

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Customs Code (Modernised Customs Code) (repealed)

TITLE III

CUSTOMS DEBT AND GUARANTEES

CHAPTER 1

Incurrence of a customs debt

Section 1

Customs debt on importation

Article 44

Release for free circulation and temporary admission

1 A customs debt on importation shall be incurred through the placing of non-Community goods liable to import duties 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 duties.

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 duties 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 45

Special provisions relating to non-originating goods

1 Where a prohibition of drawback of, or exemption from, import duties 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 Community and certain countries or territories outside the customs territory of the Community or groups of such countries or territories, a customs debt on importation shall be incurred in respect of those non-originating goods, through the acceptance of the re-export notification 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 44(2) and (3) shall apply *mutatis mutandis*. However, in the case of non-Community goods as referred to in Article 179, the person who lodges the re-export notification shall be the debtor. In the event of indirect representation, the person on whose behalf the notification is lodged shall also be a debtor.

Article 46

Customs debt incurred through non-compliance

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

- a one of the obligations laid down in customs legislation concerning the introduction of non-Community goods into the customs territory of the Community, their removal from customs supervision, or the movement, processing, storage, temporary admission or disposal of such goods within that territory;
- b one of the obligations laid down in customs legislation concerning the end-use of goods within the customs territory of the Community;
- c a condition governing the placing of non-Community 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 declaring the goods concerned under that 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 procedures referred to in paragraph 1 is drawn up, or any information required under the customs legislation

relating to the conditions governing the placing of the goods under a customs procedure is given to the customs authorities, which leads to all or part of the import duties 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 47

Deduction of an amount of import duty already paid

1 Where a customs debt is incurred, pursuant to Article 46(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 the import duty corresponding to the customs debt.

The first subparagraph shall apply *mutatis mutandis* 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 46(1), in respect of goods placed under temporary admission with partial relief from import duties, the amount of import duty paid under partial relief shall be deducted from the amount of the import duty corresponding to the customs debt.

Section 2

Customs debt on exportation

Article 48

Export and outward processing

1 A customs debt on exportation shall be incurred through the placing of goods liable to export duties 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 duties 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 49

Customs debt incurred through non-compliance

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

- a one of the obligations laid down in customs legislation for the exit of the goods;

Status: This is the original version (as it was originally adopted).

- b the conditions under which the goods were allowed to leave the customs territory of the Community with total or partial relief from export duties.
- 2 The time at which the customs debt is incurred shall be one of the following:
 - a the moment at which the goods actually leave the customs territory of the Community without a customs declaration;
 - b the moment at which the goods reach a destination other than that for which they were allowed to leave the customs territory of the Community with total or partial relief from export duties;
 - c should the customs authorities be unable to determine the moment referred 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 leave the customs territory of the Community with total or partial relief from export duties.

Section 3

Provisions common to customs debts incurred on importation and exportation

Article 50

Prohibitions and restrictions

- 1 The customs debt on importation or exportation shall be incurred even if it relates to goods which are subject to measures of prohibition or restriction on importation or exportation 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 Community of counterfeit currency;
 - b the introduction into the customs territory of the Community 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, customs duties or the existence of a customs debt provide the basis for determining penalties.

Article 51

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 the full amount of the debt.

Article 52

General rules for calculation of the amount of import or export duty

1 The amount of the 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 53

Special rules for calculation of the amount of import duty

1 Where costs for storage or usual forms of handling have been incurred within the customs territory of the Community in respect of goods placed under a customs procedure, 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-Community 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 Community, 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 Where customs legislation provides for a favourable tariff treatment of goods, or for relief or total or partial exemption from import or export duties, pursuant to Article 33(2)(d) to (g), Articles 130 to 133 or Articles 171 to 174, or pursuant to Council Regulation (EEC)

No 918/83 of 28 March 1983 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 46 or 49 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 54

Implementing measures

The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the following:

- (a) the rules for the calculation of the amount of import or export duty applicable to goods;
- (b) further special rules for specific procedures;
- (c) derogations from Articles 52 and 53, in particular to avoid the circumvention of the tariff measures referred to in Article 33(2)(h),

shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Article 55

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 notification referred to in Articles 44, 45 and 48 is lodged or where the supplementary declaration referred to in Article 110(3) is to be 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 entered for a customs procedure which has not been discharged, and the place cannot be determined, pursuant to the second or third subparagraphs of paragraph 1, within a specified period of time, 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 Community under that procedure.

The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the period of time referred to in the first subparagraph of this paragraph shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

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 46 or Article 49 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.

CHAPTER 2

Guarantee for a potential or existing customs debt

Article 56

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 Customs authorities may require a guarantee to be provided in order to ensure payment of the amount of import or export duty corresponding to a customs debt. Where the relevant provisions so provide, the guarantee required may also cover other charges as provided for under other relevant provisions in force.

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 64, the customs authorities shall require only one guarantee to be provided in respect of specific goods or a specific declaration.

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

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

5 At the request of the person referred to in paragraph 3 of this Article, the customs authorities may, in accordance with Article 62(1) and (2), 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 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.

7 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 threshold for declarations laid down in accordance with Article 12 of Council Regulation (EC) No 1172/95 of 22 May 1995 on the statistics relating to the trading of goods by the Community and its Member States with non-member countries⁽²⁾.

8 A guarantee accepted or authorised by the customs authorities shall be valid throughout the customs territory of the Community, for the purposes for which it is given.

9 The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the following:

- conditions for the implementation of this Article,
- cases, other than those laid down in paragraph 6 of this Article, in which no guarantee is to be required,
- exceptions to paragraph 8 of this Article,

shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Article 57

Compulsory guarantee

1 Where it is compulsory for a guarantee to be provided, and subject to the rules adopted pursuant to paragraph 3, 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 62, 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.

3 The Commission shall, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures for the implementation of paragraph 1 of this Article.

Article 58

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 57.

The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down when a guarantee is optional shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Article 59

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.

The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the forms of guarantee referred in point (c) of the first subparagraph of this paragraph, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

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

Article 60

Choice of guarantee

The person required to provide a guarantee may choose between the forms of guarantee laid down in Article 59(1).

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

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

Article 61

Guarantor

1 The guarantor referred to in Article 59(1)(b) must be a third person established in the customs territory of the Community. The guarantor must be approved by the customs authorities requiring the guarantee, unless the guarantor is a credit institution, financial institution or insurance company accredited in the Community in accordance with Community provisions in force.

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

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

Article 62

Comprehensive guarantee

1 The authorisation referred to in Article 56(5) shall be granted only to persons who satisfy the following conditions:

- a they are established in the customs territory of the Community;
 - b they have a record of compliance with customs and tax requirements;
 - c they are regular users of the customs procedures involved or are known to the customs authorities to have the capacity to fulfil their obligation in relation to those procedures.
- 2 Where a comprehensive guarantee is to be provided for customs debts and other charges which may be incurred, an economic operator may be authorised to use a comprehensive guarantee with a reduced amount or to have a guarantee waiver provided that he fulfils the following criteria:
- a a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
 - b proven solvency.
- 3 The Commission shall, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures governing the procedure for granting authorisations under paragraphs 1 and 2 of this Article.

Article 63

Additional provisions relating to the use of guarantees

- 1 In cases where a customs debt may be incurred in the framework of special procedures, paragraphs 2 and 3 shall apply.
- 2 The guarantee waiver authorised in accordance with Article 62(2) shall not apply to goods which are considered to present increased risks of fraud.
- 3 The Commission shall, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures:
- a implementing paragraph 2 of this Article;
 - b temporarily prohibiting the use of a comprehensive guarantee with a reduced amount referred to in Article 62(2);
 - c as an exceptional measure in special circumstances, temporarily prohibiting the use of a comprehensive guarantee in respect of goods which have been identified as being subject to large-scale fraud while under a comprehensive guarantee.

Article 64

Additional or replacement guarantee

Where the customs authorities establish that the guarantee provided does not ensure, or is no longer certain or sufficient to ensure, payment within the prescribed period of the amount of import or export duty corresponding to the customs debt and other charges, they shall require any of the persons referred to in Article 56(3) either to provide an additional guarantee or to replace the original guarantee with a new guarantee, according to his choice.

Article 65

Release of the guarantee

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

2 Where the customs debt or liability for other charges has been extinguished in part, or may arise only in respect of part, of the amount which has been secured, a corresponding part of the guarantee shall be released accordingly at the request of the person concerned, unless the amount involved does not justify such action.

3 The Commission may, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures for the implementation of this Article.

CHAPTER 3

Recovery and payment of duty and repayment and remission of the amount of import and export duty

Section 1

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

Article 66

Determination of the amount of import or export duty

1 The amount of import or export duty payable shall be determined by the customs authorities responsible for the place where the customs debt is incurred, or is deemed to have been incurred in accordance with Article 55, as soon as they have the necessary information.

2 Without prejudice to Article 27, the customs authorities may accept the amount of import or export duty payable determined by the declarant.

Article 67

Notification of the customs debt

1 The customs debt shall be notified to the debtor in the form prescribed at the place where the customs debt is incurred, or is deemed to have been incurred in accordance with Article 55.

The notification referred to in the first subparagraph shall not be made in the following situations:

- a where, pending a final determination of the amount of import or export duty, a provisional commercial policy measure taking the form of a duty has been imposed;
- b where the amount of import or export duty payable exceeds that determined on the basis of a decision made in accordance with Article 20;

- c where the original decision not to notify the customs debt or to notify it with an amount of import or export duty at a figure less than the amount of import or export payable was taken on the basis of general provisions invalidated at a later date by a court decision;
- d in cases where the customs authorities are exempted under the customs legislation from notification of the customs debt.

The Commission shall, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures for the implementation of point (d) of the second subparagraph of this paragraph.

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

3 Where paragraph 2 of this Article does not apply, the customs debt shall be notified to the debtor within 14 days of the date on which the customs authorities are in a position to determine the amount of import or export duty payable.

Article 68

Limitation of the customs debt

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

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

3 Where an appeal is lodged under Article 23, the periods laid down in paragraphs 1 and 2 of this Article shall be suspended, for the duration of the appeal proceedings, from the date on which the appeal is lodged.

4 Where liability for a customs debt is reinstated pursuant to Article 79(5), the periods laid down in paragraphs 1 and 2 of this Article shall be considered as suspended from the date on which the repayment or remission application was submitted in accordance with Article 84, until a decision on the repayment or remission is taken.

Article 69

Entry in the accounts

1 The customs authorities referred to in Article 66 shall enter in their accounts, in accordance with the national legislation, the amount of import or export duty payable as determined in accordance with that Article.

The first subparagraph shall not apply in cases referred to in the second subparagraph of Article 67(1).

The customs authorities need not enter in the accounts amounts of import or export duty which, pursuant to Article 68, correspond to a customs debt which could no longer be notified to the debtor.

2 The Member States shall determine the practical procedures for the entry in the accounts of the amounts of import or export duty. Those procedures may differ according to

whether, in view of the circumstances in which the customs debt was incurred, the customs authorities are satisfied that those amounts will be paid.

Article 70

Time of entry in the accounts

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

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

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

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

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

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

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

Article 71

Implementing measures

The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down rules for entry in the accounts, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Section 2

Payment of the amount of import or export duty

Article 72

General time limits for payment and suspension of the time limit for payment

1 Amounts of import or export duty, corresponding to a customs debt notified in accordance with Article 67, shall be paid by the debtor within the period prescribed by the customs authorities.

Without prejudice to Article 24(2), that period shall not exceed 10 days following notification to the debtor of the customs debt. In the case of aggregation of entries in the accounts under the conditions laid down in the second subparagraph of Article 70(1), it shall be so fixed as not to enable the debtor to obtain a longer period for payment than if he had been granted deferred payment in accordance with Article 74.

Extension of that period may be granted by the customs authorities at the request of the debtor where the amount of import or export duty payable has been determined in the course of post-release control as referred to in Article 27. Without prejudice to Article 77(1), such extensions shall not exceed the time necessary for the debtor to take the appropriate steps to discharge his obligation.

2 If the debtor is entitled to any of the payment facilities laid down in Articles 74 to 77, payment shall be made within the period or periods specified in relation to those facilities.

3 The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the conditions for the suspension of the time limit for payment of the amount of import or export duty corresponding to a customs debt in the following situations:

- a where an application for remission of duty is made in accordance with Article 84;
- b where goods are to be confiscated, destroyed or abandoned to the State;
- c where the customs debt was incurred pursuant to Article 46 and there is more than one debtor,

shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Those measures shall lay down, in particular, the period of the suspension, taking into account the time which is reasonable for the conclusion of any formalities or for the recovery of the amount of import or export duty corresponding to the customs debt.

Article 73

Payment

1 Payment shall be made in cash or by any other means with similar discharging effect, including by adjustment of a credit balance, in accordance with national legislation.

2 Payment may be made by a third person instead of the debtor.

3 The debtor may in any case pay all or part of the amount of import or export duty without awaiting expiry of the period he has been granted for payment.

Article 74

Deferment of payment

Without prejudice to Article 79, the customs authorities shall, at the request of the person concerned and upon provision of a guarantee, permit deferment of payment of the duty payable in any of the following ways:

- (a) separately in respect of each amount of import or export duty entered in the accounts in accordance with the first subparagraph of Article 70(1), or Article 70(4);
- (b) globally in respect of all amounts of import or export duty entered in the accounts in accordance with the first subparagraph of Article 70(1) during a period fixed by the customs authorities and not exceeding 31 days;
- (c) globally in respect of all amounts of import or export duty forming a single entry in accordance with the second subparagraph of Article 70(1).

Article 75

Time limits for deferred payment

- 1 The period for which payment is deferred under Article 74 shall be 30 days.
- 2 Where payment is deferred in accordance with Article 74(a), the period shall begin on the day following that on which the customs debt is notified to the debtor.
- 3 Where payment is deferred in accordance with Article 74(b), the period shall begin on the day following that on which the aggregation period ends. It shall be reduced by the number of days corresponding to half the number of days covered by the aggregation period.
- 4 Where payment is deferred in accordance with Article 74(c), the period shall begin on the day following the end of the period fixed for release of the goods in question. It shall be reduced by the number of days corresponding to half the number of days covered by the period concerned.
- 5 Where the number of days in the periods referred to in paragraphs 3 and 4 is an odd number, the number of days to be deducted from the 30-day period pursuant to those paragraphs shall be equal to half the next lowest even number.
- 6 Where the periods referred to in paragraphs 3 and 4 are calendar weeks, Member States may provide that the amount of import or export duty in respect of which payment has been deferred is to be paid on the Friday of the fourth week following the calendar week in question at the latest.

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

Article 76

Implementing measures

The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the rules for deferment of payment in cases where the customs declaration is simplified in accordance with Article 109, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Article 77

Other payment facilities

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

Where facilities are granted pursuant to the first subparagraph, credit interest shall be charged on the amount of import or export duty. The rate of credit interest shall be the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question (the reference rate), plus one percentage point.

For a Member State which is not participating in the third stage of economic and monetary union, the reference rate referred to above shall be the equivalent rate set by its national central bank. In that case, the reference rate in force on the first calendar day of the half-year in question shall apply for the following six months.

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

3 The Commission may, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures for the implementation of paragraphs 1 and 2.

Article 78

Enforcement of payment and arrears

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

The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down measures in respect of securing payment from guarantors within the framework of a special procedure, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

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

The rate of interest on arrears shall be the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question (the reference rate), plus two percentage points.

For a Member State which is not participating in the third stage of economic and monetary union, the reference rate referred to above shall be the equivalent rate set by its national central bank. In that case, the reference rate in force on the first calendar day of the half-year in question shall apply for the following six months.

3 Where a customs debt has been notified pursuant to Article 67(3), interest on arrears shall be charged over and above the amount of import or export duty, from the date on which the customs debt was incurred until the date of its notification.

The rate of interest on arrears shall be set in accordance with paragraph 2.

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

5 The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the cases, in terms of time and amounts, in which the customs authorities may waive the collection of interest on arrears, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Section 3

Repayment and remission of the amount of import or export duty

Article 79

Repayment and remission

1 Subject to the conditions laid down in this Section, amounts of import or export duty shall, provided that the amount to be repaid or remitted exceeds a certain amount, be repaid or remitted on the following grounds:

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

In addition, where an amount of import or export duty has been paid and the corresponding customs declaration is invalidated in accordance with Article 114, that amount shall be repaid.

2 Subject to the rules of competence for a decision, where the customs authorities themselves discover within the periods referred to in Article 84(1) that an amount of import or export duty is repayable or remissible pursuant to Articles 80, 82 or 83, they shall repay or remit on their own initiative.

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

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

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

In such cases, the interest shall be paid from the date of expiry of the three-month period until the date of repayment. The rate of interest shall be established in accordance with Article 77.

5 Where the competent authority has granted repayment or remission in error, the original customs debt shall be reinstated insofar as it is not time-barred under Article 68.

In such cases, any interest paid under the second subparagraph of paragraph 4 must be reimbursed.

Article 80

Repayment and remission of overcharged amounts of import or export duty

An amount of import or export duty shall be repaid or remitted insofar as the amount corresponding to the customs debt initially notified exceeds the amount payable, or the customs debt was notified to the debtor contrary to points (c) or (d) of Article 67(1).

Article 81

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

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

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

2 Repayment or remission of import duties shall be granted provided the goods have not been used, except for such initial use as may have been necessary to establish that they were defective or did not comply with the terms of the contract and provided they are exported from the customs territory of the Community.

3 Instead of being exported, at the request of the person concerned, the customs authorities shall permit the goods to be placed under the inward-processing procedure, including for destruction, or the external transit, the customs warehousing or the free-zone procedure.

Article 82

Repayment or remission on account of error by the competent authorities

1 In situations other than those referred to in the second subparagraph of Article 79(1) and in Articles 80, 81 and 83, an amount of import or export duty shall be repaid or remitted where, as a result of an error on the part of the competent authorities, the amount corresponding to the customs debt initially notified was lower than the amount payable, provided the following conditions are met:

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

2 Where the preferential treatment of the goods is granted on the basis of a system of administrative cooperation involving the authorities of a country or territory outside the customs territory of the Community, the issue of a certificate by those authorities, should it prove to be

incorrect, shall constitute an error which could not reasonably have been detected within the meaning of paragraph 1(a).

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

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

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

Article 83

Repayment and remission in equity

In situations other than those referred to in the second subparagraph of Article 79(1) and in Articles 80, 81 and 82, an amount of import or export duty shall be repaid or remitted in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor.

Article 84

Procedure for repayment and remission

1 Applications for repayment or remission in accordance with Article 79 shall be submitted to the appropriate customs office within the following periods:

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

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

2 Where an appeal has been lodged under Article 23 against the notification of the customs debt, the relevant period specified in the first subparagraph of paragraph 1 of this Article shall be suspended, from the date on which the appeal is lodged, for the duration of the appeal proceedings.

Article 85

Implementing measures

The Commission shall, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures for the implementation of this Section. Those measures shall lay down, in particular, the cases in which the Commission shall, in accordance with the management procedure referred to in Article 184(3), decide whether remission or repayment of an amount of import or export duty is justified.

CHAPTER 4

Extinguishment of customs debt

Article 86

Extinguishment

1 Without prejudice to Article 68 and the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on importation or exportation shall be extinguished in any of the following ways:

- a by payment of the amount of import or export duty;
- b subject to paragraph 4, by remission of the amount of import or export duty;
- c where, in respect of goods declared for a customs procedure entailing the obligation to pay duties, the customs declaration is invalidated;
- d where goods liable to import or export duties are confiscated;
- e where goods liable to import or export duties are seized and simultaneously or subsequently confiscated;
- f where goods liable to import and export duties are destroyed under customs supervision or abandoned to the State;
- g where the disappearance of the goods or the non-fulfilment of obligations arising from the customs legislation results from the total destruction or irretrievable loss of those goods as a result of the actual nature of the goods or unforeseeable circumstances or *force majeure*, or as a consequence of instruction by the customs authorities; for the purpose of this point, goods shall be considered as irretrievably lost when they have been rendered unusable by any person;
- h where the customs debt was incurred pursuant to Article 46 or 49 and where the following conditions are fulfilled:
 - (i) the failure which led to the incurrence of a customs debt had no significant effect on the correct operation of the customs procedure concerned and did not constitute an attempt at deception;
 - (ii) all of the formalities necessary to regularise the situation of the goods are subsequently carried out;
- i where goods released for free circulation duty-free, or at a reduced rate of import duty by virtue of their end-use, have been exported with the permission of the customs authorities;

- j where it was incurred pursuant to Article 45 and where the formalities carried out in order to enable the preferential tariff treatment referred to in that Article to be granted are cancelled;
- k where, subject to paragraph 5 of this Article, the customs debt was incurred pursuant to Article 46 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been exported from the customs territory of the Community.

2 In the event of confiscation, as referred to in paragraph 1(d), the customs debt shall, nevertheless, for the purposes of penalties applicable to customs offences, be deemed not to have been extinguished where, under the law of a Member State, customs duties or the existence of a customs debt provide the basis for determining penalties.

3 Where, in accordance with paragraph 1(g), a customs debt is extinguished in respect of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, any scrap or waste resulting from their destruction shall be deemed to be non-Community goods.

4 Where several persons are liable for payment of the amount of import or export duty corresponding to the customs debt and remission is granted, the customs debt shall be extinguished only in respect of the person or persons to whom the remission is granted.

5 In the case referred to in paragraph 1(k), the customs debt shall not be extinguished in respect of any person or persons who attempted deception.

6 Where the customs debt was incurred pursuant to Article 46, it shall be extinguished with regard to the person whose behaviour did not involve any attempt at deception and who contributed to the fight against fraud.

7 The Commission may, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures for the implementation of this Article.

Status: This is the original version (as it was originally adopted).

- (1) [OJ L 105, 23.4.1983, p. 1](#). Regulation as last amended by Regulation (EC) No 274/2008 ([OJ L 85, 27.3.2008, p. 1](#)).
- (2) [OJ L 118, 25.5.1995, p. 10](#). Regulation as last amended by Regulation (EC) No 1882/2003.