

EMERGING ISSUES IN EUROPEAN CUSTOMS LAW

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Abstract

In 1968 the Customs of the six founding Member States of the European Economic Union (EEC) had already been harmonised to such a degree that the customs payable by third countries could be established on the basis of a common customs tariff. Since it was no longer possible to levy customs duties on goods traded between Member States, there existed a customs tariff union between the founding Member States of the modern European Community long before the creation of the European internal market.

However, by itself the creation of a common customs tariff was not enough to realise a customs union as a fundamental characteristic of the European internal market. The EEC Treaty already required customs law to be harmonised in addition to tariffs. For many years rules governing customs law were scattered among a number of Regulations and sometimes differed. However, in 1994 the Community Customs Code (CC) and the Regulation laying down provisions for the implementation of the Community Customs Code created a uniform European Customs Law binding on all Member States. This has now provided a sound basis for achieving uniformity in customs matters of 27 countries.

B. The Customs Code (continued)

II. The structure of the Customs Code (continued)

4. Procedural law – The transit procedure

The transit procedure (Art. 4 (16) (b) and 91 ff. CC, Art. 340a–462a CCIP) allows the trader to transport goods to their place of destination within the Community without delay and without having undergone any alteration. The aim of this suspensive procedure according to Art. 84 (1) (a), first indent CC is the traversal of a distance without the goods incurring import duties or commercial policy measures.

Since the goods transported are neither used nor altered and a primary economic purpose is absent, this procedure constitutes a special case among customs procedures because it is a suspensive procedure without any economic impact. Owing to its subservient character, the transit procedure may be initiated before or after the economic customs procedure and, by means of a transit document, only serves customs supervision during the transportation of goods from the border customs office (customs office of departure) to the internal customs office (customs office of destination).³⁴ However, a security must be provided in respect of the import duties incurred by the goods (cf. Art. 88 sub-para. (1), 94 (1), Art. 189 ff. CC).

Regarding possible legal foundations, a distinction must be made between EC transit law and transit law based on international conventions. Depending on whether non-Community or Community goods are to be transported by the transit procedure, the possible types of transportation under the **external** (Art. 91 (1) (a) CC) and **internal transit procedure** (Art. 163 ff. CC) are exhaustively listed.

a. EC transit law

The external Community transit procedure. According to Art. 91 (1) (a) CC, all non-Community goods, which have been brought into the customs territory of the Community, are to be transported within the customs territory of the Community under the external transit procedure. In this case, there are six possible types of transportation (Art. 91 (2) (a)–(f) CC). The external Community transit procedure (CTP) according to Art. 91 (2) (a) CC is mandatory if non-Community goods are to be transported between two locations in the EC (under cover of the T1 transit document), without touching the territory of a third country. This procedure is particularly suitable if it has not yet been established which customs procedure to assign the goods when they are imported into the Community customs territory, or the goods are to be inspected for any defects at their destination.

The CTP does not apply if goods are moved under cover of the Rhine manifest (Art. 91 (2) (d) CC), by post within the EC (Art. 91 (2) (f) CC) or under cover of a NATO transit certificate (Art. 91 (2) (e) CC). Whilst movement by post is primarily governed by the law on postal services, only certain groups may submit a NATO transit certificate. Since goods on the Rhine can also be transported using the CTP, the Rhine manifest is hardly used.

The internal Community transit procedure. If Community goods are to be re-imported into the customs territory of the Community via a foreign country without the goods losing their status as Community goods (territorial principle) and are re-imported into the EC as non-Community goods, the trader must choose the internal transit procedure. As with the external transit procedure, the standard procedure in this case is also the internal Community transit procedure with the transit document T2 according to Art. 163 (2) (a) CC. Owing to the extraterritorial location of some states in the EU, this procedure becomes particularly important – especially in relation to goods transported through Switzerland.

b. Common transit procedure

The Convention on a Common Transit Procedure³⁵ which entered into force on 1 January 1988 between the EC and the EFTA states (Iceland, Norway, Switzerland, and Liechtenstein), extends the rules of the Community transit procedure to these areas. Accordingly, the transit declarations T1 and T2 in the Common Transit Procedure for the transportation of goods between the Community and an EFTA country or two EFTA countries or through the territory of one of the contracting parties can be used. In 2001, the provisions were approximated to the provisions of the CC which had been in force since 1994. In particular, the main section of the Convention contains the principles of the Common Transit Procedure and important features of implementation. The procedural law is presented in detail in Annex I of the Convention.

c. International transit law

The Carnet TIR – transit procedure. In addition to the common transit procedure, other international agreements on the simplification of goods via several states have been concluded. The most important procedure of this kind is the transportation of goods by the Carnet TIR (Transport International des Marchandises par la Route – International Road Transport). Its legal basis is the ‘Customs Convention on the International Transportation of Goods under Carnet TIR’ of 14 November 1975.³⁶

The transit procedure is distinguished by the fact that it not only affects the implementation of a single transit procedure but also allows the sequence of several transit procedures by different states owing to the simplification of customs formalities. Usually, when goods are transported through several states the

relevant national transit procedure must be initiated in each state, supervised and ended according to the national formal requirements. However, in the TIR procedure, associations in each contracting party are authorised to be a guarantor and to issue transit documents (Carnets). The association providing security is liable jointly and severally with the Carnet holder for any import and export duties in relation to the country in which the infraction leading to the incurrence of a customs debt has been established. Liability is only discharged once the procedure has been properly ended in one of the contracting parties. The Carnet-TIR may be used as a transit declaration for the whole distance (cf. Art. 205 (2) CCIP), which facilitates smooth transportation through several states.

The Carnet ATA – transit procedure. In order to export goods to different countries and re-import them into the Community, a simplified transit procedure can be carried out by means of the Carnet ATA (Admission Temporaire – Temporary Admission) as a transit declaration (Art. 91 (2) (c) CC, Art. 451 (2) CCIP). The Carnet ATA is a paper-based linkage of various customs procedures which are sequential and respond to economic necessity. In particular, goods which are imported temporarily can be transported according to the rules on temporary admission (Art. 511–514 CCIP). This is especially suitable for exhibition goods which are only used for a limited period of time and are to be re-exported after temporary use without having undergone any alteration.

d. Simplification of the Community/common transit procedure

In order to facilitate trade under the Community and common transit procedure, the traders can request to use a ‘simplified procedure’. Art. 372 (1) CCIP lists a number of options. Of particular note, the trader can obtain the status of ‘authorized consignor’ or ‘authorized consignee’ in accordance with Art. 372 (1) (e)–(f) CCIP. If the trader is recognised as an ‘authorized consignor’, then the goods do not have to be presented at the office of departure but can be presented directly at the place of packaging or loading instead, for example, on the premises of the consignor’s company. In other words, the customs authorities must be informed that the goods are at the intended location. In addition, the customs declaration no longer has to be submitted (Art. 398 CCIP). The declaration must have been prepared beforehand at the customs office of departure, for example, stamped in advance (Art. 400 and 401 CCIP) in order to document the course of the procedure properly.

If the recipient of the goods is deemed the ‘authorized consignee’, then the obligations incumbent on the principal (as holder of the CTP) according to Art. 96 CC, such as the presentation of the goods at the office of destination, are replaced by the transfer of goods to the ‘authorized consignee’ (Art. 406 (2) CCIP). The latter can check whether the requirements of the procedure have been followed and can confirm the arrival of the goods at the agreed location by notifying the customs office of destination (Art. 407 (1) (b) CCIP). Should the ‘authorized consignee’ discover any irregularities, the consignee must immediately inform the office of destination as well as the competent customs authorities thereof (Art. 408 (1) (a) CCIP).

e. The electronic transit procedure

The transit procedure is the first customs procedure for which an electronic solution was found on a pan-European as opposed to a national basis. The electronic transit procedure – abbreviated NCTS (New Computerized System) – applies to Community and shared transit procedures which had hitherto been carried out using the single document as the transit declaration. The traders granted the status as ‘authorized consignor’ or ‘authorized consignee’ had to fulfil the requirements of NCTS by 30 April 2004 in order to be able to retain their simplification. If they had failed to do so, the relevant authorisations were revoked.

The general rules for customs declarations by means of information procedures also apply to the electronic transit procedure. Every customs declaration must correspond to a fixed structure and contain the prescribed details (Art. 353 (1), Annex 37a CCIP). If the goods have been submitted at the customs office

of departure, the consignment is allocated a Movement Reference Number (MRN), in order to identify the respective transit procedure, if necessary. In order to document the transit per se, an accompanying transit document (ATD) is drawn up (Art. 358 (1) CCIP, Annex 45a CCIP). According to Art. 358 (5) CCIP, Art. 359 (1) CCIP, this is to be carried out in the same way as the written transit declaration at every customs office of transit. Controls can be carried out on the basis of the pre-arrival declaration and the pre-transit declaration, which are submitted upon the issue of the accompanying transit document to the customs office of destination. By means of electronic border-crossing declarations, the customs office of departure is informed of the fact that goods have crossed the border (Art. 369a CCIP). By means of the electronic confirmation of entry, the customs office of destination informs the customs office of departure of the submission (Art. 370 (1) CCIP). The supervision control report according to Art. 370 (2) CCIP documents the discharge of the transit procedure.

5. Procedural Law – The customs warehousing procedure

The customs warehousing procedure according to Art. 4 (16) (c), Art. 98 ff. CC, Art. 524–535 CCIP is one of the oldest customs procedures having economic impact (Art. 84 (1) (b), second indent CC). The object of this procedure is the unlimited storage of non-Community goods in the customs territory of the Community without the goods incurring import duties (Art. 4 (10) CC) or trade policy measures pursuant to Art. 1 (7) CCIP (Art. 98 (1) (a) CC). Traders use this customs procedure for various reasons. Without the imposition of import duties, the goods can be re-exported from the customs territory of the Community after storage (transit storage) or be stored as supplies (subject to possible import duties) until they are placed under a different customs procedure (credit storage).³⁷ As part of an export storage, the goods can even be placed in the customs warehouse with the aim of discharging an earlier customs procedure. This possibility is often used in relation to goods which have completed inward processing (cf. Art. 89 (1) CC, 128 (1) CC). If the trader has decided on export storage, it may be the case that the goods will be released subsequently for free circulation, if import duties have been paid despite the fact that the goods were placed in the customs warehouse.³⁸

Customs warehouses are places authorised and supervised by the customs authorities at which the goods may be stored under certain conditions (Art. 98 (2) CC). According to Art. 99 (1) CC, Art. 526 sub-para. 1 CCIP, these are premises or other separate places which are divided into public and private customs warehouses. Whereas anyone may use public customs warehouses in order to store the goods, private customs warehouses are limited to storage by the warehouse keeper. Art. 525 (1)–(3) CCIP lists six types of warehouses from (A) to (F), each of which has a different structure and economic performance and which, with regard to specific provisions, address the characteristics of the person responsible for the warehouse.

In all customs warehouses, goods may undergo the usual forms of handling intended to preserve them, improve their appearance or marketable quality or prepare them for distribution or resale (Art. 109 (1) CC), provided that this does not lead to the production of new goods. The list contained in Annex 72 CCIP lays down the actual procedures referred to. The usual forms of treatment listed which require authorisation must be distinguished from warehouse handling, that is, normal warehouse procedures which do not require authorisation. Such procedures are not limited to the storage of import goods per se, which is the purpose of the procedure, but also include the loading and unloading of the means of transport and transport procedures as well as transferring the goods to another place of storage, stock records, the taking of samples, weighing the goods, etc.³⁹ Handling goods by increasing or lowering the temperature also represents a usual form of warehouse handling.⁴⁰

a. Inward and outward processing

Inward processing (Art. 4 (16) (d) CC) and outward processing (Art. 4 (16) (g) CC) represent two identical customs procedures. With the exception of inward processing under the suspensive procedure, both represent customs procedures having economic impact but are fundamentally different regarding the collection of import duties.

Inward processing according to Art. 4 (16) (d), Art. 114 ff., Art. 536–550 CCIP allows the trader (processor), to import non-Community goods in the form of primary products into the customs territory of the Community in order to re-export them into the EC as compensating products, without them being subject (Art. 114 (1) (a) CC) to import duties (Art. 4 (10) CC) or commercial policy measures (Art. 1 (7) CCIP).

This procedure promotes the equality of Community processing operations with competing processing operations abroad. The latter often produce similar goods without being subject to customs import duties. However, the interests of Community producers who produce the same compensating products cannot be ignored. It may not operate in their interest if the primary products needed for production are allowed to be imported free of charge despite the fact that these goods could be acquired in the Community as well. The authorisation of the procedure can therefore only be granted according to Art. 117 (c) CC if its use will not adversely affect important interests of producers in the Community.

All products manufactured by means of the processing procedures are categorised as compensating products according to Art. 114 (2) CC. This only refers to products manufactured under authorised processing operations because processing requires authorisation (that is, the permission of the authorities) according to Art. 116 CC. Consequently, primary compensating products are products for whose manufacture inward processing has been authorised (Art. 496 (k) CCIP). Any other products which have been manufactured during the processing operations are deemed secondary compensating products (Art. 496 (l) CCIP). Such products are usually waste or leftovers although they can sometimes be objects of value. The inward processing procedure is discharged as soon as the compensating products have been assigned a new customs-approved treatment (Art. 89 (1) CC). The customs authorities may not impose a quantitative restriction of goods for release into free circulation.⁴¹ Subject to Art. 115 CC, Community products may be used instead of imported goods to manufacture compensating products. These Community products are defined as equivalent goods according to Art. 114 (2) (e) CC.

The trader can decide how he wishes to benefit from customs relief. For this purpose, the CC provides a choice of two procedures (Art. 114 (1) CC). In the case of the current suspensive procedure (Art. 114 (1) (a) CC), no import duties are collected (Art. 4 (10) CC) and no commercial policy measures (Art. 1 (7) CCIP) are applied *ab initio*. In the case of the drawback procedure (Art. 114 (1) (b) CC), non-Community goods are initially released into free circulation (Art. 79 CC) and any import duties which have already arisen are only waived or reimbursed upon (re-)export. Art. 537 CCIP shows that both procedures are on an equal footing. Whereas the drawback procedure has hitherto only required the possibility of subsequent export, the intention to export is now a compulsory requirement for the application of both procedures.

Outward processing according to Art. 4 (16) (g) CC and governed by Art. 145–160 CC and Art. 585–592 CCIP, constitutes the counterpart to inward processing. A distinction is made between two different types of procedure, depending on whether the exported Community goods or non-Community goods are to be re-imported: the basic procedure and the standard exchange procedure.

The basic procedure. Art. 145 (1) CC governs the basic procedure of outward processing. Goods are exported from the Community customs territory as temporary export goods (Art. 145 (3) (a) CC), in order to be re-imported into the Community customs territory following processing in a foreign country as a compensating product. This approach promotes the use of advanced production methods and the use of foreign capacities. Since this (unfortunately) often happens by exploiting low wage and production costs, more and more work procedures are being transferred to central and eastern Europe.

The compensating products manufactured by outward processing and re-imported (Art. 145 (3) (c) CC) may be released for free circulation with total or partial relief from import duties (Art. 145 (1), 79 CC). If the goods are released for free circulation, customs relief may be granted up to a zero rate of duty in compliance with the requirements laid down under Art. 151–153 CC. The traders may use the differential basis for assessment (Art. 151 ff. CC, Art. 591–592 CCIP) or the taxation basis for assessment (Art. 153 sub-para. (2) CC, Art. 591 CCIP) in order to accurately calculate (partial) customs relief.

Differential basis of assessment: Art. 151 CC lays down how the customs debt is to be calculated using the differential basis of calculation. According to Art. 151 (1) CC, the amount of import duties which applies in relation to the compensating products is calculated by deducting from the amount of the import duties applicable to the compensating products, the amount of the import duties that would be applicable on the same date to the temporary export goods if they were imported from the foreign country in which they underwent the processing operation. The differential between the customs for the temporary export goods and the customs of the compensation products is to be collected in the form of an import duty. This method of calculation ensures that the Community goods transported from the customs territory are not subject to the imposition of duties a second time when they are re-imported. Since the goods may leave the Community permanently as part of outward processing, export duties (Art. 4 (11) CC) must be levied *ab initio* and commercial policy measures (Art. 1 (7) CCIP) and other prohibitions and restrictions observed (Art. 145 (2) CC). This principle currently applies only in relation to a few agricultural products owing to the lack of a consistent collection of export duties.

Taxation basis of assessment: Alternatively, the **processor** can request a partial duty relief from customs duty according to Art. 153 sub-para. (2) CC in conjunction with Art. 591 sub-para. (1) CCIP taking into account the processing costs as a basis for calculating the duties. Provided that the customs rate for the compensating products is higher than for the temporary export goods, this method will prove to be more beneficial for the trader. Art. 591 sub-para. (2) CCIP restricts the application of the taxation basis of assessment. Provided that the temporary export goods do not originate in the Community and they have been released for free circulation at a zero rate of duty, the taxation basis of assessment is ruled out. Whether there is a zero rate of duty results from the customs tariff alone.⁴²

The standard exchange system. According to the identification principle, only temporary export goods may be re-exported. The standard exchange system according to Art. 154–159 CC overrides this system. It is a special procedure that allows the traders to import an equivalent product instead of a compensating product having the status of non-Community goods. According to Art. 145 (2) CC, this only applies in relation to the repair of Community goods. New products cannot be imported as replacement products (Art. 155 (2) sub-para. (1) CC), unless they are replacement products supplied free of charge owing to a guarantee or manufacturing defect (Art. 155 (2) sub-para. (2) CC).

Processing under customs control. Art. 130 CC describes the processing under customs control (Art. 4 (16) (e) CC). Non-Community goods imported into the Community customs territory are not to be released for free circulation immediately and in their original form but only once their nature has been altered (Art. 79 CC). On the one hand, this can serve to reduce the goods to a lower level of production in order to be able to profit from a lower customs rate when releasing the goods for free circulation (cf. Art. 551 (1) CCIP). On the other hand, the elimination of import restrictions and prohibitions can be the aim of processing under customs supervision (cf. Art. 551 (2) CCIP).

As in the case of inward processing, this procedure mainly concerns the working or processing of the goods. However, the compensating products are not re-exported but remain in the Community customs territory by means of releasing the goods for free circulation. Import duties (Art. 4 (10) CC) are therefore not levied for imported goods but for the products resulting from processing under customs supervision (compensating products). The same applies under Art. 509 (3) CCIP to the application of commercial policy measures (Art. 1 (7) CCIP). There is no obligation in the procedure to process the goods under customs supervision. Those who do process the goods under customs supervision must keep within the limits of the authorisation granted to them and may only carry out processing under customs supervision according to the prescriptions in Art. 131–133 CC.

Temporary importation. Art. 137–144 CC and Art. 553–584 CCIP contain further details on the customs procedure of temporary importation (Art. 4 (16) (f) CC). According to Art. 137 CC, this procedure only applies to goods which have not been finally released for free circulation in the customs territory of the Community but are only used there for a limited period, and are destined to be re-exported without

having undergone any alteration following temporary importation under total or partial relief from import duties and without being made subject to commercial policy measures. This principle often applies in relation to professional equipment, exhibition goods or equipment for the press or for sound or television broadcasting, etc. Therefore, the Community uses the 'Agreement on Temporary Admission' the so-called 'Istanbul Convention', which was created by the WCO in 1990.

Temporary importation is based on a dualism of total and partial relief from import duties. This means that temporary importation can be dealt with as a suspensive procedure (Art. 84 (1) (a) CC, fifth indent CC) as well as a customs procedure having economic impact (Art. 84 (1) (b), fourth indent CC). Art. 141 in conjunction with Art. 555–578 CCIP, lists exhaustively the objects which qualify for total relief. Art. 142 CC provides for partial relief in the event that none of the requirements for total relief are satisfied. As a rule, this means that the amount of import duties payable on the goods released for free circulation is set at 3% for every month (Art. 143 (1) CC).

The export procedure. According to Art. 4 (16) (h) CC, the export procedure also belongs to the customs procedures under the CC. It is comprehensively regulated in Art. 161–162 CC and 788–798 CCIP, and enables Community goods to be transported from the customs territory of the Community according to Art. 161 (1) CC. Since export duties are somewhat rare owing to the importance of exporting goods, the export procedure plays an important role in customs supervision (Art. 183 CC). In particular, the traders must observe commercial policy measures (Art. 1 (7) CCIP) in accordance with Art. 161 (1) sub-para. (1) CC. Nowadays, export control is becoming very important in this area. In particular, the export of military goods or goods which can be used for military purposes (that is, dual-use goods) is comprehensively regulated by the Dual-Use Regulation.⁴³

The export procedure is carried out in two stages. The goods are first presented at the customs office responsible for supervising the place where the exporter is established. The exit formalities are checked and the declaration is lodged (Art. 161 (5) CC). The actual export of the goods is carried out at the customs office of exit at the border of the Community customs territory (Art. 793 CCIP).

When carrying out the export procedure, a distinction is drawn between the **declarant** pursuant to Art. 64 (1) and (2) (b) CC and the **exporter** pursuant to Art. 788 CCIP. This distinction is necessary in order to allocate the different export requirements and determine the competent customs offices.⁴⁴ If the terms of the contract upon which export is based show that a person not established in the EC is in fact the exporter, then the exporter shall be considered to be the contracting party established in the Community owing to technical reasons relating to customs control (Art. 788 (2) CCIP).

Other provisions. The declarant is free to choose 'other provisions' instead of customs procedures. In accordance with Art. 4 (15) (b)–(e) CC, this includes the entry of goods into a free zone or free warehouse, re-export from the customs territory of the Community as well as the destruction of the goods.

Free zones and free warehouses. Art. 166 CC determines the fate of goods which enter a free zone or free warehouse. Accordingly, free zones and free warehouses also form part of the customs territory of the Community or premises situated in that territory and are separated from the rest of it. This serves to simulate a foreign country so that non-Community goods brought there are not regarded as being located in the EC. Thereby, centres for the re-allocation of import and export goods have been created in reflection of common commercial policy. According to Art. 166 CC, neither import duties (Art. 4 (10) CC) nor commercial policy measures (Art. 1 (7) CCIP) may be applied in these centres. In contrast to the customs warehouse procedure, which requires authorisation, there is no limit on the length of time that goods may remain there.

In accordance with Art. 167 (1) and (2) CC, the Member States have the power to declare certain parts of the Community customs territory free zones or to authorise and regulate the erection of free warehouses. With regard to terminology, there is hardly any difference between free zones and free warehouses. Since a free warehouse can also be a building or part of a building, there is no longer any justification

for describing it as a free zone.⁴⁵ Any industrial, commercial or service activity is authorised in a free zone or free warehouse. (Art. 172 (1) CC), although it can be restricted (Art. 172 (2) CC) depending on the type of goods (for example, explosive substances). In contrast to customs warehouses, such forms of handling do not require any express authorisation (Art. 173 (b), 174 CC).

Re-export, destruction of the goods. If non-Community goods are properly re-exported from the Community customs territory without being released for free circulation, they are assigned to the re-export procedure according to Art. 4 (15) (c), Art. 182 (1), first indent CC. In such cases, commercial policy measures will be activated in accordance with Art. 182 (2) CC in order to prevent the goods entering economic circulation or a contravention of prohibitions and restrictions according to Art. 58 (2) CC. The re-export of non-Community goods is the parallel procedure to the export of Community goods procedure according to Art. 161 ff. CC.

According to Art. 182 (1), second indent CC, non-Community goods can also be destroyed. The trader may consider this option if the goods entering the customs territory of the Community are damaged, subject to import restrictions or if the burden of duties appears too high and it is either no longer possible or too expensive to return the goods (re-export). The destruction of goods amounts to a deliberate elimination or complete devaluation of the thing in question. On the other hand, the goods merely cease to exist if their properties have been altered.⁴⁶ In the latter case, any valuable waste which accumulates must be assigned a further customs-approved treatment for non-Community goods according to Art. 182 (5) CC. Abandoning goods to the state is only possible if state law provides for this (Art. 182 (1), third indent CC).

b. Common provisions for customs procedures having economic impact

In Art. 85–90 CC, central rules and definitions relating to several customs procedures have been placed before individual specific provisions. Particularly noteworthy are common rules relating to customs procedures having economic impact. They include the customs warehouse procedure, inward processing, processing under customs control, temporary admission and outward processing (Art. 84 (1) (b) CC). Consequently, the release for free circulation, transit procedure and the export procedure are excluded from the following rules.

Authorisation of a customs procedure. According to Art. 85 CC, a customs procedure with economic impact requires authorisation (that is, the permission to use the preferred procedure) by the customs authorities (Art. 496 (b) CCIP). In particular, the authorisation assists in the proper clearance of customs procedures and informs, inter alia, the holder of the authorisation of the issuing authority, the validity, the description of the goods, the period of use, the customs offices involved and, above all, the method of securing the identity of goods.

All measures are deemed to be means of identification which ensure the identity of the goods, that is, the description of the goods in the authorisation. Usually, the goods are transferred to the customs declarant before or during the carrying out of the customs procedure, and it must be ensured that the consignment is not substituted, mixed-up or unlawfully altered. The usual means of identification include plombs, self-closing seals, seals, stamps, self-adhesive stickers, photographs, descriptions, licence plate numbers. These are mainly used to carry out the transit procedure (cf. Art. 357 CCIP; Art. 497 in connection with Annex 67 CCIP). All of the means of identification affixed to the goods or the means of transport may only be removed or destroyed by the customs authorities themselves or with their permission according to Art. 72 (2) CC. Permission is especially relevant if the trader has been granted the status of an ‘authorized consignee’ (cf. Art. 406 (1), Art. 408 (1) CCIP).

Art. 86 CC contains three of the mandatory requirements of the authorisation. Accordingly, authorisation for all customs procedures with economic impact is conditional on personal requirements and administrative requirements. On the one hand, the trader must provide the required security for the conduct of his operations in person (Art. 86, first indent CC). Neither the CC nor the CCIP state the cases in which such security is provided. Since this Article deals with a rule of universal application,

personal security will be assessed at least independently from the customs procedure to be authorised. The assessment may refer to the trader's personal reliability, trustworthiness and regular dealings.⁴⁷ On the other hand, the administration must ensure that the costs of surveillance and customs supervision do not involve administrative arrangements disproportionate to the economic needs involved (Art. 86, second indent CC). The lack of administrative efficiency must not operate to the disadvantage of the traders. As is the case with inward processing, which may not operate to adversely affect the economic interests of Community producers (cf. Art. 117 (c) CC), economic requirements must also be considered in the case of some other customs procedures whose satisfaction is usually presumed under certain circumstances (cf. Art. 539, 552 and 585 (1) CCIP).

The single authorisation. If a customs procedure is to be carried out in several Member States, then a single authorisation (that is, one authorisation valid for all EU internal borders) must be issued (cf. Art. 496 (c), 500, 501 CCIP). As a rule, the relevant application must be presented in the Member State in which the applicant has his main accounting offices (Art. 295 (5) CCIP). However, to date it has only been possible to issue a single authorisation following agreement between the customs authorities (so-called 'consultation procedure'). This will be changed in the future and a single authorisation will be possible for the whole customs territory without another Member State having a right of veto.

Discharge of a customs procedure. A customs procedure with economic impact is discharged when a new customs-approved treatment or use is assigned either to the goods placed under that arrangement or to compensating or processed products placed under it (Art. 89 (1) CC). However, the rule in Art. 89 (2) CC is limited to all suspensive procedures. This means that the transit procedure, inward processing under the draw-back system and outward processing do not fall within the scope of this provision. It simply includes the customs warehouse procedure, inward processing under the suspensive procedure, processing under customs supervision and temporary admission.

6. Procedural Law – Assigning goods to a customs procedure

The conditions under which goods are assigned to a customs procedure are laid down in Art. 59–78 CC. In this respect too, most rules apply to all customs procedures but need to be expanded by the CCIP with regard to the simplified procedures.

a. Customs declaration

According to Art. 59 (1) CC, all goods placed under a customs procedure are to be covered by a declaration for that purpose. According to the definition in Art. 4 (17) CC, 'customs declaration' means any act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure. This means that, under public law, the customs declaration is the declarant's declaration of intent (Art. 4 (18) CC), by means of which he can exercise his freedom of choice and freedom of formation under Art. 58 (1) CC with regard to the economic use of the customs procedures. According to the wording of the Act, it is irrelevant whether the goods to be declared are Community or non-Community goods.

The customs declarant. A customs declaration can also be lodged by a person other than the owner of the goods. According to Art. 64 (1) CC the **declarant** may be any person who is able to present the goods in question or have them presented to the competent customs authority, together with all the documents which are required for the relevant customs procedure. A 'person' pursuant to customs law refers to every legal or natural person and association of person without its own legal personality but which can effectively perform legal acts in transactions provided that this possibility is provided for in national (for example, OHG, KG in German law) or Community law (Art. 4 (1) CC).

However, the restrictions referred to in Art. 64 (2) and (3) CC must be observed. In particular, the declarant must be established in the Community (Art. 64 (2) (b) CC). This is regulated by Art. 4 (2) CC. In the case of natural persons, it means the place in the Community where the person is normally

resident. If a natural person has personal and professional connections in two countries, the residence is the constant mid-way point between the two locations. If, in consideration of all the facts, it is not possible to determine the place of residence in this way, personal connections can be given priority.⁴⁸

Representation. According to Art. 5 (1) CC, a person can be represented, for example, by a forwarding company. Such representation can be **direct** or **indirect** (Art. 5 (2) CC). The representation is **direct** if the representative acts in the name of and on behalf of another. This is the usual form of representation. Representation is **indirect** if the agent acts in their own name but on behalf of another. In these cases, the agent becomes the customs declarant and, together with the person they represent, the customs debtor (Art. 201 (3) CC). Therefore, indirect representation means that the agent becomes personally liable. In order to avoid unwanted legal consequences, the representation must be publicly declared in both cases (cf. Art. 5 (4) sub-para. 1 CC).

The different types of customs declaration. Art. 61 CC lays down four equally valid methods of lodging a declaration: in writing, using a data processing technique, orally or by any other act. The **written declaration** is normally used for commercial imports and exports. According to Art. 62–75 and Art. 198–238 CCIP, it can be lodged in the **‘normal procedure’** by means of a single document or in the **‘simplified procedure’** in compliance with the requirements of Art. 76 CC in conjunction with Art. 253 ff. CCIP. The documents which must be enclosed with the customs declaration depend on the intended customs procedure according to Art. 218 ff. CCIP. These may be bills, declarations of customs value, certificates of preferential treatment or import or export permits. The declarant will only be allowed to correct or invalidate the declaration under exceptional circumstances (cf. Art. 65 CC; Art. 66 CC).

b. Normal procedure for making a declaration

Written declaration. The Single Administrative Document is the official model for a written declaration of goods in the normal procedure (Art. 62 CC and Art. 205–217 CCIP). If Community legislation refers to a (written) declaration, the Single Administrative Document is always intended.⁴⁹ According to Art. 205 (2) and (5) CCIP, the situation will only be different if specific administrative documents have been introduced by Community law or international conventions, for example, Carnet TIR or ATA (Art. 91 (2) (b)–(c) CC).

The particulars which the Single Administrative Document must contain for the customs procedure in question are drawn up annually as a (optional) maximum and a (compulsory) minimal list as well as in the form of a Community list (Art. 216 CCIP, Annex 37 CCIP). Member States are free to complement this list (Art. 212 (3) CCIP).

Basically, all 54 fields of the eight copies of the Single Administrative Document are the same. However, the eight copies will not always be needed. A number of differently combined sub-sets have been provided which are specifically tailored to the relevant customs procedure and do not always require all particulars (Art. 208 (1) CCIP). The provisions concerning the transit declaration (specimens 1, 4, and 5) and those concerning the customs declaration in other cases (specimens 6, 7, and 8) or the export declaration (specimens 1, 2, and 3) are most important in practice. The codes to be used in completing the forms referred to in Article 205 (1) are listed in Annex 38 (Art. 213 CCIP).

Declaration using a data processing technique. The CC provides that the customs declaration can also be delivered using a data-processing technique as part of the information procedure (Art. 61 (b) CC, Art. 4a–c, 222–224 CCIP). Instead of presenting written documents, the particulars provided in Annex 37 CCIP are transferred electronically. Art. 4a (1) sub-para. 2 CCIP defines both the exchange of standard information according to EDI (Electronic Data Interchange) as well as the entry into customs information systems as part of the information procedure.

In Germany, the **ATLAS Total IT Concept (Automated Tariff and Local Customs Handling System)** is currently being introduced throughout the country. In particular, the declarant has different ways of

making an electronic declaration in order to release goods for free circulation. At present, the trader can make a (simplified) declaration both electronically from their company (trader entry) or in writing with entries in ATLAS by the customs authorities (user entry) at the customs office. Concerning the trader entry, however, the relevant authority must be notified of this beforehand in order to obtain a trader identification number to replace a written signature (Art. 4b CCIP). The Internet Customs Declaration for the release of goods for free circulation has been possible since 1 August 2002 and is subject to less stringent (and cost intensive) requirements. This requires an electronic form on the Internet⁵⁰ to be filled out and provides a satisfactory solution for those economic participants who do not wish to acquire the hardware and software which is required for participation in ATLAS.

c. Simplified declaration procedure

The CCIP provides for simplified declaration procedures on the basis of Art. 76 (1) CC in order to reduce the clearance formalities to a minimum and to reduce the time required for the goods to pass over the border. There are three simplified declaration procedures: the incomplete declaration (Art. 253 (1) CCIP), the simplified declaration procedure (Art. 253 (2) CCIP) and the local clearance procedure (Art. 253 (3) CCIP).

In particular, the **local clearance procedure** (which requires permission according to Art. 76 (1) (c) CC, is of great practical importance for traders if they regularly deal in large consignments of goods. This simplified procedure allows the declarant not only to declare the goods by entering them in the business records but also to enter them for the customs procedure of their choice without having to involve the competent customs authority (cf. Art. 253 (3) CCIP). Accordingly, there is a close connection with the privileges of an 'authorized consignee' on the basis of the external Community transit procedure. This means that the local clearance procedure is especially suitable for consignments which have been transported in the Community or common transit procedure and which can arrive directly at the trader's company without having to be brought to the destination customs office. Thereby, the declarant can dispose of the goods at the earliest possible opportunity. Despite these simplifications, a supplementary customs declaration must be made which contains all the required particulars and documents (Art. 267, fourth indent CCIP).

The verification of the declaration, examination of goods. The provisions of Art. 68 and Art. 73 (1) CC provide that the customs authorities are generally not obliged to verify the declaration which is submitted. The particulars contained in the declaration form the basis for further customs treatment (Art. 71 (2) CC). However, according to Art. 78 CC, a post-clearance examination is still possible, that is, the declaration can still be verified ex post on the basis of the commercial records at the declarant's company.

In addition to the examination of the declaration and accompanying documents (Art. 68 (a) CC) the examination of the goods according to Art. 68 (b) CC forms the core of the examination laid down in Art. 68 CC. The customs authorities must decide on the form the examination is to take and how to carry it out. The examination extends to the quantity and properties and can refer to all goods in the declaration (full examination) or only part of the consignment by way of samples. Art. 69 (1) (b) CC allows samples to be taken if the properties of the goods cannot be determined immediately. Once a complete examination has taken place, its results will be used for further customs procedures (Art. 71 (1) CC). Otherwise, statutory presumptions apply, that is, the characteristics which are not established by the examination are deduced from the declaration. In the case of a partial examination of the goods it is presumed that the part not examined corresponds to the examined part (Art. 70 (1) CC). The findings, that is, the results of the verification must be entered on the declaration or additional document for applying the other provisions in the procedure (Art. 247 (1) CCIP).

The release of the goods. As soon as the particulars contained in the customs declaration have been verified or accepted without verification, the goods will be released to the declarant provided that no prohibitions or restrictions apply (Art. 73 (1) CC). In accordance with Art. 4 (20) CC, 'release of goods'

means the act whereby the customs authorities make goods available for the purposes stipulated by the customs procedure under which they have been placed. If the goods are to be released for free circulation then, according to Art. 74 CC, they will only be released if either the customs debt has been paid or a security provided.

7. Procedural Law – Transporting the goods into the customs territory of the Community: Supervision of imports

The rules governing the transportation of goods into the customs territory of the Community (Title III CC) and from the customs territory of the Community (Title V CC) are arranged around the central provisions of the Customs Code in the manner of a prelude and postlude. In particular, Title III CC plays an important role concerning the physical record of the goods brought into the customs territory of the Community before they are able to be assigned a customs procedure.

a. Supervision by the customs authorities

In order to be physically recorded, the goods are subject to customs supervision from the time of their entry into the customs territory of the Community (Art. 37 (1) sentence 1 CC). From this moment, the customs authorities may take action, in general pursuant to Art. 4 (13) CC with a view to ensuring that all customs interests are secured. Art. 4 (14) CC lists the possible customs controls by way of example. In particular, the goods are subject to customs routes and opening times. Accordingly, the customs authorities may determine how and where the goods are to be transported for purposes of presentation.

b. Presentation

According to Art. 40 CC, any goods which are subject to customs routes must be presented. One such presentation is the communication to a servant of the competent customs office that the goods are at the location provided for this purpose (Art. 4 (19) CC). At this moment, the customs office is notified of the existence of the goods in the customs territory of the Community for the first time. If the goods are presented, then at this time, the traders may, on request, be allowed to view the goods in order that they may be assigned a customs-approved treatment or use later (Art. 42 CC). As part of this pre-inspection, the trader may examine the goods and take samples in order to ascertain the material composition (Art. 42 CC).

c. Summary declaration

In accordance with Art. 43 sub-para. 1 CC, a summary declaration must also be submitted for all goods once they have been presented to customs. The customs authorities may require the declaration to be submitted within one working day (Art. 43 sub-para. 2, sentence 2 CC). This summary paper is not the same as the customs declaration. Rather, its delivery is meant to ensure compliance with the period for placing goods under a customs procedure according to Art. 49 CC. In accordance with Art. 44 (1) CC the summary declaration, as a rule, requires a certain form. The corresponding printed form is to be used but the customs authorities may allow the use of any commercial or official document (Art. 44 (1) sentence 2 CC). The requirement of the form can even be completely dispensed with on the basis of Art. 45 CC. The most frequent exception is the submission of a transit certificate which qualifies as the summary declaration under Art. 183 (3) CCIP.

Once the summary declaration has been lodged, the declarant then has 20 days to lodge a customs declaration for the goods or to declare any other customs procedure (Art. 49 (1) (b) CC). A period of 45 days applies if the goods were carried by sea (Art. 49 (1) (a) CC). According to Art. 49 (2) CC, an extension may be requested. However, this will only be granted under special circumstances.⁵¹ If the trader has not chosen a customs procedure within 20 days, the customs authorities may, as a rule, sell the goods, store them under their supervision or destroy them (Art. 53, 56 CC). In addition, a customs debt arises owing to the breach of a duty relating to temporary storage (Art. 204 (1) (a) CC).

d. Temporary storage of goods

From the time the goods are presented until they are assigned a customs procedure, the goods are in temporary storage (Art. 50–53 CC, Art. 185–188 CCIP). During this time, the goods may only undergo such forms of handling as are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics (Art. 52 CC).

The customs office makes decisions relating to the temporary storage of goods. The possibilities available are not further defined by the provisions of the CC. Normally, the goods will be released to the importer or a warehousekeeper in order to save space. According to Art. 51 (2), Art. 189 CC, security may be demanded. The customs authorities can also store the goods themselves (cf. Art. 51 (1), Art. 53 CC). Places used on a permanent basis for the placing of goods in temporary storage are designated ‘temporary storage facilities’ (Art. 185 (1) CCIP). Existing customs warehouses can be used as temporary storage facilities (cf. Art. 98 ff., Art. 526 (1) CCIP). The goods may only be taken from this storage facility once they have finally been assigned a customs procedure by being released.

8. Transporting goods from the customs territory of the Community: Export supervision

Title V CC regulates the export of goods from the customs territory of the Community in order to satisfy the formal procedural requirements. Art. 183 CC and Art. 843 CCIP include the principle that goods which are exported from the EC are also under customs supervision. It is irrelevant whether these are Community goods which are in the export procedure or non-Community goods which have been assigned to re-exportation. Temporary exportation is also under customs supervision (cf. Art. 183 CC).

Endnotes

- 34 The Customs Office List (COL) lists the customs offices which are equipped with specific powers in the transit procedure concerned. The COL available at: www.europa.eu.int/comm/taxation_customs/dds/de/csr/home.htm.
- 35 Official Journal (EC) L 226, 13/08/1987, p. 2.
- 36 Official Journal (EC) L 252, 14/09/1978, p. 1.
- 37 Lux, Guide to Community Customs Legislation, p. 348.
- 38 ECJ judgment of 21 March 2000, Case C-217/98, *Hauptzollamt Hamburg-Jonas v. LFZ Nordfleisch AG*, ECR 2000, I - 1619.
- 39 Lyons, EC Customs Law, p. 323.
- 40 ECJ judgment of 28 April 1999, Case C-405/97, *Mövenpick Deutschland GmbH für das Gastgewerbe v. Hauptzollamt Bremen*, ECR 1999, I - 2397.
- 41 ECJ judgment of 29 June 1995, Case C-437/93, *Hauptzollamt Heilbronn v. Temic Telefunken Microelectronic GmbH*, ECR 1995, I - 1687.
- 42 Witte, Zollkodex, Art. 153 ZK p. 29.
- 43 Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology (Official Journal L 159 of 30/06/2000, p. 1).
- 44 Lux, Michael, Guide to Community Customs Legislation, p. 434.
- 45 Hebenstreit in Witte/Wolffgang, Lehrbuch des Europäischen Zollrechts, p. 289.
- 46 Witte/Prieß, Zollkodex, Art. 182 ZK p. 8.
- 47 Dorsch/Krüger, Zollrecht, Art. 86 ZK p. 9; Witte/Henke, Zollkodex, Art. 86 ZK p. 7.
- 48 ECJ judgment of 12 July 2001, Case C-262/99, *Paraskevas Louloudakis v. Elliniko Dimosio*, ECR 2001, I - 5547.
- 49 Lyons, EC Customs Law, p. 284; Witte/Henke, Zollkodex, Art. 62 ZK p. 1.
- 50 www.internetzollanmeldung.de (accessed on 30 September 2004).
- 51 ECJ judgment of 11 November 1999, Case C-48/98, *Firma Söhl & Söhlke v. Hauptzollamt Bremen*, ECR 1999, I - 7877.

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