application, the customs authorities may authorise some or all of the goods placed under the inward processing procedure, or the processed products, to be temporarily re-exported for the purpose of further processing outside the customs territory of the Union, in accordance with the conditions laid down for the outward processing procedure.

Section 3

Outward processing

Article 259

Scope

1. Under the outward processing procedure Union goods may be temporarily exported from the customs territory of the Union in order to undergo processing operations. The processed products resulting from those goods may be released for free circulation with total or partial relief from

import duty upon application by the holder of the authorisation or any other person established in the customs territory of the Union provided that that person has obtained the consent of the holder of the authorisation and the conditions of the authorisation are fulfilled.

2. Outward processing shall not be allowed for any of the following Union goods:

- (a) goods the export of which gives rise to repayment or remission of import duty;
- (b) goods which, prior to export, were released for free circulation under a duty exemption or at a reduced rate of duty by virtue of their end-use, for as long as the purposes of such end-use have not been fulfilled, unless those goods have to undergo repair operations;
- (c) goods the export of which gives rise to the granting of export refunds;
- (d) goods in respect of which a financial advantage other than refunds referred to in point (c) is granted under the common agricultural policy by virtue of the export of those goods.

3. The customs authorities shall specify the period within which goods temporarily exported must be re-imported into the customs territory of the Union in the form of processed products, and released for free circulation, in order to be able to benefit from total or partial relief from import duty. They may grant an extension, of reasonable duration, of that period, upon justified application by the holder of the authorisation.

Article 260

Goods repaired free of charge

1. Where it is established to the satisfaction of the customs authorities that goods have been repaired free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing or material defect, they shall be granted total relief from import duty.

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

Article 261

Standard exchange system

1. Under the standard exchange system an imported product ('replacement product') may, in accordance with paragraphs 2 to 5, replace a processed product.

2. The customs authorities shall, upon application authorise the standard exchange system to be used where the processing operation involves the repair of defective Union goods other than those subject to measures laid down under the common agricultural policy or to the specific arrangements applicable to certain goods resulting from the processing of agricultural products.

3. Replacement products shall have the same eight-digit Combined Nomenclature code, the same commercial quality and the same technical characteristics as the defective goods had the latter undergone repair.

4. Where the defective goods have been used before export, the replacement products must also have been used.

The customs authorities shall, however, waive the requirement set out in the first subparagraph 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 material or manufacturing defect.

5. The provisions which would be applicable to the processed products shall apply to the replacement products.

Article 262

Prior import of replacement products

1. The customs authorities shall, under the conditions they lay down, upon application by the person concerned, authorise replacement products to be imported before the defective goods are exported.

In the event of such prior import of a replacement product, a guarantee shall be provided, covering the amount of the import duty that would be payable should the defective goods not be exported in accordance with paragraph 2.

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

3. Where, in exceptional circumstances, the defective goods cannot be exported within the period referred to in paragraph 2, the customs authorities may grant an extension, of a reasonable duration, of that period, upon justified application by the holder of the authorisation.

~~TITLE VIII~~

~~GOODS TAKEN OUT OF THE CUSTOMS TERRITORY OF THE UNION~~

~~CHAPTER 1~~

~~Formalities prior to the exit of goods~~

~~Article 263~~

~~Lodging a pre-departure declaration~~

~~1. Goods to be taken out of the customs territory of the Union shall be covered by a pre-departure declaration to be lodged at the competent customs office within a specific time-limit before the goods are taken out of the customs territory of the Union.~~

~~2. The obligation referred to in paragraph 1 shall be waived:~~

~~(a) for means of transport and the goods carried thereon only passing through the territorial waters or the airspace of the customs territory of the Union without a stop within that territory; or~~

~~(b) in other specific cases, where duly justified by the type of goods or traffic or where required by international agreements.~~

~~3. The pre-departure declaration shall take the form of one of the following:~~

~~(a) a customs declaration, where the goods to be taken out of the customs territory of the Union are placed under a customs procedure for which such declaration is required;~~

~~(b) a re-export declaration, in accordance with Article 270;~~

~~(c) an exit summary declaration, in accordance with Article 271.~~

~~4. The pre-departure declaration shall contain the particulars necessary for risk analysis for security and safety purposes.~~

~~Article 264~~

~~Risk analysis~~

~~The customs office to which the pre-departure declaration referred to in Article 263 is lodged shall ensure that, within a specific time limit, a risk analysis is carried out, primarily for security and safety purposes, on the basis of that declaration and shall take the necessary measures based on the results of that risk analysis.~~