

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down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (repealed)

PART IV

CUSTOMS DEBT

TITLE I

SECURITY

Article 857

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

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

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

Article 858

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

TITLE II

INCURRENCE OF THE DEBT

CHAPTER I

***Failures which have no significant effect on the operation
of temporary storage or of the customs procedure****Article 859*

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

- they do not constitute an attempt to remove the goods unlawfully from customs supervision,
- they do not imply obvious negligence on the part of the person concerned, and
- all the formalities necessary to regularize the situation of the goods are subsequently carried out:
 1. exceeding the time limit allowed for assignment of the goods to one of the customs-approved treatments or uses provided for under the temporary storage or customs procedure in question, where the time limit would have been extended had an extension been applied for in time;
 2. in the case of goods placed under a transit procedure, exceeding the time limit for presentation of the goods to the office of destination, where such presentation takes place later;
 3. in the case of goods placed in temporary storage or under the customs warehousing procedure, handling not authorized in advance by the customs authorities, provided such handling would have been authorized if applied for;
 4. in the case of goods placed under the temporary importation procedure, use of the goods otherwise than as provided for in the authorization, provided such use would have been authorized under that procedure if applied for;
 5. in the case of goods in temporary storage or placed under a customs procedure, unauthorized movement of the goods, provided the goods can be presented to the customs authorities at their request;
 6. in the case of goods in temporary storage or placed under a customs procedure, removal of the goods from the customs territory of the Community or their entry into a free zone or free warehouse without completion of the necessary formalities;
 7. in the case of goods having received favourable tariff treatment by reason of their end-use, transfer of the goods without notification to the customs authorities, before they have been put to the intended use, provided that:
 - (a) the transfer is recorded in the transferor's stock records; and
 - (b) the transferee is the holder of an authorization for the goods in question.

Article 860

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

Article 861

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

CHAPTER 2

Natural wastage

Article 862

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

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

Article 863

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

Article 864

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

CHAPTER 3

Customs status of goods in certain irregular situations

Article 865

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

Article 866

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

Article 867

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

TITLE III

ENTRY IN THE ACCOUNTS AND POST-CLEARANCE RECOVERY

Article 868

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

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

Article 869

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

- (a) in cases in which preferential tariff treatment has been applied in the context of a tariff quota, a tariff ceiling or other arrangements when entitlement to this treatment had been ended at the time of acceptance of the customs declaration without that fact having been published in the *Official Journal of the European Communities* before the release for free circulation of the goods in question or, where such fact is not published, having been made known in an appropriate manner in the Member State concerned, the person liable for payment for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration;
- (b) in cases in which they consider that the conditions laid down in Article 220 (2) (b) of the Code are fulfilled, provided that the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is less than ECU 2 000;
- (c) in cases in which the Member State to which the said authorities are subject has been so authorized in accordance with Article 875.

Article 870

1 Each Member State shall send the Commission a list of the cases in which the provisions of Article 869 (a), (b) or (c) have been applied, giving a short summary of each case.

2 The list referred to in paragraph 1 shall be forwarded during the first and third quarters of each year for all cases where it was decided not to enter the uncollected duties in the accounts during the preceding half-year.

3 The Commission shall circulate the lists to all other Member States.

4 The lists shall be examined periodically by the Committee.

Article 871

In cases other than those referred to in Article 869, where the customs authorities either consider that the conditions laid down in Article 220 (2) (b) of the Code are fulfilled or are in doubt as to the precise scope of the criteria of that provision with regard to a particular case, those authorities shall submit the case to the Commission, so that a decision may be taken in accordance with the procedure laid down in Articles 872 to 876. The case submitted to the Commission shall contain all the information required for a full examination.

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

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

Article 872

Within 15 days of receipt of the case referred to in the first paragraph of Article 871, the Commission shall forward a copy thereof to the Member States.

Consideration of the case in question shall be included as soon as possible on the agenda of a meeting of the Committee provided for in Article 247 of the Code.

Article 873

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

Such decision must be taken within six months of the date on which the case referred to in the first paragraph of Article 871 is received by the Commission. Where the Commission has found it necessary to request additional information from the Member State in order that it may take a decision, the six months shall be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information.

Article 874

The Member State concerned shall be notified of the decision referred to in Article 873 as soon as possible and in any event within 30 days of the expiry of the period specified in that Article.

A copy of the decision shall be sent to the other Member States.

Article 875

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

In such a case, the decision referred to in Article 873 shall also be notified to each Member State so authorized.

Article 876

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

TITLE IV

REPAYMENT OR REMISSION OF IMPORT OR EXPORT DUTIES

CHAPTER 1

General provisions

Article 877

- 1 For the purposes of this Title:
 - a *customs office of entry in the accounts* means: the customs office where the import or export duties whose repayment or remission is requested were entered in the accounts;
 - b *decision-making customs authority* means: the customs authority competent to decide on an application for repayment or remission of import or export duties in the Member State where the duties concerned were entered in the accounts;
 - c *supervising customs office* means: the customs office having jurisdiction over the goods which gave rise to entry in the accounts of the import or export duties whose repayment or remission is requested, the said office carrying out certain checks required for appraisal of the application;
 - d *implementing customs office* means: the customs office which adopts the measures necessary to ensure that the decision to repay or remit the import or export duties is correctly implemented.
- 2 The functions of office of entry in the accounts, decision-making customs authority, supervising customs office and implementing customs office may be carried out wholly or in part by the same customs office.

CHAPTER 2

Implementing provisions relating to Articles 236 to 239 of the Code

Section 1

Application

Article 878

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

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

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

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

Article 879

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

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

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

Article 880

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

Such certification shall not be required, however:

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

Article 881

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

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

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

The applicant shall be informed of this immediately.

Article 882

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

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

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

- Mercancías de retorno en aplicación de la letra b) del apartado 2 del artículo 185 del Código
- Returvarer i henhold til kodeksens artikel 185, stk. 2, litra b)
- Rückwaren gemäß Artikel 185 Absatz 2 Buchstabe b) des Zollkodex
- Εμπορεύματα επανεισαγόμενα κατ' εφαρμογή του άρθρου 185 παράγραφος 2 στοιχείο β) του κώδικα
- Goods admitted as returned goods under Article 185 (2) (b) of the Code
- Marchandises en retour en application de l'article 185 paragraphe 2 point b) du code
- Merci in reintroduzione in applicazione dell'articolo 185, paragrafo 2, lettera b) del codice
- Goederen die met toepassing van artikel 185, lid 2, onder b), van het Wetboek kunnen worden toegelaten als terugkerende goederen
- Mercadorias de retorno por aplicação da alínea b) do n^o 2 do artigo 185^o do código;

- c the copy of the export declaration returned to the exporter at the time of completion of the export formalities for the goods, or a copy thereof certified by the customs office of exportation.

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

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

Section 2

Procedure for granting repayment or remission

Article 883

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

Article 884

Without prejudice to Article 883 and until a decision has been taken on the application for repayment or remission, the goods in respect of which repayment or remission of duties has been requested may not be transferred to a location other than that specified in the said application unless the applicant notifies in advance the customs office referred to in Article 879, which shall in turn inform the decision-making customs authority.

Article 885

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

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

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

Article 886

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

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

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

- a the information necessary for identifying the goods to which it applies;
- b the grounds for repayment or remission of the import or export duties and a reference to the corresponding article of the Code and, where appropriate, the corresponding article of this Title;
- c the use to which the goods may be put or the destination to which they may be sent, depending on the possibilities available in the particular case under the Code and where appropriate on the basis of a specific authorization by the decision-making customs authority;

- d the time limit for completion of the formalities to which repayment or remission of the import or export duties is subject;
- e a statement indicating that the import or export duties will not be repaid or remitted until the implementing customs office has informed the decision-making customs authority that the formalities to which repayment or remission is subject have been completed;
- f particulars of any requirements to which the goods remain subject pending implementation of the decision;
- g a notice informing the recipient that he must give the original of the decision to the implementing customs office of his choice when presenting the goods.

Article 887

1 The implementing customs office shall take steps to ensure:

- where appropriate, that the requirements referred to in Article 886 (2) (f) are met,
- that in all cases the goods are actually used in the manner or sent to the destination specified in the decision to repay or remit import or export duties.

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

3 Where the decision to repay or remit duties specifies a use to which the goods are to be put or a destination to which they are to be sent which can be established only in a Member State other than that in which the implementing customs office is located, proof of compliance shall be furnished by production of a control copy T 5 issued and used in accordance with the provisions of Articles 471 to 495, and of this Article.

The control copy T 5 must contain the following:

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

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

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

Article 888

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

Article 889

1 Where the request for repayment or remission is based on the existence, at the time when the declaration of release for free circulation was accepted, of a reduced or zero rate of import duty on the goods under a tariff quota, a tariff ceiling or other preferential tariff arrangements, repayment or remission shall be granted only on condition that, at the time of lodging the application for repayment or remission accompanied by the necessary documents:

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

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

2 Each Member State shall send the Commission a list of the cases in which the provisions of the second subparagraph of paragraph 1 have been applied, giving a short summary of each case.

Article 870 (2), (3) and (4) shall apply.

Article 890

Where a certificate of origin, movement certificate, internal Community transit document or other appropriate document is produced in support of an application for repayment or remission, indicating that the imported goods were eligible, at the time of acceptance of the declaration for free circulation, for Community treatment or preferential tariff treatment, the decision-making customs authority shall grant such application only where it is duly established:

- that the document thus produced refers specifically to the goods in question and that all the conditions relating to acceptance of the said document are fulfilled,
- that all the other conditions for the granting of the preferential tariff treatment are fulfilled.

Repayment or remission shall take place upon presentation of the goods. Where the goods cannot be presented to the implementing customs office, the latter shall grant repayment or remission only where it has information indicating unequivocally that the certificate or document produced post-clearance applies to the said goods.

Article 891

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

Article 892

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

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

Article 893

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

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

Article 894

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

Article 895

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

Article 896

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

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

Article 897

Where it is not the complete article that is exported, re-exported or destroyed or assigned to another authorized customs treatment or use, but one or more parts or components of that article, the amount to be repaid or remitted shall be the difference between the amount of import duties on the complete article and the amount of import duties which would have been chargeable on the remainder of the article if the latter had been entered in the unaltered state for a customs procedure involving the obligation to pay such duties on the date on which the complete article was so entered.

Article 898

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

CHAPTER 3

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

Section 1

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

Article 899

Without prejudice to other situations to be considered case by case in accordance with the procedure laid down in Articles 905 to 909, where the decision-making customs authority establishes that an application for repayment or remission submitted to it under Article 239 (2) of the Code:

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

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

- is based on grounds corresponding to one of the circumstances referred to in Article 904, it shall not repay or remit the amount of import duties concerned.

Article 900

- 1 Import duties shall be repaid or remitted where:
 - a non-Community goods placed under a customs procedure involving total or partial relief from import duties or goods released for free circulation with favourable tariff treatment by reason of their end—use are stolen, provided that the goods are recovered promptly and placed again in their original customs situation in the state they were in when they were stolen;
 - b non-Community goods are inadvertently withdrawn from the customs procedure involving total or partial relief from the said duties under which they had been placed, provided that, as soon as the error is found, they are placed again in their original customs situation in the state they were in when they were withdrawn;
 - c it is impossible to operate the mechanism for opening the means of transport on which goods previously released for free circulation are located and accordingly to unload them on arrival at their destination, provided that they are immediately re-exported;
 - d goods originally released for free circulation are subsequently returned to their non-Community supplier, under the outward processing arrangements, to enable him — free of charge — to eliminate defects existing prior to the release of the goods (even if found after release of the goods) or to bring them into line with the provisions of the contract under which they were released for free circulation, and the said supplier decides to keep the goods permanently because he is unable to remedy the defects or because it would not be economic to do so;
 - e it is found, when the customs authorities decide on post-clearance entry in the accounts of import duties actually due on goods released for free circulation with full relief from such duties, that the goods in question have been re-exported from the customs territory of the Community without customs supervision, provided it is established that

- the substantive conditions laid down in the Code for the repayment or remission of such import duties would actually have been met at the time of re-exportation if the amount had been levied when the goods were released for free circulation;
- f a judicial body has forbidden the marketing of an item previously entered for a customs procedure obliging the person concerned to pay import duties under normal conditions, and the said item is re-exported from the customs territory of the Community or destroyed under the control of the customs authorities, provided it is established that the item in question has not actually been used in the Community;
 - g the goods have been entered for a customs procedure involving the obligation to pay such duties by a declarant empowered to do so on his own initiative and, through no fault of the declarant, it has not been possible to deliver them to the consignee;
 - h the goods have been addressed to the consignee in error by the consignor;
 - i the goods are found to be unsuitable for the use for which the consignee intended them because of an obvious factual error in his order;
 - j after having been released for a customs procedure involving the obligation to pay import duties, the goods are found not to have complied, at the time of their release, with the rules in force concerning their use or marketing and therefore cannot be used for the purpose intended by the consignee;
 - k the use of the goods by the consignee for the purpose intended is prevented or substantially restricted as a result of measures of general scope taken, after the date of release for a customs procedure involving the obligation to pay import duties, by an authority or other body having the appropriate power of decision;
 - l total or partial import duty relief applied for by the person concerned in accordance with existing provisions cannot, through no fault of the person concerned, be granted by the customs authorities, who shall accordingly enter in the accounts the import duties which have become due;
 - m the goods reached the consignee after the binding delivery dates stipulated in the contract under which they were entered for a customs procedure involving the obligation to pay import duties;
 - n it has not been possible to sell the goods in the customs territory of the Community and they are delivered free of charge to charities:
 - carrying out their activities in a third country, provided that they are represented in the Community,
 - or
 - carrying out their activities in the customs territory of the Community, provided that they are eligible for relief in the case of importation for free circulation of similar goods from third countries.

2 Without prejudice to paragraph 3, repayment or remission of import duties in the cases referred to in paragraph 1 (c) and (f) to (n) shall, except where the goods are destroyed by order of a public authority or delivered free of charge to charities carrying out their activities in the Community, be conditional upon their re-export from the customs territory of the Community under the supervision of the customs authorities.

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

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

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

3 In the cases referred to in paragraph 1 (h) and (i), repayment or remission of import duties shall be conditional on re-export of the goods to the original supplier or to another address specified by him.

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

Article 901

1 Import duties shall be repaid or remitted where:

- a goods entered in error for a customs procedure involving the obligation to pay import duties have been re-exported from the customs territory of the Community without having been previously entered for the customs procedure under which they should have been placed, provided the other conditions laid down in Article 237 of the Code have been met;
- b the goods have been re-exported or destroyed in accordance with Article 238 (2) (b) of the Code without customs supervision, provided the other conditions laid down in the said Article have been met;
- c the goods have been re-exported or destroyed without customs supervision in accordance with Article 900 (1) (c) and (f) to (n), provided the other conditions laid down in Article 900 (2) and (4) have been met.

2 Repayment or remission of import duties in the circumstances referred to in paragraph 1 shall be conditional on:

- a production of all the evidence needed to enable the decision-making customs authority to satisfy itself that the goods in respect of which repayment or remission is requested:
 - have actually been re-exported from the customs territory of the Community,
 - or
 - have been destroyed under the supervision of authorities or persons empowered to certify such destruction officially;
- b the return to the decision-making customs authority of any document certifying the Community status of the goods in question under cover of which the said goods may have left the customs territory of the Community, or the presentation of whatever evidence the said authority considers necessary to satisfy itself that the document in question cannot be used subsequently in connection with any importation of goods into the Community.

Article 902

1 For the purposes of Article 901(2):

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

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

- certification by the customs office in the third country of destination confirming that the goods have arrived, or
- the original or a certified copy of the customs declaration for the goods made in the third country of destination.

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

- the original or a certified copy of the declaration for the said procedure,

and

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

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

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

Article 903

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

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

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

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

Article 904

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

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

Section 2

Decisions to be taken by the Commission

Article 905

1 Where the decision-making customs authority to which an application for repayment or remission under Article 239 (2) of the Code has been submitted cannot take a decision on the basis of Article 899, but the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which this authority belongs shall transmit the case to the Commission to be settled under the procedure laid down in Articles 906 to 909.

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

In all other cases, the decision-making customs authority shall refuse the application.

2 The case sent to the Commission shall include all the facts necessary for a full examination of the case presented.

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

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

3 Without awaiting completion of the procedure laid down in Articles 906 to 909, the decision-making customs authority may, if requested, permit the customs formalities relating to the re-export or destruction of the goods to be carried out before the Commission has given

a ruling on the application in question. Such permission shall be entirely without prejudice to the final decision on the application.

Article 906

Within 15 days of receipt of the case referred to in Article 905 (2) the Commission shall forward a copy thereof to the Member States.

Consideration of the case in question shall be included as soon as possible on the agenda of a meeting of the Committee provided for in Article 247 of the Code.

Article 907

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

That decision shall be taken within six months of the date on which the case referred to in Article 905 (2) is received by the Commission. Where the Commission has found it necessary to ask for additional information from the Member State in order to reach its decision, the six months shall be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information.

Article 908

1 The Member State concerned shall be notified of the decision referred to in Article 907 as soon as possible and in any event within 30 days of the expiry of the time limit set in Article 907.

A copy of the decision shall be sent to the other Member States.

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

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

In such a case, the decision referred to in Article 907 shall also be notified to each Member State so authorized.

Article 909

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

CHAPTER 4

Administrative assistance between the Customs authorities of the Member States

Article 910

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

Article 911

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

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

Article 912

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