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**of the**

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AND SOUTHERN AFRICA (COMESA)**

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**of the  
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Common Market Customs Management Regulations

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**By Order of the Council and Authority**

Sindiso N. Ngwenya  
Secretary-General  
COMESA

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**IT IS HEREBY NOTIFIED** that the COMESA Council, at its Twenty-Sixth Meeting held from 2<sup>nd</sup> to 4<sup>th</sup> June, 2009 at Victoria Falls, Zimbabwe issued the following Legal Notice:

**LEGAL NOTICE NO. 2 of 2009**

**HAVING REGARD** to Article 10(1) of the Treaty establishing the Common Market for Eastern and Southern Africa providing that Council may make regulations;

**NOW THEREAFTER**, the Council of Ministers hereby makes the following regulations:

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## **CHAPTER 1 PRELIMINARY**

### **Citation**

- 1. These Regulations may be cited as the **Common Market Customs Management Regulations**.

### *Interpretation*

- 2. In these Regulations, except where the context otherwise requires:

**‘administrative settlement’** means the procedure laid down by national legislation under which competent authorities are empowered to settle a customs offence;

**‘agent’** in relation to an aircraft, vessel or vehicle, includes a duly authorised person who notifies the proper officer in writing that he intends to act as the agent and who, on behalf of the person who authorised him, signs any document required or authorised by these Regulations to be signed by an agent;

**‘agreement’** means any customs or trade agreement entered into by the Council of Ministers in terms of regulation 369;

**‘aircraft’** means a machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of air against the

earth's surface and includes power-driven aircraft, helicopters, non-power driven aircraft, balloons and gliders, but excludes hovercraft;

**'appeal'** means the act by which a person who is directly affected by a decision or omission of a competent authority and who deems himself to be aggrieved seeks redress before a body legally appointed and designated for those purposes;

**'approved'** means approved by the competent authority in a Member State;

**'approved place of loading'** in relation to air, rail and sea transport means a quay, jetty, wharf, premises or other place including any part of a port or customs airport, appointed by the competent authority in a Member State by notice in accordance with the provisions in force to be a place where goods may be loaded or unloaded; and in relation to road transport, the place or premises appointed by the competent authority where the goods are placed on the means of transport after the relevant customs documents have been submitted;

**'assessment of duties and taxes'** means the determination of the amount of duties and taxes payable;

**'authorisation'** means the authorisation by the competent authority or by any proper officer performing duties on behalf of that authority;

**'boarding station'** means a place appointed by the competent authority in a Member State by notice in the *Official Gazette* to be a place for aircraft or vessel or vehicle arriving at or departing from a port or place seems incomplete for the boarding of customs or the disembarkation of pilot, master, crew members, travellers or the discharge of cargo;

**'bond'** means an undertaking in due legal form, by which a person binds himself to the competent authorities to do or not to do some specified act;

**'cargo'** includes all goods imported, exported or carried coastwise in any aircraft, vessel or vehicle other than such goods as are required as stores for consumption or use by or for that aircraft, vessel or vehicle, its master, crew and travellers, and the *bona fide* accompanied personal baggage of such master, crew and travellers;

**'cargo declaration'** means information submitted prior to or on arrival or departure of a means of transport for commercial use that provides the particulars required by the customs relating to cargo brought to or removed from the customs territory;

**‘cargo manifest’** means a listing of all goods comprising the cargo or freight carried in a means of transport or in a transport unit or which gives the commercial particulars of the goods, such as transport document number, consignors, consignees, marks and numbers, number and kind of packages, descriptions and quantities of goods;

**‘carrier’** means the person actually transporting goods or in charge of, or responsible for, the operation of the means of transport;

**‘certificate of origin’** means the specified form identifying goods, in which the authority or body empowered to issue it certifies expressly that the goods to which the certificate relates originate in a specific country, and which may include a declaration by the manufacturer, producer, supplier, exporter or other competent person;

**‘clearance’** means the accomplishment of the customs formalities necessary to allow goods to enter for home use, to be exported or to be placed under another customs procedure;

**‘clearance for home use’** means the customs procedure which provides that imported goods enter into free circulation in the customs territory upon payment of any import duties and taxes chargeable and the accomplishment of all the necessary customs formalities;

**‘CN 22/23’** means the special declaration forms for postal items as described in the Acts of the Universal Postal Union currently in force;

**‘commercial free zone’** means a designated free trade zone area where goods may not be subjected to processing or manufacturing operations. The operations allowed in a commercial free zone are restricted to only those required to preserve the goods or to improve their packaging or marketable quality and which does not change the character of the goods;

**‘commercial means of transport’** means any vessel including lighters and barges, whether or not ship borne, and hydrofoils, hovercraft, aircraft, road vehicle (including trailers, semi-trailers and combinations of vehicle or railway rolling stock, which is used for the transport of persons for remuneration or for the industrial or commercial transport of goods, whether or not for remuneration;

**‘commercial policy measures’** means non-tariff measures established, as part of the common commercial policy, in the form of Common Market provisions governing:

- (a) the import and export of goods, such as surveillance or safeguard measures;

(b) quantitative restrictions or limits; and

(c) import and export prohibitions;

**‘commercial vehicle’** means vehicle or utility vehicles classified under heading 87.01, 87.02, 87.04 and 87.05 of the Common Customs Tariff nomenclature of the Common Market.

**‘Committee procedure’** means the procedure provided for or referred to in regulation 207;

**‘Common External Tariff’** means a rate of tariff imposed on goods imported from third countries into the Common Market as prescribed by the Council ;

**‘Common Market’** means the Common Market as defined by Article 2 of the Treaty;

**‘Common Market goods’** means goods:

(a) wholly obtained in the customs territory under the conditions or rules referred to in regulation 66 and not incorporating goods imported from countries or territories not forming part of the customs territory. Goods obtained from goods placed under a suspensive arrangement shall not be deemed to have Common Market status in cases of special economic importance determined in accordance with the Committee procedure;

(b) imported from countries or territories not forming part of the customs territory which have been cleared for home use; or

(c) obtained or produced in the customs territory, either from goods referred to in paragraph (b) alone or from goods referred to in paragraphs (a) and (b) above;

**‘compensating products’** means all products resulting from processing operations;

**‘competent authority’** means a person, body or organisation designated by a Member State to administer, manage and control in part or in full the provisions of these Regulations;

**‘confiscation’** means appropriation of goods by a competent authority by operation of law or condemnation proceedings;

**'container'** means a receptacle which :

- (a) is fully or partially enclosed so as to constitute a compartment intended for containing goods;
- (b) is of a permanent character and strong enough to be suitable for repeated use;
- (c) is specially designed to facilitate the carriage of goods by one or more modes of transport without intermediate re-loading;
- (d) is designed for ready handling, particularly when being transported from one mode of transport to another; and
- (e) has an internal volume of one cubic meter or more;

**'container depot'** means any place or premises appointed by the competent authority in terms of regulation 18 to which containerised goods may be removed for temporary storage pending their declaration, examination and clearance on importation or exportation or assignment to any other approved customs procedure;

**'country of exportation'** in relation to imported goods, means the country from which such goods are exported into the Common Market, but does not include any country through which such goods are in transit or are transhipped en route to the Common Market;

**'country of importation'** means any country or customs territory into which goods are imported;

**'Council'** means the Council of Ministers of the Common Market established by Article 7 of the Treaty;

**'crew'** includes every person, other than the master, employed or engaged in any capacity on any vessel, aircraft, train or vehicle, except for the purposes set out in the provisions dealing with duty-free stores where the term 'crew' includes the master of a vessel, aircraft, train or vehicle;

**'currency'** includes any bill of exchange, promissory note, traveller's cheque or letter of credit or any draft or other document issued to obtain currency or credit for an amount of money;

**'customs'** means the authority in a Member State which is responsible for the administration of customs law and the collection of duties and taxes and which also has the responsibility for the application of other laws and



regulations relating to the importation, exportation, movement or storage of goods;

**'customs airport'** means any aerodrome or airport designated or appointed by the competent authority in terms of regulation 14;

**'customs approved route'** means any road, railway, waterway, airway and any other route or pipeline, which shall be used for the importation, customs transit and exportation of goods;

**'customs area'** means an area designated or appointed by the competent authority for the conduct of customs controls, formalities and procedures;

**'customs carrier'** means a person licensed by the competent authority to carry uncustomed goods in bond;

**'customs clearing agent'** means a person authorised by the owner to act on his behalf in terms of regulation 28 and authorised in terms of regulation 29, and who carries on the business of arranging for the customs clearance of goods and who deals directly with the customs for and on behalf of another person and includes customs agents, customs brokers and freight forwarders;

**'customs control'** means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory and third countries and the presence of goods that do not have Common Market status. Such acts may include:

- (a) examining goods,
- (b) verifying declaration data and the existence and authenticity of electronic or written documents,
- (c) examining the accounts of undertakings and other records, inspecting means of transport,
- (d) inspecting baggage and other goods carried by or on persons, and
- (e) carrying out official inquiries and other similar acts;

**'customs debt'** means the obligation on a person to pay the amount of import duties and taxes or export duties and taxes which apply to specific goods under the Common Market provisions in force;

**‘customs declaration’** means the act whereby a person indicates in the prescribed form and manner the wish to place goods under an approved customs procedure;

**‘customs duties’** means import or export duties and other charges of equivalent effect levied on goods by reason of their importation or exportation and includes suspended duties and fiscal duties or taxes where such duties or taxes affect the importation or exportation of goods but does not include internal duties and taxes such as sales, turnover or consumption taxes imposed otherwise than in respect of the importation or exportation of goods;

**‘customs formalities’** means the operations which shall be carried out by the person concerned and by the customs in order to comply with customs law and any other provisions in force;

**‘customs law’** means all the statutory provisions applied by the customs Administration on the importation, exportation, transit or movement of goods whether or not they involve the collection of duties or taxes( or security thereof),on the enforcement of prohibitions, restrictions or control or exchange control regulations or any other customs regime;

**‘customs offence’** means any breach or attempted breach of customs law;

**‘customs office’** means any customs administrative unit competent for the performance of customs formalities, and the premises or other areas approved for that purpose by the Competent authorities;

**‘customs port’** means an area designated or appointed by the competent authority through which goods may be imported or exported and at which persons may arrive or depart, by land, air or water;

**‘customs procedure’** means:

- (a) clearance for home use, including release for free circulation;
- (b) transit;
- (c) temporary storage;
- (d) inward processing;
- (e) processing for home use;
- (f) temporary admission;
- (g) outward processing;
- (h) exportation;
- (i) entry into a free zone;
- (j) re-exportation from the customs territory;

- (k) temporary exportation and re-importation;
- (l) abandonment of goods to the Member State;
- (m) the destruction of goods under official supervision;
- (n) end-use; or
- (o) transshipment;

**'customs supervision'** means any action taken in general by the competent authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are complied with.

**'customs territory'** means the territory of Member States in which the customs law of the Common Market applies, and shall from time to time include such states as may become members of the Common Market Customs Union and exclude those which cease to be Members;

**'customs transit'** means the customs procedure under which goods are transported under customs control from one customs office to another.

**'customs warehouse'** means any place approved by and under the supervision or control of the competent authorities for the storage of imported goods without the payment of import duties and taxes and without the goods being subject to commercial policy measures;

**'customs warehousing procedure'** means the customs procedure under which imported goods are stored under customs control or supervision in a designated area (a customs warehouse) without a payment of import duties and taxes;

**'data'** means any information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose;

**'date of acceptance'** means the initial date of registration of a customs declaration by the competent authority;

**'days'** means working days in any calendar month as prescribed in national legislation;

**'debtor'** means any person liable for payment of a customs debt;

**'decision'** means any official act by the competent authority pertaining to customs rules giving a ruling on a particular case, such act having legal effect on one or more specific or identifiable persons; the term covers, *inter alia*, binding tariff and origin information within the meaning of regulations 44 to 48;

**‘declarant’** means the person making a customs declaration or the person on whose behalf the declaration is made;

**‘declaration’** in relation to the clearance of goods for, *inter alia*, an approved customs procedure, means the presentation, in terms of these Regulations, of a correctly completed declaration in the prescribed form, either in writing or in electronic form, together with such bills of lading, invoices, certificates and other documents required to be furnished with that declaration;

**‘depositor’** means the person bound by the declaration placing the goods under the customs warehousing procedure, or to whom the rights and obligations of such a person have been transferred;

**‘document’** means any medium designed to carry and actually carrying a record of data entries, and includes:

- (a) Any form of writing on material;
- (b) information recorded, transmitted, or stored by means of a tape recorder, computer, or other device, and material subsequently derived from information so recorded, transmitted, or stored;
- (c) a label, marking, or other form of writing that identifies any thing of which it forms part or to which it is attached by any means;
- (d) a book, map, plan, graph, or drawing; or
- (e) one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;

**‘drawback’** means the amount of import duties and taxes repaid under the drawback procedure;

**‘drawback procedure’** means the customs procedure which, when goods are exported, provides for a repayment (total or partial) to be made in respect of the import duties and taxes charged on the goods, or on materials contained in them or consumed in their production;

**‘drawback system’** means the inward processing relief arrangements which allow refund of duty paid on inputs into manufacturing of export goods;

**‘due date’** means the date when payment of duties and taxes is due;

**‘dutiable goods’** means goods of a class or description subject to any customs duty or tax, whether or not those goods are in fact chargeable with that duty or tax and whether or not the duty or tax has been paid thereon;

**‘duties and taxes’** means import duties and taxes or export duties and taxes;

**‘economic operator’** means a person who is professionally involved in the import or export of goods to or from the customs territory;

**‘equivalent goods’** means Common Market goods which are used instead of import goods for the manufacture of compensating products under the inward processing procedure. The equivalent goods shall be of the same quality and have the same characteristics as the import goods. However, in cases determined in accordance with the Committee procedure, equivalent goods may be allowed to be at a more advanced stage than the import goods, subject to sub regulation 184(2);

**‘examination of goods’** means the physical inspection of goods by the customs authority to satisfy themselves, *inter alia*, that the nature, origin, condition, quantity and value of the goods are in accordance with the particulars furnished in the declaration or other prescribed declaration;

**‘examination station’** means an area at a customs port designated by the competent authority under regulation 17 for the embarkation and disembarkation of persons and the loading and unloading of goods;

**‘exportation’** means the act of taking or causing to be taken out any goods from the customs territory;

**‘exporter’** means the person on whose behalf the export declaration is made and who is the owner of the goods or has a similar right of disposal over them at the time when the declaration is accepted. Where ownership or a similar right of disposal over the goods belongs to a person established outside the Common Market pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Common Market;

**‘export duties and taxes’** means customs duties and all other duties, taxes or charges which are collected on or in connection with the exportation of goods, but not including any charges which are limited in amount to the approximate cost of services rendered or collected by the competent authorities on behalf of another national authority;

**‘export processing zone’** means the area designated by the competent authority where processing operations are authorised for production of goods intended for export;

**'external transit procedure'** allows the movement, from one point to another within the customs territory, of:

- (a) non-Common Market goods, without their being subject to import duties, taxes and other charges or to commercial policy measures; and
- (b) the movement, from one point to another within the customs territory, of Common Market goods which are subject to a Common Market measure involving export to third countries and in respect of which the corresponding customs formalities for export have been carried out;

**'foreign port'** means a port beyond the boundaries of the customs territory;

**'forestalling'** means the payment of duty and tax on goods at the rate in force at the time of acceptance of the declaration in the expectation that the duties and taxes would be increased before the goods could be landed and produced to customs;

**'forfeited goods'** means goods the ownership of which has been transferred by operation of law or condemnation proceedings to a Member State;

**'forfeiture'** involves permanent loss of ownership or title by operation of law or condemnation proceedings to a Member State;

**'form'** means a form prescribed by the Committee or as provided for in the national legislation and includes the special declaration form for postal items as described in the Acts of the Universal Postal Union ;

**'free zone'** means a part of the customs territory where goods introduced in the customs territory are considered, in so far as import duties are concerned, as being outside the customs territory and are not subject to the usual customs control;

**'frontier traffic'** means importation and exportation of goods between adjacent border areas by inhabitants of the frontier zone;

**'goods'** unless otherwise specifically provided for in any provisions in force, means all tangible moveable property including, *inter alia*, all wares, articles, merchandise, animals, matter, baggage, stores, materials, currency, electricity, gas, and includes postal items other than personal correspondence;

**‘goods declaration’** means a statement made in the form prescribed by the customs administration, by which the persons concerned furnish the particulars which the customs administration requires to be declared for the purposes of the application of the relevant customs procedure;

**‘goods in free circulation’** means goods imported into the customs territory from a third country or non-member country are to be considered to be in free circulation when the import formalities have been complied with and the various duties and taxes paid and the goods may be disposed of without customs restriction;

**‘goods in the unaltered state’** means import goods which under the inward processing procedure or the procedure for processing for home use, have undergone no form of processing;

**‘goods in transit’** means goods being conveyed between two Member States or between a Member State and a third country and passing through another Member State or Member States and “transit” shall be construed accordingly;

**‘goods of a non-commercial nature’** means goods whose declaration for the customs procedure in question is on an occasional basis and whose nature and quantity indicate that they are intended for the private, personal or family use of the consignees or persons carrying them or which are clearly intended as gifts;

**‘guarantee’** means an undertaking by which the surety assumes obligations towards the competent authorities;

**‘Harmonized System’** means the International Convention on the Harmonized Commodity Description and Coding System developed by the World Customs Organisation;

**‘holder of the authorisation’** means the person to whom an authorisation has been granted;

**‘holder of the procedure’** means the person on whose behalf the customs declaration was made or the person to whom the rights and obligations of the abovementioned person in respect of a customs procedure have been transferred;

**‘importation’** means the bringing or entry or causing the goods to be brought into or enter into the customs territory from a place or point outside the customs territory; and in the case of prohibited or restricted goods, includes acts of *force majeure*;

**‘import duties and taxes’** means customs duties and all other duties, taxes or charges which are collected on or in connection with the importation of goods, but not including any charges which are limited in amount to the approximate cost of services rendered or collected by the customs on behalf of another national authority;

**‘import goods’** means, save where otherwise expressly provided for in the provisions in force, or where the context otherwise requires, goods placed under a suspensive procedure and goods which, under the inward processing procedure in the form of the drawback system, have undergone the formalities for clearance for home use;

**‘importer’** in relation to goods between and including their time of importation and their time of clearance for home use, includes any owner or other person for the time being possessed of or beneficially interested in the goods and, in relation to goods imported by means of a pipeline, includes the owner of the pipeline;

**‘industrial and commercial property’** includes rights relating to:

- (a) literary, artistic and scientific works;
- (b) performances of performing artists, phonograms and broadcasts;
- (c) inventions in all fields of human endeavour;
- (d) scientific discoveries;
- (e) industrial designs;
- (f) trademarks, service marks and commercial names and designations;
- (g) (protection against unfair competition; and
- (h) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. In particular these rights place an obligation on the competent authorities to prevent the circulation of counterfeit and pirated goods;

**‘industrial free zone’** means a designated free trade zone area where processing or manufacturing operations are allowed subject to any



conditions laid down by the competent authority in either of the following forms:

- (a) general terms;
- (b) in detail in a regulation applicable throughout the free zone; or
- (c) in the authority granted to the enterprise carrying out the prescribed operations .

**‘internal clearance depot’** means a common user facility, other than a port or an airport or road or rail station, with or without public authority status, equipped with fixed installations and offering services for handling and temporary storage of goods of any kind (including containers) carried under customs bond or transit by any applicable mode of transport, placed under customs control and with customs or other agencies competent to clear goods for home use, warehousing, temporary admission, re-export, temporary storage for outward transit and outright export;

**‘internal transit procedure’** means a producer which allows, under certain conditions, the movement of Common Market goods from one point to another within the customs territory passing through the territory of a third country without any change in their customs status;

**‘internal waters’** means those areas of water, including parts of the sea, which are under the full sovereignty of a Member State and include inland waters, ports, anchorages and roadsteads, bays, gulfs and estuaries, sea separated by islands and all sea areas which are to the landward side of the baselines from which the territorial sea is delimited and includes national lake waters;

**‘inward processing’** means the customs procedure under which certain goods can be brought into the customs territory conditionally relieved from payment of import duties and taxes, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.

**‘landing’** in relation to goods, includes the discharging of goods from a pipeline;

**‘loading’** in relation to goods, includes the pumping or insertion of goods into a pipeline;

**‘master’** in relation to any vessel or vehicle or aircraft, means any person, other than the pilot of a vessel, having charge of such vessel or vehicle or aircraft;

**‘Member State’** means a Member State of the Common Market;

**‘non-Common Market goods’** means goods other than those defined as Common Market goods;

**‘officer’** means a person appointed or declared by the competent authority, to be an officer for the purposes of these Regulations or any other provision for the time being in force empowering an ‘officer’ to act for any particular purpose;

**‘omission’** for the purposes of appeals means the failure to give a [decision required of the competent authorities by the laws and regulations within a reasonable time on a matter duly submitted to the competent authority;

**‘operator’** in relation to a pipeline, includes any person responsible for the management thereof or for pumping or insertion of goods into, or the discharge of goods from the pipeline.

**‘outward-processing’** means the customs procedure under which goods which are in free circulation in the Common Market may be temporarily exported for manufacturing, processing or repair abroad and then re-imported with total or partial relief from duties and taxes;

**‘owner’:**

- (a) in respect of any goods, includes any person being or holding himself out to be the owner, manufacturer, licensee, importer, exporter, consignee, agent, or the person in possession of, beneficially interested in, or having control of, or power of disposition, over such goods;
- (b) in respect of an aircraft, vessel or vehicle, includes the master or other responsible officer of the vessel, aircraft or vehicle and any person acting as an agent for the owner or any charter or operator;

**‘package’** includes any means used or capable of being used to pack, cover, enclose, contain or encase goods for carriage; a bulk cargo container; a pallet or similar device;

**‘packings’** means all articles and materials used, or to be used in the state in which they are imported, to pack, protect, stow or separate goods, excluding packing materials such as straw, paper, glasswool, shavings when imported in bulk, containers and pallets,

**‘pallet’** means a device :

- (a) on the deck of which a quantity of goods can be assembled to form a unit load for the purpose of transporting it, or handling or stacking it with the assistance of mechanical appliances;
- (a) made up of two decks separated by bearers, or of a single deck supported by feet;
- (c) overall height is reduced to the minimum compatible with handling by fork lift trucks or pallet trucks;
- (d) it may or may not be a superstructure;

**'perfect declaration'** means a declaration made in accordance with the provisions of these Regulations and any other provisions in force;

**'person'** means:

- (a) a natural person;
- (b) a legal person; or
- (c) where the possibility is provided for in a Member State's law, an association of persons recognised as having the capacity to perform legal acts, but lacking the legal status of a legal person;

**'persons established in the customs territory or Common Market'** means:

- (a) in the case of a natural person, any person who is normally resident there; or
- (b) in the case of a legal person or an association of persons, any person that has its registered office, central headquarters or a permanent business establishment in the Common Market;

**'pilot'** in relation to any aircraft or vessel, means any person having charge of such aircraft or vessel by whichever title referred to;

**'pipe-line'** means a pipe together with any apparatus and works associated therewith, or a system of pipes together with any apparatus and works associated therewith, for the conveyance of any goods being imported into or exported out of the customs territory;

**'port'** means a port designated or appointed by the competent authority under regulation 17 of these Regulations or under national law;

**‘postal items’** means letter-post and parcels, as described in the Acts of the Universal Postal Union currently in force, when carried by or for the postal services;

**‘postal service’** means a public or private body authorised by competent authorities in the Member States to provide the international services governed by, *inter alia*, the Acts of the Universal Postal Union and Pan-African Postal Union currently in force;

**‘premises’** includes any building, house, room, place, land or structure;

**‘principal’** means the person who, or through an authorised representative, requests permission, in accordance with the required customs formalities, to carry out a transit operation and thereby makes oneself responsible to the competent authorities for the execution of a Common Market transit operation;

**‘processing operations’** means:

- (a) the working of goods, including erecting or assembling them or fitting them to other goods;
- (b) the processing of goods;
- (c) the repair of goods, including restoring them and putting them in order; and
- (d) the use of certain goods defined in accordance with the Committee procedure which are not to be found in the compensating products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process;

**‘provisions in force’** means, *inter alia*, the following:

- (a) the provisions adopted at Common Market level, and at national level to implement these Regulations ;
- (b) the provisions of the Treaty;
- (c) international agreements containing customs provisions in so far as they are applicable in the Common Market; and
- (d) any other national legislation that is administered in whole or in part by the competent authorities with particular reference to provisions in force relating to the regulation of goods, including prohibited and restricted goods, being or having being imported or exported.

**‘private warehouse’** means a customs warehouse reserved solely for the warehousing of goods by the warehouse keeper;

**‘processed products’** means the authorised products resulting from the processing of goods for home use;

**‘processing of goods for home use’** means that processing which allows non-Common Market goods to be used in the customs territory in operations which alter their nature or state, without their being subject to import duties, taxes or commercial policy measures, and allows the goods resulting from such operations to be cleared for home use at the rate of import duty and tax appropriate to them. Such goods shall be known as processed products;

**‘prohibited goods’** means goods of a class or description of which the importation, exportation, transit, transshipment or carriage coastwise is prohibited under or by virtue of any provision for the time being in force;

**‘proper officer’** means, in respect of any port, place or matter, the officer designated by rule or regulation or by the competent authority to be the proper officer at that port, place or in matter;

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

**‘rate of yield’** means the quantity or percentage of compensating products obtained from the processing of a given quantity of import goods;

**‘rebate’** means a reduction of duty and tax payable which is partial or total in accordance with the conditions laid down by the provisions in force;

**‘records’ ‘books’ or ‘other documents’** include:

- (a) any records maintained whether:
  - (i) comprised in bound volume, loose-leaf binders or other loose-leaf filing system, loose-leaf ledger sheets, pages, folios or cards, or by any other means, or
  - (ii) kept on microfilm, magnetic tape or in any non-legible form, whether by use of electronics or otherwise which is capable of being reproduced in a legible form, or
  - (iii) correspondence and other communications in relation to goods which are the subject of an approved customs procedure; and

- (b) every electronic or other automatic means, if any, by which any such thing in non-legible form is so capable of being reproduced; and
- (c) documents in manuscript, documents which are typed, printed, stencilled or created by any other mechanical means or partly mechanical process in use from time to time and documents which are produced by any photographic or photostatic process;

**‘re-importation in the same state’** means the customs procedure under which exported goods may be taken into home use free of import duties and taxes, provided that they have not undergone any manufacturing, processing or repairs outside the customs territory and provided that any sums chargeable as a result of repayment or remission of or of conditional relief from duties and taxes or of any subsidies granted at exportation shall be paid. The goods that are eligible for re-importation in the same state can be goods that were in free circulation or were compensating products;

**‘release for free circulation’** confers on non-Common Market goods the customs status of Common Market goods. Goods coming from a third country are to be considered to be in free circulation in a Member State if the import formalities have been complied with, and any customs duties, taxes or charges having equivalent effect which are payable have been levied in that state, and provided they have not benefited from a total or partial drawback of such duties, taxes, or charges. Release for free circulation entails the application of commercial policy measures, completion of the other formalities laid down in respect to the importation of goods and the charging of any duties, taxes or other charges legally due;

**‘release of goods’** means the act whereby customs make goods available for the purpose stipulated by the customs procedure under which they are placed;

**‘remission of customs debt’** means either a decision to waive all or part of the amount of a customs debt or a decision to render void an entry in the accounts of all or part of an amount of import or export duty and /or tax which has not been paid”;

**‘remission of duties and taxes’** means the waiver of payment, in whole or in part, of import or export duties and taxes where payment has not been made;

**‘repayment’** means the refund, in whole or in part, of duties and taxes where payment has been made;

**‘restrain’** means an order by a competent authority prohibiting the use of goods, tampering with customs seals, customs locks or prohibiting the departure of vessels, vehicles, trains or aircrafts from ports, airports, border posts or other approved places;

**‘restricted goods’** means goods of a class or description to which the importation, exportation, transit, transshipment or carriage coastwise is restricted under or by virtue of any provision for the time being in force;

**‘revenue lock’** means any lock, seal or rod, affixed by an officer to any premises, storage place, container, package . or goods, for the protection of the revenue;

**‘risk’** means the likelihood of an event that may occur, with regard to the entry, exit, transit, transfer or end-use of goods moved between the customs territory and countries or territories outside that territory and to the presence of goods which do not have Common Market status, which would have any of the following results:

- (a) it would prevent the correct application of the provisions in force;
- (b) it would compromise the financial interests of the Common Market and its Member States; and
- (c) it would pose a threat to the security and safety of the Common Market and its citizens, to human, animal or plant health, to the environment or to consumers;

**‘risk management’** means the systematic identification of risk and the implementation of all measures necessary for limiting exposure to risk;

**‘secondary compensating products’** means compensating products which are a necessary by-product of the processing operation other than the main compensating products specified in the authorisation;

**‘Secretary-General’** means the Secretary - General of the Common Market provided for by Article 17 of the Treaty;

**‘security’** means that which ensures to the satisfaction of the competent authority that an obligation to the competent authority will be fulfilled;

**‘seizure’** means taking possession by legal means of goods or documents or means of transport that are liable in law to confiscation or forfeiture in relation to commission of an offence;

**‘smuggling’** means the importation, introduction, exportation, or carriage coastwise or the removal from or into the customs territory of goods with

intent to defraud the customs, or to evade any prohibition or restriction or regulation or condition as to importation, exportation, carriage coastwise, transit, transshipment, storage or removal of goods;

**‘standard exchange system’** means the importation of non-Common Market goods into the customs territory, with total or partial relief from duties and taxes as replacement goods in lieu of Common Market goods exported from the customs territory for the purposes of repair. The ‘replacement’ product shall normally fall under the same subheading of the Common External Tariff, be of the same commercial grade or quality and have the same technical characteristics as the temporarily exported goods if the latter had undergone the specified repair operation, regulation 221 refers;

**‘stores’** means:

- (a) stores for consumption; and
- (b) stores to be taken away.

**‘stores for consumption’** means:

- (a) goods intended for consumption by the travellers and the crew on board vessels, aircraft or trains, whether sold or not sold; and
- (b) goods necessary for the operation and maintenance of vessels, aircraft or trains including fuel and lubricants but excluding spare parts and equipment;

which are either on board upon arrival or are taken on board during the stay in the customs territory of vessels, aircraft or trains used, or intended to be used, in international traffic for the transport of persons for remuneration or for the industrial or commercial transport of goods, whether or not for remuneration;

**‘stores to be taken away’** means goods for sale to the travellers and the crew of vessels and aircraft with a view to being landed, which are either on board upon arrival or are taken on board during the stay in the customs territory of vessels and aircraft used, or intended to be used, in international traffic for the transport of persons for remuneration or for the industrial or commercial transport of goods, whether or not for remuneration;

**‘sufferance wharf’** means a place, other than an approved place of loading or unloading, at which a competent authority may, subject to such conditions as may be imposed, allow goods to be loaded or unloaded;



**‘supervision by the competent authorities’** means action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to the competent authority’s supervision are observed;

**‘surety’** means a person who accepts responsibility in due legal form for the financial consequences of non-fulfilment of another’s obligations to the competent authority;

**‘suspensive regime’** as applied in the case of non-Common Market goods, means the following procedures:

- (a) external transit;
- (b) customs warehousing;
- (c) inward processing in the form of a system of suspension;
- (d) processing for home use; and
- (e) temporary importation.

**‘tariff ceiling’** means any pre-set value or quantity, authorised for importation or exportation of given goods, during a specified period, with a reduction of the normal customs duties and taxes, and beyond which the granting of the said tariff reduction may be suspended until the end of the period in question;

**‘tariff description’** means the description of an article or product in accordance with the terminology used in the tariff nomenclature of the Common External Tariff;

**‘tariff quota’** means any pre-set value or quantity, authorised for importation or exportation of given goods, during a specified period, with a reduction of the customs duties and taxes, and beyond which any additional quantity of these goods can be imported or exported by paying normal customs duties and taxes;

**‘temporary admission’** means the customs procedure under which certain goods can be brought into the customs territory conditionally relieved totally or partially from payment of import duties and taxes; such goods shall be imported for a specific purpose and shall be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them;

**‘temporary storage of goods’** means the storing of goods under the control of the competent authorities in premises and enclosed or unenclosed spaces approved by the competent authorities for the storage of undeclared goods pending the assignment of an approved customs procedure;

**‘the Committee’** means the Customs Regulation Committee appointed in terms of Regulation 5;

**‘third country’** means any country other than a Member State of the Common Market;

**‘third party’** means any person who deals directly with the customs for and on behalf of another person in relation to the importation, exportation, movement or storage of goods;

**‘third person’** means a person other than the two principals involved.

**‘time of exportation’** means the time at which the goods depart from the customs territory;

**‘time of importation’** means the time at which goods enter or otherwise come within the limits of the customs territory;

**‘transhipment’** means the customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation;

**‘transire’** means a customs document on which the master of a coasting vessel loading cargo to be carried coastwise is required to furnish to the competent authority before departure an account of the cargo. The account when signed and returned by the customs becomes the clearance of the vessel and permit or let-pass for the cargo to go through to the port of discharge, where the transire shall be delivered to the competent authority within 24 hours of arrival and before any of the cargo is unloaded. A separate transire is required for each voyage, but the competent authority may grant a general transire for a period not exceeding twelve months for a coasting vessel trading regularly and frequently between coastwise ports specified in the general transire, subject to delivery to the competent authority at each port of notices to load and unload coastwise cargo into and from the vessel on each voyage;

**‘transit’** means the customs procedure under which goods are transported under customs control from one customs office within the customs territory to another customs office within the customs territory;

**‘transit area’** means customs controlled space designated for parking of transit traffic and cargo;

**‘transit shed’** means a place approved by the competent authorities for the temporary storage of goods in accordance with the provisions of regulation 15 of these Regulations;

**‘Treaty’** means the treaty establishing the Common Market For Eastern and Southern Africa and all annexes and protocols thereto;

**‘uncustomed goods’** means goods liable to duty and tax on which the full duties and taxes properly payable have not been paid or secured to the satisfaction of the customs; and includes all goods whether or not liable to duty and tax in respect of which the prescribed customs formalities have not been complied with;

**‘under bond’** in relation to the removal, transport or carriage of goods means the removal, transport or carriage of goods whose duties and taxes have not been paid, by a customs carrier or person authorised by the competent authority for that purpose;

**‘vehicle’** with exception of a vessel or aircraft, means any train, motor car, van, lorry, cart, or other conveyance of any kind, fittings, furnishings, and equipment thereof, when imported together with their parts and includes animals and their harness and tackle;

**‘vessel’** includes any vessel, boat, hovercraft or floating construction of any kind whatsoever, whether propelled by steam or otherwise or towed;

**‘warehouse keeper’** means the holder of the authorisation granted in respect of a customs warehouse; and

**‘wharf owner’** includes an owner or occupier of an approved place of loading or unloading or of sufferance wharf.

### **Scope**

3. (1) These Regulations shall apply, without prejudice to the special provisions lay down in other fields of trade between the Common Market and third countries.
- (2) Save as otherwise provided, these Regulations shall apply uniformly throughout the customs territory.

- (3) Certain provisions of the customs law may also apply outside the customs territory as may be determined by the Council of Ministers or within the framework of either rules governing specific fields or international conventions.

### **Customs Territory**

4. (1) The customs territory shall comprise:
- (i) The Territory of the Republic of Burundi
  - (ii) The Territory of the United Republic of the Comoros
  - (iii) The Territory of the Republic of Djibouti
  - (iv) The Territory of the Democratic Republic of Congo
  - (v) The Territory of the Arab Republic of Egypt
  - (vi) The Territory of the State of Eritrea
  - (vii) The Territory of the Federal Democratic Republic of Ethiopia
  - (viii) The Territory of the Republic of Kenya
  - (ix) The Territory of the Republic of Libya
  - (x) The Territory of the Republic of Madagascar
  - (xi) The Territory of the Republic of Malawi
  - (xii) The Territory of the Republic of Mauritius
  - (xiii) The Territory of the Republic of Rwanda
  - (xiv) The Territory of the Republic of Seychelles
  - (xv) The Territory of the Republic of Sudan
  - (xvi) The Territory of the Kingdom of Swaziland
  - (xvii) The Territory of the Republic of Uganda
  - (xviii) The Territory of the Republic of Zambia; and
  - (xix) The Territory of the Republic of Zimbabwe.
- (2) The customs territory shall from time to time include such states as may become members of the Common Market and exclude those who cease to be members.
- (3) The customs territory shall include the territorial land, waters, inland maritime waters and the airspace of the Member States.

## **CHAPTER 2**

### **ADMINISTRATION, ENFORCEMENT AND CO-OPERATION**

#### **Part I - Customs Regulations Committee**

##### **Composition**

5. There shall be established a Customs Regulation Committee which shall consist of representatives of Member States.

##### **Powers of the Committee**

6. The Committee shall:
- (a) monitor the implementation and application of these Regulations;
  - (b) consider any measure to secure uniformity in the interpretation of these Regulations;
  - (c) consider and recommend to Council amendments to these Regulations proposed by Member States;
  - (d) consider any question concerning customs provisions raised by a Member State; and
  - (e) exercise any other powers conferred by Council necessary for the purpose of giving effect to these Regulations.

##### **Rules of the Committee**

7. (1) The Committee may make such rules, as are necessary for the implementation of these Regulations.

##### **Meetings of the Committee**

8. In accordance with Article 15 of the Treaty, the Committee shall meet as often as necessary for the proper discharge of its functions and shall determine its own rules of procedure.

## **Part II - Competent Authorities**

### **Establishment of the Competent Authority**

**9.** There shall be a competent authority in each Member State who shall be responsible for the administration of these Regulations and any other law to be administered by them.

### **Policies and Instructions by the Competent Authority**

**10.** The competent authorities may issue, for the guidance and direction of officers, policies, procedures and instructions or rules consistent with the provisions in force and any such policies, procedures and instructions or rules shall be binding on all officers.

### **Power to Conclude Administrative Agreements**

**11.** Subject to the provisions of the Treaty, the competent authorities may conclude administrative agreements with:

- (a) economic operators;
- (b) trade interest groups;
- (c) carriers of goods and travellers;
- (d) other government agencies;
- (e) other customs administrations;
- (f) regional organisations;
- (g) international organisations; or
- (h) other Member States,

in order to provide for the proper implementation of the provisions of these Regulations, and to facilitate trade.

### **Enforcement Powers**

**12.** (1) As a general guide, national legislation shall for the purpose of

control, confer on the competent authority the power to:

- (a) examine imported, originating, transiting, exiting and transshipment goods;
- (b) access premises, vehicles, vessels or aircraft of persons involved in any capacity in international trade transactions, and;
- (c) access all records, including computer systems, relating to international trade transactions. The right of access includes the right to stop a person or vehicle to conduct a search and inquiries;
- (d) take representative samples of goods at importation, post-importation and at export;
- (e) detain goods imported or intended for export and means of transport for purposes of establishing compliance with customs law;
- (f) conduct a retrospective audit of the business records, including bank records and computer systems, of any person or company involved in an international trade transaction;
- (g) exchange and share information on international movements with other customs administrations for customs control purposes;
- (h) require the person involved in an international trade transaction to submit the information necessary, as previously defined and publicised by customs, for the completion of customs formalities according to the stipulated procedure and control method;
- (i) require that this information be kept by the person or company involved in the international trade transaction according to the generally accepted accounting principles within the country concerned;
- (j) allow for the periodic lodgement of declarations and to set up systems based controls;
- (k) ascertain the admissibility of movements in advance of their arrival or departure, such as pre-classification, pre-origin or advance passenger information, and any exemption from the general obligation to produce the goods to the competent authority, including provisional pre-arrival release of cargo;

- (l) authorise persons or third parties to assist the competent authority in performing certain customs control functions; and
  - (m) carry out a formal investigation if there are reasonable grounds for establishing a customs offence.
- (2) The powers referred to in sub regulation (1) shall be invoked in accordance with risk management.

### **Part III - Administrative Co-operation**

#### **Exchange of Information by Member States**

**13.** Member States shall exchange information on matters relating to customs and customs enforcement, more particularly the following:

- (a) changes in customs law, procedures, duties and commodities subject to import or export prohibitions and restrictions; and
- (b) information relating to the prevention, investigation and suppression of customs offences as provided for in Article 66 of the Treaty.

#### **Prevention, Investigation and Suppression of Customs Offences**

- 14.** (1) Member States undertake to co-operate in the prevention, investigation and suppression of customs offences.
- (2) For the purposes of sub regulation (1), the Member States undertake to:
- (a) exchange lists of goods and publications the importation of which is prohibited or restricted in their respective territories;
  - (b) prohibit or restrict the exportation of goods and publications referred to in paragraph (a) of this sub regulation to each other's customs territories;
  - (c) exchange among themselves lists of goods known to be the subject of illicit traffic between their customs territories and maintain special surveillance over the movement of such goods;
  - (d) consult each other on the establishment of common border posts and take such steps as may be deemed appropriate to



ensure that goods exported or imported through common frontiers pass through the competent and recognised customs Offices and along approved roads and routes;

- (e) exchange among themselves lists of the customs offices located along common frontiers, details of the powers of such offices, their working hours and any changes in these particulars for the effective operation of the provisions of paragraph (d) of this sub regulation;
  - (f) endeavour to correlate the powers and harmonize the working hours of their corresponding customs offices referred to in paragraph (e) of this sub regulation; and
  - (g) maintain special surveillance over:
    - (i) the entry into, sojourn in, and exit from their customs territories of particular persons reasonably suspected by a Member State of being involved in activities that are contrary to the customs law of any Member State;
    - (ii) the movement of particular goods suspected by any Member State to be the subject of illegal traffic towards the importing Member State;
    - (iii) particular places where stocks of goods have been built up giving reason for suspicion that they may be used for illicit importation into any Member States; and
    - (iv) particular vehicles, vessels, aircraft, or other means of transport suspected of being used to commit customs offences in any Member State.
- (3) Member States shall exchange:
- (a) as a matter of course and without delay, any information regarding:
    - (i) operations which it is expected will give rise to customs offences in any Member State;
    - (ii) persons, vehicles, vessels, aircraft and other means of transport reasonably suspected of being engaged in activities that may be in violation of the customs law of any Member State;

- (iii) new techniques for the committing of customs offences; and
  - (iv) goods known to be the subject of illicit traffic;
- (b) at the request from a Member State and as promptly as possible, any available information:
  - (i) contained in customs documents relating to such exchanges of goods between countries as are suspected of being in violation of the customs law of the requesting Member State;
  - (ii) enabling false declarations to be detected, in particular with respect to dutiable value; and
  - (iii) concerning certificates of origin, invoices or other documents, known to be or suspected of being false; and
- (c) on the request and, if appropriate, in the form of official documents from a Member State, information concerning the following matters:
  - (i) the authenticity of any official document produced in support of a goods declaration made to the competent authority of the requesting Member State;
  - (ii) whether goods which were granted favourable treatment on departure from the territory of the requesting Member State, because they were declared as intended for home use in the other Member State, have been duly cleared for home use in that State;
  - (iii) whether goods imported into the territory of the requesting Member State have been lawfully exported from that of the exporting Member States;
  - (iv) whether goods exported from the territory of the requesting Member State have been lawfully imported into that of the importing Member States, and in accordance with the importer's declaration; and
  - (v) special documents which may be issued by the customs authorities of the exporting Member State for

surrender to the customs authorities of the importing Member State in order that they may certify that the goods were lawfully exported.

- (4) Each Member State undertakes, whenever expressly requested by another Member State, to:
- (a) make enquiries, record statements and obtain evidence concerning a customs offence under investigation in the requesting Member State and transmit the results of the enquiry as well as any documents or other evidence, to the requesting Member State; and
  - (b) notify the competent authorities of the requesting Member State of actions and decisions taken by the competent authorities of the Member State where the customs offence took place in accordance with the law in force in that Member State.

### **CHAPTER 3**

#### **POINTS OF ENTRY AND DESIGNATED CUSTOMS CONTROL AREAS, ROUTES, WORKING DAYS AND HOURS AND THE PROVISION OF ACCOMMODATION AND FACILITIES**

##### **Part I - Points of Entry and Exit Into and From the Customs Territory**

###### **Establishment of Customs Barriers**

**15.** The competent authority in a Member State may establish customs barriers on any route or road for the control of imports and exports.

###### **Designation of Points of Entry and Exit into and from the Customs Territory**

**16.** The competent authority may, subject to such conditions as may be specified, by notice in its *Official Gazette*:

- (a) designate or appoint areas to be ports as the exclusive points through which goods may be lawfully imported or exported by water or sea;
- (b) designate or appoint areas to be the designated customs airports at which aircraft entering the territory of a Member State shall land

and from which aircraft leaving the territory of a Member State shall depart and such places shall be the exclusive points through which goods may be lawfully imported or exported by air;

- (c) designate or appoint frontier stations and border posts as exclusive places through which goods may be lawfully imported or exported by land;
- (d) appoint pipe-lines and designate terminals for the importation and exportation of goods by pipe-line; or
- (e) appoint parcel post offices for the clearance of goods being imported or exported by postal or other such services.

## **Part II - Approval of Designated Customs Control Areas**

### **Designation of Customs Control Areas**

**17.** The competent authority may, subject to such conditions as it sees fit appoint, *inter alia*:

- (a) sufferance wharves;
- (b) boarding stations;
- (c) places of loading and unloading for import and export goods;
- (e) temporary storage facilities (transit sheds);
- (f) railway sidings for the storage and clearance of import and export goods;
- (g) designated areas and approved places for the examination of goods, vehicles, baggage and travellers;
- (h) inland clearance depots for the receipt, storage and clearance of import and export goods;
- (i) customs areas; and
- (j) container depots for the receipt, storage and clearance of import and export goods.

### **Approval of Container Depots**

- 18.** (1) The competent authorities may approve designated places as container depots for the receipt, handling, storage and detention of containers and their contents pending their declaration, examination and clearance for home use or assignment to another approved customs procedure.
- (2) Container depot facilities may be granted where it is shown to the satisfaction of the competent authorities that they are necessary for the trade of a port, quay, wharf, railway siding, border post or road station.
- (3) Approval shall be subject to the following conditions and such other conditions and safeguards as the competent authorities may prescribe:
- (a) the authorised person shall execute a bond or provide a suitable security to the satisfaction of the competent authorities to secure any outstanding duties and taxes; and to ensure compliance with the conditions and requirements laid down under the authorisation and any other provision in force in respect of goods dispatched to, received into, stored in and delivered from to the container depot; and
  - (b) the authorised person shall maintain such records as the competent authorities may see fit; and
  - (c) the authorised person shall not permit the removal of any goods from the depot until they have been assigned an approved customs procedure, and all the customs formalities in relation to the declared procedure have been complied with.
- (4) If the authorised person fails to comply with:
- (a) the conditions of his authorisation;
  - (b) any of the provisions of this regulation and any other provision for the time being in force;
  - (c) any lawful instruction given by the competent authority or by the proper officer; or
  - (d) the competent authority may, for reasonable cause, amend, vary, suspend, revoke or refuse to renew the approval.

### **Approval of Internal Clearance Depots**

- 19.** (1) The competent authorities may, subject to, in any particular case, such conditions and restrictions as they see fit to impose, approve places to be known as internal clearance depots where goods may be:
- (a) stored on importation pending clearance for home use or assignment to another approved customs procedure; or
  - (b) deposited therein and packed for exportation.
- (2) An internal clearance depot may be located in any place within the territory of a Member State.
- (3) An approval may be granted where it is demonstrated to the satisfaction of the competent authorities that:
- (a) the additional facilities for clearing imported goods and goods intended for export are necessary for trade purposes generally; and
  - (b) if granted, the clearance facilities shall be available to all traders desiring to avail themselves of them for authorised purposes.
- (4) The competent authorities may at any time for reasonable cause amend, vary, suspend, revoke or refuse to renew the approval so granted.

### **Approval of Private Sidings**

- 20.** (1) The competent authorities may approve private railway sidings as places where imported goods, other than containerised-goods, may be delivered to the approved siding by the Member State's railway services, subject to the following conditions and such other conditions and safeguards as the competent authorities may specify:
- (a) that the goods delivered to the railway siding shall be for the use of the holder of the authorisation only; and

- (b) that the holder of the authorisation shall enter into a bond or security in sufficient sum, to the satisfaction of the competent authorities, to cover any outstanding duties and taxes during the removal and storage of the goods and to ensure that all the conditions of the approval are complied with; and
  - (c) that the goods shall not be taken into stock, sold or otherwise disposed of until declaration thereof has been made and the goods cleared by customs and all customs formalities complied with; and
  - (d) the term of approval.
- (2) If the holder of the approval fails to comply with:
- (a) the conditions of the approval;
  - (b) any of the provisions of this regulation and any other provisions in force;
  - (c) any instructions given by the competent authorities or the proper officer; or
  - (d) the competent authorities may, for reasonable cause, amend, vary, suspend, revoke or refuse to renew the approval.

### **Prescribed Roads and Routes**

- 21. (1)** The competent authorities shall, by notice in their *Official Gazette*:
- (a) designate and define the roads and routes in a Member State's territory over which imported goods or goods intended for export, or being exported, shall be conveyed to or from a particular port, airport, border post or other approved place; and
  - (b) Such notice shall specify any conditions attached to the use of the designated roads or routes.

## **Part III - Prescribed Working Days and Hours**

### **Working Days and Hours**

**22.** The competent authorities shall specify their working days and hours of business, and any such related information, in their *Official Gazette*.

### **Permission to Work Outside of Official Days and Hours**

**23.** Except with the prior permission of the competent authorities, no work connected with the discharge, landing, handling, loading or receipt of any cargo shall be performed outside of the prescribed working days and hours.

### **Attendance Charges**

**24.** Where work is permitted by the competent authorities to be performed outside of the prescribed working days and hours, the services of the officers concerned shall be charged for at such rates as may be prescribed by national law.

### **Harmonisation of Business Hours at Juxtaposed Customs Offices**

- 25.**
- (1) Notwithstanding the provisions of regulation 22, where customs offices are located at a common border crossing, the competent authorities concerned shall correlate the business hours and competence of those offices.
  - (2) The competent authorities in Member States may establish common border posts, carry out joint customs controls, and take joint actions considered appropriate to ensure that goods exported or imported through common frontiers pass through the competent and recognised customs offices and along the designated roads and routes.
  - (3) Where the competent authorities operate joint border controls, they shall, wherever possible, cooperate with the neighbouring customs to establish a juxtaposed customs office to facilitate border controls.



- (4) In operating joint border controls, the customs controls of the exporting administration shall be conducted at the same time as the customs formalities of the importing administration by officers from both competent authorities.
- (5) Customs controls shall be conducted within a common area where customs offices of both competent authorities are established, whether in separate buildings or in a single facility.

#### **Part IV - Accommodation and Facilities at Wharves, Customs Sheds, Airports, Oil Terminals, Warehouses and Other Authorised Places and Premises**

##### **Provision of Office Accommodation and Examination Facilities**

26. (1) The owners or agents or authorised persons of the established and appointed places under the terms of these Regulations or any other provisions in force shall provide and maintain such operating areas, office accommodation, examination facilities, buildings, equipment, assistance and storage as the competent authorities shall determine to be reasonably necessary and suitable for the carrying out of their customs functions and responsibilities.
- (2) The requisite office accommodation, examination facilities, buildings, equipment and storage shall be provided without expense to the Member State.
- (3) Approvals of established and appointed places under regulations 17, 18, 19 and 20 shall be conditional on the provision of the requisite accommodation, required facilities and assistance.
- (4) Failure to maintain the prescribed office accommodation, examination facilities and requisite assistance to the approved standard may result in the amendment, suspension or revocation of the approval in question by the competent authority.
- (5) Approvals shall be without prejudice to any health and safety provisions or any other applicable legislation for the time being in force in the Member State in question.

## CHAPTER 4

### GENERAL PROVISIONS RELATING TO THE RIGHTS AND OBLIGATIONS OF PERSONS WITH REGARD TO CUSTOMS LAW

#### Part I - Declarants and Third Party Representation

##### Obligations of Declarants

27. (1) The importer and exporter shall be the declarants for importation and exportation of goods respectively.
- (2) Where acceptance of a customs declaration imposes particular obligations on a specific person, the declaration shall be made by that person or on his behalf.
- (3) The declarant shall be established in the customs territory, but the condition regarding such establishment does not apply to persons who:
- (a) make a declaration for transit or temporary admission; or
  - (b) declare goods on an occasional basis, provided that the competent authorities consider this to be justified.
- (4) The lodging with a customs office of a declaration signed by the declarant or his representative renders him responsible for the accuracy of the information given in the declaration, the authenticity of the documents attached and for compliance with all the obligations relating to the declaration of the goods in question under the procedure concerned.

##### *Authorised Agents*

28. Where the importer or exporter of any goods or the holder of the procedure is required or authorised to perform any act or formality laid down by the customs rules, such act or formality may be performed on his behalf by an authorised customs clearing agent or authorized representative.

### **Conditions to Act as a Customs Clearing Agent or Representative**

**29.** A person shall be a duly authorised customs clearing agent or authorized representative of any importer or exporter when:

- (a) such person is authorised, in accordance with the provisions of these Regulations or any other provisions in force, and
- (b) such person is authorised in writing by the importer or exporter or by a notary public officer to perform the act on his behalf.

### **Restriction on Representation**

**30.** A Member State may restrict the right to make a customs declaration by an agent unless he is an authorised customs clearing agent carrying on his business in the territory of that Member State.

### **Location of Agent or Representative**

**31.** Unless otherwise provided, an authorised customs clearing agent or authorised representative shall be a person established in the Common Market.

## **Part II - Authorisation of Customs Clearing Agents**

### **Authority to Lodge a Declaration**

**32.** No person shall, whether for payment or otherwise, make declaration of or lodge a declaration relating to any goods on behalf of any importer or exporter of goods, unless such person is authorised as a customs clearing agent in terms of regulation 29.

### **Authorisation of Customs Clearing Agents**

- 33.**
- (1) The competent authorities may, subject to such conditions as may be prescribed by national law, authorise or revoke the authorisation of any person to act as customs clearing agent for transacting business relating to the entry and clearance of any vessel, aircraft, vehicle or goods, other than accompanied personal baggage.
  - (2) The competent authorities may suspend or cancel the authorisation of any such person where it appears to them that he has failed to comply with any of the requirements imposed on him

by or under the provisions relating to customs control or other reasonable cause for suspension or cancellation.

- (3) The reasons for suspension or withdrawal of the authorisation may include:
  - (a) conviction for a serious customs offence within the preceding twelve months of operation;
  - (b) consistent failure to fulfil responsibilities to the principal or to the competent authorities, including instances of gross negligence or infringements of customs rules.
- (4) The competent authority shall give written notification to the person concerned of a proposed decision to suspend or withdraw an authorisation to transact business with them and the reasons for it.
- (5) The notification shall be furnished within a reasonable time in advance of any actual suspension or withdrawal or final decision in the matter in order to allow the person concerned adequate time to present his case to the competent authorities.
- (6) The final decision of the competent authorities in the matter may be appealed against in accordance with the provisions of Chapter 42.

### **Qualifying Conditions for Authorisation**

**34.** No person shall be authorised by the competent authorities to act as a customs clearing agent under the provisions in force unless the competent authority is satisfied that the person has the ability, competency, premises, financial standing and adequate facilities, including the maintenance of satisfactory records, to effectively transact a customs clearing business in accordance with the provisions in force.

### **Liability of Customs Clearing Agent**

- 35.**
- (1) A customs clearing agent shall be jointly and severally liable with the persons they represent for any duty and tax liabilities incurred through their third party representations.
  - (2) If a customs clearing agent fails to state that he is acting for and on behalf of another person, or states that he is acting for and on behalf of another person without being empowered to do so, he is deemed to be acting in his own name and on his own behalf and shall be liable for all duties and taxes properly payable.

Notwithstanding the agent's primary liability, the importer or exporter shall remain jointly and severally liable for the duties and taxes properly payable.

- (3) The customs clearing agent shall take all reasonable steps to ensure:
- (a) the accuracy of the information set out in the declaration and other submissions to the competent authorities;
  - (b) the validity of the documents presented accompanying the declaration;
  - (c) compliance with any prohibitions and restrictions for the time being in force; and
  - (d) compliance with any commercial policy measures for the time being in force.

### **Liability of the Principal**

**36.** Any person who appoints a customs clearing agent to act on his behalf and complete all customs formalities in relation to the procedure in question, shall be responsible for the acts or omissions of his clearing agent while acting on his behalf.

### **Agent's Bond**

**37.** Any authorised customs clearing agent transacting customs business shall, when required by the competent authorities, execute a bond or provide a security to the satisfaction of the competent authorities in accordance with the customs law.

### **Airfreight Licensing**

**38.** The competent authorities may authorise any person as an airfreight licensee for the purposes of handling, storage and removal of goods imported by airfreight and the payment of all duties, taxes and other charges levied on the goods.

### **Part III - Authorised Economic Operators**

#### **Approval of Authorised Economic Operators**

- 39.** (1) (a) Competent authorities, if necessary, following consultation with other competent authorities, shall grant, subject to the criteria provided for in paragraph (d) below, the status of "authorised economic operator" to any economic operator established in the customs territory.
- (b) An authorised economic operator shall benefit from facilitation with regard to customs controls relating to security and safety and from simplifications provided for under the customs rules.
- (c) The status of authorised economic operator shall, subject to the rules and conditions laid down in paragraph (d) below, be recognised by the competent authorities in all Member States, without prejudice to customs controls. The competent authorities shall, on the basis of the recognition of the status of authorised economic operator and provided that the requirements relating to a specific type of simplification provided for in the Common Market customs are fulfilled, authorise the operator to benefit from that simplification.
- (d) The criteria for granting the status of authorised economic operator shall include:
- (i) an appropriate record of compliance with customs requirements;
  - (ii) a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls
  - (iii) where appropriate, proven financial solvency, and
  - (iv) where applicable, appropriate security and safety standards
- (2) The Committee shall make rules for:
- (a) granting the status of economic operator;

- (b) granting authorisation for the use of simplification;
- (c) establishing which authority is competent to grant such status and authorisations;
- (d) determining the type and extent of facilitation that may be granted in respect of customs controls relating to security and safety, taking into account the rules for common risk management;
- (e) consultation with, and provision of information to, other customs authorities; and
- (f) determining the conditions under which.
  - (i) an authorisation may be limited to one or more Member States,
  - (ii) the status of authorised economic operator may be suspended or withdrawn; and
  - (iii) the requirement of being established in the Common Market may be waived for specific categories of economic operators, taking into account, in particular, international agreements.

#### **Part IV - General Information, Supplied and Decisions made by the Competent Authorities**

##### **Requests for Customs Information**

- 40.**
- (1) Any person may request for information concerning the application of customs law from the competent authorities. Such request may be refused where it does not relate to an import or export operation or any other approved procedure actually envisaged.
  - (2) The information shall be supplied to the applicant free of charge, provided however, that where special costs are incurred by the competent authorities, in particular as a result of analyses or expert reports on goods, or the return of the goods to the applicant, the applicant may be charged the relevant amount provided the costs are limited to the actual cost of the services rendered.
  - (3) The competent 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 legislation, administrative rulings and application forms pertaining to

international trade in goods available to economic operators free of charge and, wherever practical, through the Internet.

### **Information of General Application to be Readily Available**

**41.** The competent authorities shall ensure that all relevant information of general application pertaining to the laws and regulations which they are responsible for enforcing is readily available to any interested person.

### **Requirement to Supply Supplementary Information**

- 42.** (1) The competent authorities shall supply not only the information specifically requested but also any other pertinent information which they consider the interested person should be made aware of.
- (2) When the competent authorities supply information, they shall ensure that they do not divulge details of a private or confidential nature affecting third parties.

### **Amended General Information to be Published**

**43.** When, due to changes in laws and regulations or in customs procedures, administrative arrangements or requirements, published information of general application has to be amended, the competent authorities shall publish the revised information sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded by the relevant legislation.

## **Part V - Decisions Relating to the Application of Customs Law**

### **Requests for Administrative Decisions**

- 44.** (1) Where a person requests that a competent authority takes a decision relating to the application of customs law, that person shall supply all the information and documents required by the authority in order to take a decision.
- (2) Such decision shall be taken and notified to the applicant at the earliest opportunity.



- (3) Where a request for a decision is made in writing, the decision shall be made within a period laid down in accordance with the provisions in force, starting on the date on which the said request is received by the competent authorities and such a decision shall be notified in writing to the applicant:

provided that the period may be exceeded where the competent authorities are unable to comply with it, in which that case, those authorities shall so inform the applicant before the expiry of the above mentioned period, stating the grounds which justify exceeding it and indicating the further period of time which they consider necessary in order to give a ruling on the request.

- (4) Decisions adopted by the competent authorities in writing which either reject requests or are detrimental to the persons to whom they are addressed shall set out the grounds on which they are based and the right to appeal against such decisions.

#### **Immediate Effect of Decisions**

- 45.** Save in the cases provided for in regulation 324(2), decisions adopted shall be immediately enforceable by the competent authorities.

Without prejudice to the provisions of regulation 49 dealing with the issue and validity of binding tariff and origin information, the competent authorities who issued a “non-binding” decision under the provisions of regulations 44, 45, 46, 47 and 48 may annul, amend or revoke it where it does not conform to customs law.

#### **Basis for Annulment of Decisions**

- 46.** (1) A decision favourable to the person concerned shall be annulled if it was issued on the basis of incorrect or incomplete information and:
- (a) the applicant knew or should reasonably have known that the information was incorrect or incomplete;
  - (b) such decision could not have been taken on the basis of correct or complete information; or
  - (c) in case of changing customs tariffs during the period between the date of taking a decision and the date of customs release.
- (2) The persons to whom the decision was addressed shall be notified of its annulment.

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

### **Basis for Revocation or Amendment of a Decision**

47. (1) A decision favourable to the person concerned, shall be revoked or amended where, in cases other than those referred to in regulation 46 , one or more of the conditions laid down for its issue were not or are no longer fulfilled.
- (2) A decision favourable to the person concerned may be revoked where the person to whom it is addressed fails to fulfil an obligation imposed on him under that decision.
- (3) The person to whom the decision is addressed shall be notified of its revocation or amendment.
- (4) The revocation or amendment of the decision shall take effect from the date of notification. However, in exceptional cases where the legitimate interests of the person to whom the decision is addressed so require, the competent authorities may defer the date when revocation or amendment takes effect.

### **Annulment Unconnected with Customs Law**

48. Regulations 46 and 47 shall be without prejudice to national laws which stipulate that decisions are invalid or become null and void for reasons unconnected with customs law.

### **Requests for Binding Tariff and Origin Information**

49. (1) The competent authorities shall issue binding tariff information or binding origin information on written request, acting in accordance with the Committee procedure.
- (2) Binding tariff information or binding origin information shall be binding on the competent authorities as against the holder of the information only in respect of the tariff classification or determination of the origin of goods.
- (3) Binding tariff information or binding origin information shall be binding on the competent authorities only in respect of goods on which customs formalities are completed after the date on which the information was supplied by them.

- (4) In matters of origin, the formalities in question shall be those relating to the application of regulations 67 and 72.
- (5) The holder of such information shall be able to prove that:
  - (a) for tariff purposes: the goods declared correspond in every respect to those described in the information; and
  - (b) for origin purposes: the goods concerned and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the information.
- (6) Binding information shall be valid for a period of one year in the case of tariffs and three years in the case of origin from the date of issue. Notwithstanding regulation 46, a decision shall be annulled where it is based on inaccurate or incomplete information from the applicant.
- (7) Binding information shall cease to be valid:
  - (a) in the case of tariff information:
    - (i) where a regulation is adopted and the information no longer conforms to the law laid down thereby;
    - (ii) where it is no longer compatible with the interpretation of one of the nomenclatures referred to in regulation 60;
    - (iii) at Common Market level, by reason of amendments to any explanatory notes to the Common External Tariff or by a judgment of the Court of Justice of the Common Market;
    - (iv) at international level:
      - (A) by reason of a classification opinion or an amendment of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the World Customs Organization under the name 'the Customs Cooperation Council'; or

- (B) where it is revoked or amended in accordance with regulation 47, provided that the revocation or amendment is notified to the holder:

Provided that the date on which binding information ceases to be valid for the cases cited in (i) and (ii) above, shall be the date of publication of the said measures or, in the case of international measures, the date of publication in the *Official Gazette*;

- (b) in the case of origin information:

- (i) where a regulation is adopted or an agreement is concluded by the Common Market and the information no longer conforms to the law thereby laid down;
- (ii) where it is no longer compatible with:(aa) at Common Market level, the explanatory notes and opinions adopted for the purposes of interpreting the rules or with a judgment of the Court of Justice of Common Market, (bb) at international level, the Agreement on Rules of Origin of the World Trade Organization (WTO) or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement; or
- (iii) where it is revoked or amended in accordance with regulation 47, provided that the holder has been informed in advance:

Provided that the date on which binding information ceases to be valid for the cases referred to in (i) and (ii) shall be the date indicated when the above mentioned measures are published or, in the case of international measures, the date of publication in the *Official Gazette* of the Common Market.

- (8) The holder of binding information which ceases to be valid pursuant to paragraphs (5) (a) (ii) or (iii), or (b) (ii) or (iii), may still use that information for a period of six months from the date of publication or notification, provided that he concluded binding contracts for the

purchase or sale of the goods in question, on the basis of the binding information, before that measure was adopted.

- (9) The classification or determination of origin in binding information may be applied, on the conditions laid down in sub regulation (8), solely for the purpose of determining import or export duties.

## **Part VI - Traders' Obligations of Traders Relating to the Maintenance and Preservation of Records and the Provision of Information**

### **Requirement on Importers and Exporters to Produce Records and Provide Information**

**50.** For the purposes of applying the customs law, any person directly or indirectly involved in the operations concerned for the purposes of trade in goods shall provide the competent authorities with all the requisite documents, records and information, irrespective of the medium used, and all the required assistance, at their request and within any reasonable time limit prescribed.

### **Obligation to Keep and Produce Proper Records and Provide Requisite Assistance and Access to Information**

- 51.** (1) Without prejudice to the generality of regulation 50, every person who is concerned with, *inter alia*, the importation, exportation, transit, transshipment, or subsequently deals with the goods, either directly or indirectly and in whatever capacity, shall:
- (a) furnish to the competent authority, within such time and in such form as it may reasonably require, such information relating to the goods or to the importation, exportation, transshipment or transit as the competent authority may reasonably specify; and
  - (b) if so required by an officer, produce or cause to be produced for inspection by the officer:
    - (i) at the principal place of business of the person upon whom the demand is made or at such other place as the officer may reasonably require; and
    - (iii) at such time as the officer may reasonably require, any documents relating to the goods or to their importation, exportation, transshipment or transit.

- (2) Where, by virtue of sub regulation (1), an officer has power to require the production of any documents from any such person as is referred to in that sub regulation, he shall have like power to require production of the documents concerned from any other person who appears to the officer to be in possession of them; but where any such other person claims a lien on any document produced by him, the production shall be without prejudice to the lien.
- (3) An officer may take copies of, or make extracts from, any document produced under sub regulations (1) or (2).
- (4) If it appears to him to be necessary to do so, an officer may, at a reasonable time and for a reasonable period, remove any document produced under sub regulations (1) or (2) above and shall, on request, provide a receipt for any document so removed; and where a lien is claimed on a document produced under sub regulation (2) above, the removal of the document under this sub regulation shall be without prejudice to the lien.
- (5) Where a document removed by an officer under sub regulation (4) is reasonably required for the proper conduct of a business, the officer shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced.
- (6) Where any documents removed under the powers conferred by this regulation are lost or damaged, the competent authority shall be liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents.

### **Treatment of Confidential Information**

**52.** All information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of such information shall be permitted where the competent authorities are obliged or authorised to do so pursuant to any of the provisions in force, particularly in respect of data protection, or in connection with legal proceedings.

### **Time Limits for the Retention and Preservation of Documents and Records**

**53.** (1) The persons concerned shall keep the documents and records

referred to in regulation 50 for the purposes of customs controls, irrespective of the medium used, for a period of at least five calendar years.

- (2) The period referred to in sub regulation (1) shall run from the end of the year in which:
  - (a) in the case of goods cleared for home use in circumstances other than those referred to in paragraph (b), below, or goods declared for export, from the end of the year in which the declarations for cleared for home use or export are accepted;
  - (b) in the case of goods cleared for home use at a reduced or zero rate of import duty on account of their end use, from the end of the year in which they cease to be subject to customs supervision;
  - (c) in the case of goods placed under another approved customs procedure, from the end of the year in which the approved customs procedure concerned is completed;
  - (d) in the case of goods placed in a free zone, from the end of the year on which they leave the said free zone.
- (3) Without prejudice to the provisions of regulation 304(5), where a check carried out by the competent authorities in respect of a customs debt shows that the relevant entry in the accounts has to be corrected, the documents and records shall be kept beyond the time limit provided for in sub regulation (1), for a period sufficient to permit the correction to be made and checked.
- (4) The duty under this regulation to preserve any records may be discharged by the preservation of the information contained therein by such means as the competent authorities may approve; and where that information is so preserved a copy of any document forming part of the records shall, subject to the provisions of this regulation be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.
- (5) The competent authorities may, as a condition of an approval under sub regulation (4) of any means of preserving information, impose such reasonable requirements as appear to them to be necessary for ensuring that the information will be as readily available to them as if the records themselves had been preserved.

- (6) The competent authorities may at any time for reasonable cause revoke or vary the conditions of any approval given under sub regulation (4).

### **Adherence to Fixed Time Limits**

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

## **Part VII - Scope and Use of Information Technology**

### **Use of Information Technology**

**55.** The competent authorities shall, as far as is practicable, make use of information and communication technology in support of their prevailing customs procedures with a view to attaining:

- (a) more effective customs controls;
- (b) more effective customs clearance;
- (c) uniform application of these regulations;
- (d) more efficient revenue collection;
- (e) more effective data analysis;
- (f) efficient production of external trade statistics; and
- (g) improved quality of data.

### **Data-processing Techniques**

- 56.** (1) Under the conditions and in the manner which it shall determine, and with due regard to the principles laid down by customs rules, the competent authorities may, where such facilities exist, provide that formalities may be carried out by data-processing technique.
- (2) For the purposes of this regulation:
- (a) ' data-processing technique' means:



- (i) the exchange of electronic data interchange ( EDI) standard messages with the competent authorities;
  - (ii) the introduction of information required for completion of the formalities concerned into customs data-processing systems;
  - (iii) the exchange of information online via a customs website;
  - (iv) the exchange of information via email;
- (b) 'electronic data interchange (EDI)' means, the transmission of data structured according to agreed message standards, between one computer system and another, by electronic means;
  - (c) 'standard message' means a predefined structure recognised for the electronic transmission of data;
  - (d) 'customs website' means any internet site operated by the competent authorities for the purposes of processing data such as linked application forms; and
  - (e) 'email' means data sent via the internet in message form.
- (3) The conditions laid down for carrying out formalities by a data processing technique shall include measures for checking the source of data and for protecting data against the risk of unauthorised access, loss, alteration or destruction or any other means of manipulation, violation or interference.
  - (4) Where formalities are carried out by data processing technique, the competent authorities shall determine the rules for replacement of the handwritten signature by another technique which may be based on the use of codes.

### **Electronic Signatures, Related Certificates and their Admissibility in Evidence**

- 57. (1) In any legal proceedings:
  - (a) an electronic signature incorporated into or logically

associated with a particular electronic communication or a particular electronic data; and

- (b) the certification by any person of such a signature,

shall be admissible in evidence in relation to any question as to the authenticity of the communication or data or as to the integrity of the communication or data.

- (2) For the purpose of this regulation, an electronic signature shall be recognised if it:

- (a) is incorporated into or otherwise is logically associated with any electronic communication or electronic data; and

- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both.

- (3) For the purposes of this regulation, an electronic signature incorporated into or associated with a particular electronic communication or particular electronic data is certified by any person if that person whether before or after the making of the communication has made a statement confirming that :

- (a) the signature,

- (b) a means of producing, communicating or verifying the signature, or

- (c) a procedure applied to the signature,

is either alone or in combination with other factors a valid means of establishing the authenticity of the communication or data, the integrity of the communication or data, or both.

### **Use of Data-processing Technique in Customs Declarations**

- 58. (1) Where the customs declaration is made by a data-processing technique, the particulars of the written declaration prescribed by the competent authorities shall be replaced by sending to the customs office designated for that purpose, with a view to their processing by computer, data in codified form or data made out in any other form specified by the competent authorities and corresponding to the particulars required for written declarations.

- (2) A customs declaration made by EDI shall be considered to have been lodged when the EDI message is received by the prescribed customs office. Acceptance of a customs declaration made by EDI shall be communicated to the declarant by means of a response message containing at least the identification details of the message received and the registration number of the customs declaration and the date of acceptance.
- (3) Where the customs declaration is made by EDI, the release of the goods shall be notified to the declarant, indicating at least the identification details of the declaration and the date of release.
- (4) Where the particulars of the customs declaration are introduced into customs data-processing systems, sub regulations (2) and (3) above, shall apply *mutatis mutandis*.
- (5) Where a paper copy of the customs declaration is required for the completion of other formalities, this shall, at the request of the declarant, be produced and authenticated, by the customs office concerned.
- (6) Under the conditions and in the manner which they shall determine, the competent authorities may authorise the documents required for the declaration of goods for an approved customs procedure to be made out and transmitted by electronic means.

### **Powers to Inspect Documents and Records Stored Electronically**

59. (1) Any provision made by or under these Regulations, or any other provision for the time being in force empowering customs to inspect documents, which requires a person:
- (a) to produce, furnish or deliver any book, record or document, or cause any book record or document to be produced, furnished or delivered to the competent authority; or
  - (b) to permit the competent authorities or a person authorised by them to inspect any book, record or document or to make or take extracts or copies of or remove any book, record or document,

shall have effect as if any reference in that provision to a book, record or document were a reference to anything in which information of any description is recorded and any reference to a

copy of a book, record or document were a reference to anything onto which information recorded in the book, record or document has been copied, by whatever means and whether directly or indirectly.

- (2) A person authorised by the competent authorities to exercise the powers conferred by these provisions:
  - (a) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with any book, record or document within the meaning given by the above provisions, which, a person is or may be required by or under any law to produce, furnish or deliver, or cause to be produced, furnished or delivered or to permit the competent authorities, or a person authorised by them to inspect, make or take extracts from or copies of or remove; and
  - (b) may require the person by whom or on whose behalf the computer is or has been so used or any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such reasonable assistance as he may require for the purposes of sub regulation (2)(a).
- (3) Any person who fails to comply with any provision of this regulation shall be guilty of an offence in accordance with the provisions in force in Member States.

## **CHAPTER 5**

### **CUSTOMS TARIFF OF THE COMMON MARKET AND TARIFF CLASSIFICATION**

#### **Common Tariff Regulation**

- 60.** (1) The Common Tariff Regulation of the Common Market shall comprise:
  - (a) the nomenclature of goods;
  - (b) any other nomenclature which is wholly or partly based on the nomenclature or which adds any subdivisions to it, and which is established by

Common Market provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;

- (c) the rates and other items of charge normally applicable to goods covered by the Common External Tariff of Common Market as regards:
    - (i) customs duties, and
    - (ii) import charges laid down under any specific arrangements applicable to certain goods;
  - (d) the preferential tariff measures contained in agreements which Common Market has concluded with certain countries or groups of countries and which provide for the granting of preferential tariff treatment;
  - (e) preferential tariff measures adopted unilaterally by the Common Market in respect of certain countries, groups of countries or territories;
  - (f) autonomous suspensive measures providing for a reduction in or relief from import duties chargeable on certain goods; and
  - (g) other tariff measures as provided for by other Common Market legislation.
- (2) Without prejudice to the rules on flat-rate charges, the measures referred to in sub regulation (1) (d), (e) and (f) shall apply at the declarant's request instead of those provided for in sub regulation (1) (c) where the goods concerned fulfill the conditions laid down by those first mentioned measures. An application may be made after the event provided that the relevant conditions are fulfilled.
- (3) Where application of the measures referred to in sub regulation 1(d), (e) and (f) is restricted to a certain volume of imports, it shall cease:
- (a) in the case of tariff quotas, as soon as the stipulated limit on the volume of imports is reached;
  - (b) in the case of tariff ceilings, by a decision of Council.
- (4) The tariff classification of goods shall be the determination,

according to the rules in force, of:

- (a) the subheading of the combined nomenclature or the subheading of any other nomenclature referred to in sub regulation (3) (b); or
- (b) the subheading of any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and which is established by the Common Market provisions governing specific fields with a view to the application of measures other than tariff measures relating to trade in goods, under which the aforesaid goods are to be classified.

### **Determination of the Rate of Duty**

- 61.** (1) Where a customs debt is incurred, the duties and taxes legally due shall be based on the Common External Tariff of the Common Market for the time being in force.
- (2) For the purposes of determining duties and taxes to be paid or payable in respect of any goods that are imported or exported, the goods shall be classified in accordance with the rules for tariff classification of goods set out in the Common Tariff Regulation.

### **Classification of Goods in Specific Fields**

**62.** The other measures prescribed by other legal instruments of the Common Market covering specific fields relating to trade in goods shall, where appropriate, be applied according to the tariff classification of those goods and in accordance with prevailing legal provisions for tariff classification.

### **Determination of Tariff and Other Measures on Importation**

- 63.** (1) Goods imported into the customs territory shall be subject to the duties, taxes, prohibitions and restrictions in force at the time of their first entry into the customs territory.
- (2) Without prejudice to the provisions of sub regulation (1), the rate of duty and tax chargeable shall be that in force at the time when the appropriate declaration is accepted, and, except where otherwise allowed in the absence of forestalling, the goods are available for examination by customs in the normal manner.

### **End-use Provisions**

- 64.** (1) The favourable tariff treatment from which certain goods may benefit by reason of their nature or end-use shall be subject to conditions laid down in accordance with the Committee procedure. Where an authorisation is required, regulations 160 and 161 herein, shall apply.
- (2) For the purposes of sub regulation (1), the expression 'favourable tariff treatment' means a reduction in or suspension of an import duty even within the framework of a tariff quota.

### **Imposition and Amendment of Duties and Tariffs**

- 65.** (1) The Council may by regulation impose, alter, vary, exempt, suspend, repay, remit or revoke any and all duties, taxes and any other charges levied on goods imported into or exported from the customs territory. Such duties, taxes and other charges shall be set out in the Common External Tariff for the time being in force.
- (2) The Council may also establish subdivisions in the Common Tariff Nomenclature classifying goods beyond the level of the Harmonised System, provided that any such subdivision is added and coded at a level beyond that of the six-digit numerical Regulation set out in the annex to the International Convention on the Harmonised Commodity Description and Coding System.
- (3) Goods imported into or exported from the customs territory shall be subject to the rates of duties, taxes or other charges or measures set out in the Common External Tariff for the time being in force.

### **Operation of Tariff Quotas and Ceilings**

- 66.** Where the application of the measures referred to in regulation 160, is restricted to a certain volume of imports, such restriction shall cease:
- (a) in the case of tariff quota, as soon as the stipulated limit on the volume of imports is reached;
- (b) in the case of tariff ceilings, by ruling of the Committee.

## **CHAPTER 6**

### **ORIGIN OF GOODS**

#### **Part I - Non-preferential Rules of Origin**

##### **Application of non-preferential rules of origin**

- 67.** Non-preferential rules of origin shall lay down the rules governing:
- (a) application of the Common External Tariff of the Common Market with the exception of the measures referred to in sub regulations (1) (d) and (e) of regulation 60;
  - (b) application of measures other than tariff measures established by provisions governing specific fields relating to trade in goods; and
  - (c) the preparation and issue of certificates of origin.

##### **Goods Wholly Produced or Obtained in a Country**

- 68.** (1) In this Chapter:
- (a) 'goods originating in a country' shall be those wholly obtained or produced in that country;
  - (b) 'goods wholly obtained in a country' means:
    - (i) mineral products extracted within that country;
    - (ii) vegetable products harvested therein;
    - (iii) live animals born and raised therein;
    - (iv) products derived from live animals raised therein;
    - (v) products of hunting or fishing carried on therein;
    - (vi) products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country;



- (vii) goods obtained or produced on board factory vessels from the products referred to in subparagraph (vi), originating in that country, provided that such factory vessels are registered or recorded in that country and fly its flag;
  - (viii) products taken from the seabed or subsoil beneath the seabed outside the territorial sea provided that, that country has exclusive right to exploit that seabed or subsoil;
  - (ix) waste and scrap products derived from manufacturing operations and used articles, if they were collected therein and are fit only for the recovery of raw materials;
  - (x) goods which are produced therein exclusively from goods referred to in sub paragraphs (i) to (ix) or from their derivatives, at any stage of production.
- (2) For the purposes of regulation 1 (b) the expression 'country' covers that country's territorial land, waters, inland maritime waters and the airspace of the Member States.

### **Origin of Goods Produced in More than One Country**

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

### **Circumvention of Provisions Relating to Origin**

**70.** Any processing or working in respect of which it is established, or in respect of which the facts as ascertained justify the presumption, that its sole objective was to circumvent the provisions applicable in the Common Market to goods from specific countries shall under no circumstances be deemed to confer on the goods thus produced the origin of the country where it is carried out within the meaning of regulation 69.

## **Proof of Origin**

- 71.-** (1) The provisions in force governing specific fields may provide that a document must be produced as proof of origin of the goods in question.
- (2) Notwithstanding the production of the document referred to in sub regulation (1), the competent authorities may, in the event of serious doubts, require any additional proof to ensure that the indication of origin does comply with the rules laid down by the provisions in force.

## **Part II - Preferential Rules of Origin**

### **Rules Governing Acquisition of Origin**

- 72.** (1) Preferential rules of origin shall lay down the rules governing acquisition of origin which goods shall fulfil in order to benefit from the measures referred to in regulation 60 (1) (d) or (e).
- (2) The rules shall:
- (a) in the case of goods covered by the agreements referred to in regulation 60 (1) (d), be determined in those agreements; and
- (b) in the case of goods benefiting from the preferential tariff measures referred to in regulation 60 (1) (e), be determined in accordance with the Committee procedure.

## **CHAPTER 7**

### **VALUATION OF GOODS FOR CUSTOMS PURPOSES**

#### **Scope of Valuation Rules**

**73.** The provisions of this Chapter shall determine the customs value for the purposes of applying the Common External Tariff and non-tariff measures laid down by the prevailing provisions governing specific fields relating to trade in goods.

#### **Primary Valuation Rule – Transaction Value**

- 74.** (1) The customs value of imported goods shall be the transaction

value, that is, the price actually paid or payable for the goods when sold for export to the customs territory, adjusted, where necessary, in accordance with regulations 77 and 78 provided that:

- (a) there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:
    - (i) are imposed or required by a law or by the public authorities in the Common Market,
    - (ii) limit the geographical area in which the goods may be resold, or
    - (iii) do not substantially affect the value of the goods;
  - (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
  - (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with regulation 77; and
  - (d) the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes under sub regulation (2).
- (2)
- (a) In determining whether the transaction value is acceptable for the purposes of sub regulation (1), the fact that the buyer and the seller are related shall not in itself be sufficient grounds for regarding the transaction value as unacceptable. Where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the declarant or otherwise, the competent authorities have grounds for considering that the relationship influenced the price, they shall communicate their grounds to the declarant and he shall be given a reasonable opportunity to respond. If the declarant so requests, the communication of the grounds shall be in writing.
  - (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with sub regulation (1) wherever the declarant demonstrates that

such value closely approximates to one of the following occurring at or about the same time:

- (i) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export into the customs territory;
  - (ii) the customs value of identical or similar goods, as determined under regulation 75 (2); (c); or
  - (iii) the customs value of identical or similar goods, as determined under paragraph (d) of regulation 75 (2) (d).
- (c) In applying the tests in paragraph (b), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in regulation 77 below and costs incurred by the seller in sales in which he and the buyer are not related and where such costs are not incurred by the seller in sales in which he and the buyer are related.
- (d) The tests set forth in sub paragraph (b) of paragraph (2), are to be used at the initiative of the declarant and only for comparison purposes. Substitute values may not be established under the said paragraph.
- (3) (a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instrument and may be made directly or indirectly.
- (b) Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment is provided in regulation 77, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.

## **Secondary Valuation Rules – Value of Identical or Similar Goods or Computed Value**

75. (1) Where the customs value cannot be determined under regulation 74, it is to be determined by proceeding sequentially through paragraphs (a), (b), (c) and (d) of sub regulation (2) to the first provision under which it can be determined, subject to the proviso that the order of application of paragraphs (c) and (d) shall be reversed if the declarant so requests; it is only when such value cannot be determined under a particular paragraph that the provisions of the next paragraph in a sequence established by virtue of this regulation can be applied.
- (2) The customs value as determined under this regulation shall be:
- (a) the transaction value of identical goods sold for export to the Common Market 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 Common Market and exported at or about the same time as the goods being valued;
  - (c) the value based on the unit price at which the imported goods for identical or similar imported goods are sold within the customs territory in the greatest aggregate quantity to persons not related to the sellers;
  - (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 exportation for export to Common Market,
    - (iii) the cost or value of the items referred to in paragraph (e) of regulation 77(1).
- (3) Any further conditions and rules for the application of sub regulation (2) shall be determined in accordance with the Committee procedure.

### **Residual Valuation Rule Based on “Reasonable Means”**

- 76.** (1) Where the customs value of imported goods cannot be determined under regulation 74 or 75, it shall be determined, on the basis of data available in Common Market, using reasonable means consistent with the principles and general provisions of:
- (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; and
  - (c) the provisions of this chapter.
- (2) No customs value shall be determined under sub regulation (1) on the basis of:
- (a) the selling price in the customs territory of goods produced in the Common Market;
  - (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
  - (c) the price of goods on the domestic market of the country of exportation;
  - (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with regulation 75 (2) (d);
  - (e) prices for export to a country not forming part of the customs territory of;
  - (f) minimum customs values; or
  - (g) arbitrary or fictitious values.

### **Additional Costs to the “Transaction Value”**

- 77.** (1) In determining the customs value under regulation 74 , there shall be added to the price actually paid or payable for the imported goods:

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

- (ii) loading and handling charges associated with the transport of the imported goods; to the place of introduction into the customs territory of the Common Market.
- (2) Additions to the price actually paid or payable shall be made under this regulation only on the basis of objective and quantifiable data.
- (3) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this regulation.
- (4) In this Chapter, the term 'buying commissions' means fees paid by an importer to his agent for the service of representing him in the purchase of the goods being valued.
- (5) Notwithstanding sub paragraph (c) of paragraph (1) above:
  - (a) charges for the right to reproduce the imported goods in the Common Market shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and
  - (b) payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the Common Market of the goods.

### **Charges Excludable from the Customs Value**

- 78.** (1) Provided that they are shown separately from the price actually paid or payable, the following shall not be included in the customs value:
- (a) charges for the transport of goods after their arrival at the place of introduction into the customs territory;
  - (b) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of imported goods such as industrial plant, machinery or equipment;
  - (c) charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods, irrespective of whether the finance is provided by the



seller or another person, provided that the financing arrangement has been made in writing and where required, the buyer can demonstrate that:

- (i) such goods are actually sold at the price declared as the price actually paid or payable, and
  - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided;
- (d) charges for the right to reproduce imported goods in the Common Market;
- (e) buying commissions; and
- (f) import duties or other charges payable in the Common Market by reason of the importation or sale of the goods.

#### **Valuation of Intellectual Property Carrier Media**

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

#### **Rate of Exchange**

- 80.** (1) Where factors used to determine the customs value of goods are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used shall be that duly published by the authorities competent in the matter.
- (2) Such rate shall reflect as effectively as possible the current value of such currency in commercial transactions in terms of the currency of such Member State and shall apply during such period as may be determined in accordance with the Committee procedure. Where such a rate does not exist, the rate of exchange to be used shall be determined in accordance with the Committee procedure.

#### **Valuation of Perishable Goods**

- 81.** (1) The provisions of this Chapter shall be without prejudice to the

specific provisions regarding the determination of the value for customs purposes of goods cleared for home use after being assigned a different approved customs procedure.

- (2) Notwithstanding regulations 74, 75 and 76 , the customs value of perishable goods usually delivered on consignment may, at the request of the declarant, be determined under simplified rules drawn up for the Common Market in accordance with the Committee procedure.

## **CHAPTER 8**

### **PROHIBITED AND RESTRICTED IMPORTS**

#### **Prohibited and Restricted Imports**

- 82.** (1) Goods, the importation of which are prohibited or restricted,
- (a) by an international agreement to which the Common Market is a Contracting Party; or
  - (b) as laid down by the Committee procedure; or
  - (c) under the provisions of regulation 126(2) in accordance with the terms of Article 50 of the Treaty; or
  - (d) by any other prevailing provisions, shall not be imported into the customs territory.
- (2) Goods, the importation of which is prohibited or restricted under the conditions set out in regulation 126 (2) herein, shall only be imported into the customs territory in conformity with this regulation or such other prevailing provisions.

## **CHAPTER 9**

### **CUSTOMS CONTROLS**

#### **Customs Controls**

- 83.** (1) The competent authorities may, in accordance with the conditions laid down by the provisions in force, carry out all the controls they deem necessary to ensure that the customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory and third countries and the goods that do not have Common Market status are correctly applied.
- (2) Customs controls for the purpose of the correct application of Common Market legislation may be carried out in a third country where an international agreement provides for this.
- (3) Customs controls, other than spot-checks, shall be based on risk analysis using automated data processing techniques, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national, Common Market and, where available, international level.
- (4) The Committee procedure shall be used for determining a common risk management framework, and for establishing common criteria and priority control areas.
- (5) Member States, in cooperation with the Committee, shall establish a computer system for the implementation of risk management.
- (6) Where controls are performed by authorities other than the competent authorities, such controls shall be performed in close coordination with the competent authorities, wherever possible at the same time and place.
- (7) Without prejudice to the provisions of regulations 12 and 13, in the context of the controls provided for in this regulation, customs and other competent authorities, such as veterinary and police authorities, may communicate data received, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory and third countries and the presence of goods that do not have Common Market status, between each other and to the competent authorities of the Member States and to COMESA where this is required for the purposes of minimising risk. Communication of confidential data to the customs authorities and other bodies of third countries shall be allowed only in the

framework of an international agreement and provided that the data protection provisions in force, are respected.

### **Licensing of Means of Conveyance**

**84.** The competent authorities may require an aircraft, vessel or vehicle intended to be used for the conveyance of goods which are subject to customs control to be licensed in such manner, and upon payment of such fees, as may be prescribed.

## **CHAPTER 10**

### **SUMMARY DECLARATIONS**

#### **Pre-arrival Summary Declaration**

- 85.** (1) Where the necessary facilities exist, goods brought into the customs territory shall be covered by a summary declaration, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory.
- (2) The summary declaration shall be lodged at the customs office of entry.
- (3) The competent authorities may allow the summary declaration to be lodged at another customs office, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of entry.
- (4) Competent authorities may accept, instead of the lodging of the summary declaration, the lodging of a notification and access to the summary declaration data in the economic operator's computer system.
- (5) The summary declaration shall be lodged before the goods are brought into the customs territory.
- (6) The Committee procedure shall be used to establish:

- (a) the time limit by which the summary declaration is to be lodged before the goods are brought into the customs territory;
- (b) the rules for exceptions from, and variations to, the time limit referred to paragraph (a) above; and
- (c) the conditions under which the requirement for a summary declaration may be waived or adapted;

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

#### **Format and Data of Summary Declaration**

- 86.**
- (1) The Committee shall establish rules to be used to establish a common data set and format for the summary declaration, containing the particulars necessary for risk analysis and the proper application of customs controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices.
  - (2) The summary declaration shall be made using a data processing technique. Commercial, port or transport information may be used, provided that it contains the necessary particulars.
  - (3) The competent authorities may accept paper-based summary declarations in exceptional circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using a data processing technique.
  - (4) The summary declaration shall be lodged by the person who brings the goods, or who assumes responsibility for the carriage of the goods into the customs territory.
  - (5) Notwithstanding the obligation of the person referred to in sub regulation (4), the summary declaration may be lodged instead by:

- (a) the person in whose name the person referred to in sub regulation (3) above acts; or
  - (b) any person who is able to present the goods in question or to have them presented to the competent authorities; or
  - (c) a representative of one of the persons referred to in sub regulation (3) or paragraphs (a) or (b).
- (6) The person referred to in sub regulations (3) and (4) above shall, at his request, be authorised to amend one or more particulars of the summary declaration after it has been lodged. However, no amendment shall be possible after the competent authorities:
  - (a) have informed the person who lodged the summary declaration that they intend to examine the goods;
  - (b) have established that the particulars in questions are incorrect; or
  - (c) have allowed the removal of the goods.

### **Waiver of Summary Declaration**

- 87.** (1) The customs office of declaration may waive the lodging of a summary declaration in respect of goods for which, before expiry of the time limit referred to in regulations 83 (3) and (4), a customs declaration is lodged. In such case, the customs declaration shall contain at least the particulars necessary for a summary declaration and, until such time as the former is accepted in accordance with regulation 131, it shall have the status of a summary declaration.
- (2) The competent authorities may allow the customs declaration to be lodged at a customs office of import different from the customs office of declaration, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of declaration.

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

## **CHAPTER 11**

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

#### **Control and Supervision of Goods on Entry into the Customs Territory**

- 88.** (1) Goods brought into the customs territory shall, from the time of their entry, be subject to customs supervision. They may be subject to customs controls in accordance with the provisions in force.
- (2) (a) The goods shall remain under such customs control and supervision for as long as necessary to determine their customs status, where appropriate.
- (b) In the case of non-Common Market goods, and without prejudice to regulations 154(1) and (2), the goods shall remain under such customs control and supervision until:
- (i) their customs status is changed; or
  - (ii) they enter a free zone; or
  - (iii) they are re-exported or destroyed in accordance with regulation 125.

#### **Obligation on the Person Conveying the Goods**

- 89.** (1) Goods brought or entering the customs territory shall be conveyed by the person bringing them or responsible for their entry into the customs territory without delay, by the route specified by the competent authorities and in accordance with their instructions, if any, to:
- (a) the customs office designated by the competent authorities in a Member State or to any other place designated or authorised by those authorities; or,
- (b) a free zone if the goods are to be brought into it directly:
- (i) by sea or air, or

- (ii) by land without passing through another part of the customs territory, where the free zone adjoins the land frontier between a Member State and a third country.
- (2) Any person who assumes responsibility for the carriage of goods after they have entered into the customs territory *inter alia* as a result of transshipment shall become responsible for compliance with the provisions of sub regulation (1).
- (3) Goods which, although still outside the customs territory, may be subject to customs controls by a Member State under the provisions in force, as a result of *inter alia* an agreement concluded between that Member State and a third country, shall be treated in the same way as goods brought into the customs territory.
- (4) Sub regulation (1), shall not apply to goods on board vessels or aircraft crossing the territorial sea or airspace of the Member State without having as their destination a port or airport situated in those Member States.
- (5) Sub regulation (1)(a) shall not preclude the implementation of any provisions in force with respect to tourist traffic, frontier traffic, postal traffic or traffic of negligible economic importance, on condition that customs supervision and customs control possibilities are not thereby jeopardised.
- (6) Sub regulations (1) to (4) above and regulations 83, 84, 85, 90, 103, 108, 109, 118, 119 and 120 shall not apply to goods which temporarily leave the customs territory while moving between two points in that territory by sea, inland waters, where applicable, or air provided that the carriage is effected by a direct route and by regular air or shipping services without a stop outside the customs territory or as otherwise authorised by the competent authorities.
- (7) Sub regulation (5) shall not apply to goods loaded in third country ports or in airports, or at free ports.

#### **Notification In the Case of Unforeseeable Circumstance**

- 90.** (1) Where, by reason of unforeseeable circumstances or *force majeure*, the obligation laid down in regulation 89(1), cannot be complied with, the person bound by that obligation or any other



person acting in his place shall inform the competent authorities of the situation without delay.

- (2) Where the unforeseeable circumstances or *force majeure* does not result in total loss of the goods, the competent authorities shall also be informed of the precise location of the goods.
- (3) Where, by reason of unforeseeable circumstances or *force majeure*, a vessel or aircraft covered by regulation 88 above is forced to put into port or land temporarily in the territory and the obligation laid down in of regulation 89 (1) cannot be complied with, the person bringing the vessel or aircraft into the customs territory or any other person acting in his place shall without delay inform the competent authorities.
- (4) The competent authorities shall determine the measures to be taken in order to permit customs supervision and control of the goods referred to in sub regulation (1) above as well as those on board a vessel or aircraft in the circumstances specified in sub regulation (2) above and to ensure, where appropriate, that they are subsequently conveyed to a customs office or other place designated or approved by the authorities.

## **CHAPTER 12**

### **THIRD COUNTRY VESSELS AND AIRCRAFTS**

#### **Search by Proper Officer**

**91.** Where a third country aircraft or vessel arrives in the customs territory having on board goods and stores for use in that aircraft or vessel,

- (a) the aircraft or vessel may be boarded and searched by the proper officer and the proper officer may cause any such goods to be taken ashore and placed in a customs warehouse;
- (b) the master of the aircraft or vessel shall:
  - (i) deliver an account of the goods in a prescribed form, indicating the quantity, marks and names of the shippers and consignees thereof;
  - (ii) answer all questions put to him by the proper officer in relation to any goods on board.

## **CHAPTER 13**

### **DUTY FREE STORES**

#### **Stores on Board**

**92.** Stores which are carried in a vessel, aircraft or train arriving in the customs territory shall be exempted from import duties and taxes provided that they remain on board.

#### **Stores for International Express Trains**

**93.** Stores for consumption by the travellers and the crew imported as provisions on international express trains may be exempted from import duties and taxes provided that:

- (a) such goods are purchased only in the countries crossed by the international train in question; and
- (b) any duties and taxes chargeable on such goods in the country in which they were purchased are paid.

#### **Stores for the Operation of Vessels, Aircraft and Trains**

**94.** Stores for consumption necessary for the operation and maintenance of vessels, aircraft and trains which are on board of these means of transport arriving in the customs territory shall be exempted from import duties and taxes provided that they remain on board while these means of transport are in the customs territory.

#### **Stores Declarations**

- 95.**
- (1) When a declaration concerning stores on board vessels, aircraft or trains arriving in the customs territory is required by the competent authority, the information required shall be kept to the minimum necessary for the purposes of customs control.
  - (2) The competent authorities may require that the quantities of stores which are supplied to vessels, aircraft or trains during their stay in the customs territory should be recorded on any declaration concerning stores which has been required by the competent authority.

- (3) The competent authorities may waive the requirement of the presentation of a separate declaration of stores remaining on board an aircraft.

### **Visiting Vessels**

- 96.**
- (1) The competent authorities shall allow the issue of stores for consumption on board during the stay of a vessel in the customs territory in such quantities as the competent authorities deem reasonable having regard to the number of the travellers and the crew and to the length of the stay of the vessel in the customs territory.
  - (2) The competent authorities shall require the removal of stores from the vessel, aircraft or train for storage elsewhere during their stay in the customs territory only where they consider it necessary.

### **Sealing of Stores**

**97.** The competent authorities shall require the carrier to take such appropriate measures as may be necessary, including sealing of the stores to prevent any unauthorised use of the stores.

### **Stores for Departing Vessels, Aircraft and Trains**

**98.** Vessels, aircraft and trains which depart for an ultimate destination to a point or place outside the customs territory shall be entitled to take on board, exempted from duties and taxes:

- (a) stores in such quantities as the competent authorities deem reasonable having regard to the number of the travellers and the crew, to the length of the voyage or flight and to any quantities of such stores already on board; and
- (b) stores for consumption necessary for their operation and maintenance, in such quantities as are deemed reasonable for operation and maintenance during the voyage or flight having regard also to any quantities of such stores already on board.

## **CHAPTER 14**

### **CLEARANCE OF TRAVELLERS**

#### **Definitions in this Chapter**

- 99.** For the purposes of this Chapter:
- (a) 'personal effects' means all articles (new or used) which a traveller may reasonably require for his personal use during the journey, taking into account all the circumstances of the journey but excluding any goods imported or exported for commercial purposes; and
  - (b) 'traveller' means:
    - (i) any person who temporarily enters the territory of a country in which he does not normally reside ("non-resident") or who leaves that territory; and
    - (ii) any person who leaves the territory of a country in which he normally resides ("departing resident") or who returns to that territory ("returning resident");

#### **Traveller to Report on Arrival and Declare all Accompanying Goods**

- 100.** (1) Any traveller arriving into the customs territory from a point or place outside that territory shall:
- (a) proceed immediately to the nearest customs office or place prescribed for the declaration and clearance of travellers, their goods, accompanying baggage and modes of conveyance where applicable; and
  - (b) report his arrival in accordance with the provisions in force to the proper officer at the prescribed customs office or place or any other office or place should the prescribed office or place be closed or otherwise unavailable; and
  - (c) make a declaration to the proper officer, in such manner and form as may be prescribed, in respect of any goods,

baggage or mode of conveyance in his possession or under his control; and

- (d) produce all goods in his possession or control to the proper officer;
  - (e) Produce any requested book, record or document in his possession or control and answer fully and truthfully any questions put to him by an officer.
- (2) Travellers arriving from a point or place outside of the customs territory shall not dispose of any goods in his possession or control until the proper officer has released such goods from customs control and all formalities in relation to the goods have been complied with.
- (3) If goods are conditionally relieved from duties and taxes, they shall not be disposed of until the relieving condition is satisfied or their disposal is authorised by the competent authority.
- (4) Where unaccompanied baggage of the traveller arrives before or after the traveller the unaccompanied baggage shall be cleared in the manner prescribed in sub regulations (1) and (2) above.
- (5) The Council may, subject to such conditions, as may be imposed, exempt any person or class of persons from any of the provisions of this regulation.

### **Declaration of Goods on Intended Departure by Traveller**

**101.** Any traveller about to depart from the customs territory, whether or not he has goods in his possession or control shall :

- (a) proceed immediately to the nearest customs office or place prescribed for the declaration and clearance outwards of travellers, their goods, and modes of conveyance, where applicable;
- (b) report his intention to depart to the proper officer at the prescribed customs office or place, or any other office or place should the prescribed office or other place be closed or otherwise unavailable;
- (c) make a declaration to the proper officer, in such manner and form as may be prescribed, in respect of any goods for exportation or mode of conveyance in his possession or under his control;

- (d) produce all goods in his possession or under his control; and
- (e) produce any requested book, record or document in his possession or control and answer fully and truthfully any questions put to him by an officer.

### **Treatment of Transit Passengers**

**102.** Transit passengers who do not leave the transit area shall not be required to pass any customs control. However, the competent authorities shall be allowed to maintain general surveillance of transit areas and take any action necessary where a customs offence is suspected of either having been committed or is in the course of commission, including *inter alia*, where the transit passenger is suspected of being in possession or control of any prohibited or restricted goods under the provisions in force.

### **Presentation of Goods to the Competent Authority**

- 103.** (1) Goods entering the customs territory shall be presented to customs by the person who brings them or causes them to be brought into that territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such declaration, with the exception of such goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within the territory. The person presenting the goods shall make a reference to the summary declaration or customs declaration previously lodged in respect of the goods.
- (2) sub regulation (1) above shall not preclude the implementation of rules in force relating to goods:
- (a) carried by travellers;
  - (b) placed under an approved customs procedure but not presented to the competent authority.
- (3) Goods may, once they have been presented to the competent authority, and with the permission of the competent authorities, be examined or samples may be taken, in order that the goods may be assigned an approved customs procedure, such permission shall be granted, on request, of the person authorised to assign the goods to such an approved customs procedure.

## **CHAPTER 15**

### **CARGO DECLARATION**

#### **Cargo Declaration**

- 104.** (1) Goods presented to the competent authorities in terms of regulation 103 shall be covered by a cargo declaration.
- (2) The competent authority may permit the use of a prescribed commercial or official document, which contains the particulars necessary for identification of the goods.

#### **Lodgement of a Cargo Declaration**

- 105.** (1) The cargo declaration shall be lodged by:
- (a) the person who brought or caused the goods to be brought into the customs territory or by any person who assumes responsibility for carriage of the goods following such introduction; or
- (b) the person in whose name the person referred to in paragraph (a) above acted.
- (2) The cargo declaration shall be lodged:
- (a) when the goods have been presented to customs; or
- (b) prior to the arrival of the goods under declaration.
- (3) The competent authority may allow a period for lodging a declaration, which shall not extend beyond the first working day following the day on which the goods are presented to customs.
- (4) (a) Where goods are covered by a cargo declaration, the formalities necessary for them to be assigned an appropriate customs procedure shall be carried out within such period as may be prescribed by the Committee.
- (b) Where the goods are not cleared within the period for the time being laid down, such goods shall be transferred to a

warehouse designated by the competent authority for that purpose.

### **Waiver of Cargo Declaration**

**106.** Notwithstanding regulation 104, where, prior to the expiry of the period referred to in regulation 105, the formalities necessary for the goods to be assigned an appropriate customs procedure are carried out the competent authority may waive the lodging of a cargo declaration on condition that this does not jeopardise customs supervision of the goods.

### **Masters to Report on Arrival**

- 107.** (1) The Master of an aircraft or vessel arriving in the customs territory shall, immediately after landing or docking at an approved airport or dock, cause the aircraft or vessel to proceed to the examination place.
- (2) The master of an aircraft or vessel shall:
- (a) within three hours after landing or within thirty six hours of docking the vessel, deliver to the competent authorities an inward report in the prescribed form together with such other documents as may be required by the competent authority or under these Regulations or any other provision for the time being in force;
  - (b) answer fully and truthfully any questions asked by an officer with regard to the aircraft or vessel, its cargo, crew, passengers flight or voyage.
- (3) except with the permission of the competent authorities no person shall enter or leave the aircraft or vessel or unload any cargo there from until a report has been made in terms of this regulation and any other requirement regarding inspection or examination of the aircraft or vessel, its passengers, or cargo have been completed.

### **Approval for the Unloading and Removal of Goods**

- 108.** (1) Goods shall be unloaded or transhipped from the means of transport carrying them solely with the permission of the competent authority in places designated or approved by the competent authority.



- (2) Notwithstanding sub regulation (1), the Master may unload all or part of the goods in the event of imminent danger necessitating such unloading, provided he forthwith so informs the competent authority.
- (3) For the purposes of inspecting goods and the means of transport carrying them, the competent authorities may at any time require goods to be unloaded and unpacked.
- (4) Goods shall not be removed from their designated place of storage without the prior permission of the competent authorities.

## **CHAPTER 17**

### **Goods to be Assigned an Approved Customs Procedure and the Applicable Time Limits**

- 109.** (1) Non-Common Market goods presented to the competent authority shall be assigned an approved customs procedure authorised for such non-Common Market goods.
- (2) (a) Where goods are covered by a summary declaration, the formalities necessary for them to be assigned an approved customs procedure shall be carried out within:
    - (i) 45 days from the date on which the summary declaration is lodged in the case of goods carried by sea;
    - (ii) 20 days from the date on which the summary declaration is lodged in the case of goods carried otherwise than by sea.
  - (b) Where circumstances so warrant, the competent authority may set a shorter period or authorise an extension of the periods referred to in sub regulation (1) provided such extension shall not exceed the genuine requirements justified by the circumstances.

## **CHAPTER 16**

### **Goods in Temporary Storage Status**

**110.** Until such time as they are assigned an approved customs procedure, goods presented to customs shall, following such presentation, have the status of goods in temporary storage.

### **Approval of Temporary Storage**

- 111.**
- (1) Goods in temporary storage shall be stored only in places authorised by the competent authorities and under such conditions as may be prescribed by the competent authorities.
  - (2) The competent authorities may require the person holding the goods to provide security with a view to ensuring payment of any customs debt which may arise under regulations 286 or 287.
  - (3) Without prejudice to the provisions of regulation 103(3) goods in temporary storage shall be subject only to such forms of handling as are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics.

### **Measures to be Adopted**

- 112.**
- (1) Subject to the principle of proportionality, a competent authority shall take all measures necessary, including the sale of the goods, to regularise the situation of goods in temporary storage in respect of which the formalities necessary for them to be assigned an approved customs procedure are not initiated within the period as determined in accordance with regulation 119(2).
  - (2) The competent authority may, at the risk and expense of the person holding them (consignee), have the goods in question transferred to a special place which is under their supervision, until the situation of the goods is regularised.

## CHAPTER 17

### TRANSHIPMENT

#### Treatment of Goods under Transhipment

- 113.**
- (1) Goods admitted to transhipment shall not be subject to the payment of duties and taxes where the conditions laid down by the competent authorities are complied with.
  - (2) A single goods declaration may cover both the arrival and removal of goods in a transhipment operation. A commercial or transport document setting out clearly the necessary particulars may be accepted as the descriptive part of the goods declaration and this acceptance shall be noted on the document.
  - (3) The process of controlling transhipment operations through documentation involves recording the goods which arrive for transhipment, keeping a list of goods in transhipment, and removing goods from the list when they leave for their onward journey.
  - (4) Where the competent authority considers it necessary, they shall take action at importation to ensure that the goods to be transhipped will be identifiable at exportation and that unauthorised interference is easily detectable by sealing the goods container on arrival and examining the seal on departure.
  - (5) At the request of the person concerned and subject to such conditions as the competent authorities may specify, the competent authorities shall, as far as possible, allow goods in transhipment to undergo operations likely to facilitate their exportation.
  - (6) Save as otherwise specifically provided for by the provisions in force, transhipment shall not be refused solely on the grounds of the country of origin of the goods, the country from which they arrived or their country of destination.
  - (7) Where the competent authorities fix a time limit for the exportation of goods declared for transhipment, it shall be sufficient for the purposes of transhipment. At the request of the person concerned and for reasons deemed valid by the

competent authorities, the latter should extend any period initially fixed.

## **CHAPTER 18**

### **TRANSIT PROCEDURE**

#### **Scope of Transit Procedure**

- 114.** (1) The competent authorities may allow imported goods that are declared for transit to be removed under customs control without payment of import duties and taxes, subject to such conditions or restrictions and time limits as may be prescribed by the Committee.
- (2) The competent authorities shall allow goods to be transported under customs transit in their territory:
- (a) from an office of declaration to an office of exit;
  - (b) from an office of declaration to an inland customs office;
  - (c) from an inland customs office to an office of exit; or
  - (d) from one inland customs office to another inland customs office.
- (3) Where goods are declared in terms of sub regulation (1) as being in transit the competent authorities shall request the principal of the operation to lodge security in the form and in an amount acceptable to the competent authorities.

#### **Principals' and Carriers' Liabilities**

- 115.** (1) The principal shall be the holder of the Common Market transit procedure.
- (2) The Principal shall be responsible for:
- (a) production of the goods intact at the customs office of destination by the prescribed time limit and with due

observance of the measures adopted by the competent authorities to ensure identification; and

- (b) observance of the provisions relating to the Common Market transit procedure.
- (3) Notwithstanding the principal's obligations under sub regulation (2), a carrier or recipient of goods who knowingly accepts goods in transit in the customs territory shall also be responsible for production of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the competent authorities to ensure identification.
- (4) Any person making a goods declaration under the transit procedure shall comply with the obligations as laid down by the Committee procedure.

### **Scope of Prohibitions and Restrictions**

- 116.** (1) The competent authorities may, under the conditions set out in regulation 126(2) prohibit, restrict or otherwise control the entry of certain goods or means of transport from entering the customs territory.
- (2) The competent authorities may, after having given notice to the Secretary-General, in accordance with Article 50 of the Treaty: introduce or continue to impose restrictions or prohibitions affecting, *inter alia*:
- (a) the control of arms, ammunition and other war equipment and military items; and
  - (b) the protection of human, animal or plant health or life, or the protection of public morality.

### **Termination of Transit Procedure**

**117.** The customs transit procedure shall be discharged by the presentation of the goods and the accompanying documents at the designated office of destination within the time specified by the competent authority on condition that:

- (a) the goods have not been interfered with in any way;

- (b) the goods have not been used;
- (c) the customs seals, fastenings or identification marks are intact; and
- (d) the proper officer certifies the discharge of the transit procedure.

### **Breaches of the Transit Procedure**

- 118.** (1) In the event of a breach of the transit procedure giving rise to a customs debt, the debt incurred shall be determined in accordance with regulation 286 or 287 as appropriate.
- (2) The place where the debt occurs shall be determined in accordance with regulation 298.

### **Rules for the Operation of Transit Procedure**

- 119.** (1) The Committee shall make rules for the operation of the transit procedure.
- (2) a Member State shall have the right to establish simplified procedures:
- (a) in certain circumstances for goods not required to move in the territory of another Member State; and
  - (b) through bilateral or multilateral arrangement, consistent with criteria to be set according to the circumstances and applying to certain types of goods traffic or specific undertakings:

Provided that the implementation of common Market measures applying to goods is guaranteed.

- (3) A Member State shall as soon as practically possible, notify the Committee of any simplified procedures it has established under sub regulation (2).

## CHAPTER 19

### MOVEMENT OF GOODS TO AND FROM AN INTERNAL CLEARANCE DEPOT

#### Control of Movement of Goods to and from Internal Clearance Depots

- 120.** (1) The competent authorities may approve:
- (a) the movement of imported goods between the place of importation and a place approved by the competent authorities for the clearance out of charge, a free zone or the place of exportation of such goods;
  - (b) the movement of goods between:
    - (i) a free zone and a place approved by the competent authorities for the clearance out of charge of such goods;
    - (ii) a place approved by the competent authorities out of charge of such goods and a free zone; or
    - (iii) a free zone to another free zone; or
  - (c) the movement of goods intended for export between a place approved by the competent authorities for the examination of such goods under regulation 16 and the place of exportation, subject to such conditions and restrictions as they deem fit to impose.
- (2) The conditions laid down under sub regulation (1) above may in particular:
- (a) require the goods to be moved within such period and by such route as may be specified under the conditions of authorisation;
  - (b) require the goods to be carried in a vehicle or container complying with such requirements and secured in such circumstances as may be so specified;
  - (c) prohibit, except in such circumstances as may be so specified, any loading or unloading of the vehicle or

container or any interference with the security of the vehicle or container;

- (d) require the lodgement of an appropriate security to cover all duties and taxes chargeable on the goods.
- (3)
- (a) Any documents required to be made or produced as a result of the conditions laid down under sub regulation (1) above shall be made or produced in such form and manner and contain such particulars as the competent authorities may direct.
  - (b) The competent authorities may relax any requirement imposed under paragraph (a) or substitute any requirement for another where the circumstances so require.

## **CHAPTER 20**

### **PROVISIONS APPLICABLE TO NON - COMMON MARKET GOODS UNDER A TRANSIT PROCEDURE**

#### **Measures Applicable to Goods Imported Under a Transit Procedure**

- 121.** (1) Regulation 89, with the exception of sub regulation (1) (a) there of, and regulations 90, 103, 108, 109, 118, 119, 120 shall not apply when goods already placed under a transit procedure are brought into the customs territory.
- (2) Once non-Common Market goods, which have moved under a transit procedure, reach their destination in the customs territory and have been presented to customs in accordance with the rules governing transit, sub regulation 103(3) and regulations 108, 109, 118, 119, 120 shall apply.

## **CHAPTER 21**

### **RE-EXPORTATION, DESTRUCTION AND ABANDONMENT OF GOODS**

#### **Destruction of Goods by Competent Authorities**

- 122.** (1) Where the circumstances so require, the competent authorities



may have goods presented to them destroyed.

- (2) Where the goods have been destroyed under sub regulation (1), the competent authorities shall inform the holder of the goods accordingly.
- (3) The costs of destroying the goods shall be borne by the holder.

### **Pest-infected or Harmful Goods**

- 123.** (1) Without prejudice to the generality of regulation 122 above, if, after obtaining such expert advice as may be available to them, a competent authority is of the opinion that any goods which are under its control:
- (a) have become infected or contaminated in any manner deemed to be injurious to human, plant or animal life; or
  - (b) for any other reason, are deemed by it, to be prejudicial to the health of any human beings, plants or animals,

the competent authority may direct that such goods, including any packing and containers in which they are packed or contained, be seized, and the goods, and where applicable, packing and containers be destroyed or otherwise dealt with in accordance with the provisions in force.

- (2) The competent authority shall, where circumstances so allow, notify the owner of the goods in sufficient time so as to allow him to inspect the goods prior to their disposal.
- (3) The owner may appeal against a decision of the competent authority taken under sub regulation (1) in accordance with the provisions of regulation 326.
- (4) No person shall be entitled to claim compensation on account of any action taken by the competent authority in terms of sub regulation (1).
- (5) All costs incurred in destroying the goods, packing and containers shall be borne by the importer or exporter, as the case may be;

### **Sale of Uncustomed Goods**

**124.** Where the competent authorities find that goods have been brought unauthorised or entered unlawfully into the customs territory or have been withheld from surveillance by the competent authorities, they shall take any measures necessary, including sale of the goods, in order to regularise their situation.

### **Re-exportation, Destruction and abandonment of Goods by the Owner**

**125.** (1) Non-Common Market goods may be:

- (a) re-exported from the customs territory;
  - (b) destroyed; or
  - (c) abandoned to the Member State where national legislation for the time being in force makes provision to that effect.
- (2) Re-exportation shall, where appropriate, involve application of the formalities laid down for goods leaving the customs territory, including commercial policy measures.
  - (3) Cases in which non-Common Market goods may be placed under a suspensive arrangement with a view to non-application of commercial policy measures on exportation may be determined in accordance with rules made by the Committee.
  - (4) The re-exportation or destruction of the goods by the owner shall be subject to prior notification and approval by the competent authority, except as otherwise provided for in rules made by the Committee.
  - (5) A competent authority shall prohibit re-exportation where the formalities or measures referred to in sub regulation (2) have not been complied with.
  - (6) Where goods placed under an economic customs procedure when in the customs territory, are intended for re-exportation, a customs declaration within the meaning of regulations 127 to 131; 136 to 145; and 147 to 151, shall be lodged and sub regulation 243 (4) and (5) shall apply.
  - (7) Abandonment of goods by the owner shall be in accordance with national provisions in force.

- (8) Destruction or abandonment shall not entail any expense for the Member State.
- (9) Any waste or scrap resulting from destruction shall be assigned an approved customs procedure.
- (10) The waste or scrap shall remain under customs supervision until the time laid down in regulation 88(2).

## **CHAPTER 22**

### **CUSTOMS PROCEDURE**

#### **Part I - Placing Goods Under A Customs Procedure**

##### **Assignment to a Customs Procedure**

- 126.** (1) Save as otherwise provided, goods may at any time, under the conditions laid down, be assigned any approved customs procedure irrespective of their nature, quantity, their country of origin, consignment or destination.
- (2) Sub regulation (1) shall not preclude the imposition of prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value or the protection of industrial and commercial property in accordance with the provisions of Article 50 of the Treaty. Such prohibitions or restrictions shall not, however, institute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

##### **Declaration for a Customs Procedure**

- 127.-** (1) All goods intended to be placed under an approved customs procedure shall be covered by a declaration for that approved customs procedure.

- (2) Common Market goods declared for export, outward-processing, transit or customs warehousing procedure shall be subject to customs supervision and control from the time of acceptance of the customs declaration until such time as they leave the customs territory, are destroyed, or the customs declaration is invalidated.

### **Competence of Customs Offices**

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

### **Method of Customs Declaration**

**129.** A customs declaration shall be made:

- (a) in writing;
- (b) using a data-processing technique where provided for by provisions laid down in accordance with the Committee procedure or where authorised by the competent authorities under any national provisions in force;
- (c) by means of an oral declaration in the case of goods of a non-commercial nature contained in a traveller's personal baggage; or
- (d) by electing and proceeding through a green "nothing to declare" channel or a red "goods to declare" channel where a dual-channel system for the clearance of travellers, their baggage and modes of conveyance, where appropriate, is in operation; or
- (e) by means of a normal declaration or any other act provided for under the provisions in force whereby the importer or exporter signifies his intention to place the goods under an approved customs procedure.

## **Part II - Declarations In Writing**

### **Division 1 - Normal Procedure**

#### **Declarations to be in Prescribed Form**

**130. (1)** Declarations in writing shall be made in a prescribed form issued for this purpose under these regulations.

- (2) Declarations shall be signed and contain all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared.
- (3) Declarations shall be accompanied by all the documents required for implementation of the provisions governing the customs procedure for which the goods are declared.

### ***Provisions Governing Acceptance of a Declaration***

- 131.** Declarations which comply with the conditions laid down in regulation 129 shall be accepted by the competent authorities immediately, provided that the goods to which they refer are presented to them or are allowed by them to be presented at a later date.

### **Acceptance of Provisional and Incomplete Declarations**

- 132.** (1) Where for reasons deemed valid by the competent authorities, the declarant does not have all of the information required to make a complete declaration, a provisional or incomplete declaration may be allowed to be lodged, provided that it contains the particulars deemed necessary by the competent authorities and that the declarant undertakes to complete it within a specified period.
- (2) A provisional or an incomplete declaration is considered as an undertaking by the declarant to produce a final declaration or to provide supplementary information to the competent authorities within a specified period in order to receive immediate release of the goods.
  - (3) A provisional or an incomplete declaration is one that is made out on the same form as a complete declaration but without all of the details having been included.
  - (4) A provisional or an incomplete declaration may be allowed when it is clear that the declarant does not have all the data required on hand, for example where the weight of bulk goods can only be determined after unloading.
  - (5) The competent authorities may refuse the lodgement of a provisional or an incomplete declaration if essential information is missing, such as a reasonable description of the goods. The competent authorities may, where appropriate, require that a provisional estimated value be

stated, and to state which other particulars in the declaration are only provisional or incomplete.

- (6) Where a declaration is accepted under this regulation, the declarant shall, within such time as the competent authorities may allow, deliver to the proper officer such of the particulars or documents as were required to be, but were not, contained in or delivered with the declaration or, if the proper officer so permits, deliver to him a substituted complete declaration complying in all respects with the provisions of this Regulation and any other provisions in force.
- (7) Where a provisional or an incomplete declaration has been accepted under the foregoing provisions and the declarant has given security by deposit of money or otherwise to the satisfaction of the competent authorities for payment of any outstanding duties and taxes, the goods may be delivered without payment of any duty and tax chargeable in respect of the goods; but any such duty and tax shall be paid within such time as the competent authorities may direct.
- (8) Where the competent authorities have authorized a person to make a provisional or an incomplete declaration, the competent authorities may suspend or cancel the authorization where it appears to them that
  - (a) the person has failed to comply with any requirement imposed upon him by or under the provisions relating to the control of importation or exportation, or
  - (b) there are other reasonable grounds for the suspension or cancellation
- (9) The competent authorities may give directions imposing such requirements, as the competent authorities deem fit, on any person authorized under sub regulation (8) or vary any such requirements previously imposed.

### **Prior Lodgement, Acceptance and Checking of Declarations and Pre-clearance Facilities**

- 133.** (1) The competent authorities may, as they see fit, and under such conditions as they deem necessary, allow for:

- (a) the prior lodgement, acceptance and checking of entries before the importing vessel or aircraft arrives within the customs territory; and
  - (b) the pre-clearance of goods before the goods arrive within the customs territory.
- (2) In the absence of forestalling, the date of acceptance of the relevant conveyance or means of transport report shall be the date determining the rates of duties and taxes chargeable on the goods dealt with under this regulation and any other measures applicable to the goods, provided that the goods are subsequently available for examination in the normal manner.
  - (3) Where forestalling is established the newly imposed higher rate of duties, taxes or other charges and measures shall apply.

#### **Advance Electronic Goods Declarations**

- 134. (1) Where the necessary facilities exist, an importer or his agent shall submit an advance electronic import goods declaration to the competent authority prior to the arrival of the conveyance or other means of transport at the first customs office.
- (2) Where an electronic import declaration is incomplete or a simplified electronic declaration has been accepted, it shall be followed up by a supplementary declaration for other purposes such as duty and tax calculation or the collection of trade statistics at a later stage as stipulated by the provisions in force.

#### **Person Responsible for Making a Customs Declaration**

- 135. (1) Subject to the provisions of regulations 27 to 38, a customs declaration may be made by any person who is authorised in terms of this regulation to present the goods in question to the competent authorities together with all documents for the application of the rules governing the customs procedure in respect of which the goods were declared.

provided that::

where acceptance of a customs declaration imposes a particular obligation on a specific person, that declaration shall be made by that person or on his behalf; and

- (2) The condition regarding establishment in the Common Market shall not apply to persons who:
  - (a) make a declaration for transit or temporary admission;
  - (b) declare goods on an occasional basis, provided that the customs authorities consider this to be justified.
- (3) Sub regulation 2 (b) shall not preclude the application by Member States of bilateral agreements concluded with third countries, or customary practices having similar effect, under which nationals of such countries may make custom declarations in the territory of the Member States in question, subject to reciprocity.

### **Amendment of a Customs Declaration**

- 136.** (1) A declarant shall, at his request, be authorised to amend one or more of the particulars of the declaration after it has been accepted by the competent authorities. The amendment shall not have the effect of rendering the declaration applicable to goods other than those it originally covered.
- (2) No unilateral amendment by the declarant shall be permitted where authorisation is requested after the competent authorities
    - (a) have informed the declarant that they intend to examine the goods; or,
    - (b) have established that the particulars in question are incorrect; or
    - (c) have released the goods;
  - (3) The Committee may, in accordance with the Committee procedure, adopt measures laying down exceptions to sub regulation 2(c).
  - (4) The competent authorities may allow the requested amendments in cases (a) and (b) above where, following the examination of the goods or such further investigation as they see fit, they satisfy themselves that no fraud or other irregularity was involved in the declaration. Any such amendment shall be without prejudice to any administrative fines, penalties or amendment fees provided for by national law and cases of fraud or other irregularities shall be dealt with in accordance with national law.



### **Invalidation of a Customs Declaration**

- 137.** (1) The competent authorities shall, at the request of the declarant, invalidate a declaration already accepted where the declarant furnishes proof that the goods were declared in error for the approved customs procedure covered by that declaration or that, as a result of special circumstances, the placing of the goods under the approved customs procedure for which they were declared is no longer justified.
- (2) Where the competent authorities have informed the declarant of their intention to examine the goods, a request for invalidation of the declaration shall not be accepted until the goods have been examined.
- (3) The declaration shall not be invalidated after the goods have been released, except as otherwise provided for by the Committee Procedure.
- (4) Invalidation of the declaration shall be without prejudice to the application of the penal provisions in force.

### **Date of Acceptance of the Declaration**

- 138.** Save as otherwise expressly provided for and in the absence of forestalling, the date to be used for the purposes of all the provisions governing the approved customs procedure for which goods are declared shall be the date of acceptance of the declaration by the competent authorities, provided that the goods are available for examination in the normal manner.

### **Verification of Customs Declarations**

- 139.** The competent authorities may for the purposes of verification of declarations which have been accepted:
- (a) examine documents covering the declaration and the documents accompanying it. The competent authorities may require the declarant to present other documents for the purposes of verifying the accuracy of the particulars contained in the declaration;
- (b) examine goods and take samples for analysis or for detailed examination.

### **Provision of Examination Facilities and Attendance at Examinations**

- 140.** (1) The transportation of goods to places of examination and sampling and the handling necessitated by such examination or sampling shall be carried out by or under the responsibility of the declarant. The costs incurred shall be borne by the declarant.
- (2) The declarant shall be entitled to be present when the goods are examined and when samples are taken. Where they deem it appropriate, the competent authorities shall require the declarant to be present or represented when the goods are examined or samples are taken in order to provide them with the assistance necessary to facilitate such examination or sampling. Provided that samples are taken in accordance with the provisions in force, the competent authorities shall not be liable for payment of any compensation in respect of those samples.

### **Application of Results of Partial Examinations**

- 141.** (1) Where only part of the goods covered by a declaration are examined by the competent authorities, the results of the partial examination shall be taken to apply to all the goods covered by that declaration.
- (2) The declarant may request a further examination of the goods if he considers that the results of the partial examination are not valid as regards the remainder of the goods declared and the costs involved shall be borne by the declarant.
- (3) For the purposes of sub regulation (1) above, where a declaration form covers two or more items, the particulars relating to each item shall be deemed to constitute a separate declaration.

### **Use of Results of Verifications**

- 142.** Without prejudice to the findings of any subsequent verifications or inquiries in relation to the goods:

- (a) results of the verification of the declaration shall be used to apply to the provisions governing the approved customs procedure under which goods are placed.
- (b) Where the declaration is not verified prior to clearance or release, the provisions referred to in paragraph (a) shall be applied on the basis of the particulars contained in the declaration.

### **Identification of Goods**

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

### **Release of Goods**

- 144.** (1) Without prejudice to regulation 147, where the conditions for placing goods under the approved customs procedure in question are fulfilled, and provided that:
- (a) the goods are not subject to any prohibitive or restrictive measures;
  - (b) no offence has been found ;
  - (c) any duties and taxes have either been paid or appropriate action has been taken to secure their collection; and
  - (d) all necessary authorisations relating to the procedure concerned have been submitted to the competent authority,

the competent authorities shall release the goods as soon as the particulars in the declaration have been verified or are accepted without verification. The same shall apply where such verification cannot be completed within a reasonable period of time and the goods are no longer required to be present for verification purposes.

- (2) Where samples are taken or technical documents or expert advice is required, the competent authorities may release the goods before the results of such examination are known, provided that security has been furnished and they are satisfied that the goods are not subject to any form of prohibition or restriction;
- (3) Where the competent authorities either suspect or are satisfied that an offence has been committed, they may release the goods prior to the completion of administrative or legal action provided that:
  - (a) the goods are not subject to any prohibitions or restrictions;
  - (b) adequate security has been lodged to cover any potential duties, taxes, fines and any other charges, that may accrue;
  - (c) the goods will not be required to be produced as evidence at a later stage in the proceedings
- (4) All goods covered by the same declaration shall be released at the same time.
- (5) For the purposes of sub regulation (4) where a declaration form covers two or more items, the particulars relating to each item shall be deemed to constitute a separate declaration.

### **Powers of Competent Authority to Deal with Goods Pending a Decision**

- 145.** (1) Where for any legitimate reason it is impractical to immediately ascertain whether or what duties and taxes are payable in respect of any imported or export goods which are declared for home use or exportation, the competent authorities may, if they see fit, allow those goods to be cleared for home use or exported upon the declarant giving security by deposit of money or otherwise to their satisfaction for payment of the full amounts of duties and taxes payable on the goods in question.
- (2) The competent authorities may treat such goods as declared for home use notwithstanding that the declaration does not contain all the particulars required for a perfect declaration. The declarant shall, however, declare all particulars known or reasonably known to him at the time of making the declaration and shall, without delay, furnish any outstanding particulars to the competent authorities.

- (3) Where the goods are cleared for home use under the provisions of this regulation, the competent authority shall, when they have determined the full amounts of duties, taxes and other charges which in their opinion are duly payable on the goods, give the declarant a notice specifying those amounts.
- (4) On receipt of such notice, the declarant shall pay the amounts specified in the notice. Where any amounts have been duly deposited, any difference between those amounts shall forthwith be paid or repaid as the case may require. If the declarant disputes the correctness of the amounts specified in a notice so given to him, he may at any time invoke the appeal procedure provided for in regulations 324 to 327 of these Regulations. The appeal procedure shall not take place until the duties, taxes and other charges notified have been dealt with in accordance with the provisions in force.
- (5) The provisions of this regulation are without prejudice to the declarant's overriding responsibility to determine and declare the proper amounts of duties, taxes and other charges payable on import and export goods.
- (6) This regulation does not apply where the question of the goods being subject to a prohibition or restriction on importation or exportation arises, either directly or indirectly.

#### **Non-release of Goods**

- 146.** (1) Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration shall not be released unless the customs debt has been paid or secured in accordance with the provisions in force.
- (2) Without prejudice to sub regulation (3) below, this provision shall not apply to the temporary importation procedure with partial relief from import duties and taxes.
  - (3) Where, pursuant to the provisions governing the approved customs procedure for which the goods are declared, the competent authorities require the provision of a security, the said goods shall not be released for the customs procedure in question until such security is provided.

### **Measures to Regularise Uncleared Goods**

**147.** Any necessary measures, including confiscation and sale, where so provided for by the provisions in force, shall be taken to deal with goods:

- (1) which cannot be released because:
  - (a) it has not been possible to undertake or continue examination of the goods within the period prescribed by the competent authorities for reasons attributed to the declarant; or
  - (b) the documents which shall be produced before the goods can be placed under the approved customs procedure requested have not been produced; or,
  - (c) payments or security which should have been made or provided in respect of import duties and taxes or export duties and taxes, as the case may be, have not been made or provided within the period prescribed; or
  - (d) the goods are subject to a prohibition or restriction under regulation 126(2) herein.
- (2) Where the said goods are not removed within a reasonable period after their clearance.

### **Division 2 – Simplified Procedures**

#### **Special Arrangements for Authorised Persons**

- 148.** (1) In order to simplify completion of formalities and procedures as far as possible while ensuring that operations are conducted in a proper manner, the competent authorities may, under conditions laid down in accordance with rules established by the committee, grant permission for:
- (a) the declaration referred to in regulation 130 to omit certain of the particulars referred to in sub regulation (1) of that regulation and for some of the documents referred to in sub regulation (2) of that regulation not to be attached thereto;
  - (b) a commercial or administrative document, accompanied by a request for the goods to be placed under the approved

customs procedure in question, to be lodged in lieu of the declaration referred to in regulation 130 herein;

- (c) the goods to be entered for the procedure in question by means of an entry in the records, in which case the competent authorities may waive the requirement that the declarant presents the goods to customs.
- (2) The simplified declaration, commercial or administrative document or entry in the records shall contain at least the particulars necessary for identification of the goods. Where the goods are entered in the records, the date of such declaration shall be included.
  - (3) Except in cases to be determined in accordance with rules established by the Committee procedure, the declarant shall furnish a supplementary declaration which may be of a general, periodic or recapitulative nature.
  - (4) Supplementary declarations and the simplified declarations referred to in sub regulation (1)(a) to (c), shall be deemed to constitute a single, indivisible instrument taking effect on the date of acceptance of the simplified declarations, and in the cases referred to in sub regulation (1)(c) , entry in the records shall have the same legal force as acceptance of the declaration referred to in regulation 130.
  - (5) Special simplified procedures for the Common Market transit procedure shall be laid down in accordance with the Committee procedure.
  - (6) Except in cases to be determined in accordance with rules established by the Committee procedure, the declarant shall furnish a supplementary declaration which may be of a general, periodic or recapitulative nature.
  - (7) Supplementary declarations and the simplified declarations referred to in sub regulation (1)(a) to (c), shall be deemed to constitute a single, indivisible instrument taking effect on the date of acceptance of the simplified declarations, and in the cases referred to in sub regulation (1)(c) , entry in the records shall have the same legal force as acceptance of the declaration referred to in regulation 129.
  - (8) Special simplified procedures for the Common Market transit procedure shall be laid down in accordance with the Committee procedure.

## **Simplification of Customs Procedures**

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

### **Part III - Other Declarations**

#### **Provisions Applicable to Oral and Electronic Declarations**

- 150.** (1) Where the customs declaration is made by means of a data-processing technique within the meaning of regulation 129 (b) or by oral declaration or any other act within the meaning of regulation 127 (c) , regulations 130, 131, 136 to 145, 147 to 149, shall apply *mutatis mutandis*, without prejudice to the principles set out therein.
- (2) Where the customs declaration is made by means of a data-processing technique, the competent authorities may allow accompanying documents referred to in regulation 130 (2) not to be lodged with the declaration and the documents shall be kept at the competent authorities' disposal.

### **Part IV - Post-Clearance Examination of Declarations**

#### **Post Clearance Verification of Declarations and Examination of Goods**

- 151.** (1) The competent authorities may, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods.
- (2) Such inspections may be carried out at the premises of the declarant, or any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes.
- (3) The competent authorities may also examine the goods where it is still possible for them to be produced.
- (4) Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or



incomplete information, the competent authorities shall, in accordance with any provisions laid down, take the necessary measures to regularise the situation, taking account of the new information available to them.

## **Part V - Clearance for Home Use**

### **Conferral of Common Market Status**

- 152.** (1) Clearance for home use shall confer on non-Common Market goods the customs status of Common Market goods.
- (2) The clearance for home use of non Common Market goods shall entail application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties, taxes or other charges legally due.

### **Application for More Favourable Rate of Duty**

- 153.** (1) A declarant may apply for a more favourable rate of duty where the import duties and taxes duly chargeable on goods is one of the duties or taxes for the time being in force and that the rate of duty or tax is reduced after the date of acceptance of the declaration for home use provided that the application is made before the goods are cleared.
- (2) Sub regulation (1) shall not apply where it has not been possible to clear the goods for reasons solely attributable to the declarant alone.

### **Customs Supervision of End-use Goods**

- 154.** (1) Where goods are cleared for home use at a reduced or zero rate of duty and tax on account of their end-use, the goods shall remain under customs supervision or control.
- (2) Customs supervision or control shall end where:
- (a) the conditions laid down for granting such a reduced or zero rate of duty and tax cease to apply; or
- (b) where the goods are exported or destroyed; or

- (c) where the use of the goods for purposes other than those laid down for the application of the reduced or zero rate of duty and tax is permitted subject to payment of the duties and taxes due.
- (3) Regulations 163 and 165, shall apply *mutatis mutandis* to the goods referred to in sub regulation (1).

#### **Loss of Common Market Status**

**155.** Goods cleared for home use shall lose their customs status as Common Market goods where:

- (a) the declaration for release for home use is invalidated after release; or
- (b) the import duties and taxes payable on those goods are repaid or remitted:
  - (i) under the inward processing procedure in the form of the drawback system; or
  - (ii) in respect of defective goods or goods which fail to comply with the terms of contract, pursuant to regulation 317; or
  - (iii) in situations of the type referred to in regulation 318 where repayment or remission is conditional upon the goods being exported or re-exported or being assigned an equivalent approved customs procedure.

#### **Part VI - Clearance of Goods Imported or Exported by Pipe-line**

##### **Customs Law Applicable to Pipe-lines**

- 156.** (1) The provisions of this regulation and any other prevailing provisions shall apply *mutatis mutandis* to the importation and exportation of goods by pipe-line.
- (2) Goods exported by pipe-line shall be treated as exported at the time when they are charged or loaded into the pipe-line for exportation.

## **Prescribed and Approved Methods of Measurement for Report and declaration Purposes**

157. (1) The nature and quantities of goods imported or exported by pipe-line shall be recorded and reported by the operator of the pipe-line in such a manner as the competent authorities may direct.
- (2) For the purposes of making report and declaration, and for the maintenance of any other records as required under the terms of the authorisation, the operator of the pipe-line shall at his own expense, provide such apparatus and appliances as the competent authorities may specify and authorise.
- (3) The authorisation shall be subject, *inter alia*, to any weights and measures or other applicable provisions in force in the Member State or Member States in question.

## **Part VII - Suspensive Arrangements and Customs Procedures with Economic Impact**

### **Division 1 - Provisions Common to Several Procedures**

#### **Definitions**

158. (1) For purposes of this part:
- (a) the term 'Suspensive' in the context of Common Market goods applies to the following arrangements:
- (i) customs warehousing;
  - (ii) external transit;
  - (iii) inward processing in the form of a system of suspension;
  - (iv) processing of goods for home use; and
- (b) the term 'customs procedure with economic impact' applies to the following arrangements:
- (i) customs warehousing;

- (ii) inward processing;
  - (iii) outward processing.
  - (iv) processing of goods for home use; and
  - (v) temporary importation;
- (c) 'Import goods' means goods placed under a suspensive procedure and goods which, under the inward processing procedure in the form of the drawback system, have undergone the formalities for clearance for home use.
- (d) 'Goods in the unaltered state' means import goods which, under the inward processing procedure or the procedures for processing for home use, have undergone no form of processing.

#### **Authorisation for a Procedure with an Economic Impact**

**159.** The use of an approved customs procedure with economic impact shall be conditional upon an authorisation being issued by the competent authorities.

#### **Authorisation Criteria**

**160.** Without prejudice to any additional special conditions governing the procedure in question, the authorisation referred to in regulation 158 and that referred to in regulation 168(1) shall be granted only:

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

#### **Application for Authorisation**

**161. (1)** Where the competent authorities authorise the procedures in terms of regulation 159, the conditions under which the procedure in question is used shall be set out in the authorisation.

- (2) The holder of the authorisation shall notify the competent authority of all factors arising after the authorisation was granted which may influence its continuation or content.

### **Goods Placed under a Suspensive Arrangement**

- 162. (1) Goods obtained from goods placed under a suspensive arrangement shall be deemed to have Common Market status in cases where such goods are considered of special economic importance in accordance with the Committee procedure.
- (2) Any product or goods obtained from goods placed under the suspensive arrangement referred to in sub regulation (1) shall be considered as being placed under the same arrangement

### **Security for Goods under a Suspensive Arrangement**

- 163. (1) The competent authorities may make the placing of goods under a suspensive arrangement conditional upon the provision of security in order to ensure that any customs debt which may be incurred in respect of those goods will be paid.
- (2) Special provisions in relation to the provision of security in terms of sub regulation (1) may be laid down for a specific suspensive arrangement.

### **Discharge of a Suspensive Arrangement**

- 164. (1) A suspensive arrangement with economic impact shall be discharged when a new approved customs procedure is assigned either to;
  - (a) the goods placed under that arrangement; or
  - (b) to compensating or processed products placed under it.
- (2) The competent authorities shall take all necessary measures in accordance with the provisions in force to regularise the position of goods in respect of which a procedure has not been discharged under the conditions prescribed.

## **Transfer of Rights and Obligations**

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

## **Division 2 – Customs Warehouses**

### **Warehousing Procedure**

- 166.** (1) (a) The customs warehousing procedure shall allow, under the conditions laid down, the storage in a customs warehouse of non-Common Market goods, without such goods being liable to import duties and taxes or commercial policy measures;
- (b) Subject to sub regulation (c), the warehousing procedure shall be available to all non-Common Market goods irrespective of quantity, country of origin, country from which the goods arrived or country of destination; and
- (c) Goods subject to prohibitions or restrictions, other than those imposed under regulation 126 (2), may be stored in a customs warehouse.
- (2) Goods which constitute a hazard, which are likely to affect other goods or which require special installation should only be stored in specially designed customs warehouses authorised to receive the same.
- (3) The Committee may prescribe the conditions under which the goods referred to in sub regulation (1) may be placed under an approved warehousing procedure without being stored in a customs warehouse.

### **Types of Warehouse and Related Aspects**

- 167.** A customs warehouse may be either a public warehouse or a private warehouse.

### **Approval of a Customs Warehouse**

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

### **Warehouse keepers' Obligations**

- 169.** (1) The warehouse keeper shall be responsible for:
- (a) ensuring that while the goods are in the customs warehouse they are not removed from customs supervision or control except with the authority of the competent authority;
  - (b) fulfilling the obligations that arise from the storage of goods covered by the warehousing procedure;
  - (c) complying with the particular conditions specified in the authorisation;
  - (d) payment of duties and taxes for the time being in force on all goods in warehouse and on their removal from the warehouse;
  - (e) payment of duties and taxes on all shortages and deficiencies other than those accounted for to the satisfaction of the competent authorities in accordance with sub regulation (2) .
- (2) The warehouse keeper shall be exempt from the payment of duties and taxes on all *bona fide* losses or deficiencies in goods occurring in a warehouse where he can establish to the satisfaction of the competent authority that the losses and deficiencies resulted from:

- (a) the total destruction or irretrievable loss of the said goods as a result of the actual nature of the goods or unforeseeable circumstances or *force majeure*; or
  - (b) as a consequence of authorisation by the competent authority such as authorised operations .
- (3) For the purposes of sub regulation 2, goods shall be deemed to be irretrievably lost where they are rendered unusable by any person.

### **Theft from Warehouse**

- 170.** (1) Theft of goods from a warehouse shall not be treated as an act of *force majeure*.
- (2) Where goods have been stolen from a warehouse, such goods shall be liable to the duties and taxes chargeable on them in accordance with the provisions of regulation 285.

### **Guarantee to Ensure Compliance with Conditions**

**171.** Without prejudice to regulation 163 above, the competent authorities may demand that a warehouse keeper provide a guarantee in connection with the responsibilities specified in regulation 169.

### **Depositors' Obligations**

**172.** A depositor shall at all times be responsible for fulfilling the obligations arising from the placing of goods under the customs warehousing procedure.

### **Transfer of Warehouse Authorisation**

- 173.** (1) The rights and obligations of a warehouse keeper may, with the agreement of the competent authorities, be transferred to another person.
- (2) The provisions of regulation 169 shall apply *mutatis mutandis* to the proposed transferee of the authorisation.



### **Keeping of Stock Records and the Production of Goods**

174. (1) An authorised warehouse keeper shall keep stock records of all the goods placed under the customs warehousing procedure in a form approved by the competent authorities.
- (2) An authorised warehouse keeper shall produce the goods whenever so required; and shall consent to all monitoring of stock obligations and provide all necessary examination facilities and assistance to the proper officer.

### **Authorised Processing of Goods in a Customs Warehouse**

175. (1) Where an economic need exists and customs supervision or control is not adversely affected thereby, the competent authorities may allow:
- (a) Common Market goods to be stored on the premises of the customs warehouse;
  - (b) non-Common Market goods to be processed on the premises of a customs warehouse under the inward processing procedure, subject to the conditions provided for by that procedure. The formalities which may be dispensed with in a customs warehouse shall be determined in accordance with the Committee procedure;
  - (c) non-Common Market goods to be processed on the premises of a customs warehouse under the procedure for processing for home use, subject to the conditions provided for by that procedure. The formalities which may be dispensed with in a customs warehouse shall be determined in accordance with the Committee procedure.
- (2) In cases referred to in sub regulation (1), the goods shall not be subject to the customs warehousing procedure.
- (3) The competent authorities may require the goods referred to in sub regulation (1) to be entered in the stock records provided for in regulation 174.

### **Goods Warehoused to be immediately entered into Stock Records**

176. Goods placed under the customs warehousing procedure shall be entered in the stock records provided for in regulation 174 as soon as they are brought into the customs warehouse.

### **Minor Operations only Permitted in a Customs Warehouse**

177. (1) Any person entitled to dispose of warehoused goods shall be allowed, for reasons deemed valid by the competent authorities:
- (a) to inspect them;
  - (b) to take samples, against payment of import duties and taxes wherever applicable;
  - (c) to carry out operations necessary for their preservation; and
  - (d) to carry out such other normal handling operations as are necessary to improve their packaging or marketable quality or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, and repacking.
- (2) Measures provided for in sub regulation (1), shall be authorised in advance by the competent authority, which shall lay down the conditions under which they may take place.

### **Time Limits for the Storage of Goods in a Customs Warehouse**

178. (1) Goods admitted to a customs warehouse may be stored there for a maximum period of twelve months.
- (2) Where goods have not been removed from a warehouse within the prescribed or permitted period such goods shall be removed to a warehouse operated by the competent authority and, subject to the principle of proportionality, shall be dealt with in accordance with national law.
- (3) Notwithstanding the provisions of sub regulations (1) and (2) the competent authorities may prescribe special time limits for:
- (a) goods stored in a private customs warehouse; and

- (b) certain warehouse goods, where economic need dictates a modified period of warehousing.

### **Temporary Removal of Goods from Warehouse**

- 179.** (1) Where circumstances so warrant, goods placed under the customs warehousing procedure may be temporarily removed from the customs warehouse. Such removal shall be authorised in advance by the competent authorities, who shall stipulate the conditions under which it may take place.
- (2) While they are outside the customs warehouse, the goods may undergo the forms of handling referred to in regulation 177 on the conditions set out therein.

### **Transfer of Goods Between Customs Warehouses**

- 180.** (1) The competent authorities may allow goods placed under the customs warehousing procedure to be transferred under customs control from one customs warehouse to another customs warehouse. Any such transfer shall be without prejudice to any national licensing requirement concerning the sale of goods in question.
- (2) On application in writing, the owner of the goods warehoused may be authorised to transfer such ownership to any other person. Any such transfer shall be without prejudice to any national licensing requirement concerning the sale of goods in question.
- (3) Where transfer of ownership is carried out in terms of sub regulation (2) but without application the competent authorities may refuse to recognise such a transfer.

### **Closure of a Customs Warehouse**

- 181.** In the event of the closure of a customs warehouse, the depositors shall be given sufficient time to remove their goods to another customs warehouse or to place them under another approved customs procedure, subject to compliance with the conditions and formalities applicable in each case.

## **Exclusion of Certain Costs of Warehousing and Handling**

- 182.** (1) Where a customs debt is incurred in respect of import goods and the customs value of such goods is based on a price actually paid or payable which includes the cost of warehousing and of preserving goods while they remain in the warehouse, such costs need not be included in the customs value if they are shown separately from the price actually paid or payable for the goods.
- (2) Where the said goods have undergone the usual forms of handling within the meaning of regulation 177, the nature of the goods, the customs value and the quantity to be taken into account in determining the amount of import duties and taxes shall, at the request of the declarant, be those which would be taken into account for the goods, at the time referred to in regulation 297 if they had not undergone such handling. However, derogations from this provision may be adopted under the Committee procedure.
- (3) The rate of duty and tax shall be that in force at the time the competent authorities accept the declaration for home use.

## **Part VIII – Inward Processing**

### **Division 1 - General**

#### **Scope of Procedure and Definitions**

**183.** Without prejudice to regulation 183, the inward processing procedure shall allow the following goods to be used in the customs territory in one or more processing operations:

- (a) non-Common Market goods intended for re-export from the customs territory in the form of compensating products, without such goods being subject to import duties and taxes or commercial policy measures;
- (b) goods cleared for home use with repayment or remission of the import duties and taxes chargeable on such goods if they are exported from the customs territory in the form of compensating products.

- (c) goods placed under another customs procedure such as goods being removed from a customs warehouse or free zone, or goods under transit or under temporary admission, provided that the conditions for inward processing are met and that the previous approved customs procedure is properly discharged.

### **Equivalence and Prior Exportation**

- 184.** (1) Where the conditions laid down in sub regulation (2) are fulfilled, and subject to sub regulation (4) , the competent authorities shall allow:
- (a) compensating products to be obtained from equivalent goods; and
  - (b) compensating products obtained from equivalent goods to be exported from the customs territory before importation of the import goods.
- (2) Equivalent goods shall be of the same quality and have the same characteristics as the import goods. However, in specific cases determined in accordance with the Committee procedure, equivalent goods may be allowed to be at a more advanced stage of manufacture than the import goods.
- (3) Where sub regulation (1) applies, the import goods shall be regarded for customs purposes as equivalent goods and the latter as import goods.
- (4) Measures aimed at prohibiting, imposing certain conditions for or facilitating recourse to sub regulation (1) may be adopted in accordance with the Committee procedure.
- (5) Where sub regulation (1) (b) is applied and the compensating products would be liable to export duties and taxes if they were not being exported or re-exported under an inward processing operation, the holder of the authorisation shall provide a security to ensure payment of the duties should the import goods not be imported within the period prescribed.

## **Division 2 – Grant of Authorisation**

### **Authorisation for the Inward Processing Procedure**

**185.** The competent authorities in a Member State shall authorise inward processing procedure at the request of the person who carries out the processing operations or who arranges for them to be carried out.

### **Conditions for Granting Authorisation**

**186.** The authorisation shall be granted only:

- (a) to persons established in Common Market. However, the authorisation may be granted to persons established outside the customs territory in respect of imports of a non-commercial nature;
- (b) where, without prejudice to the use of the goods referred to in the definition for “processing operations”, the import goods can be identified in the compensating products or, in the case referred to in regulation 183, where compliance with the conditions laid down in respect of equivalent goods can be verified; and
- (c) where the inward processing procedure can help create the most favourable conditions for the export or re-export of compensating products, provided that the essential interest of Common Market producers are not adversely affected (economic conditions). The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the Committee procedure.

## **Division 3 – Operation of the Procedure**

### **Time Limits for Conducting Inward Processing Operations**

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

- (2) The period shall run from the date on which the non-Common Market goods are placed under the inward processing procedure. The competent authorities may grant an extension on submission of a duly substantiated request by the holder of the authorisation.
- (3) For purposes of simplification, the competent authorities may decide that a period which commences in the course of a calendar month or quarter shall end on the last day of a subsequent calendar month or quarter respectively.
- (4) Where regulation 184(1) (b) applies, the competent authorities shall specify the period within which the non-Common Market goods shall be declared for the procedure. That period shall run from the date of acceptance of the export declaration relating to the compensating products obtained from the corresponding equivalent goods.
- (5) Specific time limits may be laid down in accordance with the Committee procedure for certain processing operations or for certain import goods.

#### **Establishment of the Rate of Yield**

- 188.** (1) The competent authorities shall set either the rate of yield of the operation or, where appropriate, the method of determining such rate. The rate of yield shall be determined on the basis of the actual circumstances in which the processing operation is to be carried out.
- (2) Where circumstances so warrant, and in particular in the case of the processing operation which is customarily carried out under clearly defined technical conditions involving goods of substantially uniform characteristics, and resulting in the production of compensating products of uniform quality, standard rates of yield may be set in accordance with the Committee procedure on the basis of actual data previously ascertained.

#### **Goods Deemed to Have Been Cleared for Home Use**

- 189.** The cases in which and the conditions under which goods in the unaltered state or compensating products shall be considered to have been cleared for home use may be determined in accordance with the Committee procedure.

### **Date for Determination of Duty Elements**

- 190.** (1) Where a customs debt is incurred, the amount of such debt shall be determined on the basis of the taxation elements appropriate to the import goods at the time of acceptance of the declaration of placing these goods under the inward processing procedure.
- (2) If at the time referred to in sub regulation (1), the import goods fulfilled the conditions to qualify for preferential tariff treatment within tariff quotas or ceilings, they shall be eligible for any preferential tariff treatment existing in respect of identical goods at the time of acceptance of the declaration for clearance for home use.

### **Treatment of Waste and Scrap, Intermediate Products, Goods in the Unaltered State, and Unaccounted for Deficiencies**

**191.** Without prejudice to the provisions of regulation 190, the following specific rules of assessment shall apply in the circumstances set out hereunder:

- (a) By way of derogation from the general rule of assessment, waste and scrap having a commercial value shall be classified and valued as waste and scrap and liable to duty and tax on that basis. The rate of duty and tax chargeable shall be that in force at the time the declaration for home use is accepted by the competent authority.
- (b) Where a customs debt is incurred in respect of:
- (i) goods in the unaltered state;
  - (ii) secondary compensating products; or
  - (iii) unaccounted for losses or deficiencies,

the amounts of those debts shall be determined on the basis of the items of charge elements appropriate to the import goods at the time of acceptance of the declaration to the placing of the goods under the inward processing procedure.

## **Division 4 – Processing Operations Outside the Customs territory**

### **Temporary Exportation for Further Processing**



- 192.** (1) Some or all of the compensating products or goods in the unaltered state may be temporarily exported for the purpose of further processing outside the customs territory if the competent authorities so authorises, in accordance with the conditions laid down in the outward processing provisions.
- (2) Where a customs debt is incurred in respect of re-imported products, the following shall be charged:
- (a) import duties and taxes on the compensating products or goods in the unaltered state referred to in sub regulation (1), shall be calculated in accordance with regulation 190; and
- (b) import duties and taxes on products re-imported after processing outside the customs territory, the amount of which shall be calculated in accordance with the provisions relating to the outward processing procedure, on the same conditions as would have applied had the products exported under the latter procedure been cleared for home use before such export took place.

## **Part IX – Processing for Home Use**

### **Procedure for Processing for Home Use and Determination of Duty Liability**

**193.** The procedure for processing of goods for home use shall allow non-Common Market goods to be used in the customs territory in operations which alter their nature or state, without their being subject to import duties and taxes or commercial policy measures and shall allow the products resulting from such operations to be cleared for home use at the rate of import duty and tax applicable to them in their processed or altered state. Such products shall be termed processed products.

### **Determination of Customs Value for Processed Products**

**194.** The value of processed products for duty and tax purposes shall be determined, at the choice of the declarant in the following manner:

- (a) the customs value determined at or about the same time of identical or similar goods produced in any third country;

- (b) the selling price, provided that it was not influenced by a relationship between the buyer and seller;
- (c) the selling price in the customs territory of identical or similar goods, provided that it was not influenced by a relationship between the buyer and the seller; or
- (d) the customs value of the import goods plus the processing costs;
- (e) For the purposes of this regulation, 'the processing costs' means all costs incurred in making the processed product, including overheads and the value of any Common Market goods used.

### **List of Goods Qualifying for Processing for Home Use Procedure**

**195.** The cases in and specific conditions under which the procedure for which processing for home use may be used shall be determined in accordance with the Committee procedure.

### **Authorisation for Processing for Home Use**

**196.** Authorisation for processing for home use shall be granted at the request of the person who carries out the processing or arranges for it to be carried out.

### **Conditions for Granting Authorisation**

**197.** Authorisation shall be granted only:

- (a) to a person established in Common Market;
- (b) where the import goods can be identified in the processed products;
- (c) where the competent authorities are able to satisfy themselves that the products resulting from the processing of goods for home use have been obtained from the import goods;
- (d) where the goods cannot be economically restored after processing to their description or state as it was when they were placed under the procedure;

- (e) where the use of the procedure cannot result in circumvention of the effect of the rules governing origin and quantitative restrictions applicable to the import goods;
- (f) where the necessary conditions for the procedure help to create or maintain processing activity in Common Market without adversely affecting the essential interests of Common Market producers of equivalent goods (economic conditions). The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the Committee procedure.

### **Rate of Yield**

**198.** Regulation 188 (1) and (2) and Regulation 217 shall apply *mutatis mutandis*.

### **Taxation Elements for Goods in an Unaltered State or at an Intermediate Stage of Manufacture**

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

### **Application of Preferential Tariff Rates**

- 200.** (1) Where the import goods qualified for preferential tariff treatment when they were placed under the procedure for processing for home use, and such preferential tariff treatment is applicable to products identical to the processed products cleared for home use, the import duties and taxes to which the processed products are subject shall be calculated by applying the rate of duty and tax applicable under that treatment.
- (2) If the preferential tariff treatment referred to in sub regulation (1) in respect of the import goods is subject to tariff quotas or tariff ceilings, the application of the rate of duty and tax referred to in sub regulation (1) in respect of the processed products shall also be subject to the condition that the said preferential tariff treatment is

applicable to the import goods at the time of acceptance of the declaration of clearance for home use.

- (3) The quantity of import goods actually used in the manufacture of the processed products cleared for home use shall be charged against the tariff quotas or ceilings in force at the time of acceptance of the declaration of clearance for home use and no quantities shall be counted against tariff quotas or ceilings opened in respect of products identical to the processed products.

### **Termination of Processing of Goods for Home Use Procedure**

**201.** In accordance with regulation 164, the procedure for processing of goods for home use is discharged when a new approved customs procedure, including clearance for home use, is assigned either to the goods placed under the arrangement or to compensating products or processed products placed under it.

### **Treatment of Waste and Scrap**

**202.** Any waste or scrap resulting from the processing of goods for home use shall be liable, if cleared for home use, to the import duties and taxes that would be applicable to such waste or scrap imported into the Common Market at the time of acceptance of the declaration for home use.

## **Part XI – Temporary Admission**

### **Temporary Admission Procedure**

**203.** The temporary admission procedure shall allow the use in the customs territory, with total or partial relief from import duties and taxes, and without their being subject to commercial policy measures, of non Common Market goods intended for re-export without having undergone any change except normal depreciation due to the use made of them. Such goods shall be imported for a specific purpose and shall be intended for re-exportation within a specified period.

### **Authorisation for Temporary Admission**

**204.** Authorisation for temporary admission shall be granted by the competent authority of a Member State at the request of the person who uses the goods or who arranges for them to be used.

### **Requirement of Identification**

- 205.** (1) The competent authorities shall refuse to authorise the use of the temporary admission procedure where it is impossible to ensure that the goods can be identified.
- (2) Notwithstanding the provisions of sub regulation (1), the competent authorities may authorise the use of the temporary admission procedure where, in view of the nature of the goods or of the operations to be carried out, the absence of identification measures is not liable to give rise to any abuse of the procedure.

### **Prescribed Period for Temporary Admission**

- 206.** (1) Goods imported under the temporary admission procedure may stay in the customs territory for a period not exceeding twelve months from the time of importation.
- (2) The competent authorities may grant an extension on submission of a substantiated request by the holder of the authorisation.

### **Total Relief on Temporary Admission**

**207.** The Committee shall determine the cases, circumstances and conditions under which the temporary admission procedure may be used with total relief from import duties and taxes.

### **Partial Relief on Temporary Admission**

- 208.** (1) Use of the temporary admission procedure with partial relief from import duties and taxes shall be granted in respect of goods which, while remaining the property of the person established outside the customs territory, are not covered by the provisions adopted in accordance with the Committee procedure referred to in regulation 207 or which are covered by such provisions but do not fulfil all the conditions provided for therein for the grant of temporary admission with total relief.
- (2) The list of goods in respect of which the temporary admission procedure with partial relief from import duties may not be used shall be drawn up in accordance with the Committee procedure.

### **Calculation of Partial Relief Liability**

- 209.** (1) The amount of import duties and taxes payable in respect of goods placed under the temporary admission procedure with partial relief from import duties and taxes shall be determined by the Committee procedure, for every month or fraction of a month during which the goods have been placed under the temporary importation procedure with partial relief, of the amount of duties and taxes which would have been payable on the said goods had they been cleared for home use on the date on which they were placed under the temporary importation procedure.
- (2) The amount of import duties and taxes to be charged shall not exceed that which would have been charged if the goods concerned had been cleared for home use on the date on which they were placed under the temporary admission procedure, excluding any applicable interest.
- (3) Transfer of the rights and obligations deriving from the temporary admission procedure pursuant to regulation 164 shall not mean that the same relief arrangements shall be applied to each of the periods of use to be taken into consideration.
- (4) Where the transfer referred to in sub regulation (3) is made with partial relief for both persons authorised to use the procedure during the same month, the holder of the initial authorisation shall be liable to pay the amount of import duties and taxes due for the whole of that month.

### **Taxation Elements and Amount of Customs Debt**

- 210.** (1) Where a customs debt is incurred in respect of import goods, the amount of such debt shall be determined on the basis of the taxation elements appropriate to those goods at the time of acceptance of the declaration of their placing under the temporary admission procedure.
- (2) Where the provisions of regulation 207 apply, the amount of the debt shall be determined on the basis of the taxation elements appropriate to the goods in question at the time referred to in regulation 297.
- (3) Where, for a reason other than the placing of goods under the temporary admission procedure with partial relief from import duties and taxes, a customs debt is incurred in respect of goods placed under the said procedure, the amount of that debt shall be equal to

the difference between the amount of duties calculated pursuant to sub regulation (1) and that payable pursuant to regulation 209.

### **Provision of Security for Temporary Admission**

**211.** The competent authorities of Member States may require deposit of security for the temporary admission of goods under total or partial relief of duties and taxes.

### **Termination of the Procedure**

**212.** The temporary admission procedure may be terminated by lodging a goods declaration for re-exportation of the imported goods or by placing the imported goods under another approved customs procedure, subject to compliance with the conditions and formalities applicable in each case.

## **Part XI – Outward Processing**

### **Division 1 – General**

#### **Scope of Outward Processing Procedure and Definitions**

- 213.** (1) The outward processing procedure shall, without prejudice to the provisions governing specific fields relating to the standard exchange system laid down in regulations 192, 222, 223, 224, 225, 226 and 227, allow Common Market goods to be exported temporarily from the customs territory in order to undergo processing operations and the products resulting from those operations to be cleared for home use with total or partial relief from import duties and taxes; and
- (2) Temporary exportation of Common Market goods shall entail the application of export duties and taxes, commercial policy measures and other formalities for the exit of Common Market goods from the customs territory.

#### **Goods Excluded from Outward Processing**

- 214.** (1) The outward processing procedure shall not be open to Common Market goods:
- (a) whose export gives rise to repayment or remission of import duties and taxes;

- (b) which, prior to export, were cleared for home use with total relief from import duties by virtue of end use, for as long as the conditions for granting such relief continue to apply.
- (2) However, derogations from sub regulation (1) (b) may be determined in accordance with the Committee procedure.

## **Division 2 – Grant Authorisation**

### **Authorisation for Outward Processing Procedure**

- 215.** (1) Authorisation to use the outward processing procedure shall be issued at the request of the person who arranges for the processing operations to be carried out.
- (2) By way of derogation from sub regulation (1), authorisation to use the outward processing procedure may be granted to another person in respect of goods of Common Market origin within the meaning of Part I of Chapter 6 of these Regulations where the processing operation consists in incorporating those goods into goods obtained outside the customs territory and imported as compensating products, provided that use of the procedure helps to promote the sale of export goods without adversely affecting the essential interests of Common Market producers of products identical or similar to the imported compensating products.
- (3) The cases in which and the arrangements under which sub regulation (2) shall apply shall be determined in accordance with the Committee procedure.

### **Conditions for Granting Authorisations**

- 216.** Authorisation shall be granted only:
- (a) to persons established in the Common Market;
- (b) where it is considered that it will be possible to establish that the compensating products have resulted from processing of the temporary export goods:
- (c) Provided that the cases in which derogations from this paragraph may apply and the conditions under which such derogations shall apply shall be determined in accordance with the Committee procedure; and



- (d) where authorisation to use the outward processing procedure is not liable to cause serious harm to the essential interests of Common Market processors.

### **Division 3 – Operation of the Procedure**

#### **Establishment of the Rate of Yield and Period for Exportation**

- 217.** (1) The competent authorities shall specify the period within which the compensating products shall be re-imported into the customs territory and may extend that period on submission of a duly substantiated request by the holder of the authorisation.
- (2) The competent authorities shall set either the rate of yield of the operation or, where necessary, the method of determining that rate.

#### **Conditions for Granting Total or Partial Relief from Duties**

- 218.** (1) The total or partial relief from import duties and taxes provided for in regulation 219 (1) shall be granted only where the compensating products are declared for clearance for home use by or on behalf of:
- (a) the holder of the authorisation; or
- (b) any other person established in the Common Market provided that that person has obtained the consent of the holder of the authorisation and the conditions of the authorisation are fulfilled.
- (2) The total or partial relief from import duties and taxes provided for in regulation 219 shall not be granted where one of the conditions or obligations relating to the outward-processing procedure is not fulfilled, unless it is established that the failures have no significant effect on the correct operation of the said procedure.

#### **Calculation of Total or Partial Relief from Duties**

- 219.** (1) The total or partial relief from import duties and taxes in regulation 213 shall be effected by deducting from the amount of the import duties and taxes applicable to the compensating products cleared for home use the amount of the import duties and taxes that would be applicable on the same date to the temporary export goods if they were imported into the customs territory from the country in which they underwent the processing operation or last processing operation.

- (2) The amount to be deducted pursuant to sub regulation (1) shall be calculated on the basis of the quantity and nature of the goods in question on the date of acceptance of the declaration placing them under the outward-processing procedure and on the basis of the other items of charge applicable to them on the date of acceptance of the declaration relating to the clearance for home use of the compensating products.
- (3) The value of the temporary export goods shall be that taken into account for those goods in determining the customs value of the compensating products in accordance with regulation 77 (1) (b)(i) or, if the value cannot be determined in that way, the difference between the customs value of the compensating products and the processing costs determined by reasonable means:

Provided that:

- (a) certain charges determined in accordance with the Committee procedure shall not be taken into account in calculating the amount to be deducted;
  - (b) where, prior to being placed under the outward processing procedure, the temporary export goods were cleared for home use at a reduced rate by virtue of their end use, and for as long as the conditions for granting the reduced rate continue to apply, the amount to be deducted shall be the amount of import duties and taxes actually levied when the goods were cleared for home use.
- (4) Where temporary export goods could qualify on their clearance for home use for a reduced or zero rate of duty by virtue of their end use, that rate shall be taken into account provided that the goods underwent operations consistent with such an end-use in the country where the processing operation or last such operation took place.
  - (5) Where compensating products qualify for a preferential tariff measure and the measure exists for goods falling within the same tariff classification as the temporary export goods, the rate of import duty or tax to be taken into account in establishing the amount to be deducted pursuant to paragraph 1 shall be that which would apply if the temporary export goods fulfilled the conditions under which that preferential measure may be applied.

- (6) This regulation shall be without prejudice to the application of provisions, adopted or liable to be adopted in the context of trade between the Common Market and third countries, which provide for relief from import duties and taxes in respect of certain compensating products.

#### **Total Relief from Duties on Repairs**

- 220.** (1) Where the purpose of the processing operation is the repair of the temporary export goods, they shall be cleared for home use with total relief from import duties and taxes where it is established to the satisfaction of the competent authorities that the goods were repaired free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect.
- (2) Sub regulation (1) shall not apply where account was taken of the defect at the time when the goods in question were first cleared for home use.

#### **Partial Relief from Duties on Repairs**

- 221.** (1) Where the purpose of the processing operation is the repair of temporary export goods and such repair is carried out in return for payment, the partial relief from import duties and taxes provided for in regulation 219 shall be granted by establishing the amount of the duties and taxes applicable on the basis of the taxation elements pertaining to the compensating products on the date of acceptance of the declaration of clearance for home use of those products and taking into account, as the customs value, an amount equal to the repair costs, provided that those costs represent the only consideration provided by the holder of the authorisation and are not influenced by any relationship between that holder and the operator.
- (2) By way of derogation from regulation 219, the Committee procedure maybe used to determine the cases in and specific conditions under which goods may be cleared for home use following an outward processing operation, with the cost of the processing operation being taken as the basis for assessment for the purpose of applying the Common External Tariff.

## **Division 4 – Outward Processing with the use of the Standard Exchange System**

### **Replacement Product as Compensating Product**

- 222.** (1) Under this regulation and regulations 223, 224, 225, 226 and 227, the standard exchange system shall permit an imported product, hereinafter referred to as a 'replacement product', to replace a compensating product.
- (2) The competent authorities shall allow the standard exchange system to be used where the processing operation involves the repair of Common Market goods.
- (3) Without prejudice to regulation 227, the provisions applicable to compensating products shall also apply to replacement products.
- (4) The competent authorities shall, under the conditions they lay down, permit replacement products to be imported before the temporary export goods are exported (prior importation).
- (5) In the event of prior importation of a replacement, security shall be provided to cover the amount of the import duties and taxes.

### **Characteristics of and Classification Requirements for Replacement Product**

- 223.** (1) Replacement products shall have the same tariff classification, be of the same commercial quality and possess the same technical characteristics as the temporary export goods had the latter undergone the repair in question.
- (2) Where the temporary export goods have been used before export, the replacement products shall also have been used and may not be new products.
- (3) The competent authorities may grant derogations from this regulation if the replacement product has been supplied free of charge either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect.

### **Authorisation of Standard Exchange Arrangements**

**224.** Standard exchange shall be authorised only where it is possible to verify that the conditions laid down in regulation 222(4) have been fulfilled.

### **Replacement Products and Prior Importation**

- 225.** (1) In the case of prior importation, the export goods shall be temporarily exported within a period of two months from the date of acceptance by the competent authorities of the declaration relating to the clearance of the replacement products for home use.
- (2) Where exceptional circumstances warrant, the competent authorities may, at the request of the person concerned, extend within reasonable limits the period referred to in sub regulation (1).

### **Duty Basis in the Event of Prior Importation**

**226.** In the case of prior importation and where regulation 219 is applied, the amount to be deducted shall be determined on the basis of the items of charge applicable to the temporary export goods on the date of acceptance of the declaration placing them under the procedure.

### **Exceptions**

**227.** Regulations 215 (2) and 216 (b) shall not apply in the context of standard exchange.

### **Application of Non-Tariff Measures**

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

## CHAPTER 23

### FREE ZONES

#### Provisions Relating to Free Zones

229. (1) In a free zone:
- (a) non-Common Market goods shall be considered, for the purpose of import duties and commercial policy import measures, as not being in the customs territory, provided they are not cleared for home use or placed under another customs procedure or used or consumed under conditions other than those provided for in customs regulations;
  - (b) Common Market goods, for which such provision is made under Common Market legislation governing specific fields of quality, for purposes of being placed in a free zone, shall be subject to measures normally attaching to the export of goods.
- (2) Member States may designate parts of the customs territory as free zones.
- (3) Member States shall determine the area covered by each zone.
- (4) The competent authorities of a Member State shall permit free zones to be established under customs control and operate under such conditions as may be prescribed by the Committee.
- (5) Entry into a commercial free zone shall allow total relief from payment of duty and taxes on all imported goods entering the zone provided that the operations shall be limited to that which is necessary for the preservation of the imported goods and the usual form of handling to improve their packaging or marketable quality or prepare them for shipment, such as breaking bulk, grouping of packages, sorting, grading, and repacking for subsequent sale or re-export.
- (6) Entry into an industrial free zone shall allow total relief from payment of duty and taxes on all imported goods entering the zone, except motor vehicles, used or consumed directly in the production of goods for export and provided that operations shall be limited to processing and manufacturing of goods from articles or materials

imported, used or consumed in the processing or manufacturing of goods for direct export.

- (7) Entry into the free zones referred to in sub regulations (5) and (6), shall also allow total relief from payment of duties and taxes for:
  - (a) all goods, articles and materials relating to the authorised activity and in the construction of the facilities within the zone; and
  - (b) all capital equipment and machinery related to activities within the zone.
- (8) Goods entering a free zone shall be exempt from all import and export licensing requirements and other restrictions, other than those restrictions imposed on grounds of public morality, public order, public security, public hygiene or health, animal or plant health, life considerations or related to the protection of patents, trade marks, copy rights and other intellectual property.
- (9) Goods imported into or produced in a free zone which are not exported, shall where it is in the public interest, be diverted for disposal on prior approval by the competent authority in a Member State and such goods shall be treated for customs purposes as goods imported from outside the customs territory .
- (10) Subject to sub regulation (13), before any free zone goods are removed from a free zone for:
  - (a) home use; or
  - (b) transfer to another approved customs procedure providing for suspension of, or relief from, customs duty and tax, the goods shall be entered for such purpose and all the customs formalities associated with the procedure completed.
- (11) Where a customs debt is incurred in respect of non-Common Market goods and the customs value of such goods is based on a price actually paid or payable which includes the cost of warehousing or of preserving goods while they remain in the free zone, such costs shall not be included in the customs value if they are shown separately from the price actually paid or payable for the goods.
- (12) Where the said goods have undergone, in a free zone, one of the usual forms of handling within the meaning of regulation 177, the nature of the goods, the customs value and the quantity to be taken

into consideration in determining the amount of import duties and taxes shall, at the request of the declarant and provided that such handling was covered by an authorisation granted in accordance with that regulation, be those which would be taken into account in respect of those goods, at the time referred to in regulation 297, had they not undergone such handling.

- (13) Save as the Committee procedure may otherwise allow and subject to such conditions as they may impose, no goods shall be removed from a free zone until any customs duty and tax chargeable thereon has been paid; and where the goods have been entered for home use, such duty and tax shall be paid at the time the requisite declaration is delivered.
- (14) The applicable export formalities and any prohibition or restriction on export of goods, imposed by or under any provision for the time being in force, shall apply to goods removed from a free zone for export.
- (15) No goods shall be removed from a free zone except with the authority of and in accordance with any requirements made by the proper officer and on completion of the requisite customs formalities for the time being in force.
- (16) Derogations from sub regulation (15) may, be determined in accordance with the rules established by the Committee.

## **CHAPTER 24**

### **RELIEF FROM CUSTOMS DUTIES**

#### **General Provision for Relief in Special Circumstances**

**230.** The Council shall determine the cases in which, on account of special circumstances, relief from import or export duties and taxes shall be granted where goods are cleared for home use or exported.

#### **Temporary Export for Repairs under Specified Conditions with Total or Partial Relief on Importation**

**231.** Where a temporary export declaration has been lodged, under conditions prescribed by the competent authorities, and the goods are re-imported into the



customs territory within the prescribed period of their exportation, total or partial relief of import duties and taxes shall be granted where:

- (a) the re-imported goods were repaired, and such repairs could not have been undertaken in the Common Market;
- (b) equipment or other goods were added to the exported goods that could not be added within the Common Market; or
- (c) processing or manufacturing was done on the re-imported goods and the goods exported were the product of, and originated within the Common Market.

#### **Relief from Duty on Emergency Running Repairs Carried out in a Third Country**

- 232.** (1) Subject to the provisions of sub regulation (2), the total relief from import duties and taxes shall be granted in respect of any commercial means of transport re-imported into the customs territory after exportation where the returned aircraft, vessel, train, commercial vehicle or conveyance was repaired outside the customs territory as a result of an emergency and repairs were necessary to ensure a safe return to the customs territory.
- (2) Duty and tax shall not be charged on operations necessarily carried out on goods outside of the Common Market for their preservation or maintenance provided such operations do not enhance the value of the goods at the time of exportation.
- (3) Duty and tax shall be charged on all unnecessary repairs and maintenance carried out outside of the customs territory.
- (4) The customs value of the cost of repairs and maintenance shall be established in accordance with the provisions of Chapter 7 of these Regulations.
- (5) The rate of duty and tax shall be that in force at the time of acceptance of the declaration covering the re-importation.

## CHAPTER 25

### RETURNED SAME STATE GOODS

#### Scope of Re-importation and Same State Return Provisions

- 233.**
- (1) Goods that are eligible for re-importation in the same state can be goods that were in free circulation or were compensating products.
  - (2) For purposes of this Chapter 're-importation in the same state' means the customs procedure under which temporarily exported goods may be taken into home use free of import duties and taxes, provided that they have not undergone any manufacturing, processing or repairs outside the customs territory and provided that any sums chargeable as a result of repayment or remission of, or of conditional relief from, duties and taxes or of any subsidies granted at exportation shall be paid.
  - (3) Situations involving goods re-imported in the same state following their exportation with notification of intended return shall include:
    - (a) Packings, containers, pallets, and commercial road vehicles which are in use for the international transport of goods;
    - (b) Goods displayed abroad (and equipment for use in such a display) at exhibitions, fairs, meetings or similar events of a commercial, technical, religious, educational, scientific, cultural or charitable nature; or
    - (c) Professional equipment.
  - (4) Situations where goods may be returned as a result of unforeseen circumstances which arise after they are exported shall include:
    - (a) An exporter encountering unforeseen or unforeseeable difficulties which may lead to the re-importation of goods which had been exported outright, such as where they have remained unsold, where the consignee refuses them as not conforming to contract, or where they have been damaged during transportation; or
    - (b) Goods may also be re-imported as a result of a new transaction providing for their return to the customs territory

from which they were exported, or because they were exported inadvertently.

#### **Qualifying Conditions for Relief**

- 234.** (1) Goods that are re-imported or returned in the same state into the customs territory shall be entitled to entry free of import duties and taxes and to a repayment of any duties and taxes paid on exportation, provided that:
- (a) the goods have not undergone any manufacturing, processing or repairs and are in the same state as when exported;
  - (b) the re-imported or returned goods can be identified by an officer as the goods that were exported;
  - (c) any amount of duties and taxes chargeable as a result of any repayment or remission, or conditional relief of any duties and taxes or any subsidies or any other amounts granted on exportation are paid; or
  - (d) re-importation or return occurs within a year from the time of exportation or such other period as may be determined by the competent authorities taking into account the differing circumstances of each case.
- (2) The relief from import duties provided for in sub regulation (1) shall be granted only if goods are re-imported in the state in which they were exported. The circumstances in which and the conditions under which this requirement may be waived shall be determined in accordance with the Committee procedure.
- (3) Subject to the provisions of sub regulation (1) (b), re- imported goods shall be exempt from import duties and taxes even where they represent only a portion of the goods previously exported from the customs territory.
- (4) The provision under sub regulation (3) applies where the goods consist of parts or accessories belonging to machines, instruments, apparatus or other products previously exported from the customs territory.
- (5) (a) The competent authorities shall not refuse the re-importation or return of goods in the same state solely on the grounds that the goods have been used, damaged, or have deteriorated during their stay in a third country.

- (b) The competent authorities shall satisfy themselves that the use, damage or deterioration of the goods is consistent with the declared purpose and use for which the goods were exported such as the wear and tear on a digger temporarily exported to carry out a building project.
- (6)
  - (a) The competent authorities may allow any person to re-import or have returned goods in the same state provided that he is duly authorised to do so and can furnish the necessary evidence to identify the goods.
  - (b) The person shall also be able to prove to the competent authorities the amount of any repayment, remission, conditional relief or subsidies granted at exportation in order for the competent authorities to determine whether any duties and taxes are payable on re-importation or return.
- (7) The competent authorities shall not require a written goods declaration for the re-importation or return in the same state of packing, containers, pallets and means of transport for commercial use which are in use for the international transport of goods, provided that the competent authorities are satisfied that the packing, containers, pallets and means of transport for commercial use were in free circulation at the time of exportation.
- (8) The relief from import duties and taxes provided for in sub regulation (1) shall not be granted in the case of:
  - (a) goods exported from the customs territory under the outward processing procedure unless those goods remain in the state in which they were exported; or
  - (b) goods which have been the subject of a Common Market measure involving their exportation to third countries. The circumstances in which and the conditions under which this requirement may be waived shall be determined in accordance with the procedure of the Committee.

## **CHAPTER 26**

### **PRODUCTS OF SEA-FISHING AND OTHER PRODUCTS TAKEN FROM THE SEA**

### **Relief from Import Duties**

**235.** The following shall be exempt from import duties and taxes when they are cleared for home use:

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

### **Re-exportation of Goods**

- 236.** (1) The competent authorities may authorise re-exportation of imported goods from the customs territory.
- (2) The re-exportation of goods in terms of sub regulation (1) shall, where appropriate, comply with all conditions and formalities relating to the export of goods, including commercial policy measures.
  - (3) The competent authorities shall prohibit re-exportation in terms of sub regulation (2) if the formalities or commercial measures referred to under that regulation so provide.
  - (4) Where goods placed under an approved customs procedure of economic importance are intended for re-export, a goods declaration shall be lodged in accordance with the prescribed provisions.
  - (5) Cases in which non-Common Market goods may be placed under a suspensive arrangement with a view to non-application of commercial policy measures on exportation may be determined in accordance with the Committee procedure.

## **CHAPTER 27**

### **PROHIBITIONS AND RESTRICTIONS**

#### **Prohibited and Restricted Exports**

- 237.** (1) Goods, the exportation of which are prohibited or restricted under:
- (a) regulation 126(2), in accordance with Article 50 of the Treaty;
  - (b) any international agreement to which the Common Market is a contracting party; or
  - (c) any other provision for the time being in force, shall not be exported outside of the customs territory.
- (2) In the case of restricted goods, exportation may be effected where the necessary authorisation covering the goods in question is produced and all customs formalities covering the exportation of the goods are complied with.

## **CHAPTER 28**

### **EXPORT PROCEDURE**

#### **Customs Supervision and Control**

**238.** Goods leaving the customs territory shall be subjected to customs supervision and control.

#### **Exports to be Covered by Customs or Summary Export Declaration**

- 239.** (1) Goods leaving the customs territory, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within that territory, shall be covered either by a customs declaration or, where a customs declaration is not required, a summary declaration.
- (2) The Committee procedure shall be used to establish:
- (a) the time limit by which the customs declaration or a summary declaration is to be lodged at the customs office of export before the goods are brought out of the customs territory;

- (b) the rules for exceptions from and variations to the time limit referred to in paragraph (a);
- (c) the conditions under which the requirement for a summary declaration may be waived or adapted; and
- (d) the cases in which and the conditions under which goods leaving the customs territory are not subject to either a customs declaration or a summary declaration,

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

#### **Office Where Export Declaration is to be Lodged**

- 240.** (1) Where goods leaving the customs territory are assigned to an approved customs procedure for the purpose of which a customs declaration is required under the customs rules, such customs declaration shall be lodged at the customs office of export before the goods are to be brought out of the customs territory.
- (2) Where the required facilities exist, the customs office of export shall be that responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment.
- (3) Subject to the approval of the competent authorities and under such conditions as they may impose, where the customs office of export is different from the customs office of exit, the customs office of export shall immediately communicate or make available electronically the necessary particulars to the customs office of exit.
- (4) The customs declaration shall contain at least the particulars necessary for the summary declaration referred to in regulation 242.
- (5) Where the customs declaration is made other than by use of a data processing technique, the customs authorities shall apply the same level of risk management to the data as that applied to customs declarations made using a data processing technique.

### **Goods not Covered by Export Declaration Require a Summary Declaration**

- 241.** (1) Where goods leaving the customs territory are not assigned to an approved customs procedure for which a customs declaration is required, a summary declaration shall be lodged at the customs office of exit before the goods are to be brought out of the customs territory.
- (2) The competent authorities may allow the summary declaration to be lodged at another customs office, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of exit.
- (3) The competent authorities may accept, instead of the lodging of a summary declaration, the lodging of a notification and access to the summary declaration data in the economic operator's computer system.

### **Summary Declaration to have a Common Data Set and Format**

- 242.** (1) Where the requisite facilities exist, the Committee procedure shall be used to establish a common data set and format for the summary declaration, containing the particulars necessary for risk analysis and the proper application of customs controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices.
- (2) The summary declaration shall be made using a data processing technique. Commercial, port or transport information may be used, provided that it contains the necessary particulars.
- (3) The competent authorities may accept paper-based summary declarations in alternative circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using a data processing technique.
- (4) The summary declaration shall be lodged by:
- (a) the exporter; or
- (b) the exporter's duly authorised customs clearing agent.



- (5) The person referred to in sub regulation (3) shall, at his request, be authorised to amend one or more particulars of the summary declaration after it has been lodged.
- (6) No amendment shall be possible after the competent authorities:
  - (a) have informed the person who lodged the summary declaration that they intend to examine the goods;
  - (b) have established that the particulars in questions are incorrect; or
  - (c) have allowed the removal of the goods.
- (7) The provisions of regulation 136(4) relating to amendments by the competent authority apply *mutatis mutandis* to this regulation.

### **Export Procedure**

- 243.** (1) The export of goods from the customs territory shall be in accordance with export procedure of the customs territory.
- (2) The export procedure shall entail the application of exit formalities including commercial policy measures and, where appropriate, export duties and taxes.
  - (3) Except for goods placed under the outward processing procedure or an internal transit procedure, all Common Market goods intended for export shall be placed under the export procedure.
  - (4) The case in which and the conditions under which goods leaving the customs territory are not subject to an export declaration shall be determined in accordance with the Committee procedure.
  - (5) Where the necessary facilities exist, the export declaration shall be lodged at the customs office responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment. Derogations shall be determined in accordance with the Committee procedure.
- 244.** Goods leaving the customs territory:
- (a) shall be subject to customs supervision and control;

- (b) may be the subject of checks by the competent authorities in accordance with the provisions in force; and
- (c) shall leave the said territory using, where appropriate, the route determined by the competent authorities and in accordance with the procedures laid down by those authorities.

### **Declaration of Goods for Export**

**245.(1)** Goods which require an export declaration shall be entered:

- (a) in such form and manner, including by electronic means into a computer or other device, as may be prescribed by the competent authority; and
  - (b) within such time as may be prescribed or such further time as the competent authorities may allow.
- (2) Every person who makes a declaration under this regulation shall:
- (a) answer any question, relevant to matters arising under these regulations or any other provision for the time being in force, asked by an officer with respect to the goods; and
  - (b) at the request of an officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any freight container or package that the officer wishes to examine.
- (3) In the case of goods to be exported under drawback, the making of any such declaration is deemed to be the making of a claim for drawback.
- (4) Unless the competent authorities in any particular case otherwise determine, no right to drawback exists in the case of goods placed on a vessel or aircraft before declaration has been made and accepted.
- (5) Except as otherwise permitted by the competent authorities, goods shall not be loaded for export until the requisite declaration has been lodged with and accepted by the competent authority.

### **Goods for Export to be Dealt with in Accordance with Declaration**

- 246.** (1) In the case of goods that have been entered for export, the person making the declaration, or the owner of the goods, as the case may be, shall forthwith export the goods to a destination outside the customs territory in accordance with the declarations and the prevailing provisions governing the exportation of goods from the customs territory.
- (2) If goods entered for export are not exported in accordance with the declaration, the person making the declaration shall immediately give notice to the proper officer of the failure to export and the reasons for it and, in any such case, the competent authority:
- (a) shall cancel or amend the declaration; and
  - (b) may, where applicable, allow the goods to be released from customs control.

#### **Export Goods not to be Re - landed**

**247.** No goods loaded for export shall, without the permission of the proper officer, be re - landed except at a place outside the customs territory.

#### **Customs Formalities and Supervision**

- 248.** (1) Goods destined to leave the customs territory shall be subject to the application of export formalities, which shall, as appropriate, include the following:
- (a) the repayment or remission of any import duties and taxes;
  - (b) the collection of export duties and taxes; and
  - (c) any formalities required under any prevailing excise provisions;
- (2) Goods leaving the customs territory shall be subject to customs supervision and control from the time the goods are presented and declared for export to the time they leave the customs territory.
- (3) Where appropriate, customs may determine the route to be used when goods are to leave the customs territory.
- (4) Clearance for export or re-exportation shall be granted on condition that the goods in question leave the customs territory in the same

condition as when the advance pre-departure declarations were accepted.

## **CHAPTER 29**

### **CLEARANCE OUTWARDS OF AIRCRAFT, VESSELS AND VEHICLES**

#### **Aircraft, Vessel or Vehicle not to Depart Without Clearance**

- 249.** (1) The master of any aircraft, vessel or vehicle shall not, except with the prior permission of the competent authorities, cause or permit his aircraft, vessel or vehicle to depart to a point or place outside the customs territory.
- (2) The master of every aircraft, vessel or vehicle proceeding to a point or place outside the customs territory shall, prior to departure:
- (a) make a declaration to the proper officer in such manner and form as may be prescribed in respect of such aircraft, vessel or vehicle and of the cargo and stores aboard;
  - (b) produce any book, document or record for the officers inspection and answer fully and truthfully any question as may be required or put to him by an officer; and
  - (c) obtain clearance outwards for the intended voyage or journey from the proper officer.
- (3) If an aircraft, vessel or vehicle in respect of which clearance outwards has been issued does not depart within thirty six hours of the time when the clearance was issued, or within such further period as the proper officer may allow, such clearance shall lapse and the master shall obtain a new clearance outwards before the aircraft, vessel or vehicle departs to a point or place outside the customs territory.

## **CHAPTER 30**

### **CUSTOMS PROCEDURE FOR CARRIAGE OF GOODS COASTWISE**

#### **Definition and Scope of Procedure**

**250.** (1) For purposes of this Chapter:

'carriage of goods coastwise' means the customs procedure under which:

- (a) goods in free circulation; and
- (b) imported goods that have not been declared under the condition that they shall be transported in a vessel other than the importing vessel in which they arrived in the customs territory; are loaded on board a vessel at a place in the customs territory and are transported to another place in the custom territory where they are then unloaded.

(2) The procedure shall not apply to the following categories of goods:

- (a) the transport of imported goods that have not been declared and which are still on board the vessel in which they arrived in the customs territory;
- (b) goods which have already been placed under an approved customs procedure such as:
  - (i) customs transit;
  - (ii) transshipment; or
  - (iii) outright exportation.

### **Treatment of Coastwise Trade**

**251.** The conveyance of goods by vessel between any coastal or shoreline ports of the Common Market shall be deemed to be coastwise traffic and all vessels in such traffic shall be deemed to be coasting vessels.

### **Procedure Where other Goods Are Carried with Coastwise Goods**

**252.** (1) The competent authorities shall allow goods to be transported under the carriage of goods coastwise procedure on board a vessel carrying other goods at the same time, provided that they are

satisfied that the goods can be identified and other requirements will be met.

- (2) The competent authorities shall require goods in free circulation being transported under the carriage of goods coastwise procedure to be segregated from other goods carried on board the vessel only when they consider it to be necessary for customs control.
- (3) Vessels may pick up coastwise goods while proceeding to the port where Imported goods on board are to be declared or may carry goods coastwise to the port at which goods will be placed under the outright exportation procedure.

#### **Conditions under Which a Coastwise Vessel may Call at a Third Country Port**

- 253.** (1) At the request of the person concerned, and subject to such conditions as the competent authorities deem necessary, the latter may allow goods to be transported under the carriage of goods coastwise procedure on board a vessel which is to call at a foreign port during its voyage coastwise.
- (2) When a vessel which is to call at a place or places outside the customs territory has been authorised to convey goods under the carriage of goods coastwise procedure, those goods should be sealed only at the request of the person concerned or when the competent authorities consider sealing to be necessary to ensure that goods cannot be removed there from or other goods added thereto without this being readily apparent.
- (3) When a vessel transporting goods under the carriage of goods coastwise procedure is forced to deviate from its intended route and to call at a place outside the customs territory, the customs may regard those goods as remaining under the carriage of goods coastwise procedure provided they are satisfied that the goods are those which were originally placed under the procedure.

#### **Designated Ports and Places for Loading and Unloading Coastwise Traffic**

- 254.** (1) National legislation shall specify the places which are approved for the loading and unloading of goods under the carriage of goods coastwise procedure and the times during which loading and unloading may be carried out.
- (2) At the request of the person concerned, the competent authority shall, in the case of a vessel carrying only goods in free circulation

under the carriage of goods coastwise procedure, allow such goods to be loaded or unloaded at any place and at any time.

- (3) At the request of the person concerned, the competent authorities shall allow goods under the carriage of goods coastwise procedure to be loaded or unloaded at a place other than that normally approved for that purpose even if the vessel is also carrying imported goods that have not been declared or goods placed under another approved customs procedure. Any expenses chargeable shall be limited to the approximate cost of the services rendered.

### **Carriage of Undeclared Goods or of Goods Placed under Another Procedure**

- 255.** (1) When a vessel transporting goods under the carriage of goods coastwise procedure is conveying imported goods that have not been declared or goods placed under any other approved customs procedure, the competent authorities shall allow goods under the carriage of goods coastwise procedure to be loaded or unloaded as soon as possible after the arrival of the vessel at the place of loading or unloading.
- (2) The competent authorities shall require the master or other person concerned to present only a single document giving details of the vessel, listing the goods to be carried under the carriage of goods coastwise procedure and stating the port or ports in the customs territory at which they are to be unloaded.
- (3) The document referred in sub regulation (2) shall:
- (a) be known as a transire; and
  - (b) once endorsed by the competent authorities, constitute the authorisation for the conveyance of the goods under the carriage of goods coastwise procedure.

### **Grant Of General Authorisation To Convey Goods Under The Carriage Of Goods Coastwise Procedure**

- 256.** (1) The competent authorities may grant a general authorisation to convey goods, under the carriage of goods coastwise procedure for vessels which trade regularly between specified ports.

- (2) When a general authorisation has been granted for a vessel, the competent authorities shall require only a list of the goods to be conveyed under the carriage of goods coastwise procedure before the goods are loaded.
- (3) In relation to goods unloaded from a vessel covered by a specific authorisation, the competent authorities shall require the master or other person concerned to present only a copy of the authorisation listing the goods to be unloaded at that port.
- (4) In the case of a vessel granted a general authorisation, only a list of the goods to be unloaded shall be required.

#### **Cases where Security is Required**

**257.** Only when the competent authorities consider it indispensable shall security be required in respect of goods in free circulation being transported under the carriage of goods coastwise procedure which would be liable to export duties and taxes if exported or which are subject to export prohibitions or restrictions.

#### **Onus of Proof of Payment of Duty**

**258.** Any goods landed from any vessel under this procedure in Common Market, shall be deemed to be imported goods upon which duties and taxes have not been paid unless it is proved otherwise to the satisfaction of the competent authorities and subject to compliance with any prevailing prohibitions and restrictions.

#### **Cases of *Force Majeure*, Third Country Stops and Change of Port of Destination**

- 259.** (1) When a vessel transporting goods under the carriage of goods coastwise procedure is forced to deviate from its intended route and to call at a place outside the customs territory, the competent authorities shall regard those goods as remaining under the carriage of goods coastwise procedure provided they are satisfied that the goods are those which were originally placed under the procedure.
- (2) When a vessel transporting goods under the carriage of goods coastwise procedure is diverted during the voyage, the competent authorities shall, at the request of the person concerned, allow such goods to be unloaded under the procedure at a place other than that originally intended. Any expenses chargeable shall be limited to the approximate cost of the services rendered.



- (3) When the transport of goods under the carriage of goods coastwise procedure is interrupted by accident or *force majeure*, the competent authorities shall require the master or other person concerned to take reasonable precautions to prevent the goods from entering into unauthorised circulation and to advise the competent authorities or other competent authorities of the nature of the accident or other circumstances which interrupted the journey.

### **Additional Powers of Officers in Relation to Coasting Vessels**

- 260.** (1) The proper officer may examine any goods carried or to be carried in a coasting vessel:
- (a) at any time while they are on board the vessel; or
  - (b) at any place in the customs territory to which the goods have been brought for shipment in, or at which they have been unloaded from the vessel.
- (2) For the purpose of examining any goods in pursuance of sub regulation (1), the proper officer may require any container to be opened or unpacked and any such opening or unpacking and any repacking shall be done by or at the expense of the proprietor of the goods.
- (3) The proper officer:
- (a) may board and search a coasting vessel at any time during its voyage; and
  - (b) may at any time require any document which should properly be on board a coasting vessel to be produced or brought to him for examination.

## **CHAPTER 31**

### **IMPORTATION AND EXPORTATION OF GOODS BY POST**

#### **Postal Goods Subject to Customs Control and Supervision**

**261.** Goods imported or exported through the postal service shall be subject to customs control and supervision.

### **Regulation Provisions Applicable to Postal Traffic**

**262.** The provisions of this Chapter and any implementing regulations shall apply *mutatis mutandis* to goods brought into or sent out of the customs territory by post from or to any place outside the customs territory as they apply in relation to goods otherwise imported or exported into or out of the customs territory from or to any such place.

### **Appointment of Foreign Parcel Posts**

**263.** The competent authorities shall by agreement with a postal operator, designate the post offices or other places at which the postal items may be cleared.

### **Clearance of Postal Items**

**264.** The clearance of postal items shall be carried out as rapidly as possible and customs control shall be restricted to necessary measures required to ensure compliance with the provisions in force.

### **Postal Operator Responsible for the Production and Handling of Postal Items**

- 265.** (1) A postal operator shall be responsible for the conveyance, storage and production to the competent authority of postal items and, at the request of the competent authorities, may open them for purposes of customs control.
- (2) Notwithstanding the foregoing provisions, an officer may select, open and examine any postal item that he deems fit.
- (3) The competent authorities shall not, as a general rule, require the following categories of imported postal items to be produced:
- (a) postcards and letters containing personal messages only; or
  - (b) literature for the blind; or
  - (c) printed papers not subject to duties and taxes

### **Reports of Postal Services**

**266.** Any public or private body authorised by the competent authority to provide postal services shall report, by means of a manifest or in any other approved form, all goods or parcels arriving or departing from the customs territory and shall produce such goods to the proper officer for customs clearance.

### **Officers' Powers in Relation to Postal Items**

**267.** An officer may, whether accompanied by the postal operator or otherwise, do any of the following acts:

- (a) open any postal item irrespective of whether the addressee is present or not;
- (b) examine, sample and list the contents of any postal item;
- (c) assess any duties and taxes payable on the goods contained in any postal item;
- (d) detain any such goods for payment of any duties and taxes chargeable but not paid or otherwise secured to the satisfaction of the competent authorities;
- (e) detain any such goods pending enquiries relating to the dutiable or taxable nature of the said goods or whether any prohibitions or restrictions apply to the goods; and
- (f) seize any goods that are liable to forfeiture.

### **Declaration of Postal Items**

- 268.** (1) Where all the information required by the proper officer to determine and assess the duty liability of the goods is available from forms CN22 or CN23 and supporting documents, forms CN22 or CN23 shall be construed as the goods declaration except in the cases of:
- (a) goods having a value exceeding an amount specified by the Committee;
  - (b) goods which are subject to prohibitions or restrictions on importation;
  - (c) imported goods to be placed under an approved customs procedure other than clearance for home use.
- (2) For the importation of goods referred to in sub regulation (1) (a)(b) and (c), a separate goods declaration shall be required.

### **Exemption from the Requirement to Produce Postal Items**

**269.** The competent authorities may waive the requirement to produce postal goods at the time of exportation for customs supervision or control, except in the following circumstances:

- (a) goods the exportation of which shall be certified;
- (b) goods having a value exceeding an amount determined by the Committee procedure;
- (c) goods which are selected for customs control on a selective or random basis; or
- (d) goods which are subject to export prohibitions or restrictions or to export duties and taxes.

## **CHAPTER 32**

### **SECURITY TO COVER CUSTOMS DEBT**

#### **Requirement of Security**

- 270.** (1) Where in accordance with customs rules the competent authorities require security to be provided in order to ensure payment of a customs debt, such security shall be provided by the person who is liable or who may become liable for that debt.
- (2) The competent authorities shall require only one security to be provided in respect of one customs debt.
- (3) Where security is provided under an approved customs procedure which may be used for specific goods in several Member States, that security shall, as may be prescribed by the Committee, be valid in the Member State concerned.
- (4) The competent authorities may authorise the security to be provided by a person other than the person from whom it is required.
- (5) Where the person who has incurred or who may incur a customs debt is a public authority no security shall be required.

- (6) The competent authorities may waive the requirement for the provision of security where the amount of the security does not exceed the amount of security prescribed in accordance with the Committee procedure.

### **Cases of Optional Security**

- 271.** (1) Where customs law or prevailing provisions provide that the provision of security is optional, such security shall be required at the discretion of the competent authorities in so far as they consider that a customs debt which has been or may be incurred is not likely to be paid within the prescribed period.
- (2) Where the security referred to in regulation 270(1) is not required, the competent authorities may require, from the person referred to in the said sub regulation, an undertaking to comply with the obligations which that person is legally obliged to fulfil.
- (3) The security referred to in sub regulation (1) shall be required:
- (a) at the time of application of the rules requiring such security to be provided; or
- (b) at any subsequent time when the competent authorities find that the customs debt which has been or may be incurred is not certain to be paid within the prescribed period.

### **Approval to Use Security for Two or More Transactions**

**272.** At the request of the person referred to in regulation 270(1) and (4), the competent authorities shall allow comprehensive security to cover two or more transactions in respect of which a customs debt has been or may be incurred.

### **Amount of Security**

- 273.** (1) Where any provision in force makes it compulsory for security to be provided, and subject to any specific provisions laid down for transit in accordance with the Committee procedure, the competent authorities shall fix the amount of security at a level equal to:
- (a) the precise amount of the customs debt or debts in question, where that amount can be established with certainty at the time when the security is required; and

- (b) in other cases, the maximum amount, as estimated by the competent authorities, of the customs debt or debts which has been or may be incurred.
- (2) Where comprehensive security is provided for customs debts which vary in amount over time, the amount of such security shall be set at a level enabling the customs debts in question to be covered at all times.
- (3) Where customs law or any other provision for the time being in force provides that the provision of security is optional and the competent authorities require security to be provided, the amount of the security shall be fixed by those authorities so as not to exceed the level provided for in sub regulation (1) .
- (4) The circumstances in which, and the conditions under which a flat-rate security may be provided, shall be determined in accordance with the Committee procedure.
- (5) Notwithstanding the provisions of this regulation, the competent authorities may determine the level of security of a good behaviour bond.

### **Form of Security**

- 274.** (1) Security may be provided in the form of:
- (a) a cash deposit; or
  - (b) a bank guarantee; or
  - (c) a bond; or
  - (d) any combination of paragraphs (a), (b) and (c) of this sub regulation.
- (2) Subject to sub regulation (1) security may, with the approval of the competent authorities, be given to cover any other transactions which the person giving the security may enter into within such period and for such amount as determined by the competent authorities.
- (3) The forms of security specified by the competent authorities shall be sufficient for all purposes of a bond or guarantee under these Regulations and shall bind the guarantor thereto.

- (4) Every security shall be valid for such period as may be specified in the bond or guarantee and, subject to sub regulation (2), may be reviewed.

### **Cash Deposit in Local Currency**

- 275.** (1) A cash deposit shall be made in the currency of the Member State in which the security is required.
- (2) The following shall be deemed equivalent to a cash deposit:
- (a) submission of a cheque the payment of which is guaranteed by the institution on which it is drawn in any manner acceptable to the competent authorities; and
  - (b) submission of any other instrument recognised by those authorities as a means of payment.
- (3) Security in the form of a cash deposit or payment deemed equivalent to a cash deposit shall be given in accordance with the provisions in force in the Member State in which the security is required.

### **Choice of Security**

- 276.** (1) A person required to provide security shall be free to choose between the types of security laid down in regulation 274(1), provided that such security is recognised by the competent authorities as a means of payment.
- (2) The competent authorities may refuse to accept the type of security proposed where it is incompatible with the proper functioning of the approved customs procedure concerned.
- (3) The competent authorities may require that the type of security chosen be maintained for a specific period.

### **Joint and Several Liability and Circumstances in which the Guarantor and Security Shall be Replaced**

- 277.** (1) A guarantor shall undertake in writing to pay jointly and severally



with the debtor the secured amount of a customs debt which the debtor fails to pay.

- (2) A guarantor shall be a third person established in the Common Market and approved by the competent authorities of Member States.
- (3) The competent authorities may refuse to approve the guarantor or type of security proposed where the guarantor does not appear certain to ensure payment of the customs debt within the prescribed period.
- (4) If any person being a guarantor:
  - (a) dies; or
  - (b) becomes incapacitated; or
  - (c) becomes bankrupt; or
  - (d) enters into an arrangement or composition with, or for the benefit of his creditors; or
  - (e) departs from the customs territory without leaving sufficient property therein to satisfy the whole amount of the bond or guarantee, a fresh guarantor shall be required.
- (5) The competent authorities may also require fresh security where it is not satisfied with the sufficiency of any security previously given.

### **Other Forms of Security**

- 278.**
- (1) Where the rules adopted in accordance with the Committee procedure so provide, the competent authorities may accept types of security, other than those referred to in regulation 274, where such securities provide equivalent assurance that the customs debt will be paid.
  - (2) The competent authorities shall refuse the security proposed by the debtor where they do not consider that such security is likely to ensure payment of the customs debt.
  - (3) Subject to the reservation referred to in sub regulation (2), the competent authorities may accept a cash deposit without the conditions laid down in regulation 275 (1) being fulfilled.

### **Additional or New Security**

**279.** Where the competent authorities establish that the security provided does not ensure, or is no longer certain or sufficient to ensure, payment of the customs debt within the prescribed period, they shall require the person referred to in regulation 270 (1), at his option, to provide additional security or to replace the original security with a new security.

### **Discharge of Security by the Competent Authority**

- 280.**
- (1) Security shall not be released until such time as the customs debt in respect of which it was given is extinguished or can no longer arise.
  - (2) Once the customs debt is extinguished or can no longer arise, the security shall be released forthwith.
  - (3) Where the customs debt has been extinguished in part or may arise only in respect of part of the amount which has been secured, part of the security shall be released accordingly at the request of the person concerned, unless the amount involved does not justify such action.

### **Derogation from Surety**

**281.** The Committee shall prescribe the procedures in relation to derogation from surety taking into account international conventions.

## **CHAPTER 33**

### **INCURRENCE OF A CUSTOMS DEBT**

#### **Duty Point**

**282.** All goods imported into the customs territory shall be liable, *inter alia*, to import duties and taxes at the time of their entry into the customs territory.

### **Lawful Importation**

- 283.** (1) A customs debt on importation shall be incurred through:
- (a) the clearance for home use of goods liable to import duties and taxes; or
  - (b) the placing of such goods under the temporary importation procedure with partial relief from import duties and taxes.
- (2) A customs debt shall be incurred at the time of acceptance of the customs declaration in question provided the goods in question are available for examination in the normal manner, unless otherwise allowed in circumstances where there is no danger of forestalling.
- (3) The debtor shall be the declarant.
- (4) Where a customs declaration in respect of one of the procedures referred to in sub regulation (1) is drawn up on the basis of information which leads to all or part of the duties and taxes legally owed not being collected, the persons who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known that such information was false, may also be considered debtors in accordance with the provisions in force.

### **Unlawful Importation**

- 284.** (1) A customs debt on importation shall be incurred through:
- (a) the unlawful entry into the customs territory of goods liable to import duties and taxes; or
  - (b) the unlawful entry into another part of that territory of such goods located in a free zone.
- (2) For the purpose of this regulation, unlawful entry means any entry in violation of the provisions of regulations 89, 90, 103 (1) and (2) and 229 (10) and (13).
- (3) The customs debt shall be incurred at the moment when the goods unlawfully enter the customs territory.
- (4) A debtor for purposes of this regulation shall be:

- (a) the person who introduced such goods unlawfully;
- (b) the person who caused such goods to enter unlawfully;
- (c) any person who participated in the unlawful introduction of the goods and who was aware or should reasonably have been aware that such introduction was unlawful; and
- (d) 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 they had been introduced unlawfully.

### **Unlawful Removal from Customs Supervision or Control**

- 285.** (1) A customs debt on importation shall be incurred through the unlawful removal from customs supervision or control of goods liable to import duties and taxes.
- (2) The customs debt shall be incurred at the moment when the goods are unlawfully removed from customs supervision or control.
- (3) A debtor for the purposes of this regulation shall be:
- (a) the person who unlawfully removed the goods from customs supervision or control;
  - (b) the person who caused the goods to be unlawfully removed from customs supervision or control;
  - (c) any persons who participated in such unlawful removal and who were aware or should reasonably have been aware that the goods were being unlawfully removed from customs supervision or control; and
  - (d) any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been unlawfully removed from customs supervision or control; and
  - (e) where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or

from the use of the approved customs procedure under which those goods are placed.

### **Non-fulfillment of Obligations or Conditions**

- 286.** (1) A customs debt on importation shall be incurred through:
- (a) non-fulfilment of any of the obligations arising, in respect of goods liable to import duties and taxes, from their temporary storage or from the use of the approved customs procedure under which they are placed;
  - (b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty and tax by virtue of the end-use of the goods;
  - (c) in cases other than those referred to in regulation 285 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.
- (2) The customs debt shall be incurred:
- (a) at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met; or
  - (b) at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition precedent governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty and or tax, by virtue of the end-use of the goods was not in fact fulfilled.
- (3) A debtor for the purposes of this regulation shall be a person who is required, according to the circumstances:
- (a) to fulfil the obligations arising, in respect of goods liable to import duties and taxes, from their temporary storage or from the use of the approved customs procedure under which they have been placed; or
  - (b) to comply with the conditions governing the placing of the goods under that procedure.

### **Unauthorised Consumption or Use of Goods**

- 287.** (1) A customs debt on importation shall be incurred through:
- (a) the consumption or use, in a free zone, of goods liable to import duties and taxes, under conditions other than those laid down by the provisions in force.
  - (b) Where goods disappear and their disappearance cannot be explained to the satisfaction of the competent authorities, those authorities may regard the goods as having been consumed or used in the free zone.
- (2) The customs debt shall be incurred at the moment when the goods are consumed or are first used under conditions other than those laid down by the provisions in force.
- (3) A debtor for the purposes of this regulation shall be:
- (a) a person who consumed or used the goods and any person who participated in such consumption or use and who was aware or should reasonably have been aware that the goods were being consumed or used under conditions other than those laid down by the provisions in force; and
  - (b) the last person known to customs authorities to have been in possession of the goods in the event that the customs authorities are unable to identify the person referred to in sub regulation (3)(a).

### **Circumstances where no Customs Debt is incurred**

- 288.** (1) By way of derogation from regulations 206 and 285, no customs debt on importation shall be deemed to be incurred in respect of specific goods where the person concerned proves that the non-fulfilment of the obligations which arise from:
- (a) regulations 89, 90, 103 (2) and (3) and 229(10) and(13);
  - (b) keeping the goods in question in temporary storage; or
  - (c) the use of the customs procedure under which the goods have been placed, results from the total destruction or irretrievable loss of the said goods as a result of the actual

nature of the goods or unforeseeable circumstances or *force majeure*, or as a consequence of authorisation by the competent authorities.

- (2) For the purposes of this regulation, goods shall be irretrievably lost when they are rendered unusable by any person.
- (3) On importation, a customs debt shall not be deemed to be incurred in respect of goods cleared for home use at a reduced or zero rate of import duty and tax by virtue of their end-use, where such goods are exported or re-exported with the permission of the competent authorities.

### **Status of Scrap or Waste Resulting from End-use Destruction**

**289.** Where, in accordance with regulation 287 (1), no customs debt is deemed to be incurred in respect of goods cleared for home use at a reduced or zero rate of import duty and tax on account of their end-use, any scrap or waste resulting from such destruction shall be deemed to be non-Common Market goods and liable to duties, taxes, prohibitions and restrictions accordingly.

### **Credit for the Reduced Rate of Duty Paid**

- 290.** (1) Where in accordance with regulations 285 and 286 a customs debt is incurred in respect of goods cleared for home use at a reduced rate of import duty and tax on account of their end-use, the amount paid when the goods were cleared for home use shall be deducted from the amount of the customs debt.
- (2) This regulation shall apply *mutatis mutandis* where a customs debt is incurred in respect of scrap and waste resulting from the destruction of such goods.

### **Customs Debt Incurred on the Basis of an Export Declaration**

- 291.** (1) On exportation, a customs debt shall be incurred through the exportation from the customs territory, under cover of a customs declaration, of goods liable to export duties and taxes.
- (2) The customs debt referred to in sub regulation (1) shall be incurred at the time when such customs declaration is accepted.
  - (3) For the purposes of this regulation a debtor shall be;

- (a) a declarant; and
- (b) a person on whose behalf the customs declaration is made by a third party such as an agent whether authorised or not.

### **Exportation Without a Customs Declaration**

- 292.** (1) On exportation, a customs debt shall be incurred through the removal from the customs territory of goods liable to export duties and taxes without a customs declaration.
- (2) The customs debt referred to in sub regulation (1) shall be incurred at the time when the said goods actually leave the territory of the Common Market.
- (3) The debtor shall be:
- (a) the person who removed the goods; and
  - (b) any person who authorised the removal of the goods; and
  - (c) any person who participated in such removal and who was aware or should reasonably have been aware that a customs declaration had not been but should have been lodged.

### **Failure to Comply with Total or Partial Relief Conditions**

- 293.** (1) On exportation, a customs debt shall be incurred through failure to comply with the conditions under which the goods were allowed to leave the customs territory with total or partial relief from export duties and taxes.
- (2) The debt referred to in sub regulation (1) shall be incurred:
- (a) at the time when the goods reach a destination other than that for which they were allowed to leave the customs territory with total or partial relief from export duties and taxes; or,
  - (b) should the competent authorities be unable to determine that time, the expiry of the time limit set for the production of



evidence that the conditions entitling the goods to such relief have been fulfilled.

- (3) For the purposes of this regulation, a debtor shall be:
  - (a) a declarant.
  - (b) a person who on his behalf a customs declaration is made by a third party such as an agent, whether authorised or not.

### **Customs Debt Relating to Goods Subject to Prohibitions and Restriction**

- 294.** (1) The customs debt referred to in regulations 284, 285, 286, 287, 288, 292 and 293 shall be incurred even if it relates to goods subject to measures of prohibition or restriction on importation or exportation of any kind whatsoever.
- (2) A customs debt shall not be incurred on the unlawful introduction into the customs territory of counterfeit currency or of narcotic drugs and psychotropic substances which do not enter into the economic circuit strictly supervised by the competent authorities with a view to their use for medical and scientific purposes.
  - (3) For the purposes of criminal law as applicable to customs offences, a customs debt shall nevertheless be deemed to have been incurred where, under a Member State's criminal law, customs duties and taxes provide the basis for determining penalties, or the existence of a customs debt is grounds for taking criminal proceedings.

### **Favourable Tariff Treatment in the Absence of Fraud or Negligence**

**295.** Where customs law provides for favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or partial exemption from import or export duties and taxes pursuant to regulations 64, 154 and 213 or regulations 230, 231, 232, 233 and 234, such favourable tariff treatment, relief or exemption shall also apply in cases where a customs debt is incurred pursuant to regulations 284, 285, 286, 287 and 292 or 293, on condition that:

- (a) the act or omission of the person concerned involves neither fraudulent dealing nor obvious negligence; and

- (b) a person produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied.

### **Joint and Several Liability**

**296.** Where several persons are liable for payment of one customs debt, the said persons shall be jointly and severally liable for such debt.

### **Time of Incurrence of a Customs Debt and Payment of Compensatory Interest**

- 297.** (1) Save as otherwise provided by this regulation and without prejudice to sub regulation (2), the amount of the import and export duties and taxes applicable to goods shall be determined on the basis of the rules of assessment appropriate to those goods at the time when the customs debt in respect of them is incurred.
- (2) Where it is not possible to determine precisely when the customs debt is incurred, the time to be taken into account in determining the rules of assessment appropriate to the goods concerned shall be the time when the competent authorities conclude that the goods are in a situation in which a customs debt is incurred.
- (3) Where the information available to the competent authorities enables them to establish that the customs debt was incurred prior to the time when they reached that conclusion, the amount of the import and export duties and taxes payable on the goods in question shall be determined on the basis of the rules of assessment appropriate to the goods at the earliest time when existence of the customs debt arising from the situation may be established from the information available.
- (4) Compensatory interest shall be applied, in the circumstances and under the conditions to be defined in the provisions adopted under the Committee procedure, in order to prevent the wrongful acquisition of a financial advantage through deferment of the date on which the customs debt was incurred or entered in the accounts.

### **Place where Customs Debt was Incurred**

- 298.** (1) A customs debt shall be incurred:

- (a) at the place where the events from which it arises occur;
  - (b) if it is not possible to determine that place, at the place where the competent authorities conclude that the goods are in a situation in which a customs debt is incurred,
  - (c) if the goods have been entered for an approved customs procedure which has not been discharged, and the place cannot be determined pursuant to paragraphs (a) and (b) within a period of time determined, if appropriate, in accordance with the Committee procedure, at the place where the goods were either placed under the procedure concerned or were introduced into the customs territory under that procedure.
- (2) Where the information available to the competent authorities enables them to establish that the customs debt was already incurred when the goods were in another place at an earlier date, the customs debt shall be deemed to have been incurred at the place which may be established as the location of the goods at the earliest time when existence of the customs debt may be established.
- (3) The competent authorities referred to in regulation 300 are those of the Member State where the customs debt is incurred or is deemed to have been incurred in accordance with this regulation.
- (4) If a competent authority finds that a customs debt has been incurred under regulation 284 in another Member State and the amount of that debt is lower than the amount determined by the Committee procedure, the debt shall be deemed to have been incurred in the Member State where the finding was made.

## **Liability and Treatment of Inward Processing**

### **Goods for Preference Purposes**

- 299.** (1) In so far as agreements concluded between the Common Market

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

- (2) The moment when such customs debt is incurred shall be deemed to be the moment when the competent authorities accept the export declaration relating to the goods in question.
- (3) For the purposes of this regulation, a debtor shall be:
  - (a) a declarant;
  - (b) a person on whose behalf the declaration is made in the event of a declaration by a customs clearing agent,
- (4) The amount of the import duties and taxes corresponding to the customs debt referred to in this regulation shall be determined under the same conditions as in the case of a customs debt resulting from the acceptance, on the same date, of the declaration for clearance for home use of the goods concerned for the purpose of terminating the inward processing procedure.

## **CHAPTER 34**

### **RECOVERY OF CUSTOMS DEBT**

#### **Part I - Calculation, Payment and Collection of Customs Duty**

##### **Duty to be Calculated by the Declarant and Paid on a Self-assessment Basis**

- 300.** (1) All duties and taxes due on importation or exportation shall be calculated by the importer or exporter, as the case may be.

- (2) Customs checks, examinations, verifications, audits and investigations shall not relieve the importer or exporter of his legal obligation to declare his goods correctly and to pay the full amount of duties and taxes legally due in accordance with the provisions in force at the time of acceptance of his goods declaration.
- (3) Notwithstanding the provisions of sub regulations (1) and (2), the competent authorities may assess the duty and tax liabilities in defined circumstances as specified by the provisions in force such as in the case of non-commercial goods imported by post and goods in traveller's baggage.
- (4) Import and export duties and taxes shall be paid in accordance with the rates in the Common External Tariff of the Common Market for the time being in force.
- (5) The time and place of payment of duties and taxes shall be at the time and place of acceptance of the declaration, subject to any requirement regarding the production of the goods.
- (6) The amount of import or export duty and tax shall, subject to any checks by the competent authorities, be entered by the competent authorities in the accounting records or any other equivalent medium such as entry in the accounts within the prescribed period.
- (7) Sub regulation (6) shall not apply where:
  - (a) a provisional anti-dumping or countervailing duty and tax has been introduced;
  - (b) the amount of duties and taxes legally due exceeds that determined on the basis of binding information;
  - (c) the provisions adopted in accordance with the Committee procedure waive the requirements for the competent authorities to enter in the accounts, amounts of duty and tax below a given level.
- (8) The Member States shall determine the practical procedures for the declaration and recording of the amounts of duties and taxes due.

### **Declarants' Responsibilities**

**301.** The importer, exporter or holder of the approved procedure, as the case may be, shall be responsible for, *inter alia*, the following:

- (a) the completion of all the customs formalities in relation to the procedure in question in accordance with the provisions in force;
- (b) the accuracy and completeness of the particulars given in the declaration;
- (c) the authenticity of the documents produced in support of these particulars;
- (d) the calculation and payment of the duties and taxes legally due;
- (e) the supply of any information or document necessary to establish the customs classification, value, origin of the goods;
- (f) compliance with any prohibitions or restrictions for the time being in force; and
- (g) compliance with all the obligations relating to the entry of the goods in question under the procedure concerned.

### **Correction of Errors by the Competent Authority**

- 302.** (1) Where the competent authorities find an error in the goods declaration or in the assessment of the duties and taxes that will cause or has caused the collection or recovery of an amount of duties and taxes less than the legally chargeable amount, the competent authorities shall require the declarant to correct the error and pay the amount of duties and taxes demanded.
- (2) where the underpayment is a *bona fide* one and the amount involved is less than the prescribed minimum in accordance with the Committee procedure, the competent authorities waive the collection of the amount otherwise due.

### **Non-payments and underpayments to be entered into the Accounts Except in Specified Circumstances**

- 303.** (1) Where the amount of duty and tax resulting from a customs debt has not been entered in the accounts in accordance with the provisions in force or has been entered in the accounts at a level

lower than the amount legally owed, the amount of duty to be recovered or which remains to be recovered shall be entered in the accounts within two days of the date on which the competent authorities become aware of the situation and are in a position to calculate the amount legally owed and to determine the debtor such as subsequent entry in the accounts.

- (2) The time limit referred to in sub regulation (1) may be extended in accordance with the Committee procedure.
- (3) Except in the cases referred to in regulation 300 (7) (a), (b) and (c), subsequent entry in the accounts shall not occur where:
  - (a) the original decision not to enter duty in the accounts or to enter it in the accounts at a figure less than the amount of duty legally owed was taken on the basis of general provisions invalidated at a later date by a court decision;
  - (b) the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the competent authorities which could not reasonably have been detected by the person liable for payment, provided the person liable for payment acted in good faith and complied with all the provisions laid down by the provisions in force as regards the customs declaration.
  - (c) Where the preferential status of the goods is established on the basis of a system of administrative cooperation involving the competent authorities of a third country, the issue of a certificate by those competent authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of sub regulation (3) (b).
  - (d) The issue of an incorrect certificate shall not constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where, in particular, it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment.
  - (e) A person liable for payment may plead good faith when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to

ensure that all the conditions for the preferential treatment have been fulfilled.

- (f) A person liable for payment may not plead good faith if the Committee has published a notice in the *COMESA Official Gazette*, stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country.
- (g) the provisions adopted in accordance with the Committee procedure exempt the competent authority from the subsequent entry in the accounts of amounts of duty and tax less than a prescribed minimum.

### **Notification of Duty Payment**

- 304.**
- (1) Where the particulars of a goods declaration have been entered in accordance with the provisions in force, the amount of duties and taxes chargeable on the goods shall be that declared by the declarant unless the amount of duty and tax declared does not correspond to the amount determined by the authorities, either at that stage or any stage subsequent to declaration or clearance of the goods.
  - (2) The competent authorities shall notify the declarant without delay of the acceptance or rejection of the goods declaration in accordance with the provisions in force.
  - (3) Where the competent authorities have rejected a declaration the competent authorities shall set out their reasons in writing and advise the declarant accordingly in order that he may rectify the position.
  - (4) Any consequential amendments to a declaration shall, where allowed by the competent authority, be subject to any applicable penalties, fines and fees provided for by national law.
  - (5) Where provided for by the provisions in force, clearance or release of the goods by the competent authorities shall be equivalent to communication to the debtor that the amount declared by such debtor has been accepted and entered into the accounts.
  - (6) The competent authorities shall not proceed against the debtor or attempt to recover any outstanding duties and taxes deemed due



after the expiry of a period of five years from the date on which the customs debt was incurred.

- (7) The period referred to in sub regulation (6) shall be suspended from the time an appeal within the meaning of regulation 324 is lodged, for the duration of the appeal proceedings.
- (8) Where the customs debt is the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the amount may, under the conditions set out in the provisions in force, be communicated to the debtor after the expiry of the five-year period referred to in sub regulation (6).

## **Part II - Time Limit and Procedures for the Amount of Duty**

### **Period Within which Duty Should be Paid**

- 305.** (1) Payment of duties and taxes shall be effected within the following periods:
- (a) where a person is not entitled to payment facilities as provided for in terms of regulations 307, 308 and 309, payment shall be effected within the period prescribed by national law;
  - (b) Without prejudice to regulation 325, the period referred to in sub regulation (1) (a) shall not exceed 14 days following the communication of the acceptance or any other equivalent notification of the amount of duty and tax assessed and declared by the person responsible for the payment of the duties and taxes payable in accordance with the provisions in force; and
  - (c) where a person is entitled to payment facilities as provided for in terms of regulations 307, 308 and 309, payment shall be effected not later than the expiry of the period specified in relation to the facility.
- (2) The Committee may prescribe the circumstances and conditions under which payment of duties and taxes may be suspended where:
- (a) an application for remission of duty is made in terms of Chapter 36 of these Regulations; or

- (b) goods are seized with a view to subsequent forfeiture.

### **Means of Payment**

**306.** Payment shall be made:

- (a) in cash;
- (b) by adjustment of credit balance where the provisions in force so allow;
- (c) by any other means with similar discharging effects as provided for in accordance with the provisions in force.

### **Deferred Payment Facilities**

**307.** Where the amount of duty and taxes payable by the person concerned relates to goods declared for an approved customs procedure which entails the obligation to pay such duties and taxes, the competent authorities shall, at the request of an importer or exporter as the case may be, grant deferment of payment of duties and taxes under such conditions and procedures as may be prescribed by the Committee.

### **Provision of Security Covering Deferred Payment**

**308.** The granting of deferred payment facilities shall be conditional on the provision of security by an applicant.

### **Payment of Interest**

**309.** Where duties and taxes have not been paid within the prescribed period in terms of regulation 305, the competent authority shall claim interest on arrears of duties and taxes payable at such rates and on such conditions as may be prescribed by the Committee procedure.

## CHAPTER 35

### EXTINCTION OF CUSTOMS DEBT

#### Conditions for Duties and Taxes to be Extinguished

- 310.** (1) Without prejudice to the provisions in force relating to the time-barring of a customs debt and non-recovery of such a debt in the event of a legally established insolvency procedure of a debtor, a customs debt shall be extinguished:
- (a) upon payment of the amount of duties and taxes;
  - (b) by remission of the amount of duties and taxes;
  - (c) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties:
    - (i) a customs declaration is invalidated,
    - (ii) the goods, before their release, are either seized and subsequently forfeited, destroyed on the instructions of the competent authorities, destroyed or abandoned in accordance with regulation 125, or destroyed or irretrievably lost as a result of their actual nature or circumstance of *force majeure*:
  - (d) where goods in respect of which a customs debt is incurred in accordance with regulation 285 are seized upon their unlawful introduction and are subsequently forfeited.
- (2) Where goods have been seized and subsequently forfeited, a customs debt shall, for purposes of the criminal law applicable to customs offences, be deemed not to have been extinguished where, under a Member State's criminal law, customs duties provide the basis for determining penalties or the existence of a customs debt as grounds for taking criminal proceedings.

## CHAPTER 36

### REPAYMENT AND REMISSION

#### Repayments, Remissions and Time Limits

311. (1) Import and export duties and taxes shall be repaid where it is established that when such duties and taxes were paid, the amount of such duties and taxes was not legally owed or that the amount has been entered in the accounts contrary to regulation 303(2).
- (2) Import duties and taxes or export duties and taxes shall be remitted where it is established that when such duties and taxes were entered in the accounts the amount of such duties and taxes was not legally owed or that the amount has been entered in the accounts contrary to regulation 303(2).
- (3) No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.
- (4) Import duties and export duties and taxes shall be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of duties and taxes was declared to and accepted by the competent authorities in accordance with the provisions in force.
- (5) The period referred to in sub regulation (4) shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of circumstances of *force majeure*.
- (6) Where the competent authorities discover within the period referred to in sub regulation (4) that either of the situations described in sub regulations (1) and (2) exist, the competent authorities shall repay or remit on their own initiative.

### **Duty and Taxes to be Repaid or Remitted when Customs Declaration is Invalidated**

- 312.** (1) Import and export duties and taxes shall be repaid or remitted where a customs declaration is invalidated and the duties have been paid.
- (2) Repayment shall be granted upon submission of an application by the person concerned within the periods laid down for submission of the application for invalidation of the customs declaration.

### **Goods Rejected by Importer for Non conformity with Contract**

- 313.** (1) Import duties and taxes shall be repaid or remitted where it is established that the amount of such duties and taxes entered in the accounts relates to goods placed under the customs procedure in question and rejected by the importer because at the time referred to in regulation 138 they are defective or do not comply with the terms of the contract on the basis of which they were imported.
- (2) Defective goods, within the meaning of sub regulation (1) above, shall be deemed to include goods damaged before their release.
- (3) Repayment or remission of import duties and taxes shall be granted on condition that:
- (a) the goods have not been used, except for such initial use as may have been necessary to establish that they were defective or did not comply with the terms of the contract;
- (b) the goods are exported from the customs territory .
- (4) At the request of the person concerned, the competent authorities shall permit the goods to be destroyed or to be placed, with a view to re-export, under the external transit procedure or the customs warehousing procedure or in a free zone, instead of being exported.
- (5) For the purposes of being assigned one or more of the approved customs procedures provided for in sub regulation (4), the goods shall be deemed to be non-Common Market goods.
- (6) Import duties and taxes shall not be repaid or remitted in respect of goods which, before being declared to customs declaration, were imported temporarily for testing, unless it is established that the fact

that the goods were defective or did not comply with the terms of the contract could not normally have been detected in the course of such tests.

- (7) Import duties and taxes shall be repaid or remitted for the reasons set out in sub regulation (1) upon submission of an application to the appropriate customs office within twelve months from the date on which the amount of those duties and taxes was accepted by the competent authority.
- (8) The competent authorities may permit the period referred to in sub regulation (7) to be exceeded in duly justified exceptional cases.

#### **Provision for Equitable Repayments or Remissions**

- 314.** (1) Import and export duties and taxes may be repaid or remitted in situations other than those referred to in regulations 311(1), 312 and 313 and shall be:
- (a) determined in accordance with the Committee procedure;
  - (b) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (2) The situations in which this regulation may be apply and the procedures to be followed shall be defined in accordance with the Committee procedure.
  - (3) Repayment or remission may be made subject to special conditions.
  - (4) Subject to sub regulations (1),(2) and (3),duties and taxes shall be repaid or remitted upon submission of an application to the appropriate customs office within twelve months from the date on which the amount of the duties and taxes was entered in the accounts.
  - (5) The competent authorities may permit the period referred to in sub regulation (4) to be exceeded in duly justified exceptional cases.

#### **Minimum Amount of Repayment or Remission**

**315.** Import and export duties and taxes shall be repaid or remitted under the conditions laid down in this chapter only if the amount to be repaid or remitted exceeds an amount prescribed in accordance with the Committee procedure.

### **Payment of Interest Charges by Competent Authorities**

- 316.** (1) Subject to sub regulation (2), repayment by the competent authorities of amounts of import and export duties and taxes of credit interest, interest on arrears collected on payment of such duties and taxes shall not give rise to the payment of interest by those authorities.
- (2) The competent authorities shall pay interest where:
- (a) a decision to grant a request for repayment is not implemented within three months of the date of adoption of that decision; or
  - (b) national laws prescribe.
- (3) The amount of such interest referred to in sub regulation (2) shall be calculated in such a way that it is equivalent to the amount which would be charged for this purpose on the national money or financial market.

### **Repayments and Remissions made in Error**

- 317.** (1) Where a customs debt has been remitted or the corresponding amount of duty and tax has been repaid in error, the original debt shall become payable.
- (2) Any interest paid under regulation 316 shall be reimbursed.

## **CHAPTER 37**

### **DRAWBACK OF DUTY**

#### **Conditions for Drawback of Duty**

**318.** Drawback of duty shall be granted upon submission of an application to the appropriate customs office within a period of twelve months from the date of exportation or performance of the conditions on which drawback may be allowed.

#### **Scope of Drawback Provision**

**319.** Drawback of any duty and tax paid on goods or on any material used in the manufacture or processing of such goods may be granted in accordance with and subject to such limitations and conditions as may be prescribed by the Committee.

## **CHAPTER 38**

### **REBATE AND DUTY EXEMPTION**

#### **Provision for Rebates or Exemptions**

**320.** The Committee shall prescribe the provisions relating to the granting of rebates or exemptions from duty and tax and the disposal of goods.

## **CHAPTER 39**

### **PREFERENTIAL AGREEMENTS**

#### **Authority to Waive, Remit or Reduce Payment of Duty**

- 321.** (1) The Committee may, subject to any agreements between the Common Market and any third country, define the conditions under which payment of duties and taxes shall be waived, remitted or reduced.
- (2) The particulars of the agreements referred to in sub regulation (1) shall be set out in a regulation in accordance with the Committee procedure.

## **CHAPTER 40**

### **DISPUTED LIABILITIES**

#### **Payment of Duty under Protest**

**322.** Where the person responsible for paying any duties and taxes on goods disputes any additional duty and tax demanded by the competent authorities following any documentary checks on the declaration and accompanying



documents, physical examination of the goods; or any post-clearance audits or verifications, or for whatever other reason, he shall pay the additional duties and taxes demanded by the competent authority and may appeal their decision in accordance with the provisions of regulation 324.

## **CHAPTER 41**

### **IMPOSITION OF ADMINISTRATIVE FINES AND PENALTIES**

#### **Provision for Fines and Penalties on Underpayment**

- 323.** (1) Where an underpayment of duties and taxes arises as a result of the incorrect classification, undervaluation or a false claim to preferential tariff treatment, the persons responsible for payment of duties and taxes in accordance with the provisions of Chapter 33 of these Regulations shall pay the outstanding amounts.
- (2) Payment of the amounts referred to in sub regulation (1) shall be without prejudice to any criminal, civil or administrative actions provided for by national law including, the imposition of penalties, administrative fines and the payment of amendment fees.

## **CHAPTER 42**

### **APPEALS**

#### **Right of Appeal**

- 324.** (1) A person shall have the right to appeal against decisions taken by the competent authorities which relate to the application of the customs provisions in force, including, customs valuation, classification and origin, and which concern him directly and individually.
- (2) A person who has applied to the customs authorities for a decision relating to the application of the customs provisions in force and has not obtained a ruling on that request within the period referred to in regulation 44 (2) shall be entitled to exercise the right of appeal.

- (3) The appeal shall be lodged in the Member State where the decision has been taken or applied for.
- (4) An appeal may be lodged:
  - (a) initially, before the authorities designated for that purpose by the Member States;
  - (b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.

### **Effect of an Appeal**

- 324.** (1) The lodging of an appeal shall not cause implementation of a disputed decision to be suspended.
- (2) The competent authorities shall suspend implementation of a decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with customs provisions in force or that irreparable damage is to be feared for the person concerned.
- (3) Where a disputed decision has the effect of causing import and export duties and taxes to be charged, suspension of implementation of that decision shall be subject to the existence or lodging of a security.
- (4) The security referred in sub regulation (3) shall not be required where such a requirement would be likely, owing to the debtor's circumstances, to cause serious economic or social difficulties.

### **Appeal Procedure**

**325.** Member States shall lay down the provisions for the implementation of the appeals procedure.

### **Exclusion of Criminal Matters**

**326.** The provisions of this Title shall not apply to appeals lodged with a view to the annulment or revision of a decision taken by the competent authorities on the basis of criminal law.

**CHAPTER 43**  
**CUSTOMS OFFENCE**

**Customs Offences**

**328.** Each Member State shall, in its National Legislation:

- (a) define customs offences and specify the conditions under which they may be investigated, established and, where appropriate, dealt with by administrative settlement;
- (b) specify the persons to be held responsible in connection with the commission of a customs offence;
- (c) specify a period beyond which proceedings in connection with customs offences may no longer be taken and shall fix the date from which that period shall run.

**Officers' Powers of Examination, Search and Securing of Evidence**

**329.** National Legislation shall specify the conditions under which the competent authorities are empowered to:

- (a) examine, detain and seize goods and means of transport;
- (b) require the production of records, documents or correspondence;
- (c) require access to computerised databases;
- (d) secure evidence;
- (e) detain and search persons, provided that personal searches for customs purposes shall be carried out only when there are reasonable grounds to suspect smuggling or other customs offences which are regarded as serious; and
- (f) search premises, provided that the competent authorities shall not search premises unless they have reasonable grounds to suspect smuggling or other customs offences which are regarded as serious.

### **Requirements of Natural Justice**

**330.** National legislation shall specify that the competent authorities shall inform the person concerned as soon as possible of the nature of the alleged offence, the legal provisions that may have been contravened and, as appropriate, the possible penalties.

### **Measures to be Taken upon the Discovery of an Offence**

**331.** National legislation shall specify the procedure to be followed by the competent authorities after it has been discovered that a customs offence has occurred and the measures the competent authorities may take.

### **Seizure of Goods and Means of Transport**

**332.** National legislation shall specify that the competent authorities shall seize goods and means of transport only when:

- (a) the goods are liable to forfeiture or confiscation; or
- (b) the goods may be required to be produced as evidence at a later stage.

### **Offence Relating to Part of Consignment**

**333.** National legislation shall provide that in cases where a customs offence relates only to part of a consignment, only that part shall be seized or detained, provided that the competent authorities are satisfied that the remainder of the consignment did not serve, directly or indirectly, in the commission of the offence.

### **Notice of Seizure**

**334.** National legislation shall specify that when the competent authorities seize or detain goods and means of transport, the competent authorities shall furnish the person concerned with a document showing:

- (a) the description and quantity of the goods and means of transport seized or detained;
- (b) the reason for the seizure or detention; and

- (c) the nature of the offence.

### **Release of Seized Goods against Security**

**335.** National legislation shall specify that the competent authorities should release seized or detained goods against adequate security, provided that the goods are not subject to any prohibitions or restrictions or may be required as evidence at a later stage.

### **Circumstances under which the Means of Transport may be Seized**

**336.** National legislation shall specify that means of transport shall only be forfeited or confiscated where:

- (a) the owner, operator or person in charge was, at the time, a consenting party or was privy to the customs offence, or had not taken all reasonable steps to prevent the commission of the offence;
- (b) the means of transport has been specially constructed, adapted, altered, or fitted in any manner for the purpose of concealing goods; or
- (c) restoration of the means of transport which has been specially altered or adapted is not possible.

### **Goods other than Perishable Goods may not be Disposed of Prior to Condemnation**

**337.** National legislation shall specify that unless seized or detained goods are likely to deteriorate quickly or it would, due to their nature, be impracticable for the competent authorities to store them, seized or detained goods shall not be sold or otherwise disposed of by the customs before they have been definitively condemned as forfeited or confiscated or have been abandoned to the competent authorities.

### **Detention of Persons in Specified Circumstances**

**338.** National legislation shall specify the powers of the competent authorities in connection with detention of persons and shall lay down the conditions thereof, in particular the period after which detention becomes subject to a review by a judicial authority.

### **Administrative Settlements**

**339.** The competent authorities shall take the necessary measures to ensure, where applicable, that as soon as possible after a customs offence is discovered:

- (a) the administrative settlement of the customs offence is initiated; and
- (b) the person concerned is informed about the terms and conditions of the settlement, the avenues of appeal and the time limits for such appeals.

### **Penalties Applicable to Administrative Settlements and the Customs Offices Competent to Administer them**

**340.** National legislation shall lay down the penalties applicable to each category of customs offence that can be dealt with by administrative settlement and shall designate the customs offices competent to apply them.

### **Adherence to the Principle of Proportionality**

**341.** National Legislation shall specify that the severity or the amount of any penalties applied in an administrative settlement of a customs offence shall depend upon the seriousness or importance of the customs offence committed and the record of the person concerned in his dealings with the competent authorities.

### **Right of Appeal to an Independent Body in Relation to an Administrative Settlement**

**342.** A person implicated in a customs offence that is the subject of an administrative settlement shall have the right of appeal to an authority independent of the competent authorities unless he has chosen to accept a compromise settlement.

### **Mitigating Circumstances where Declarant can Demonstrate his *Bona Fides***

**343.** Where untrue particulars are furnished in a goods declaration and the declarant can show that all reasonable steps had been taken to provide accurate

and correct information, the competent authorities shall take that factor into account in considering the imposition of any penalty.

### **Cases of *Force Majeure***

**344.** National legislation shall specify that except in cases of absolute prohibitions, where a customs offence occurs as a result of *force majeure* or other circumstances beyond the control of the person concerned and there is no question of negligence or fraudulent intent on his part, no penalty shall be applied provided that the facts are duly established to the satisfaction of the competent authorities.

### **Disposal of the Proceeds of the Sale of Goods**

**345.** National legislation shall specify that goods that have been seized or detained, or the proceeds from the sale of such goods after deduction of any duties, taxes and all other charges and expenses incurred shall be turned over to the person entitled to receive them as soon as possible after the customs offence has been definitively settled; or when this is not possible, held at disposal of the competent authorities for a specified period.

## **CHAPTER 44**

### **MISCELLANEOUS**

#### **Confidential Information**

**346.** No officer shall disclose any information relating to any person, firm, or business acquired in the performance of his duties unless:

- (a) otherwise expressly provided for in this regulation or any other prevailing provision;
- (b) with the express permission of the competent authorities;
- (c) for the compilation of statistics by the competent authorities; or
- (d) when ordered to do so by the Court.

### **Oaths and Affidavits**

**347.** The competent authorities or any officer designated by competent authorities shall be vested with the power to administer any oath or attest an affidavit required by law in any matter relating to customs.

### **Declarations and Oaths Made Outside the Customs Territory**

**348.** Any goods declaration, writing, oath, or other declaration required to be made under these Regulations or any other prevailing provisions shall, if made outside the customs territory to or before a Member State's customs officer, be a binding testimony and have full force and effect within the customs territory.

### **Translation of Documents into the Official Languages**

- 349.-** (1) Where any document written in a language other than English, French or any other official language approved by the Council, as the case may be, is presented to any officer for any purpose connected with this regulation or any other provision for the time being in force, the competent authorities may require its translation into one of the said languages.
- (2) The cost of this translation shall be borne by the person presenting the documentation or the person on whose behalf the document is lodged.

### **Enforcement of Bonds**

- 350.-** (1) The conditions of any bond, guarantee or similar undertaking executed in accordance with terms of this regulation and the enforcement thereof shall not exempt any person from any prosecution to which he may be liable under any provisions in force.
- (2) In any proceedings for the enforcement of a bond, guarantee or similar undertaking entered into in accordance with the terms of this regulation, the sum stated therein shall be deemed to be liquidated damages, calculated to reimburse the Member State for loss occasioned by breach of any of the conditions of such bond, guarantee or similar undertaking.



### **Expense and Risk of Handling Goods**

**351.** All handling of and dealing with goods in terms of this regulation and any other prevailing provision shall be performed at the expense and risk of, the importer, exporter or holder of the procedure, as the case may be.

### **Onus of Proof of Payment of Duties and Taxes**

- 352.** (1) A person in possession or control of imported goods or goods which are liable to duty and tax under the provisions of this regulation and the Common External Tariff, and any person who offers for sale, exports, or attempts to export such goods or has such goods entered in his books, records or documents shall, when requested by an officer to do so, produce proof:
- (a) as to the place where entry of such goods was made;
  - (b) of the payment of duty and tax thereon;
  - (c) of the date and entry of goods;
  - (d) of the marks and numbers on goods or packaging where applicable; and
  - (e) that will enable the officer to establish the person who made such declaration and payment in respect of the goods.
- (2) Where:
- (a) a person who has made declaration and payment in respect of goods referred to in sub regulation (1) cannot be located or found for any reason whatsoever; and
  - (b) there is no evidence of duty having been paid;
  - (c) the person being in possession of such goods shall be liable to pay all such duties and taxes as demanded by the competent authorities.
- (3) A person failing or delaying without reasonable cause to produce the proof or evidence as required in terms of this regulation shall be guilty of an offence in accordance with the prevailing provisions in Member States.

### **Notice of Warehouse Approvals, Cancellations and Revocations**

- 353.** (1) The competent authorities may, by notice in an official gazette of a Member State and the official gazette of the Common Market, or any other instrument, declare any building, premises or area as a customs warehouse for the purposes of this regulation and may in like manner declare that any customs warehouse shall cease to be a customs warehouse.
- (2) The competent authority shall prescribe terms and conditions under which a customs warehouse shall operate.

### **National Weights and Measures Apply**

- 354.** Where duty and tax is imposed according to weight or measure, the weight or measurement of the goods shall be ascertained according to the standard weights and measures established by the Member States.

### **Prescribed Forms to be Used**

- 355.** (1) Any declaration, bond, return, account or other document required or authorised for the purposes of this regulation shall be on such form as may be prescribed by the provisions in force.
- (2) Where a prescribed form contains, by way of note or otherwise, a clear direction or indication of a requirement as to:
- (a) the colour or size of the form;
  - (b) the number of copies of the form to be tendered and the word "in duplicate" or similar words shall be a sufficient indication of the number required;
  - (c) the nature or form of the information to be furnished;
  - (d) any action to be taken by the person concerned, or his agent, in the transaction in which the form is used;
  - (e) the receipts to be signed by a person as proof of the fact that the goods described in the form have been received for carriage or otherwise; such requirements shall be deemed to have been legally prescribed.
- (3) The proper officer may require copies additional to the number of copies prescribed on the form.

### **Failure to Produce Documents**

- 356.** (1) Where a person fails to produce books, records or documents when requested by the proper officer under this regulation or any other provision for the time being in force, the proper officer may refuse entry, delivery, or prevent the exportation of the goods:

Provided that the proper officer may allow entry, delivery or exportation upon the deposit of such security as determined by the proper officer, pending the production of the books, records or documents.

- (2) The deposit of any security made in terms of this regulation or any other prevailing provisions shall be forfeited and paid into the customs revenue where the books, records or documents are not produced within three months, or such other period as the proper officer may permit.
- (3) The proper officer may retain any book, record or document produced by any owner under this regulation or any other provisions in force.
- (4) Where any book, record or document is retained pursuant to sub regulation (3), the owner may at any reasonable time inspect the original book, record or document in the presence of the proper officer and shall be entitled to certified copies thereof as reasonably required by him.

### **Receipt for Payment of Duty**

**357.** Where a person requires a receipt for any form of payment made in respect of a declaration, that person shall furnish the proper officer with an additional copy of the entry that was made and duly signed by the proper officer acknowledging receipt of the money and that copy shall constitute the receipt for such payment.

### **Service of Notice by the Competent Authority**

**358.** Where under this regulation or any other prevailing provision , a notice or any other document is required or authorised to be served, given or delivered by the competent authority or any officer on any person, such notice or document shall be deemed to be served, given or delivered:

- (a) if delivered to him personally;
- (b) if left at his last known place of abode or business, or in the case of a body corporate, at its registered or principal office;
- (c) if left on board any vessel or aircraft on which he may boarded or have lately boarded; or
- (d) by sending it via registered post to the appropriate address specified in paragraph (b).

### **Service of Notices on the Competent Authority**

**359.** Where a notice or summons of any description is required to be served under this regulation or any prevailing provisions on the competent authorities or any of their officers, such notice or summons shall be deemed to have been served if:

- (a) delivered personally to the proper officer;
- (b) delivered by hand to the official office of the proper officer or competent authority, as the case may be and an official receipt obtained therefore; or
- (c) sent by registered post to the official address of the proper officer or competent authority as the case may be.

### **Restraint of Goods**

- 360.** (1) Where an officer has reasonable grounds for suspecting that an offence has been committed under this regulation or any prevailing provision, in respect of any goods which have been released from customs control and in respect of which any proceedings could be commenced under this regulation or other prevailing provision, an officer may, instead of seizing such goods, place a restraining order on them regardless of where or in whose possession such goods are found.
- (2) Where a restraining order has been placed on the goods by an officer, that officer shall forthwith give notice to the owner in writing of such restraint order.
- (3) Notice of a restraining order given to an owner of goods in respect of which a restraining order has been placed shall be deemed to be notice to any person being or holding himself out to be the owner,

manufacturer, licensee, importer, exporter, consignee, agent or the person in possession of, beneficially interested in, or having control of, or power of disposition, over such goods..

- (4) Except with the permission in writing of the proper officer, no person shall remove or in anyway deal with goods upon which a restraining order has been placed until the proper officer has withdrawn such order in writing.

### **Compounding Offences**

**361.** (1) The competent authorities may, as they deem fit, and where they are satisfied that a person has committed an offence or an irregularity under the provisions in force in respect of which a penalty or fine is provided for in national law, or in respect of which any thing is liable to forfeiture under the provisions in force:

- (a) compound any proceedings for the said offence and for the condemnation of any thing as being forfeited under any of the provisions in force; or
  - (b) restore, subject to such conditions, if any, as they deem proper, any thing forfeited or seized under the provisions in force.
- (2) The competent authorities shall not exercise the powers under this regulation unless the person admits in writing that he has committed the offence and requests the competent authorities to deal with the offence under this regulation.
  - (3) Where the competent authorities make an order under this regulation:
    - (a) the order shall be in writing;
    - (b) the order shall specify:
      - (i) the offence which the person committed;
      - (ii) the penalty imposed by the competent authority; and
      - (iii) any other terms and conditions of the settlement, with particular reference to the treatment of any seized or forfeited goods involved in the offence; and
    - (c) a copy of such order shall be given to the person.

- (4) Every agreement to compound shall be final and conclusive.
- (5) On payment of the agreed amount in accordance with the compounding agreement no further proceedings in regard to such particular offence shall be taken against the person who has so agreed to the compounding.
- (6) Where the amount agreed upon in terms of the provisions in force or any part of such amount is not paid in accordance with the compounding agreement, the competent authority shall send a certified copy of such compounding agreement to the competent court which shall thereupon proceed to enforce such agreement in the same manner as if the competent court has imposed that penalty or fine.

#### **Payment of Fines and Duty by Instalments**

**362.** A competent authority may allow any fine or penalty imposed in terms of a compounding agreement or any duties and taxes to be paid by instalments of such amounts and at such time as the competent authority may fix:

Provided that the Committee may prescribe such rate of interest applicable to the payment made in terms of these Regulations.

#### **Recovery of Duty by Distress**

- 363.** (1) If upon written demand a person neglects or refuses to pay any duties and tax legally due from him, the competent authorities may authorise distress to be levied upon:
- (a) the goods, chattels and effects of the person liable to payment of duty and taxes wherever they are found; and
  - (b) the plant of any factory and upon any vats, vehicles, animals or other articles used in the manufacture, sale or distribution of goods by that person and found on any premises in the use or possession of that person or of any person on his behalf or in trust for him.
- (2) The warrant of distress shall be in the form prescribed by the Committee and the warrant shall authorise distress for the amount of the duty specified therein.

- (3) For the purpose of levying distress the person authorised under the warrant may, if necessary, break into any building or place in the daytime and may call to his assistance a police officer.
- (4) Where any goods have been distrained under a warrant, the goods shall be kept at the cost of the owner thereof for a period of fourteen days or until the amount due in respect of duty and of the costs and charges of, and incidental to the distress are paid, whichever is the sooner; and if at the end of such period the duty, costs and charges are not paid in full then the goods may be sold.
- (5) Where any goods are sold in accordance with this regulation, the proceeds of sale shall be applied in discharge of:
  - (a) the duties and taxes; and
  - (b) the costs and charges of, and incidental to the levying of distress and the sale:

provided that the balance if any, shall be paid to the owner of the goods if he makes application within twelve months of the date of the sale.

- (6) Goods seized in terms of this regulation shall not be liable to attachment or any other form of execution at the instance of a creditor of the:
  - (a) owner of such goods; or
  - (b) person from whom the goods were seized;

until the goods have been disposed of or otherwise dealt with in terms of this regulation or any other prevailing provisions .

### **Charge on Property to Recover Outstanding Duties**

- 364.** (1) Where a person, being the owner of land or buildings situated in the customs territory, fails to pay any duty and taxes or other sum of money due and payable under this regulation, the competent authority may by notice in writing, inform that person of its intention to register an inscription on the property of that person.
- (2) Where a person who has been served with a notice in terms of this regulation fails to pay the whole of the amount specified in the notice within thirty days of the date of service thereof, the competent authority may register an inscription on the property of

such person which shall subsist as a charge to secure the amount of duties and taxes due.

- (3) The competent authority shall, upon the payment of the whole of the amount specified in sub regulation (2), by notice in writing to the appropriate authority request the cancellation of the inscription made.

(4) The appropriate authority shall, without fee, record the cancellation.

### **Disposal of Goods Conditionally Free or Exempt from Duty**

- 365.**
- (1) Where goods liable to duty and tax have been imported or purchased prior to declaration for home use by or on behalf of a person either exempt from duty and tax or at a reduced rate of duty and tax, and the goods are subsequently dealt with or disposed of in a manner inconsistent with the purpose for which they were exempted or relieved from duty and tax, the goods in question shall be liable to duty and tax at the rate applicable to goods of that class or description at the time of their disposal unless the competent authority otherwise directs
  - (2) Sub regulation (1) shall be without prejudice to any penalty provisions prevailing in a Member State.
  - (3) Where a person responsible for goods in terms of sub regulation (1) proposes to dispose such goods he shall furnish the competent authority with the particulars of the proposed disposal and shall if authorised to do so pay duties and taxes thereon.
  - (4) Where goods referred to in this regulation are possessed by any person in satisfaction of any claim due from the importer or purchaser, that person shall be liable to pay the duties and taxes on such goods as if such duties and taxes due were payable him:

Provided that nothing in this regulation shall absolve the importer or purchaser from payment of the duty on such goods.

- (5) Where goods referred to in this regulation are disposed of without the payment of duties and taxes, such goods shall be liable to forfeiture.



### **Fee for Correcting Declarations**

**366.** The competent authority shall charge such accounting fee as the competent authority may prescribe for the correction or alteration of any bill of declaration.

### **Indemnification of Officers**

**367.** An officer shall not be liable in tort for any accidents, harm caused or damage done while exercising all due care in the performance of his legal duties.

### **Wearing of Uniform by Officers**

**368.** An officer on duty shall wear uniform as prescribed by the competent authority to distinguish such officer from the members of the public and shall bear an insignia depicting the rank of the officer.

### **International Agreements**

- 369.** (1) Council may conclude conventions, treaties, agreements or other arrangements with any country, group of countries or trading bloc in relation to concessions to, or exemption from, the duties and taxes normally payable in respect of goods grown, produced or manufactured in, or imported from, the territory of that country, group of countries or trading block.
- (2) The Council, on the advice of the Committee, shall pursuant to sub regulation (1), determine which goods shall be prohibited or restricted from importation or exportation as the case may be, or which goods may be imported or exported under licence.

### **Rewards**

**370.** The competent authorities may offer and order rewards, to be paid to any officer or any other person for services rendered in connection with the detection of offence against these Regulations or any other provision for the time being in force, or in connection with any seizure made under these Regulations or any other prevailing provision.

### **Extra-territorial Offences**

**371.** The Council, on the advice of the Committee, shall determine offences that shall have extra-territorial operation.

### **Legal Effect of Measures Taken by Other Member States**

**372.** Where a customs procedure is used in several Member States:

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

## **CHAPTER 45**

### **ENTRY INTO FORCE**

#### **Date of Entry Into Force Of Regulation**

**373.** These Regulations shall enter into force in accordance with Article 12 of the Treaty.

**Sindiso Ngwenya  
SECRETARY GENERAL**