

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

TITLE III

**CUSTOMS DEBT AND GUARANTEES**

CHAPTER 3

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

*Section 3*

***Repayment and remission***

*Article 116*

**General provisions**

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

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

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

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

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

- a where the customs authorities consider that the special circumstances are the result of the Commission failing in its obligations;
- b where the customs authorities consider that the Commission committed an error within the meaning of Article 119;
- c where the circumstances of the case relate to the findings of a Union investigation carried out under Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>(1)</sup>, or under any other Union legislation or any agreement concluded by the Union with countries or groups of countries in which provision is made for carrying out such Union investigations;

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- d where the amount for which the person concerned may be liable in respect of one or more import or export operations equals or exceeds EUR 500 000 as a result of an error or special circumstances.

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

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

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

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

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

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

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

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

In such cases, [<sup>X1</sup>any interest paid under the second subparagraph of paragraph 6 shall be reimbursed.]

#### Editorial Information

- X1** Substituted by [Corrigendum to Regulation \(EU\) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code \(Official Journal of the European Union L 269 of 10 October 2013\)](#).

#### Modifications etc. (not altering text)

- C1** Art. 116(6) excluded (1.8.2021) by [S.I. 1995/2518, regs. 133AD\(b\), 133L](#) (as inserted by [The Value Added Tax \(Amendment\) \(EU Exit\) Regulations 2021 \(S.I. 2021/715\), regs. 1, 43, 47](#))

### Article 117

#### Overcharged amounts of import or export duty

1 An amount of import or export duty shall be repaid or remitted insofar as the amount corresponding to the customs debt initially notified exceeds the amount payable, or the customs debt was notified [<sup>X1</sup>to the debtor contrary to point (c) or (d) of the second subparagraph of Article 102(1).]

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

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

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- X1** Substituted by [Corrigendum to Regulation \(EU\) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code \(Official Journal of the European Union L 269 of 10 October 2013\)](#).

*Article 118*

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

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

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

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

3 Repayment or remission shall not be granted where:

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

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

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## Article 119

### Error by the competent authorities

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

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

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

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

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

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

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

## Article 120

### Equity

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

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

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

### *Article 121*

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

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

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

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

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

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

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

### *Article 122*

#### **Delegation of power**

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

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

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### *Article 123*

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

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

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

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

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

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

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

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(1) [OJ L 82, 22.3.1997, p. 1.](#)

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