

# **THE CUSTOMS LAW**

## **PART I**

### **GENERAL PROVISIONS**

#### **CHAPTER ONE SCOPE OF APPLICATION AND BASIC DEFINITIONS**

##### **Article 1**

This Law shall regulate customs procedure, the rights and obligations of persons participating in customs procedure and rights, obligations and powers of the s authorities in charge of customs clearance of goods (hereinafter referred to as customs authorities).

Customs income and other incomes realized in the customs procedure are belonging to the budget of Montenegro.

##### **Article 2**

The customs territory of the Republic of Montenegro (hereinafter referred to as: the customs territory) shall comprise the territory of the Republic of Montenegro (hereinafter referred to as: the Republic), including territorial waters, bays and airspace.

The customs territory shall be enclosed by the customs boundary line which is identical to the state border of the Republic.

#### **1. CUSTOMS CROSSING**

##### **Article 3**

Goods shall be brought into or out of customs territory through customs crossings.

The Government of the Republic of Montenegro (hereinafter referred to as: the Government) shall designate customs crossings and their classification, categorization and working hours.

Circulation of goods liable to phytopathological, veterinary and other prescribed controls shall be permitted only via those customs border crossings designated for circulation of such goods in accordance with special regulations.

Design, construction or reconstruction of the international border crossing in part that is intended for performing of customs supervision and customs procedure shall be subject to the approval of the Director General of the Customs Administration (hereinafter referred to as: Director General).

## **2. CUSTOMS GOODS**

### **Article 4**

Deleted.

## **3. BASIC DEFINITIONS**

### **Article 5**

Expressions used in this Law shall be interpreted as follows:

*"the person"* is:

- Private person,
- Juridical person,
- Union of persons without juridical person property which may undertake legal actions in line with the legislation;

*"the private person with headquarters or residence in Montenegro"* is:

- Private person with residence in Montenegro,
- Juridical person or union of persons with headquarters, branch (registered by foreign company) or permanent business presence in Montenegro;

*"the foreign person"* is:

- Private person with residence outside Montenegro,
- Juridical person or union of persons with headquarters outside Montenegro, whereas it does not have registered part of company in Montenegro and does not have permanent business presence in Montenegro;

*"the customs organ"* is administration organ performing the works defined by the customs and other legislation;

*"the customs office"* is organizational part of customs organ which performs all works defined by customs and other legislation;

*"the decision"* is an act, i.e. the official activity by the customs organ related to the customs legislation which involves decision making in an individual case, holding a legal action towards one or more determined or determinable persons;

*"the customs status"* is status of commodities in the customs procedure, being declared as domestic or foreign:

*"the domestic commodities"* are:

a) commodities fully prepared or produced within the customs area, under the conditions stipulated in Article 24 of this Law, excluding commodities imported in the customs area from abroad;

b) commodities imported from other countries and placed on the market;

c) commodities acquired or produced within the customs area, providing it is acquired or produced fully using the commodities defined in point b) or if it was acquired and produced using commodities defined in points a) and b);

*"the foreign commodities"* are all commodities not defined as domestic commodities, together with the domestic commodities exported from the customs area, except for the commodities where the procedure prescribed by Articles 165 and 166 applies;

*"the customs debt"* is obligation of a person to pay defined amount of levies and other fees for specific commodities according to the law;

*"the import duty"* includes customs duty and other levies paid when importing goods, with the same effect as the duty itself;

*"the debtor"* is any person obligated to pay the customs debt;

*"the customs agent"* is a person participating in customs procedure on behalf of foreign person;

*"the customs supervision"* is a procedure involving necessary measures enforced by the customs organ to insure enforcement of customs and other legislation applied on commodities under customs supervision;

*"the customs control"* is: performing prescribed activities such as commodities overview, control of files existence and correctness, overview of accounting and other documents, control of transportation vehicles, control of luggage and other goods carried by persons or on persons,

enforcing official controls and other similar activities in order to provide appropriate application of customs and other legislation to be applied on the commodities subject to customs supervision;

*"the customs allowed acting or use of commodities "* is putting the commodities in the customs procedure, entering the commodities in free zone or free storage, re-export from customs area, commodities destruction, expropriation of commodities in favor of the state;

*"the customs procedure"* is: free marketing of commodities, transit procedure, storage procedure, procedure of upgrading in Montenegro (hereinafter: the active upgrading), procedure of upgrading under customs supervision, procedure of temporary import, procedure of upgrading outside Montenegro (hereinafter: the passive upgrading) and export procedure;

*"the customs declaration"* is an activity whereas the person in prescribed form and manner requests for the commodities to enter some of the customs procedures;

*"the declaration applicant"* is a person submitting customs declaration in his/her own name or on behalf of person in whose name the customs declaration is being submitted;

*"the commodities submitting"* is informing customs organ in the prescribed manner on commodities arriving to customs office or other location noted or approved by the customs organ;

*"the commodities releasing"* is activity by the customs organ allowing full disposal of the commodities for the purpose defined by the customs procedure it is to undertake;

*"the verification user"* is a person to whom certain verification was issued in line with the customs legislation;

*"the procedure holder"* is a person on whose behalf the customs declaration had been submitted or a person to whom that person had transferred rights and obligations regarding the customs procedure;

*"the border crossing"* is an established location where the persons cross and the commodities are transferred;

*"the banned commodities"* are such commodities for which the import or export are banned according to the legislation;

*"the restricted commodities"* are such commodities for which the import or export are subject to control by issuing verification by the authorized state organ;

*"the identical commodities"* are such commodities produced in the same country, which are in any sense, including physical characteristics, quality and reputation identical, while minor differences in appearance are not the credible reason for such commodities not to be considered identical commodities;

*"the similar commodities"* are such commodities produced in the same country which are, although not similar in every sense, with the same properties and similar contents enabling them

to perform the same functions and to be commercially interchangeable; commodities quality, reputation and existence of brand name are the factors to be considered when deciding if two commodities are similar or not;

*"the commodities from the same group or type"* are such commodities belonging to the group of assortment of commodities produced within one branch, including identical or similar commodities;

*"the customs debt deduction"* is resigning from charging the entire import debt which was not paid or some fraction of it.

*"the risk"* is probability of occurrence of an event which may occur regarding the import, export, transit and special use of commodities situated in the customs area of Montenegro, which moves between customs areas of Montenegro and third countries, as well as regarding the presence of commodities without the domestic commodities status, which:

- prevents due applications of measures in Montenegro, or
- jeopardizes the interests of Montenegro, or
- threatens Montenegro security, protection of health and life of humans, animals and vegetation, public morale, protection of national heritage with historical, artistic or archeology value or protection of intellectual property, environment, consumers, etc;

*"the risk management"* is a systematic establishing of risk and application of all necessary precautions to remedy risk exposure, regarding acquisition of data and information, risk analysis and assessment, prescribing and implementing measures and regular control and overview of procedures and their results, in line with the national and international sources and strategies;

*"the commercial policy measures"* are such measures prescribed by the state organs, which influence commodities export and import, including, but not limited to, protective measures, quantitative limits and bans.

## **CHAPTER TWO RIGHTS AND OBLIGATIONS OF PERSONS**

### **1. REPRESENTATION**

#### **Article 6**

Any person whose rights and obligations are decided upon may appoint a representative for undertaking all or some of the actions in the procedure conducted by the customs authority.

Such representation may be:

- 1) direct, in which case the representative shall act in the name of and on behalf of another person, and
- 2) indirect, in which case the representative shall act in his own name but on behalf of another person.

The representative must have headquarters or residence in Montenegro, except in the situations stipulated in the Article 72 Paragraph 3 herein.

A representative must state who is the person being represented, and whether the representation is direct or indirect, and at the request by the customs authority must submit also a valid document with evidence of his powers to act as a representative.

Persons who fail to state that they are acting in the name or on behalf of another person, or who state that they are acting in the name of and on behalf of another person without producing a relevant document, shall be deemed to be acting in their own name and on their own behalf.

A representative may perform the representation activities when the good are being cleared, in accordance with the separate regulation to be issued by the Government.

#### **Article 6 a**

The foreign person participating in customs procedure shall have a customs agent acting in his own name, and on behalf of foreign person.

The customs agent may be an enterprise or entrepreneur with headquarters in Montenegro and must be registered with customs organ. The customs organ shall register the customs agent upon written request of enterprise or entrepreneur, containing an extract from Central register of Market court.

The customs agent is jointly responsible with the foreign person for payment customs debt and takes full responsibility for fulfilling any law-prescribed obligations and appropriate application of customs and other regulations.

The customs agent is responsible for customs offenses prescribed in this Law committed in customs procedures.

#### **b) Authorized enterprises**

##### **Article 6 b**

The customs organ shall, in cooperation with other authorized organ and in line with the criteria fro Paragraph 3 herein, grant the status of authorized enterprise for the person with headquarters within the customs area of Montenegro.

Authorized enterprise may use favors when performing security-relevant checks, i.e. simplified procedures prescribed by the customs legislation.

The authorized enterprise status may be granted for the following persons:

- which had appropriately adhere to customs legislation in previous period,
- which satisfactory keeps business and, when necessary, transport records, providing thus for appropriate customs controls,
- which fulfills the conditions for performing agency activities in customs procedure, as defined by separate regulation,
- which is financially reliable and stable,
- which fulfills appropriate protection and security measures.

The Government's regulation prescribes:

- conditions for granting the authorized enterprise status,
- conditions for granting authorization to use simplified procedures,
- type and scope of favors which may be granted in view of security relevant checks and risk management,
- conditions and procedures under which the status of authorized enterprise may be cancelled.

The authorized enterprise is obligated to inform customs organ on status and other changes which may influence issued verification.

## **2. APPLICATION OF REGULATIONS ON GENERAL ADMINISTRATIVE PROCEDURE**

### **Article 7**

Regulations governing general administrative procedure shall be applied to procedures conducted by the customs authorities, unless otherwise stipulated by this Law.

### **Article 8**

Where a person requests that customs authority takes a decision, that person shall state all facts and circumstances and submit documents and other evidence required in order to take a decision.

An appeal may be lodged against the first-instance decision to the Ministry of Finance.

The appeal shall not postpone the enforcement of the decision.

The execution of decision can be either fully or partially delayed if customs authority:

- a) finds that the decision, against which an appeal or some other legal expedient was lodged, is not in accordance with the customs regulations, or

b) finds that the enforcement of that decision may cause irreparable damage to the person to whom the decision is addressed.

The enforcement of a decision pertaining to the computation of import or export duties shall be postponed provided that the funds in the amount of the disputed debt payable on the importation or exportation are deposited.

In exceptional cases, no request for the deposit of funds shall be made where the customs duty payer furnishes evidence that the payment of the deposit would bring him into a difficult economic or social position.

#### **Article 8 a**

If overview of data presented in declaration as bases for customs debt calculation and in documents presented with declaration establishes that calculation of customs debt is not in line with the real situation of commodities, i.e. if customs debt was paid in higher or lower amount or is paid several times:

- the customs organ is obligated to, within one year after submitting the customs declaration, ex-post calculate debt and produce resolution on return or charging the customs debt;

- the declaration applicant may, within one year since customs declaration was submitted, file a request with the customs organ, to recalculate the customs debt and produce resolution on subsequent payment or reimbursement of customs debt.

#### **Article 8 b**

If comparison of data from declaration with data submitted with the declaration, where customs debt calculation does not depend on that, establishes that data in declaration are not in line with the data from submitted documents or real situation of the commodities, the customs organ shall, as requested by the declaration applicant, within the deadline of one year after submitting customs declaration, produce a resolution.

#### **Article 9**

Deleted.

#### **Article 10**

Deleted.

### **4. INFORMATION ON APPLICATION OF CUSTOMS REGULATIONS**



## **Article 11**

Any person importing or exporting goods may request information concerning the application of customs rules from the customs service authorities without being charged.

However, fees may be charged where special costs are incurred by the customs authority as a result of necessary analyses or expert testing of the goods in question, report making or return of the goods to the applicant.

## **Article 12**

The customs authority shall issue the following information at written request:

- 1) binding information on the classification of goods under the Customs Tariff,
- 2) binding information on the origin of goods.

Binding information in writing on the classification of goods under the Customs Tariff shall have an effect equivalent to that of a decision adopted in the administrative procedure.

Binding information on tariff classification of goods and the origin of goods shall be binding on the customs authorities as against the holder of the information only in respect of the goods for which customs procedure is conducted after the date on which the binding information was supplied, or concerning the origin of goods, only for the goods for which the procedure of establishing the origin of goods, pursuant to this Law, was conducted after the date of supplying the binding information.

The person using such information must be able to prove:

- 1) that, in case of the binding information on the classification of goods under the Customs Tariff, the goods declared correspond in every respect to those described in the information,
- 2) that, in case of the binding information on the origin of goods, the goods concerned and the circumstances determining the establishing of the origin of goods correspond in every respect to the goods and the circumstances described in the information.

Pursuant to Article 9 of this Law, the binding information shall be annulled where it is based on inaccurate or incomplete data supplied by the applicant.

Binding information regarding tariff classification of goods shall become invalid:

- 1) due to amendments in the regulations;
- 2) where the binding information no longer conforms to the instructions by the competent authority concerning the tariff classification of goods under the Customs Tariff Law, and

- 3) where the binding information is revoked or amended in accordance with Article 10 of this Law, and the holder of the information shall be notified of the revocation or amendment of the binding information.

In cases where the binding information on tariff classification is no longer in accordance with the regulation or in line with the information of the Ministry of Finance, the given information shall become invalid as of the day of enforcement or implementation of the regulation adopted or its interpretation.

The binding information regarding the origin of goods shall become invalid:

- 1) where a regulation is amended or an international agreement is concluded and the binding information no longer conforms to the regulations,
- 2) where the binding information no longer conforms to interpretations of the body authorized by the Law to issue interpretations of rules concerning the origin of goods,
- 3) where the binding information is revoked or amended pursuant to Article 10 of this Law, and the holder of the information shall be notified of the revocation or amendment of the information given.

Where a regulation is amended or an international agreement is concluded, and the binding information is no longer in accordance with the regulations or is not in accordance with the interpretation by the ministry, the binding information shall cease to be valid on the date when the adopted regulation, international agreement or interpretation takes effect, or on the date it becomes effective.

The holder of the binding information ceasing to be valid in accordance with paragraph 6, items 1) and 2), and paragraph 8, items 1) and 2) of this Article, may still use that information for a period of up to three months from the date it ceased to be valid, provided that he concluded a binding contract for the purchase or sale of the goods in question, on the basis of the binding information.

In the cases referred to in paragraph 6, items 1) and 2), and paragraph 8, items 1) and 2) of this Article, the regulation or agreement may lay down a period within which the information may be used.

Binding information on the classification of goods under the Customs Tariff or on the origin of goods may be used pursuant to this Article, solely for the purpose of determining the import or export duties or computing the amounts of export fees or refunds related to agricultural policy measures.

### **Article 13**

The Government shall lay down specific conditions for the issue of binding information in accordance with this Law.

## **5. OTHER PROVISIONS**

### **Article 14**

The customs authorities in the customs territory may, in accordance with the regulations, take and carry out any measure of customs supervision and control they deem necessary to ensure that customs and other regulations are applied.

Customs supervision and control shall be performed selectively, according to the risk analysis with the objective to determine the risk and its intensity, as well as to develop necessary measures for risk estimation according to the established criteria. The customs organ establishes framework for risk management, criteria and priority control areas.

When other authorized organs perform control over the same goods, such control must be performed in direct cooperation with customs organ and, whenever possible, in the same time and at the same place.

Within the control mentioned in Paragraph 2 herein, and when deemed necessary for the purpose of risk alleviation, customs and other authorized organs may exchange data regarding entry, exit, transit, transfer and final use of commodities moving between customs area of Montenegro and other areas, as well as regarding presence of foreign commodities, with international institutions and organs of other states.

When the situation requires facilitating traffic flow on border crossings or remedying obstacles for performing customs procedures within the customs area, customs organ may make a decision on temporary introduction of simplified procedures for enforcement of customs supervision and control measures.

### **Article 15**

Any person directly or indirectly involved in the operations for the purpose of trade in goods shall provide the customs authorities at their request with all the requisite documents and information and any requisite assistance for the application of customs rules.

### **Article 16**

All information which is by nature confidential or which is provided on a confidential basis shall be considered as official secret and it shall not be disclosed by the customs authorities without the express consent of the person or authorities providing it.

The communication of confidential information shall be permitted where the customs authorities may be obliged or authorized to do so pursuant to regulations in force.

### **Article 17**

For the purpose of customs supervision or check, the persons involved in trade in goods possessing documents or information referred to in the Article 15 of this Law, shall keep them for the period laid down in the regulations in force, but not for a period shorter than five calendar years. That period shall run from:

- 1) the last day of the calendar year in which the customs declaration for release for free circulation or for export is accepted,
- 2) the last day of the calendar year in which goods released for free circulation at a reduced rate of import duty on account of their special purpose cease to be subject to customs supervision,
- 3) the last day of the calendar year in which another customs procedure is completed for goods placed under that procedure,
- 4) the last day of the calendar year in which the depositor of goods placed in a free zone or free warehouse no longer enjoys that status for the goods in question.

Where a check carried out by the customs authorities in respect of a customs debt shows that the relevant entry in the accounts has to be corrected, the documents and information shall be kept beyond the time limit provided for in paragraph 1 of this Article in accordance with Article 222 paragraph 4 of this Law for a period sufficient to permit the correction to be made and checked.

#### **Article 18**

Where customs rules lay down a period or date, such period may be extended and the date may be altered only if specific provision is present in the rules concerned.

#### **Article 19**

Public authorities and judicial bodies shall declare to the nearest customs office all goods and vehicles which they have temporarily detained, or seized, in the case of foreign goods which were not placed under the customs procedure pursuant to the provisions of this Law.

Foreign goods which are temporarily detained or seized may be released to another person only where the customs authorities have assigned a customs-approved treatment or use, or where the customs debt for the goods has been paid.

The customs debt shall be paid by the debtor or covered from proceeds of the goods sold.

### **PART II**

#### **BASIS FOR CALCULATION OF IMPORT AND EXPORT DUTIES AND APPLICATION OF OTHER MEASURES PRESCRIBED FOR TRADE IN GOODS**

**CHAPTER ONE  
CUSTOMS TARIFF AND TARIFF CLASSIFICATION**

**Article 20**

Duties on goods imported into the customs territory of the Republic shall be based on the Law on Customs Tariff and on rules laid down in this Law.

In exceptional cases, a uniform rate in the amount of 5% of the customs value of goods may be applied to goods which are not envisaged for trade and are carried by a traveler, or for goods received by a natural person in the post from another natural person.

The Government shall determine the value of goods, including the kinds of goods to which the uniform rate cannot be applied.

The Government may adopt specific regulation to determine export duties on certain products.

**Article 21**

Where goods are imported from countries with which the Republic has concluded a free trade agreement, the import duties shall be charged in accordance with provisions of the agreement in question.

The declarant may subsequently submit a request for the application of paragraph 1 of this Article where conditions laid down in the agreement are fulfilled.

**Article 22**

The Government may lay down detailed conditions on the basis of which the customs authority shall approve a more favorable tariff treatment, from which certain goods may benefit by reason of their nature or particular purpose, than that prescribed by the Customs Tariff pertaining to those particular goods.

As referred to in paragraph 1 of this Article, a "more favorable tariff treatment" shall mean a reduction in or elimination of an import duty and other charges payable on importation of goods referred to in paragraph 1 and within the restrictions related to quantity.

**CHAPTER TWO  
ORIGIN OF GOODS**

**1. NON-PREFERENTIAL ORIGIN**

### **Article 23**

The non-preferential origin of goods is defined by this Law for the purposes of:

- a) applying the Customs Tariff, with the exception of cases set forth in the Article 21 of this Law,
- b) applying other measures established by provisions of separate regulations governing trade in goods, and
- c) the issuing of certificates of origin.

### **Article 24**

Goods originating in a country shall be those wholly obtained or produced in that country, including that country's territorial waters.

The expression "goods originating in a country" means:

- 1) mineral products extracted from the soil of that country;
- 2) vegetable products harvested therein;
- 3) live animals born and raised therein;
- 4) products derived from live animals raised therein;
- 5) products of hunting or fishing carried out therein;
- 6) products of sea-fishing and other products taken from the sea outside a country's territorial waters by vessels registered or recorded in the ship register of the country concerned and flying the flag of that country;
- 7) products obtained or produced on board factory-ships exclusively from the products taken from the sea outside the territorial waters, provided that such factory-ships are registered or recorded in that country and fly its flag;
- 8) products taken from the seabed or subsurface outside the territorial waters, provided that the country has exclusive rights to exploit the subsurface;
- 9) waste and scrap products derived from manufacturing operations or used articles, if they were collected therein and are fit only for the recovery of raw materials, and
- 10) goods which are produced therein exclusively from the above mentioned products or from derivatives thereof, at any stage of processing.

### **Article 25**

Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last substantial, economically justifiable processing (treatment, final treatment, further treatment) resulting in new products or representing a crucial stage of manufacture.

The following shall not be deemed as the last substantial, economically justifiable processing which results new products or represents a crucial stage of manufacture:

- 1) packing and repacking of goods, irrespective of where the packaging material was manufactured,
- 2) dividing large quantities of goods into smaller quantities or putting small quantities together to make large quantities;

- 3) separating, sorting out, sifting, rinsing or cutting of products into pieces;
- 4) labeling and marking of goods;
- 5) treatment necessary to preserve the characteristics of products during transport and storage, and
- 6) simple assembly of parts into the whole product.

#### **Article 26**

Any processing of goods established to be or involving an established fact that its sole object was to circumvent the provisions of this Law applicable in the Republic to goods from certain countries shall not be deemed authentic, and such goods shall not have the status of the goods produced in such country.

#### **Article 27**

The Government shall prescribe detailed criteria for determining the origin of goods referred to in Article 25, paragraph 1 of this Law, the manner of proving their origin, the manner of issuing certificates of origin, and shall designate competent certification bodies for the certificates of origin of goods.

### **2. PREFERENTIAL ORIGIN OF GOODS**

#### **Article 28**

The rules on preferential origin which goods must fulfill in order to benefit from more favorable tariff treatment referred to in the Article 21 of this Law shall be determined in free trade agreements.

The rules on origin for goods from countries to which the Republic applies preferential tariff treatment on the basis of its unilateral decision shall be determined in a regulation adopted by the Government.

When states or groups of states, by their individual decision, grant a favorable customs fee for domestic commodities exported to those states or groups of states, the rules on goods origin established by that decision shall apply.

### **CHAPTER THREE VALUE OF GOODS FOR CUSTOMS PURPOSES**

#### **Article 29**

The provisions of this Chapter shall establish the customs value of the goods for the purposes of application of the customs tariff as well as non-tariff measures laid down by the rules of the Republic governing certain fields related to trade in goods.

### **Article 30**

The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods sold for export to the Republic and increased as set forth in the Article 38 of this Law, provided:

- 1) that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:
  - are defined by regulations in force in the Republic, or based on by-laws adopted on the basis of those regulations,
  - limit the geographical area in which the goods may be resold, or
  - do not substantially affect the value of the goods.
- 2) that the sale or price are not subject to conditions or restrictions for which a value cannot be determined with respect to the goods being valued,
- 3) that no part of the proceeds of any subsequent resale, disposal or use of the goods will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 37 of this Law,
- 4) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes.

Two persons shall be considered related in the cases where:

- 1) one person is a manager or director of a company owned by the other person and vice versa,
- 2) they are legally recognized as business partners,
- 3) they are in an employer-employee relationship,
- 4) one of them is a direct or indirect owner, or controls or owns 5% or more of voting shares in both companies,
- 5) one person, in direct or indirect manner, controls another, i.e. when one of these persons is legally or actually in position to force limitations or to manage other person;



- 6) they are under direct or indirect supervision of a third party,
- 7) they jointly supervise a third party directly or indirectly, or
- 8) they are members of the same family.

Where one person is the other person's exclusive representative, exclusive dealer or exclusive concessionaire, irrespective of the description of their relationship, those persons shall be considered related.

In determining whether the transaction value is acceptable as set forth in paragraph 1 of this Article, the circumstance that the buyer and seller are related persons referred to in paragraph 2 of this Article shall not represent sole grounds for not accepting the pertinent transaction value.

In the case referred to in paragraph 4 of this Article the customs office shall determine the sale circumstances and accept the transaction value, provided that the existing related status did not influence the price.

If, in the light of the information provided by the importer or otherwise, the customs office has grounds for considering that the existing related status influenced the price, they shall communicate their grounds to the importer and he shall be given opportunity to respond as to the nature of his business relationship. At the request of the importer, the customs office shall in writing communicate to him the grounds due to which the transaction value was not accepted.

In case of sale between related persons, the transaction value shall be considered acceptable and the goods valued, as referred to in paragraph 1 of this Article, wherever the importer can prove that such value closely approximates to one of the following, occurring at or about the same time:

- 1) the transaction value in sales, between buyers and sellers who are not related, of identical or similar goods intended for export to the Republic;
- 2) the customs value of identical or similar goods as determined under Article 35 of this Law;
- 3) the customs value of identical or similar goods as determined under Article 36 of this Law.

In conducting the comparison, due account shall be taken of demonstrated differences in commercial levels, of quantity levels, the appropriate amounts determined in Article 38 of this Law, and costs incurred by the seller in sales where the seller and the buyer are not related, and which are not present in sales where the seller and the buyer are related.

The comparison is to be carried out at the request of the importer and only for comparison purposes in determining the transaction value, and such value cannot represent the transaction value.

### **Article 31**

The price actually paid or payable is the total payment made or to be made by the buyer for the benefit of the seller for the imported goods, and includes all payments made or to be made as a condition of sale for the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation to the seller.

The payment may be made by cash money, letters of credit or other negotiable instrument of payment.

The payment may be made directly or indirectly.

Activities undertaken by the buyer on his own account, including also marketing activities not referred to in Article 38 of this Law, for which an adjustment of value is to be made, shall not be considered as an indirect payment to the seller, even when they may be regarded as undertaken for the benefit of the seller or by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value.

### **Article 32**

Where the customs value of imported goods cannot be determined on the basis of Article 30 of this Law, it is to be determined as the transaction value of identical goods sold for export to the Republic and exported at or about the same time and sold on the same commercial grounds and in approximately the same quantity as the goods being valued.

Where it is impossible to find an adequate example of sales as referred to in paragraph 1 of this Article, the transaction value of identical goods sold on different commercial grounds or in different quantities shall apply, after the necessary adjustments of the differences arising from commercial grounds or quantities, provided that such adjustments can be made on the basis of the evidence produced which clearly demonstrates the adequacy and accurateness of the adjustment, irrespective of whether the adjustment increases or reduces the value.

Where the transaction value includes costs and charges referred to in the Article 38 paragraph 1 item 1), indents 4, 5, and 6 of this Law, the adjustment shall take into account the difference in such costs and prices between the imported goods and identical goods which may derive from differences in distances and means of transport.

Where, in application of this Article, it is established that there is more than one transaction value for the identical goods, the lowest of the existing values shall be applied in determining the customs value.

### **Article 33**

Where the customs value of imported goods cannot be determined as set forth in Articles 30 and 32 of this Law, the transaction value of similar goods sold for export to the Republic shall be considered as the customs value if the goods are exported at or about the same time as the goods being valued.

In the implementation of this Article, the transaction value of similar goods sold on the same commercial grounds and in approximately the same quantity as the goods being valued shall be used in determining the customs value.

Where it is impossible to find an adequate example of sales referred to in paragraph 2 of this Article, the transaction value of similar goods sold on different commercial grounds or in different quantities shall apply, after the necessary adjustments of the differences arising from commercial grounds or quantities, provided that such adjustments can be made on the basis of the evidence produced which clearly demonstrates the adequacy and accurateness of the adjustment, irrespective of whether the adjustment increases or reduces the value.

Where the transaction value includes costs and charges referred to in the Article 38, paragraph 1 item 1), indents 4, 5, and 6 of this Law, the adjustment shall take into account the difference in such costs and prices between the imported goods and similar goods which may derive from differences in distances and means of transport.

Where, in the application of this Article, it is established that there is more than one transaction value of the similar goods, the lowest of the existing values shall be applied in determining the customs value.

#### **Article 34**

Where the customs value of imported goods cannot be determined as set forth in Articles 30, 32 and 33 of this Law, it is to be determined as laid down in Article 35 of this Law.

Where the customs value cannot be determined under Article 35 of this Law either, the provisions of Article 36 of this Law shall apply, and at the request of the importer, the order of application of Articles 35 and 36 of this Law may be reversed.

#### **Article 35**

If the same or identical or similar commodities are sold in Montenegro in the same state it was imported, the customs value of the commodities evaluated shall be established according to the unit price per which that commodity or identical or similar commodity is being sold in greatest total quantity in the same or approximately similar timeframe as the commodities evaluated, namely to the persons linked to the persons buying those commodities, providing that the price is decreased for the amount of:

- 1) an amount of commission usually paid or payable, or an amount usually added for profit and general expenses equal to that usually present in sales within the Republic of imported goods of the same class or kind,

- 2) the usual charges for transport, insurance and other related costs incurred within the Republic,

3) customs duties, taxes and other charges payable in the Republic at importation or sale of the goods.

In case that imported or identical or similar goods are not sold at or about the same time as the time of import of goods being valued, the customs value shall be based on unit price at which imported or identical or similar goods are sold within the Republic in the same state as that in which they were imported and within the shortest possible period after the importation of the goods being valued, but not later than 90 days from the import date.

In case that imported goods, identical or similar goods are not sold within the Republic in the same state as that in which they were imported, then, at the importer's request, the customs value of the goods shall be based on unit price at which the imported goods, upon subsequent processing are sold in the greatest aggregate quantity to persons in the Republic who are not related to the sellers of such goods, provided that the valuation takes into account the processing value added to the goods, and the reductions laid down in paragraph 1 of this Article.

### **Article 36**

Pursuant to the provisions of this Article, the customs value of imported goods shall be based on the computed value, consisting of the sum of:

- a) the value of materials and cost of production or other treatments employed in producing the imported goods,
- b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Republic;
- c) all costs and charges set forth in Article 38, paragraph 1, item 1), indents 4, 5 and 6 of this Law.

No person permanently established or residing in the territory of the Republic shall be requested to enable inspection or allow access to any of his accounts or other records for the purpose of determining the computed value.

For the purposes of determining the customs value in another country, the customs service authority may, with the permission of the manufacturer of goods, verify the information received from him, provided that the government of the country concerned is timely notified and does not object the verification.

### **Article 37**

The customs value of imported goods that cannot be determined under the provisions of Articles 30 to 36 of this Law shall be determined on the basis of data available in the Republic, applying appropriate methods in accordance with the principles and main provisions of:

- Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade of 1994;
- Article VII of the General Agreement on Tariffs and Trade;
- this Chapter of the Law.

Pursuant to this Article, no customs value shall be determined on the basis of:

- 1) the selling price for goods produced in the Republic,
- 2) a system which provides for the acceptance for customs purposes of the higher of two possible values,
- 3) the price of goods on the domestic market of the exporting country,
- 4) the production costs, except for calculated value determined for identical or similar goods in accordance with the provisions of Article 36 of this Law,
- 5) the price of goods intended for export to another country, and not for the market of the Republic,
- 6) officially determined minimum customs value, and
- 7) arbitrary or fictitious values.

At the importer's request, the customs authority shall notify him of the customs value determined pursuant to the provisions of this Article and of the method used to determine the value.

The information on customs value and method used for its establishing mentioned in Paragraph 3 herein shall be issued in the form of resolution, against which a complaint may be filed according to the Article 8 herein.

### **Article 38**

In determining the customs value, in accordance with Article 30 of this Law, to the price actually paid or payable (transaction value) for the imported goods the following shall be added:

- 1) the costs, to the amount borne by the buyer, not included in the price actually paid or payable for the goods, of the following:
  - commissions and brokerage, except buying commission,
  - packaging treated as being integral part of the goods in question for customs purposes,

- packing, whether for labor or materials,
  - transport of imported goods to the port or the place of introduction into the customs area of Montenegro,
  - loading, unloading and handling pertaining to the transport of the imported goods to the port or the place of introduction into the territory of the Republic,
  - the cost of insurance before the introduction of imported goods into the territory of the Republic;
- 2) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at a reduced price, for use in production and sale of imported goods for export, to the extent that such value has not been included in the price actually paid or payable:
- materials, components and similar items incorporated into imported goods,
  - tools, dies, moulds, casts and similar items used in the production of the imported goods,
  - other materials consumed in the production of imported goods,
  - engineering, development, artwork services, design work, and plans and sketches undertaken elsewhere than in the Republic and necessary for the production of imported goods,
- 3) royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, provided that such royalties and license fees are not included in the price actually paid or payable,
- 4) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller,

Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

No other additions shall be made to the price actually paid or payable in determining the customs value, save those set forth in this Article.

In determining the customs value, the following shall not be added to the price actually paid or payable:

- 1) charges for the right to reproduce the imported goods,
- 2) payments made by the buyer for the right to distribute or resell the imported goods, if such payments are not a condition for the sale for export to the Republic.

### **Article 39**

Provided that they are shown separately from the price actually paid or payable, the following costs shall not be included in the customs value:

- 1) the transport of goods after their introduction into the customs territory,
- 2) construction, mounting, assembling, maintenance or technical assistance, to be undertaken after the importation, e.g. of industrial plants, machinery or equipment,
- 3) interests under a financial arrangement entered into by the buyer and relating to the purchase of imported goods, irrespective of whether the finance is provided by the seller or another person, provided that the financial arrangement has been made in writing and, where required, the buyer can demonstrate that:
  - such goods have been sold at the price actually paid or payable,
  - the rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided,
- 4) the right to reproduce imported goods,
- 5) buying commissions,
- 6) import duties or other charges payable in the Republic by reason of the importation or sale of the goods.

### **Article 40**

The customs value of goods, for which the contracted price has not yet been paid at the time of determination of the customs value, shall be determined on the basis of a price payable towards the fulfillment of the obligation.

All usual price reductions and cash discounts shall not be included in the customs value if they were contracted before the importation and effected within the period laid down.

### **Article 41**

The customs value of the goods not sold for export to Montenegro and the customs value of temporarily imported goods shall be determined under Articles 32 through 37 of this Law.

The customs value of the goods damaged before being released to the declarant shall be determined by reducing the relevant contracted price by a percentage in which it was damaged.

The customs office shall estimate the percentage of the damage.

Where a new price, corresponding to the conditions provided in Article 30 of this Law, was contracted during the customs procedure, that price shall represent the new customs value.

If the commodities imported according to the lease or leasing arrangement the customs value cannot be established according to the provisions of Paragraph 1 herein and for which no purchase option is defined within the contract, the customs value shall be the amount of lease fee to be paid for the duration of lease period or leasing, increased, if necessary, according to the Article 38 herein.

If, after marketing the commodities the marketer had decreased real paid price or price to be paid, such decreased price shall be taken into account when determining the customs value, according to the Article 30 herein, providing that the customs organ establishes that:

- 1) The commodities had deficiencies in the time of declaration accepting for marketing;
- 2) The marketer had decreased the price regarding execution of warranty obligation prescribed by the contract on commodity sales signed before the commodity was marketed;
- 3) Commodity deficiency was not considered when signing the commodity sales contract.

Price paid or to be paid is, according to the Paragraph 6 herein decreased, and it may be considered when establishing the customs value if the change had occurred no later than twelve (12) months since the day of declaration acceptance for marketing the commodity.

#### **Article 42**

Where in determining the customs value of imported goods it is necessary to postpone the final determination of the customs value, the goods may be released to the declarant provided that the payment of customs duties is secured in the form of a deposit in the amount of a probable customs debt.

#### **Article 43**

In determining the customs value of data carrier bearing data or program instructions for use of data processing equipment (hereinafter referred to as: program support), the price or value of the program support shall not be included in the customs value provided that the price or value is shown separately from the value of the carrier media for use in data processing.

The expression "data carrier" referred to in paragraph 1 of this Article shall not mean included systems, semiconductors and similar devices or products incorporating such systems or devices.

The expression "data and program instructions" referred to in paragraph 1 of this Article, shall not mean audio, cinematographic or video recordings.



#### **Article 44**

In the customs procedure, the customs office may request the declarant to produce all the requisite documents and information necessary for determining the customs value as provided for in Articles 30 to 37 of this Law.

No provision of this chapter shall restrict the right of the customs office to establish whether any statement, document or declaration submitted for the determination of the customs value is accurate and correct.

The provisions of this chapter shall be without prejudice to the specific provisions of this Law regarding the determination of the customs value for goods released for free circulation after being assigned a different customs-approved treatment or use.

The Director General of the Customs Administration may lay down a simplified procedure for determining the customs value of perishable goods.

Provisions of this Chapter shall not exclude applications of provisions of this Law for establishing the customs value for the commodities which were, after the second granted customs procedure or its use, marketed.

#### **Član 44a**

Information and data necessary for validation and checking of customs value of goods, having a classified nature or obtained on a classified basis, shall be considered to be an official secret and the customs authority must not further communicate it, without prior consent of a person or authorized bodies who revealed it, except in cases where a Court requires it to be revealed.

#### **Article 45**

Where the procedure of determining the customs value calls for conversion of foreign currency into the currency used as means of payment in the Republic, the foreign currency shall be converted in accordance with the official exchange rate in effect on the day the customs debt is chargeable.

### **PART III**

## **PROVISIONS APPLICABLE TO GOODS BROUGHT INTO THE CUSTOMS TERRITORY UNTIL THEY ARE ASSIGNED A CUSTOMS-APPROVED TREATMENT OR USE**

### **CHAPTER ONE ENTRY OF GOODS INTO THE CUSTOMS TERRITORY OF THE REPUBLIC**

## **1. CUSTOMS SUPERVISION**

### **Article 46**

The goods brought into the customs territory of the Republic shall, from the time of their entry, be subject to customs supervision and customs control in accordance with regulations.

The goods shall remain under customs supervision until their customs status is determined, and in case of foreign goods, without prejudice to Article 90 of this Law, the goods shall remain under supervision until their customs status is changed, or they enter a free zone or free warehouse, or they are re-exported or destroyed in accordance with the provisions of the Article 182 of this Law.

Both passengers and crew, or driving personnel of means of transport and carrying are subject to customs supervision.

The following are not subject to customs supervision:

- 1) domestic and foreign military vessels;
- 2) vessels navigating in parts of border rivers which are not subject to customs supervision pursuant to international agreements;
- 3) vessels belonging to internal affairs authorities;
- 4) domestic and foreign military aircraft.

Notwithstanding paragraph 4 of this Article, the following are subject to customs supervision:

- 1) goods, passengers and members of the crew embarking or disembarking the vessels referred to in paragraph 4, items 1 and 3 of this Article, as well as traffic between such vessels and the coast;
- 2) goods, passengers and members of the crew embarking or disembarking the aircraft referred to in paragraph 4, item 4 of this Article.

Persons referred to in paragraph 5 of this Article shall declare the customs goods at the customs office when entering in order for the customs procedure to be conducted.

## **2. DECLARING GOODS**

### **Article 47**

All the goods entering or leaving the customs territory must be declared at the border customs office, or other competent customs office.

The master of any vessel or other responsible person and the commander of any aircraft arriving in the Republic, or person authorized by him, shall, immediately upon arrival and prior to unloading the goods, submit to the customs office the manifest for all the goods transported as cargo on such vessel or aircraft.

The master of any vessel or other responsible person and the commander of any aircraft leaving the Republic, or person authorized by him, shall, prior to leaving, submit to the customs office the manifest for all the goods transported as cargo on such vessel or aircraft.

In case of vessels, the form of manifest for international maritime traffic (IMO) must be in accordance with the standards defined by the United Nations Organization, and in case of aircraft, the format of the manifest must be in accordance with the standards defined by the International Air Transport Association (IATA).

The master of the vessel and the commander of the aircraft or his representative in the Republic must verify that the manifest contains full, accurate and correct data on all the goods transported by that vessel or aircraft.

The person bringing the goods into the customs territory of the Republic shall be obliged to convey them without delay, by the route and in the manner specified by the customs office to the designated customs office or any other place designated or approved by the customs authorities, and to a free zone.

Any person who assumes responsibility for the carriage of goods after they have been brought into the customs territory shall become responsible for compliance with the obligation set forth in paragraph 6 of this Article.

In compliance with a concluded interstate agreement, the goods outside the customs territory of the Republic may be subject to customs control as if the goods had been brought into the territory, under the conditions and in the manner specified in the interstate agreement concerning such goods.

The provision of paragraph 6 of this Article shall not preclude implementation of any regulation concerning passenger traffic, frontier traffic, or postal traffic on condition that customs supervision and customs control possibilities are not thereby jeopardized.

Paragraphs 1 through 9 of this Article and Articles 48 through 63 of this Law shall not apply to goods temporarily leaving the customs territory while moving between two points in that territory by sea or air, provided that the transportation is made directly and by regular air or maritime line with no stops outside the customs territory. This provision shall not apply to the goods loaded in the ports, airports, or free ports of foreign countries.

Paragraphs 1 through 6 of this Article shall not apply to goods on board of vessels or aircraft crossing the territorial sea or airspace without having as their destination a port or airport situated in the Republic.

#### **Article 48**

Where, by reason of unforeseeable circumstances or force majeure, the obligations laid down in Article 47 paragraph 6 of this Law cannot be complied with, the person bound by that obligation or any other person acting in his place shall inform without delay the competent customs office of the situation.

Where the unforeseeable circumstances or force majeure do not result in total loss of the goods, the customs authorities shall also be notified immediately of their precise location by the person that was issued an order or any other person acting on his behalf.

The customs office shall determine the measures to be taken in order to permit customs supervision of the goods from paragraph 2 of this Article.

#### **Article 49**

Where, by reason of unforeseeable circumstances or force majeure, a vessel or aircraft, referred to in the Article 47 paragraph 10 of this Law, is forced to stop or temporarily be kept in the customs territory of the Republic whereby the obligations laid down in the Article 47 paragraphs 2 and 3 of this Law cannot be complied with, the person in charge of the vessel or aircraft or any person acting on his behalf shall inform the customs office of the situation without delay.

Should the customs office deem necessary to examine the goods, they shall order the goods to be subsequently conveyed to a customs office or other place approved by the customs office.

#### **Article 49a**

The Ministry of Finance may, as proposed by the customs organ, prescribe special measures of customs supervision and customs procedure for the commodities used for supplying transportation vehicles in the international traffic (navy, air and rail).

## **CHAPTER TWO PRESENTATION OF GOODS TO CUSTOMS**

#### **Article 50**

As laid down in Article 47 of this Law, the goods which have been conveyed to the customs office or other place designated or approved by the customs office shall be presented to the customs office by the person bringing such goods into the customs territory or by the person undertaking responsibility for such goods following the entrance thereof.

#### **Article 51**

Article 50 of this Law shall not preclude the implementation of regulations concerning the following:

- a) goods brought in by passengers,
- b) goods placed under customs procedure but not presented to customs.

#### **Article 52**

Once the goods have been presented to customs office, they may be examined or samples may be taken in order that further customs treatment may be determined or that the goods may be used with the customs office permission.

The permission for further customs treatment or use of the goods shall be granted at the request of the person authorized to carry out the approved customs treatment or use of the goods.

### **CHAPTER THREE SUMMARY CUSTOMS DOCUMENT FOR DECLARING AND UNLOADING OF THE GOODS PRESENTED TO CUSTOMS OFFICE**

#### **Article 53**

All the goods to be declared as referred to in Article 47 paragraph 1 of this Law and for the goods to be presented as referred to in Article 50 of this Law shall be covered by a summary customs document for presentation of goods (hereinafter: declaration); except for the temporary storage when short application shall be filed.

Declaration shall be submitted to the customs office at the time of the entrance of the goods into the customs territory.

The customs office may extend the time period for the declaration to be submitted, but not beyond the end of the first working day following the day on which the goods are presented to customs.

#### **Article 54**

The application and short application shall be made on the prescribed form pursuant to Article 69, paragraph 2 of this Law.

The application and short application shall be submitted by:

- 1) the person who brought the goods into the customs territory, or the person who assumes responsibility for transportation of goods following such entry; or
- 2) the person in whose name the persons referred to in item 1) of this paragraph act.

#### **Article 55**

Without prejudice to provisions regulating goods imported by travelers, letter mail and postal parcels, the customs office shall not request the declaration to be submitted provided that this does not impede the implementation of the customs supervision measures and that formalities necessary for the goods to be assigned the requested customs-approved treatment or use of the goods, have been carried out.

#### **Article 56**

Goods may be unloaded or reloaded from the means of transport solely with the permission of the customs office and in places designated and approved for such purpose.

In the event of the imminent danger necessitating the immediate unloading of all or part of the goods, such permission of the customs office shall not be required; however the customs office shall be informed about such an event immediately.

Customs service authorities may require at any time that the goods be unloaded or unpacked for the purpose of examining the goods and means of transport carrying them.

#### **Article 57**

The goods shall not be removed from the original position without the permission of the customs office.

### **CHAPTER FOUR OBLIGATION TO ASSIGN GOODS PRESENTED TO CUSTOMS A CUSTOMS- APPROVED TREATMENT OR USE**

#### **Article 58**

Foreign goods presented to customs shall be assigned a customs-approved treatment or use.

### **Article 59**

Where the goods are covered by a declaration, the necessary actions for them to be assigned the customs-approved treatment or use shall be carried out within the following time period:

- a) 45 days from the day on which the declaration is submitted for goods carried by sea,
- b) 20 days from the day on which the declaration is submitted for goods carried otherwise.

Should the circumstances so require, the customs office may set a shorter period or allow extension of the periods referred to in paragraph 1 of this Article.

## **CHAPTER FIVE TEMPORARY STORAGE OF GOODS**

### **Article 60**

Goods presented to customs office shall have the status of goods in temporary storage until they are assigned customs-approved treatment or use.

### **Article 61**

Goods in temporary storage may be stored only in places and under circumstances approved by the customs office.

The customs office may require the person holding the goods to deposit security for payment of customs debt which may arise in accordance with Articles 203 and 204 of this Law.

### **Article 62**

Notwithstanding provisions of Article 52 of this Law, goods in temporary storage may be subject to such forms of handling which are necessary for ensuring their preservation without modifying their appearance or technical characteristics.

### **Article 63**

The customs authorities shall without further delay take all necessary measures for regulating the status of the goods, including sale thereof, if the formalities necessary for the goods to be assigned a customs-approved treatment or use are not initiated within the periods determined in accordance with Article 59 of this Law.

The customs office may, at the risk and expense of the person holding the goods, have the goods transferred to any other place under its supervision, until the situation of the goods is regulated.

**CHAPTER SIX  
PROVISIONS APPLICABLE TO TRANSIT PROCEDURE**

**Article 64**

Article 47, with the exception of paragraphs 1, 6 and 7, and Articles 48 through 63 of this Law shall not apply when goods already placed under a transit procedure are brought into the customs territory of the Republic.

Once foreign goods, carried under a transit procedure, reach their destination in the customs territory and are presented to customs office in accordance with provisions governing transit procedure, Articles 52 through 63 of this Law shall apply.

**CHAPTER SEVEN  
OTHER PROVISIONS**

**Article 65**

Where circumstances so require, the customs office may undertake actions aimed at destroying the goods presented to customs, and shall then inform the holder of the goods accordingly.

The costs of destroying the goods shall be borne by the holder of the goods.

**Article 66**

Where the customs authorities find that the goods have been brought unauthorized into the customs territory of the Republic or have been withheld from customs supervision, they may take any measures necessary, including sale of goods, for the purpose of regulating the status thereof.

**PART IV**

**CUSTOMS-APPROVED TREATMENT OR USE OF GOODS**



## **CHAPTER ONE GENERAL PROVISIONS**

### **Article 67**

Save as otherwise provided in this Law, the goods may, at any time, under the conditions laid down, be assigned any customs-approved treatment or use irrespective of their nature or quantity, origin, destination or consignment.

Paragraph 1 of this Article shall not be applied, if such application is in contradiction with the measures for public morality protection, security, protection of health and life of humans, animals or plants, protection of national treasures possessing historical, artistic or archeological value, or protection of intellectual property and other.

The Government shall lay down the treatment of goods, the importation ,exportation or transit of which is reasonably suspected to violate the rights of intellectual property.

## **CHAPTER TWO CUSTOMS PROCEDURES**

### **SECTION 1**

#### **Placing Goods under Customs Procedure**

### **Article 68**

All goods to be placed under a customs procedure shall be covered by an appropriate customs declaration for that customs procedure.

Domestic goods declared for export, outward processing, transit or customs warehousing procedures shall be subject to customs supervision from the time of acceptance of the customs declaration until such time as they leave the customs territory of the Republic or are destroyed or the customs declaration is invalidated.

The Director General may establish the competence of individual customs offices for the customs clearance of certain goods or for undertaking certain actions related to the goods.

### **Article 69**

The customs declaration shall be made:

- a) in writing;

b) using electronic data transfer, where technical possibilities are provided for and where usage of such means is authorized by the customs service, or

c) verbally or by means of any other act whereby the holder of the goods requests their placing under a customs procedure, where such possibility is provided for by the regulations.

The form, substance and manner of submitting the customs declaration and other forms used in the customs procedure are proscribed by the Ministry of Finance on the proposal of the customs authorities.

## **1. CUSTOMS DECLARATION IN WRITING**

### **1) Regular Procedure**

#### **Article 70**

The customs declaration in writing shall be submitted in the prescribed form and shall be signed and contain all the particulars necessary for implementation of the regulations governing the customs procedure for which the goods are declared

The customs declaration shall be accompanied by all the documents required for implementation of the regulations governing the customs procedure for which the goods are declared.

#### **Article 71**

The customs organ shall instantly accept declaration submitted in line with the provisions of Article 70 herein, providing that the commodities included in declaration are delivered to the customs office.

#### **Article 72**

The customs declaration may be filed by any person who has the possibility to present the subject commodities or to provide its presentation to the authorized customs organ, together with any required documents for the purpose of application of legislation which regulates the procedure for which the subject commodities were registered.

The customs declaration applicant must have headquarters or residence in Montenegro.

Condition stated in Paragraph 2 herein does not relate to the persons who:

- 1) are registering the commodities for transit or temporary import;
- 2) are declaring the commodities in special circumstances, providing that the customs organ deems that to be justified.

### **Article 73**

The declarant, at his request, will be permitted to amend one or more of the particulars of the customs declaration, which has already been accepted by the customs office, provided that the amendment shall not have the effect on any other goods other than those originally declared.

Amendments shall not be permitted if the permission is requested after the customs office:

- a) has informed the declarant of the intention to examine the goods;
- b) has established that the particulars are incorrect, or
- c) has cleared the goods.

### **Article 74**

The customs office shall, at the request of the declarant, invalidate a declaration already accepted where the declarant furnishes the proof that goods were declared by mistake for the customs procedure referred to in that declaration, or that, as a result of special circumstances, the performing of the customs procedure for which the goods are declared is no longer justified.

Where the customs office has informed the declarant of the intention to examine the goods, the request to invalidate the declaration shall not be accepted until after the examination of the goods.

Customs declaration shall not be invalidated after the goods have been released into free circulation, except in the cases specified by the Government.

Invalidation of the customs declaration shall be without prejudice to the application of penal provisions in force.

### **Article 75**

Save as otherwise expressly provided, all provisions in force on the day of acceptance of the customs declaration shall be applied in the customs procedure for which the goods are declared.

### **Article 76**

For the verification of the customs declaration accepted, the customs office may:

- 1) examine the documents being part of the customs declaration and the documents accompanying the customs declaration;
- 2) request the declarant to present other documents for the purpose of verifying the accuracy of the particulars in the declaration,

3) examine the goods and take samples for analysis of the goods or for further examination.

#### **Article 77**

Transport of the goods to the place where they are examined or samples are taken, and any other handling of the goods necessary for the purpose of examination or taking samples shall be carried out by the declarant or under his responsibility. The expenses thus incurred shall be borne by the declarant.

The declarant shall be entitled to be present when the goods are examined or when samples are taken.

Where deemed necessary, the customs office may require the declarant or his representative to be present when the goods are examined or samples are taken in order to provide the necessary assistance for the purpose of facilitating such examination or sample taking.

Provided the samples are taken in compliance with the regulations in force, the customs office shall not be liable for payment of any compensation thereof, but the costs of analyses or testing shall be borne by the customs office.

#### **Article 78**

Where only part of the goods covered by the customs declaration is examined, the result of such examination shall apply to all the goods covered by that declaration.

Should the declarant consider that the result of partial examination is not valid as regards the remainder of the goods, he may request further examination of the goods.

Where the customs declaration form covers two or more descriptions, for the purpose of paragraph 1 of this Article, the particulars relating to each description shall be deemed to constitute a separate customs declaration.

#### **Article 79**

The results of verifying the customs declaration shall be used for the purpose of applying the regulations governing the customs procedure under which the goods are placed.

Where the customs declaration is not verified, the regulations governing the customs procedure under which the goods are placed shall be applied on the basis of the particulars stated in the customs declaration by the declarant.

#### **Article 80**

The customs office shall take all the measures necessary to identify the goods, where the identification is necessary for implementation of the customs procedure for which the goods are declared.

Customs means of identification may be removed from the goods or means of transport or destroyed only by the customs office or with its permission, save in the cases when, due to unforeseeable circumstances or force majeure, their removal or destruction is essential for the protection of the goods or means of transport.

Type and mode of application of the customs means of identification shall be laid down by the Director General.

### **Article 81**

Without prejudice to Article 82, where the conditions for placing the goods under the requested customs procedure are met, and where the goods are not subject to any restrictive or prohibitive measures, the customs office shall release the declared goods to the declarant as soon as the particulars from the customs declaration are verified and accepted or accepted without verification.

The customs office shall also release the goods to the declarant in cases where the customs declaration cannot be verified in the reasonable period, and when the goods are not required to be present for verification purposes.

The goods covered by the same customs declaration shall be released at the same time.

For the purposes of paragraph 2 of this Article, where a customs declaration covers several classes of goods, the particulars relating to each class of goods shall be deemed to constitute a separate declaration.

### **Article 82**

Where acceptance of the customs declaration gives rise to a customs debt, the customs clearance of the goods under such declaration may be carried out only after the amount of the customs debt has been paid or the security in that amount deposited.

Where, pursuant to the provisions governing the customs procedure for the goods declared, the customs office requires a security to be deposited, such goods shall not be cleared in accordance with the customs procedure carried out until the said security has been deposited.

The provision referred to in paragraph 2 of this Article shall not apply to the temporary import procedure where partial exemptions of import customs duties are in place.

### **Article 83**

The customs office may take all the necessary measures, including confiscation and sale of the goods, where:

- 1) the goods cannot be cleared because:
  - it has not been possible to undertake or continue examination of the goods within the period specified by the customs office for reasons attributable to the declarant,
  - all the documents necessary for placing the goods under the requested customs procedure have not been produced,
  - customs debt has not been paid, or security for its payment has not been provided within the prescribed period,
  - the goods are subject to bans or restrictions,
- 2) the goods have not been removed within the prescribed period after being cleared by the customs authorities.

## **2) Simplified Procedures**

### **Article 84**

In order to simplify the formalities of the procedures, the customs office shall, in cases and in the manner laid down by the Minister of Finance, grant permission for:

- 1) the customs declaration to omit certain particulars and for some documents, specified in Article 70 of this Law, not to be attached thereto,
- 2) a commercial or administrative document accompanying the request for the goods to be placed under the customs procedure to be lodged in place of the customs declaration,
- 3) the goods to be placed under the requested customs procedure on the basis of an entry in the bookkeeping records, in which case the customs office may relieve the declarant of his obligation to present the goods to customs.

A simplified customs declaration, a commercial or administrative document, and entry in the bookkeeping records must contain the particulars necessary for identification of the goods. The entry in the records concerning the goods must include the date when the entry was made.

The declarant shall furnish, within the prescribed period, a supplementary declaration, which may be of general, periodic or recapitulative nature.

The Ministry of Finance may specify the cases in which a supplementary declaration shall not be lodged.

The supplementary customs declaration and the simplified customs declaration shall constitute an indivisible legal instrument subject to regulations in force on the day of acceptance of the simplified customs declaration. The entry in the bookkeeping records shall have the same legal force as acceptance of customs declaration referred to in Article 70 of this Law.

The Government may prescribe special simplified procedures for transit procedure.

### **3) Other Customs Declarations**

#### **Article 85**

Where the customs declaration is made by means of electronic data transfer, verbally or by any other act, provisions of Articles 70 through 82 of this Law shall apply *mutatis mutandis*.

Where the customs declaration is made by means of electronic data transfer, the customs office may approve not submitting the subsidiary documents as laid down in Article 70 paragraph 2, in addition to the customs declaration, whereby the documents are to be available for the customs authorities.

### **4) Post-Clearance Control of Customs Declaration**

#### **Article 86**

The customs office may, *ex officio* or at the request of the declarant, review the accuracy of the customs declaration after release of the goods to the declarant.

Authorized customs officers may, after clearing the goods, and for the purpose of verifying the accuracy of the particulars contained in the customs declaration, carry out the control of commercial documents, and other data relating to the import or export operations in respect of the goods concerned, or of subsequent commercial operations involving these goods.

Such inspections may be carried out at the premises of the declarant or any other person who is directly or indirectly involved in the said operations in a business capacity, or at the premises of any other person in possession of the said data and documents for business purposes.

Authorized customs officers may also examine the goods where the goods are still available for such examination.

Where post-clearance examination of the customs declaration indicates that the regulations for implementation of the customs procedure have been applied on the basis of incorrect or incomplete information, the customs office shall, in accordance with the regulations, take the

measures necessary for correct implementation of the procedure in question, in compliance with the new circumstances.

## **SECTION 2**

### **Releasing Goods in Free Circulation**

#### **Article 87**

Release for free circulation shall confer on foreign goods the status of domestic goods, which entails application of commercial policy measures, performing other specified formalities related to importation of goods, as well as payment of all prescribed duties, taxes and other charges.

#### **Article 88**

Where import duty is reduced after the acceptance of the customs declaration for release for free circulation, but the goods have not still been released into free circulation, the declarant may request the application of a lower rate of import duty.

Lower rate of import duty shall not be applied where it has not been possible to release the goods for free circulation for reasons attributable to the declarant.

#### **Article 89**

Where a consignment contains the goods classified under different tariff classifications, and classification of goods and drawing up of a customs declaration would entail work and costs disproportionate to the customs duties chargeable, the customs office may, at the request of the declarant, allow that the customs duty for the entire consignment be charged on the basis of the tariff classification of the goods which are subject to the highest rate of import customs duty.

#### **Article 90**

Where the goods have been released for free circulation at the more favorable rate of customs duty, on account of their end-use, such goods shall remain under customs supervision.

Customs supervision shall end when the conditions on account of which the more favorable rate was granted cease to apply, when the goods are exported or destroyed, or where the use of goods for the purposes other than those laid down for application of the more favorable rate of customs duty is permitted, provided customs import duty is paid.



Articles 96 and 98 of this Law shall apply *mutatis mutandis* to the goods referred to in paragraph 1 of this Article.

### **Article 91**

Goods released for free circulation shall lose the status of domestic goods where:

- 1) the customs declaration for release for free circulation is invalidated after the release;
- 2) the customs import duties payable on the goods are repaid or remitted:
  - under the procedure of processing in the Republic in the form of the repayment system;
  - in respect of the defective goods or goods which fail to comply with the terms of the contract under which the goods have been imported, or
  - in cases set forth in Article 231 of this Law, where repayment of or exemption from customs duty is conditional upon the goods being exported or re-exported, or being assigned other relevant customs-approved procedure or use.

## **SECTION 3**

### **Suspensive Arrangements and Customs Procedures with Economic Impact**

#### **General provisions for multiple procedures**

### **Article 92**

Phrases used in Articles 93 through 97 herein are related to:

- 1) for "customs procedure with delay", the procedures of:
  - external transit,
  - customs storage,
  - active upgrading with delay system application,
  - processing under customs supervision,
  - temporary import.
- 2) for "customs procedure with economic effect", the procedures of:
  - customs storage,
  - active upgrading,
  - processing under customs supervision,
  - temporary import,
  - passive upgrading,
  - internal transit.

"Import goods" shall mean the goods placed under a suspensive procedure and goods which, under the inward processing procedure in the form of the repayment system, have undergone the formalities for release for free circulation and formalities set out in Article 129 of this Law.

"Goods in unaltered state" shall mean the import goods, which under the inward processing procedure in the Republic or processing under customs control procedure, have undergone no form of treatment or processing.

### **Article 93**

The use of any customs procedure with economic impact shall be conditional upon authorization being issued by the customs office.

### **Article 94**

Without prejudice to meeting the additional special conditions governing the procedure in question, the authorization referred to in Article 93 and Article 107, paragraph 1, of this Law shall be granted only:

- 1) to persons providing every guarantee necessary for the proper conduct of the approved procedure;
- 2) where the customs offices can supervise the authorized procedure and control it.

### **Article 95**

The authorization shall contain all the conditions under which the procedure in question is to be conducted.

The holder of the authorization shall immediately notify the customs office of all facts arising after the authorization was granted, and which may influence its validity or content.

### **Article 96**

The customs office may require the holder of the authorization to provide a security for the payment of any customs debt which may arise in relation to the goods placed under a suspensive arrangement.

Special provisions on providing security may be prescribed within a suspensive arrangement.

### **Article 97**

Customs procedure with economic impact shall be discharged when a new, customs-approved treatment or use is assigned to the goods which were placed under such procedure, or to equivalent goods or compensating products following processing.

The customs office shall take all necessary measures applicable to the goods in respect of which a procedure has not been discharged under the conditions prescribed.

## **Article 98**

The rights and obligations of the holder of a customs procedure with economic impact may, under the conditions laid down by the customs office, be transferred to other persons meeting any conditions laid down for the procedure in question.

## **2. External Transit Procedure**

### **1) General provisions**

## **Article 99**

The external transit procedure shall allow movement from one point to another within the customs territory, and that of:

- 1) foreign goods, which are not subject to payment of customs import duties and other charges or to commercial policy measures;
- 2) domestic goods, which have undergone the export procedure.

Movement of goods referred to in paragraph 1 of this Article shall take place:

- 1) under the external transit procedure set out by this Law,
- 2) under TIR carnet procedure (as laid down in the TIR Convention) provided that such movement:
  - began or is to end outside the Republic;
  - relates to consignments of goods which must be unloaded in the customs territory and which are conveyed with goods to be unloaded in a third country; or
  - is effected between two points in the country through the territory of a third country;

- 3) under ATA carnet procedure (as laid down in the ATA Convention), used only as a transit document;
- 4) by post (including parcel post).

#### **Article 100**

The external transit procedure shall apply without prejudice to the specific provisions applicable to the movement of goods placed under a customs procedure with economic impact.

#### **Article 101**

The external transit procedure shall end when the goods and the corresponding transit documents and the documents issued by the customs office of entry in the Republic, are presented to the customs office of destination in accordance with the provisions on the transit procedure.

The customs office shall complete the procedure where it is possible to compare the data kept by the customs office of origin of goods with the one of the destination of goods, and thus determine the procedure to have been completed in the proper manner.

#### **Article 102**

The holder of the transit procedure shall be the principal and he shall be responsible for:

- 1) the presentation of goods at the customs office of destination in an unaltered state and within the specified period, and with any measures undertaken for the purpose of ensuring identicalness of the goods duly observed, and
- 2) observance of the provisions governing the transit procedure.

Notwithstanding the obligations of the principal, a carrier or recipient of goods who accepts goods and who is aware that they are under the transit procedure shall be responsible for presentation of goods at the customs office of destination in an unaltered state and within the specified period, and with any measures undertaken for the purpose of ensuring identicalness of the goods observed.

#### **2) Specific provisions relating to external transit procedure**

#### **Article 103**

The principal shall provide a security for payment of any customs debt or other charges which may be incurred in respect of the goods.

The security may be:

- 1) individual, for one transport based on the transit procedure;
- 2) general, for several transports based on the transit procedure, in which case the principal has been granted the permission by the Customs Administration.

The permission referred to in paragraph 2, item 2) of this Article shall be granted solely to persons:

- 1) established or residing in the Republic;
- 2) regularly using the transit procedure in the Republic and known to the customs service authorities as capable of meeting their obligations related to the said procedures;
- 3) not having committed any serious offense against customs or fiscal regulations.

The security referred to in paragraph 1 of this Article shall not be provided in case of transport by sea, river, air, railway and pipelines.

Notwithstanding paragraph 4 of this Article, the Ministry of Finance may order that the security referred to in paragraph 1 of this Article is to be provided also in cases referred to in paragraph 4 of this Article.

#### **Article 104**

The Finance Minister may prescribe the cases where other forms of security in the internal transit procedure may be furnished in lieu of the security referred to in Article 193 of this Law.

### **3. Customs Warehousing Procedure**

#### **Article 105**

The customs warehousing procedure may allow storage in a customs warehouse of the following:

- 1) foreign goods, which at that time are not subject to import customs duties and commercial policy measures, and
- 2) domestic goods intended for export, which by being placed in the customs warehouse becomes subject to application of the measures which, in compliance with the specific regulations, are applied to the export of such goods;
- 3) domestic goods intended for export.

Customs warehouse shall mean any place where the goods may be stored under the conditions laid down and approved by the customs office, and which is under customs supervision.

The Government shall provide for the cases where the goods referred to in paragraph 1 of this Article, which are not stored in customs warehouses, may be placed under the customs warehousing procedure.

### **Article 106**

Customs warehouse may be a public warehouse or a private warehouse.

Public warehouse shall mean customs warehouse where any person may store goods.

Private warehouse shall mean customs warehouse intended for warehousing of goods belonging to the holder of the warehouse.

The holder of the warehouse shall mean the person authorized by the customs office to operate the customs warehouse.

The user of the warehouse shall mean a person who is bound by the declaration to place the goods under customs warehousing procedure, or a person to whom the rights and obligations of such person have been transferred.

### **Article 107**

The authorization by the customs office is necessary for the operation of customs warehouse, unless the customs office operates the customs warehouse.

Any person wanting to operate the customs warehouse must submit the application in writing containing all the particulars necessary for issuing of the authorization, with special emphasis on the present economic need for warehousing. The authorization shall specify the requirements for operating the customs warehouse.

The authorization for operation of a customs warehouse may be issued only to persons who are established or residing in the Republic.

The authorization shall specify the type of warehouse and conditions of its operation by the owner, types of goods which may be stored, and other obligations of the holder towards the customs office.

The applicant must produce evidence that he meets all the requirements laid down by special regulations pertaining to storage of certain types of goods, operation of certain businesses or handling of goods are stored in such warehouse.

### **Article 108**

The holder of the warehouse shall be responsible for:

- 1) ensuring that the goods stored in the customs warehouse are not taken or removed from customs supervision,
- 2) fulfilling all obligations arising from customs warehousing procedure,
- 3) complying with special requirements contained in the authorization for opening of customs warehouse.

### **Article 109**

Without prejudice to the provision laid down in Article 108 of this Law, the authorization for public warehouse may determine that the responsibility referred to in Article 108, items 1) and 2) of this Law be transferred solely to the depositor.

The depositor shall in any case be responsible for fulfilling of obligations arising from placing the goods under the customs warehousing procedure.

### **Article 110**

The rights and obligations of the holder of the warehouse may, with the agreement of the customs authorities, be transferred to another person.

### **Article 111**

Without prejudice to the provision laid down in Article 96, the customs office may demand that the holder of the warehouse provide the security that the obligations set forth in Article 108 of this Law shall be fulfilled.

### **Article 112**

The holder of the customs warehouse shall keep stock records of the goods placed under the customs warehousing procedure.

The goods placed under the customs warehousing procedure shall be entered into the stock records as soon as they are brought to the customs warehouse.

As set forth in Article 94 of this Law, the customs office may dispense with stock records kept by the owner of the warehouse, where the responsibility for fulfilling the obligations referred to in Article 108, items 1) and 2) of this Law, lie solely with the depositor, and the goods are stored in

the customs warehouse on the basis of a written declaration as a part of a regular procedure, or documents laid down in Article 84, paragraph 1 of this Law.

### **Article 113**

Where there are justified economic reasons which do not jeopardize customs supervision, the customs office may allow:

- 1) domestic goods to be stored on the premises of a customs warehouse, except for the goods referred to in the Article 105 paragraph 1, item 2) of this Law,
- 2) foreign goods to be processed on the premises of a customs warehouse under the inward processing procedure in the Republic, subject to the conditions provided for by that procedure, and
- 3) foreign goods to be processed on the premises of a customs warehouse under the procedure for processing under customs supervision, subject to the conditions provided for that procedure.

In the cases referred to in paragraph 1 of this Article, the goods shall not be deemed to have been in the customs warehousing procedure.

The customs office may require the details on the goods referred to in paragraph 1 of this Article to be entered into the stock records as laid down in Article 112 of this Law.

### **Article 114**

There shall be no limit to the length of time goods may remain under the customs warehousing procedure.

Exceptionally, the customs authorities may set a period in which the depositor shall assign the goods a new customs-approved treatment or use.

The Minister of Finance may, on the proposal by the Minister of Agriculture and Forestry, lay down specific time periods for some of the types of goods referred to in Article 105, paragraph 1, item 2 of this Law, which are under protective measures of agricultural policy.

### **Article 115**

Import goods may undergo the usual forms of handling which are performed for the purpose of their preservation, improvement of their appearance or marketable quality or preparation for distribution or resale.



The forms of handling referred to in paragraph 1 of this Article must be authorized in advance by the customs office.

The Minister of Finance may, on the proposal by the Minister of Agriculture and Forestry, lay down cases where such handling of goods subject to protective measures of agricultural policy shall be prohibited.

#### **Article 116**

Where special circumstances so warrant, the goods may be temporarily removed from the customs warehouse.

The customs office must authorize removal of goods in advance and set the conditions on which such removal may take place.

While the goods are outside the customs warehouse, they may undergo usual forms of handling referred to in Article 115 of this Law, and on the conditions set out.

#### **Article 117**

The customs office may authorize the removal of goods having been subject to customs warehousing procedure from one customs warehouse to another.

#### **Article 118**

Where a customs debt is incurred in respect of import goods placed under customs warehousing procedure, the cost of warehousing and of preserving goods while they are stored in the warehouse shall not be included in the customs value of the goods provided that they be shown separately from the price actually paid or payable for the goods.

Where the goods have undergone usual forms of handling for the purpose of the Article 115 of this Law, the type of goods, customs value and quantity at the time when the customs debt was incurred may, at the request of the declarant, be taken into account in determining the amount of customs debt as laid down in Article 215 paragraph 1 of this Law, as if the goods had not undergone usual forms of handling.

Where import goods are released for free circulation on the basis of entry into the bookkeeping records, the kind of goods, the customs value and the quantity of goods to be taken into account shall be those applicable to the goods at the time when the goods were placed under the customs warehousing procedure, unless the declarant requests the customs value determined at the time when the customs debt was incurred to be accepted.

Paragraph 3 of this Law shall be applied without prejudice to controls at a later date as referred to in Article 86 of this Law.

## **4. Inward Processing**

### **1) General provisions**

#### **Article 119**

Without prejudice to Article 120 of this Law, based on the procedure of inward processing, the use of the following goods in one or several procedures of processing may be allowed:

- 1) foreign goods, intended for re-export in the form of compensating products (suspension system) which are not subject to customs duties or commercial policy measures,
- 2) foreign goods released for free circulation with payment of customs duties, for which repayment or write-off of the customs debt may be granted where the goods are exported from the customs territory in the form of compensating products (repayment system).

The expressions used in the Articles 119 through 132 of this Law shall have the following meanings:

- 1) “suspension system” shall mean the requirements as provided for in paragraph 1, item 1) of this Article;
- 2) “repayment system” shall mean the requirements as provided for in paragraph 1, item 2) of this Article;
- 3) “processing operations” shall mean:
  - the working of goods, including mounting, assembling or fitting them to other goods;
  - the processing of goods;
  - the repair of goods, including restoring them and putting them in order;
  - the use of certain goods which are not to be found in the compensating products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process.
- 4) “compensating products” shall mean all products resulting from processing operations;
- 5) “equivalent goods” shall mean domestic goods which are used instead of the import goods for the manufacture of compensating products;
- 6) “rate of yield” shall mean the quantity or percentage of products obtained from the processing of a given quantity of import goods.

#### **Article 120**

Where the conditions laid down in paragraph 2 of this Article are fulfilled, and subject to paragraph 4 of this Article, the customs office shall allow:

- 1) processing with the use of equivalent goods;
- 2) compensating products obtained from equivalent goods to be exported from the Republic before importation of the import goods.

Equivalent goods must be of the same quality and have the same characteristics as the import goods.

However, the Finance Minister may, in agreement with the Minister of Economy, prescribe the cases in which equivalent goods shall not be used, and cases in which equivalent goods do not have to be of the same quality, have the same characteristics and traits as import goods.

Where paragraph 1 of this Article applies, the import goods shall be regarded for customs purposes as equivalent goods and the latter as import goods.

Where paragraph 1, item 2) of this Article is applied and the compensating products would be liable to export duties if they were not being exported or re-exported under an inward processing operation, the holder of the authorization shall provide a security to ensure payment of the import duties should the import goods not be imported within the period prescribed.

## **2) Granting authorization**

### **Article 121**

The customs office shall grant the authorization at the request in writing of the person(s) carrying out or arranging the carrying out the processing operations.

The authorization shall be granted only:

- 1) to persons established or residing in the Republic, and in case of non-commercial importation the authorization may also be granted to persons who are not established or residing in the Republic,
- 2) where import goods can be identified in a compensating product, save in the case of usage referred to in Article 119, paragraph 2, item 3), indent 4 of this Law, and in the case of usage of equivalent goods in compliance with the provisions of Article 120 of this Law,
- 3) where inward processing procedure creates more favorable conditions for export or re-export of compensating products, provided that the essential interests of domestic manufacturers of similar or the same products are not adversely affected (economic conditions).

The Government shall prescribe the method of verifying the meeting of the economic conditions.

### **3) Operation of the procedure**

#### **Article 122**

The customs authorities shall set out the period within which the compensating products must be re-exported or requested to be assigned another customs-approved procedure or use.

In specifying the period referred to in the paragraph 1 of this Article, the customs office shall take account of the time required to carry out inward processing operations and dispatch of the compensating products.

The period shall run from the day on which foreign goods are placed under the inward processing procedure.

The customs office may grant extension of the period on submission of duly substantiated request by the holder of the authorization.

Where applying Article 120, paragraph 1, item 2) of this Law, the customs office shall set out the period within which the foreign goods shall have been declared for specific procedure, and such period shall run from the day on which export declaration for compensating products obtained from the equivalent goods is accepted.

The Finance Minister may specify the specific time periods for certain processing procedures or for specific import goods.

#### **Article 123**

The customs office shall determine the rate of yield of compensating products obtained from the inward processing of a given quantity of import goods or, where appropriate, the method of determining such rate.

The rate of yield shall be determined on the basis of actual circumstances in which the goods are inward processed or should be processed.

Where circumstances so warrant, and, in particular in the case of processing operation carried out under clearly defined technical conditions involving goods of the same characteristics and resulting in the production of compensating products of uniform quality, the customs office may set out standard rates of yield, on the basis of previously established actual data.

#### **Article 124**

Compensating products and goods in unaltered state must be re-exported, and the customs office may in special justified cases authorize release of goods for free circulation, placing of goods

under the procedure of processing under customs control, destruction of goods or their abandonment to the government.

Paragraph 1 of this Article shall apply to the products the inward processing procedure of which has previously been finalized under customs warehousing procedure, temporary import procedure, internal transit procedure or the procedure of placing goods in a free zone or free warehouse.

Where the customs office authorize the inward processing procedure under suspension system, the customs debt on goods which are released for free circulation shall be inclusive of interest on arrears, in compliance with paragraphs 1 and 2 of this Article.

### **Article 125**

As set forth in Article 126 of this Law, where a customs debt is incurred, the amount of customs debt shall be determined on the basis of the regulations governing determination of the amount of customs duties applicable to the import goods at the time of acceptance of the declaration for placing the goods under inward processing procedure.

Where, at the time of acceptance of the customs declaration, the import goods met the quality requirements for the application of preferential tariff treatment on the basis of free trade agreement, the request of the declarant that these customs duties be applied shall be accepted, where they are applicable to the identical goods at the time when the declaration for release for free circulation is accepted.

### **Article 126**

By way of derogation from Article 125 of this Law the compensating goods:

- 1) shall be subject to the import duties where they are released for free circulation in accordance with the detailed conditions prescribed by the Government. Holder of the authorization may ask for the customs duty on those products to be calculated in the manner referred to in Article 125 of this Law.
- 2) if subject to import duties calculated in accordance with the rules applicable to the customs procedure in question or to free zones or free warehouses where they have been placed under a suspensive arrangement or in a free zone or free warehouse. Holder of the authorization may ask for the customs duty on those products to be calculated in the manner prescribed by Article 125 of this Law. Where the amount of import customs duty is calculated in accordance with this Article, the calculated amount shall be at least equal to the amount which would be calculated in accordance with Article 125 of this Law.
- 3) compensating goods which are subject to the rules governing assessment of duty laid down under the procedure for processing under customs supervision;

- 4) compensating goods shall enjoy favorable tariff treatment owing to the special use for which they are intended, where provision is made for such treatment in the case of identical imported goods;
- 5) compensating goods shall be admitted free of import duty where such duty-free provision is made in the case of identical goods imported in accordance with Article 184 of this Law.

#### **4) Outward processing operations for compensating product and goods in unaltered state**

##### **Article 127**

Some or all of the compensating products or goods in unaltered state may be temporarily exported for the purpose of further outward processing if the customs office authorizes so, and in accordance with the requirements laid down for the outward processing procedure.

Where a customs debt is incurred in respect of reimported products, the following shall be charged:

- 1) import duties on the compensating products or goods in the unaltered state, referred to in paragraph 1 of this Article, calculated in accordance with Articles 124 and 125 of this Law,
- 2) import duties on products reimported after outward processing, the amount of which shall be calculated in accordance with the provisions relating to the outward processing operations, on the same conditions as those which would have been applied had the products exported under that procedure been released for free circulation before such export took place.

#### **5) Special provisions relating to the repayment system**

##### **Article 128**

The repayment system may apply to all goods.

The repayment system shall not apply for compensating goods which, at the time the declaration for release for free circulation is accepted:

- 1) are subject to quantitative import restrictions,
- 2) may qualify for application of preferential tariff treatment or autonomous suspensive arrangement pursuant to Article 21 of this Law,
- 3) for the export of which repayment or a tax is envisaged.

### **Article 129**

The declaration for release for free circulation shall indicate that the repayment system is being used and shall provide particulars of the authorization.

The customs office may request that the said authorization be attached to the declaration for release for free circulation.

### **Article 130**

Within the repayment system, paragraph 1, item 2), paragraphs 3 and 5 of Article 120, paragraph 3 of Article 122, Articles 124 and 124, paragraph 1, item 3) of Article 125 of this Law shall not be implemented.

### **Article 131**

Temporary exportation of the compensating products, carried out in accordance with Article 127 paragraph 1 of this Law, shall not be considered to be exportation for the purpose of the Article 132 of this Law, unless these products are reimported into the Republic within the period prescribed.

### **Article 132**

The holder of the authorization may request customs duty to be repaid or written off where he can prove to the satisfaction of the customs office that the import goods released for free circulation under the repayment system in the form of compensating products or goods in the unaltered state have been:

- 1) exported or
- 2) placed, with a view of being subsequently re-exported under the internal transit procedure, under the customs warehousing procedure, the temporary importation procedure or inward processing procedure (suspensive arrangement), or in a free zone or free warehouse, provided that all other stipulated conditions have been fulfilled.

In such case of the paragraph 1 item 2) of this Article the compensating products and goods in the unaltered state shall be considered to be foreign goods.

The repayment of customs duty may be requested no later than 3 years from the day when the customs debt was incurred.

Without prejudice to provision from paragraph 1 item 2) of this Article, compensating products or goods in the unaltered state placed under the customs procedure or in a free zone or free warehouse are released for free circulation, the amount of import duties repaid or exempted shall be considered to constitute the amount of customs debt.

## **5. PROCESSING UNDER CUSTOMS SUPERVISION**

### **Article 133**

The procedure for processing under customs supervision shall allow foreign goods to be used in the customs territory in operations which alter their nature or state, without being subject to customs duties or commercial policy measures, and shall allow products which result from such operations to be released for free circulation at the rate of customs duty laid down for them.

These products shall be named processed products.

### **Article 134**

The Government shall determine the cases where the procedure for processing under customs supervision may be allowed.

### **Article 135**

Authorization for processing under customs supervision shall be issued at the request in writing of the person who carries out the processing or arranges it to be carried out.

### **Article 136**

The authorization for processing under customs supervision shall be granted:

- a) to persons who are established or residing in the Republic,
- b) where the import goods can be identified in the processed products,
- c) where the goods cannot be restored after processing to their description, contents or state as they were before they were placed under the procedure,
- d) where use of this procedure cannot result in circumvention of the rules concerning origin or quantitative restrictions applicable to the imported goods,
- e) where the use of this procedure helps create or maintain a processing activity in the Republic without adversely affecting the interests of the manufacturers of similar or the same goods.

### **Article 137**



Article 122, paragraphs 1, 2 and 4, and Article 123 of this Law shall apply *mutatis mutandis* to the procedure for processing under customs supervision.

#### **Article 138**

Where, under the procedure for processing under customs supervision, a customs debt is incurred in respect of goods in the unaltered state or of products the processing of which has not reached the processing stage specified in the authorization, the amount of that debt shall be determined on the basis of the provisions governing the determination of the customs duties which were applicable to the import goods at the time of acceptance of the declaration relating to placing of the goods under the procedure for processing under customs supervision.

#### **Article 139**

Where the import goods qualified for preferential tariff treatment under the free trade agreement when they were placed under the procedure for processing under customs supervision and such preferential tariff treatment is applicable also to products identical to the processed products which were released for free circulation, the import duties on the processed products shall be calculated at the rate of customs duty applicable under that preferential treatment.

If the preferential tariff treatment referred to in paragraph 1 of this Article is conditional upon tariff quotas or ceilings, the preferential tariff treatment shall be granted provided that at the time of acceptance of the declaration for release for free circulation of the processed goods the import goods fulfill the conditions for such treatment and the quantities shall be charged against the tariff quotas in force for import goods, and not against the processed products.

### **6. TEMPORARY IMPORTATION**

#### **Article 140**

The procedure for temporary importation shall allow use, with total or partial relief of import duties and exemption from the commercial policy measures, of foreign goods which are intended for re-export without having undergone any change except normal depreciation due to the use made of them.

#### **Article 141**

Authorization for temporary importation shall be granted at the request of the person who uses the goods or arranges for them to be used.

#### **Article 142**

The customs office shall refuse to authorize the use of temporary importation procedure where it is impossible to ensure that the import goods can be identified.

The customs office may authorize the use of temporary importation procedure even where it is impossible to ensure that the import goods can be identified when, in view of the nature of the goods or their intended use, abuse of the procedure is not possible.

### **Article 143**

The customs office shall set the period within which the import goods must be re-exported or assigned a new customs-approved treatment or use. Such period must be long enough for the objective of the temporary importation to be achieved.

The maximum period within which the goods may remain under the temporary importation procedure shall be 24 months, unless otherwise stipulated by the Government rule adopted in accordance with the Article 144 of this Law.

Exceptionally, the customs office may, where it is justified, extend the set periods set forth in the paragraphs 1 and 2 of this Article for the purpose of achieving the objective of the authorized use.

### **Article 144**

The Government shall prescribe the special cases and detailed conditions and terms of total relief from import duties for the temporary importation procedure.

### **Article 145**

Use of temporary importation procedure with partial relief from import duties shall be granted in respect of goods which, while remaining the property of a person established or residing outside the customs territory, are not covered by the specific provisions of the Government referred to in Article 144 of this Law, or are covered by such provisions but do not fulfill all conditions necessary for temporary importation with total relief.

The Government shall list the goods in respect of which the temporary importation procedure with partial relief from import duties shall not be used, as well as the conditions for such procedure to be carried out.

### **Article 146**

The amount of import duties payable in respect of goods under the temporary importation procedure with partial relief from import duties shall be set at 3%, for each month or for part of a month in which the goods have been under the said procedure, of the amount of import duties payable on the said goods had they been released for free circulation on the day of acceptance of the declaration for temporary importation procedure.

The amount of import duties to be charged shall not exceed the amount which should have been paid if the goods had been released for free circulation on the day on which they were placed under the temporary importation procedure, leaving out of the account any interest which may be applicable.

Transfer of the rights and obligations arising from the temporary importation procedure pursuant to Article 98 of this Law, shall not mean that the same relief must be applied to each of the periods of use.

Where transfer of the rights and obligations referred to in paragraph 3 of this Article is made with partial relief for both persons authorized to use the procedure during the same month, the holder of the initial authorization shall be liable to pay the amount of the import duties for the whole that month.

### **Article 147**

Where a customs debt is incurred in respect of the goods placed under the temporary importation procedure, the amount of such debt shall be determined on the basis of the calculation elements applicable on the day of acceptance of the declaration for temporary importation procedure.

Where stipulated by the Government in the rules of application of temporary importation procedure with total relief from import duties, the amount of debt for the goods shall be determined on the basis of the provisions governing this matter which are in force on the day on which the debt has been incurred, in accordance with the Article 212 of this Law.

Where, for reasons other than the placing of goods under temporary importation procedure with partial relief from import duties, a customs debt is incurred in respect of goods placed under the said procedure, the amount of the debt shall correspond to the difference between the amount of duties calculated pursuant to paragraph 1 of this Article and the amount payable pursuant to Article 146 of this Law.

## **7. OUTWARD PROCESSING**

### **1) General provisions**

#### **Article 148**

Without prejudice to the provisions of Articles 157 to 162 of this Law, the procedure of outward processing may be allowed for domestic goods that are temporarily exported from the customs territory for processing purposes.

The products resulting from the procedure of outward processing may be released for free circulation whereby they shall be exempted from payment of import, in whole or in part.

In case of temporary export of domestic goods, export duties, trade measures and other procedures envisaged for export of domestic goods from the customs territory shall apply.

The expressions used in the Articles 149 to 161 of this Law shall have the following meanings:

“Temporary export of goods” is placement of goods in the procedure of outward processing;

“Outward processing” is the process referred to in Article 119 paragraph 2 item 3) indents 1, 2, and 3 of this Law;

“Compensating products” are the products resulting from processing operations;

“Rate of yield” is the quantity or percentage of compensating products obtained from the processing of a given quantity of import goods.

### **Article 149**

Outward processing shall not be allowed for the domestic goods:

- 1) the export of which incurs entitlement to the refund or exemption from payment of customs duties;
- 2) which was before export released for free circulation without charging the customs duties for utilization for specific purposes;
- 3) the export of which incurs the entitlement to export refund.

Exemptions from the ban referred to in paragraph 1 item 2) of this Law may be prescribed by the Government.

## **2) Grant of authorization**

### **Article 150**

The customs authorities shall grant the authorization at the request of the person who organizes the outward processing.

Notwithstanding paragraph 1 of this Article, the authorization for the outward processing shall be granted to a person other than the person who organizes the outward processing when the processing concerns the goods of domestic origin and the production activity involves integration of such goods in the foreign goods which shall be imported in the Republic as compensating products, provided the use of such procedure improves sale of exported domestic goods and if the import of new product does not prejudice essential interests of domestic manufacturers of such products or the products similar to the imported new product.

### **Article 151**

The authorization for outward processing shall be granted:

- 1) to persons with domicile and residence in the Republic;
- 2) where it appears possible to establish that the compensating products have been produced from the temporarily exported goods;
- 3) if granting the authorization does not prejudice essential interest of domestic manufacturers (economic condition)

The finance minister may specify when an exemption may be made from paragraph 1 item 2) of this Article.

### **3) Implementation of the procedure**

#### Article 152

The customs authorities shall set out the period within which the compensating products must be re-imported in the customs territory.

The customs authorities may grant extension of the period for re-import of the compensating products upon timely and reasonable request submitted by the holder of the authorization.

The customs authorities shall determine the rate of yield or, where appropriate, the method of determining such rate.

#### Article 153

The total or partial relief from import duties provided for in the Article 154 paragraph 1 of this Law may be granted only where the compensating products are declared for release for free circulation in the name or on behalf of:

- 1) the holder of the authorization, or
- 2) any other person with the domicile in the Republic provided such person has obtained the consent of the holder of the authorization and the conditions of the authorization have been fulfilled.

The total or partial relief from import duties provided for in the Article 154 of this Law shall not be granted where one of the conditions or obligations relating to outward processing procedure is not fulfilled, unless it is established that the flaws do not significantly prejudice proper implementation of the procedure.

#### Article 154

As set forth in the Article 148 the total or partial relief from import duties shall be established by deducting from the amount of import duties applicable to the compensating products released for

free circulation the amount of import duties that would be applicable on the same day to temporary exported goods if they were imported into the Republic from the country in which they underwent the processing operations or the last processing operation.

The amount deducted pursuant to paragraph 1 of this Article shall be calculated on the basis of the quantity and nature of the goods on the day of acceptance of declaration placing them under outward processing procedure and on the basis of other calculating elements applicable to them on the day of acceptance of declaration for release for free circulation.

The value of the temporary export goods shall be that taken into account for those goods in determining the customs value of compensating products in accordance with Article 38 paragraph 1 item b) indent 1 of this Law, or, if the value cannot be determined in that way, the difference between the customs value of compensating goods and the processing costs determined in a non-arbitrary manner.

Where temporary export goods were, prior to being placed under outward processing procedure, released for free circulation at a reduced rate of customs duties on account of their end-use, and for as long as the conditions for granting reduced rate continue to apply, the amount to be deducted shall be equal to the amount of import duty which was charged when the goods were released for free circulation.

Where temporary export goods could qualify on their release for free circulation for a preferential rate of duty on account of their end-use, such rate shall be taken into account provided that the goods underwent operations consistent with such end-use in the country in which processing operation or last such operation took place.

Where the Article 21 of this Law is applicable to compensating products and if measures are envisaged for goods falling within the same tariff classification as the temporary export goods, the amount to be deducted pursuant to paragraph 1 of this Article shall be determined by taking into account import duties which would be applied if the temporary export goods fulfilled the conditions for implementation of the Article 21 of this Law.

This Article shall not apply if an international agreement which is binding for the Republic provides for relief from import duties on certain products.

#### Article 155

If outward processing procedure was authorized for the repair of temporary export goods, the goods may be released for free circulation with total relief from import duties provided it is established to the satisfaction of the customs authorities that the goods were repaired free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect.

Paragraph 1 of this Article shall not apply where the manufacturing defect was identified at the time when the goods were first released for free circulation.

#### Article 156

Where the purpose of outward processing procedure is the repair of temporary export goods in return for payment, the goods may be partially relieved of import duties as set forth in the Article 148 paragraph 2 of this Law.

The amount of the customs duties shall be determined on the basis of calculation elements pertaining to compensating products on the day of acceptance of the declaration for release for free circulation of those products, and taking into account as the customs value an amount equal to the costs of repair, provided that those costs represent the only payment by the holder of the authorization and are not influenced by any link of that holder and the person who carried out the repair work.

#### **4) Outward processing with use of the exchange system**

##### Article 157

In accordance with the Article 157 to 162 of this Law, under the outward processing procedure, exchange system shall allow imported product (hereinafter referred to as replacement product) to replace a compensating product.

The customs authorities may allow the standard exchange system to be used where the processing operation involves the repair of domestic goods.

Save for Article 162 of this Law, the provisions applicable to compensating products shall also apply to replacement products.

The customs authorities may, under certain conditions, allow the replacement goods to be imported prior to temporary export of goods (prior importation).

In the event as set forth in the paragraph 4 of this Article, security shall be provided to cover the amount of the import duties on replacement product.

##### Article 158

Replacement products shall have the same tariff classification, be of the same quality and possess the same technical characteristics as the goods temporarily exported for repair.

Where the temporary export goods have been used prior to export, the replacement products must also be used.

The customs authorities may grant derogations from the rule where the replacement products have been supplied free of charge either because of contractual or statutory obligation arising from a guarantee or because of a manufacturing defect.

##### Article 159

Exchange system shall be authorized only where it is possible to verify that the replacement product fulfills the conditions laid down in Article 158 of this Law.

#### Article 160

In the event of prior importation, the goods shall be temporarily exported within the period of two months from the day of acceptance by the customs authorities of the declaration for release for free circulation of replacement products.

Where exceptional circumstances so warrant, the customs authorities may extend the period in question, at the timely request of the holder of the authorization, as appropriate.

#### Article 161

In the event of prior importation and where Article 154 of this Law applies, the amount to be deducted shall be determined on the basis of calculation elements applicable to the temporary export goods on the day of acceptance of the declaration placing the goods under outward processing procedure.

### **5) Other provisions**

#### Article 162

Provisions of Article 150 paragraph 2 and Article 151 paragraph 1 item 2) of this Law shall not apply in the context of the standard exchange system.

Commercial policy measures shall apply to the procedures provided for within the framework of outward processing operations.

### **8. Export**

#### Article 163

The export procedure shall allow domestic goods to leave the customs territory.

Export procedure shall entail the application of all export related measures, including the application of the commercial policy measures and, where appropriate, payment of export duties.

The customs value of export goods equals the value of goods transported to the frontier of the Republic.

All domestic goods intended for export shall be placed under export procedure, with the exception of the goods placed under outward processing procedure or internal transit procedure of domestic goods from one point in the customs territory to another via the territory of another country, without the customs status of the goods being changed.



The Government shall lay down the cases in which and conditions under which the goods which leave the customs territory shall not be subject to export declaration.

The export declaration shall be lodged at the customs office which is responsible for supervising the area where the exporter is established or where the goods have been packed or loaded for export shipment.

#### Article 164

Release of goods for export shall be granted on condition that the goods are exported from the customs territory in the same condition as when the export declaration was accepted.

### **6. Internal transit**

#### Article 165

The internal transit procedure shall, under the conditions laid down in paragraphs 2 and 3, allow the movement of domestic goods from one point to another within the customs territory, passing through the territory of a third country without any change in their customs status, without prejudice to the provisions of Article 99 paragraph 1 item 2 of this Law.

The movement referred to in paragraph 1 may take place either:

- 1) under the internal transit procedure, provided that such a possibility is provided for in an international agreement;
- 2) under cover of a TIR carnet;
- 3) under cover of an ATA carnet used as a transit document;
- 4) by post (including parcel post).

In the case referred to in paragraph 2 item 1) of this Law, the provisions of Articles 101 to 104 shall apply *mutatis mutandis*.

#### Article 166

The detailed conditions under which the goods may move from one point to another within the customs territory, passing through the territory of a third country, without being subject to a customs procedure and without alteration of their customs status, shall be determined by the Government.

### **3. OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE**

#### **SECTION 1**

## **Free zones and free warehouses**

### **1. General provisions**

#### Article 167

Establishing of free zones and free warehouses, running of free zones and free warehouses, and conditions of performing business activities in free zones and free warehouses shall be regulated by a separate law.

#### Article 168

Free zones and free warehouses shall be parts of the customs territory and premises in that territory separated from the rest of it in which:

a) foreign goods are considered as not being in the customs territory, for the purpose of import duties and commercial policy import measures, provided that the goods have not been released for free circulation or placed under another customs procedure or use, or consumed or used under conditions other than those provided for in customs regulations, and

b) domestic goods intended for export, for which specific provisions are made, qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attached to the export of such goods.

#### Article 169

The area covered by a free zone and free warehouse, their perimeter including exit and entry points shall be under supervision by the customs authorities.

Means of transport and persons entering or leaving a free zone or free warehouse shall be under supervision by the customs authorities and may be subject to a customs check.

Access to a free zone or free warehouse may be denied to persons who do not provide every guarantee necessary for compliance with the rules provided for in this Law.

The customs authorities may check goods and carry out any other measure of customs supervision over the goods entering, remaining in or leaving a free zone or free warehouse.

A person designated by the customs authority shall, for the purpose of enabling the checking of goods, submit or present a copy of the transport document which shall accompany goods entering or leaving.

Where such checks are required, the goods shall be made available to the customs authorities.

### **2. Placing of goods in a free zone or free warehouse**

## Article 170

Both foreign and domestic goods may enter a free zone or free warehouse.

Where specially authorized by the customs authorities, a user may store the domestic goods which are not intended for export or processing in the zone, in a free zone or free warehouse separately from other goods.

The customs authorities shall not authorize storage of such goods, where it would make supervision over operations in a zone or warehouse more difficult.

Domestic goods which are stored in a free zone or free warehouse shall be entered into the stock records.

The goods entering a free zone or free warehouse directly by sea, air, or land, as referred to in Article 47, paragraph 6 of this Law, shall be submitted to the customs authorities based on the transportation document.

The domestic goods shall be stored in a free zone or warehouse based on the invoice or other document containing the information required for keeping stock records in a free zone or free warehouse.

The customs authorities may require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them.

## Article 171

Without prejudice to Article 169 paragraphs 4, 5 and 6 of this Law, the goods entering a free zone or free warehouse need not be presented to the customs authorities, nor need a customs declaration be lodged.

Goods shall be presented to the customs authorities and undergo the prescribed customs formalities only where:

(a) Goods, which on entrance into a free zone or free warehouse discharge another customs procedure, shall be placed into a free zone or free warehouse on the basis of the document indicating the discharge of the previous procedure, unless such customs procedure allows for exemption from the obligation to present goods;

(b) they have been placed in a free zone or free warehouse on the authority of a decision adopted by the customs authorities to grant repayment or remission of import duties;

(c) the quality for the measures referred to in Article 168 item 2 of this Law.

The customs authorities may request separate stock records to be kept for goods subject to economic policy measures.

At the request of the participant in the customs procedure in question or other persons concerned, the customs authorities shall certify whether the goods placed in a free zone or free warehouse have the status of domestic or foreign goods.

### **3. Operation of foreign goods in free zones or free warehouses**

#### Article 172

There shall be no limit to the length of time goods may remain in a free zone or free warehouse.

All industrial, commercial or service activities may be conducted in a free zone or free warehouse, under the conditions prescribed by law and upon prior consent of the customs authorities.

The customs authorities may introduce certain measures to ban or restrict the activities referred to in paragraph 2 of this Article, taking into account the type of the goods or the required customs surveillance measures.

The customs authorities may ban certain persons from conducting the activities in a free zone or free warehouse, if such persons fail to present guarantees that they shall conduct the activities in compliance with law.

For certain domestic goods as set forth in Article 168 item 2 of this Law, the Government may impose specific time limits.

#### Article 173

Foreign goods placed in a free zone or free warehouse, while still situated in a free zone or free warehouse, may:

- 1) be released for free circulation under the conditions prescribed for such procedure and by Article 178 of this Law,
- 2) as set forth in the Article 115 paragraph 1 of this Law, undergo the usual forms of handling, without special authorization by the customs authorities,
- 3) be placed under inward processing procedure under the conditions laid down for that procedure,
- 4) be placed under the procedure for processing under customs supervision under the conditions laid down for that procedure,
- 5) be temporarily imported under the conditions laid down for that procedure,
- 6) be surrendered to the government in accordance with Article 182 of this Law, and

- 7) be destroyed or otherwise rendered unsuitable for any use, provided that the customs authorities are furnished with all the information they judge necessary.

Where goods are placed under one of the procedures referred to in paragraph 1 items 3), 4), or 5) of this Article, the customs authorities may adjust the control arrangements laid down, in so far as is necessary to take account of the operating and customs supervision conditions of the free zones or free warehouses.

#### Article 174

Domestic goods intended for export as set forth in the Article 168 item 2) of this Law, may, in a free zone or free warehouse, undergo only the forms of handling which are prescribed for such goods by Article 115 of this Law.

#### Article 175

Goods placed in a free zone or free warehouse, which are not subject to Articles 173 and 174 of this Law shall not be consumed or used during the period they remain in a free zone or free warehouse.

#### Article 176

Person who carries out an activity of the storage, working or processing, or sale or purchase of goods in a free zone or free warehouse shall, for the purpose of customs supervision, keep stock records in an approved form so as to record goods which enter, or leave the premises, as well as usage of goods and changes they undergo.

The goods shall be entered into the stock records as soon as they are brought into the premises of such person.

The stock records must enable the customs authorities to identify the goods and monitor their movements.

The stock records shall be kept in a chronological order on the basis of information from the documents accompanying goods on exportation or importation, or on the basis of standard rates of use of material and processing of goods.

The form of stock records and manner in which customs supervision is carried out in a free zone or free warehouse shall be prescribed by the Government.

Where goods are transshipped within a free zone, the documents relating to the operation shall be kept at the disposal of the customs authorities. The short-term storage of goods in connection with such transshipment shall be considered to be an integral part of the operation.

### **4. Removal of goods from free zones or free warehouses**

#### Article 177

Goods leaving a free zone or free warehouse may be:

1. exported or re-exported from the customs territory, or
2. brought into another part of the customs territory.

Title III, with the exception of Articles 58 to 63 of this Law, shall apply to goods which are brought into other parts of the customs territory from a free zone or free warehouse, except where the goods leave a free zone by sea or air without being placed under internal transit or other appropriate customs procedure.

#### Article 178

Where a customs debt is incurred in respect of foreign goods which are brought into other parts of the customs territory from a free zone or free warehouse, the customs value of such goods shall be determined on the basis of a price actually paid or payable.

Costs of warehousing and preserving goods while they remain in a free zone or free warehouse shall not be included in the customs value where they are shown separately from the price actually paid or payable for the goods.

Where the goods have undergone the forms of handling set forth in the Article 115 paragraph 1 of this Law, the declarant may request that the amount of customs debt be determined on the basis of the nature of goods, the customs value, and quantity of goods which would have been taken into account in accordance with Article 215 of this Law if the goods had not undergone such handling.

Derogations from paragraph 3 of this Article shall be laid down by the Government.

#### Article 179

Domestic goods referred to in Article 168, item b) of this Law, may be assigned other treatment or use where by virtue of their being brought into a free zone or free warehouse they fulfill conditions laid down for export of such goods.

Where domestic goods referred to in Article 167, item b) of this Article are not exported within the period referred to in Article 172 of this Law or are returned to another part of the customs territory, the customs authorities shall take the measures prescribed for the cases where the goods fail to comply with the specific conditions.

#### Article 180

Where the goods are brought into or returned to another part of the customs territory from a free zone or free warehouse or where the goods are placed under a customs procedure, the certificate referred to in Article 171, paragraph 4 of this Law may be used as a proof of domestic or foreign status of such goods.

Where it is impossible to prove by the certificate or other means that the goods have domestic or foreign status, they shall be considered to be:

1. domestic, for the purpose of applying export duties, obtaining export licenses (certificates) and export measures laid down under the commercial policy, or
2. foreign in all other cases.

#### Article 181

The customs authorities shall supervise whether the rules governing export or re-export are observed where the goods are exported or re-exported from a free zone or free warehouse.

### **6. Duty free shops**

#### **Article 181a**

The duty free shops may be opened on the airports and navy ports opened for the international traffic, with organized passport and customs control, for selling commodities to the passengers leaving abroad and passengers in transit over the customs area of Montenegro.

In duty free shops opened on the airports and navy ports opened for the international traffic, passengers leaving the customs area abroad and passengers transiting over the customs area of Montenegro may be sold commodities after they pass the customs control.

Provisions regarding the customs storage procedure shall also apply on storage of commodities in duty free shops.

Granting opening of the duty free shops, as requested by the interested enterprise with headquarters in Montenegro shall be performed by the Ministry of Finance.

The Government prescribes in detail conditions for opening duty free shops, enforcing measures of customs supervision over the commodities stored in the tax free shops and methods for keeping register of such commodities.

## **SECTION 2**

### **Re-export, destruction and surrender of goods to the government**

#### Article 182

Foreign goods may be:

1. re-exported from the customs territory,

2. destroyed, or
3. surrendered to the government.

Re-exportation shall, where appropriate, involve application of the rules laid down for export of goods, including commercial policy measures.

The Ministry of Finance shall lay down the cases where the foreign goods placed under a suspensive arrangement shall not be subject to commercial policy measures on exportation from the Republic.

The customs authorities shall be notified in advance of the intention to re-export or destroy the goods.

The customs authorities shall prohibit re-export where the formalities or measures referred to in paragraph 2 of this Article so provide.

The Ministry of Finance shall adopt a regulation governing the cases and the manner in which the goods may be abandoned to the government.

Destruction or abandonment of the goods shall not entail any costs to the government.

Any waste or scraps resulting from destruction shall be assigned a customs-approved treatment or use prescribed for foreign goods.

Waste or scraps shall remain under customs supervision in compliance with Article 46, paragraph 2 of this Law.

## **TITLE V**

### **GOODS LEAVING THE CUSTOMS TERRITORY**

#### Article 183

Goods leaving the customs territory of the Republic shall be under customs supervision and may be subject to checks in accordance with the provisions in force.

Goods shall leave the territory of the Republic by the routes, in the manner and within the period set out by the customs authorities.

## **TITLE VI**

### **PRIVILEGED OPERATIONS**

#### *CHAPTER 1*



## ***RELIEFS FROM CUSTOMS DUTY***

### Article 184

Relief from customs duty shall be granted:

- 1) For goods specified by an international agreement which is binding for the Republic,
- 2) For goods of non-commercial nature which are brought in by travelers from abroad, and which are of prescribed kind, value and quantity,
- 3) for goods contained in the consignments which are sent from abroad to natural persons in the Republic free of charge, provided that these consignments are not of commercial nature and comply with the provisions governing their kind, quantity and value,
- 4) for medals and awards obtained at the international events, and presents received in respect of international relations,
- 5) for goods satisfying basic human needs, such as food, medications, clothes, bed linen, toiletries, and similar, which are imported by registered humanitarian organizations for the purpose of their distribution free of charge to the vulnerable categories of people and victims of natural and other catastrophes,
- 5a) goods sent to the Red Cross of Montenegro as humanitarian aid and donations for performing of humanitarian activities.
- 6) to humanitarian organizations, associations of blind and deaf or hearing-impaired persons, persons suffering from muscular or neuromuscular disorders – for specific aids, equipment, and instruments, spare parts and supplies for these persons, which are not manufactured in the country,
- 7) for trade marks, patents, models, and supporting documents, application forms for patents or innovations which are sent to copyright and industrial right agencies,
- 8) for the following items:
  - a) Application forms and documents which are received by the public authorities for the purpose of performing activities for which they are competent.
  - b) Items representing evidence in court or other proceedings before public authorities,
  - c) Printed circulars released within the framework of normal exchange of information between public services or bank institutions,
  - d) Securities,

e) Designs, technical drawings, models, descriptions and other similar documents which are imported for the purpose of complying with the conditions set for participation at international contests organized in the country,

f) Printed forms which, in accordance with international agreements, are used as administrative documents in the international trade in vehicles or goods, and

g) Letter mail,

9) for products of crop cultivation, livestock breeding, forestry, fish breeding, and bee hiving obtained from private holdings situated in the frontier strip of five kilometers of the neighboring country which are the property of the citizens of Montenegro, as well as for offspring and other produce obtained from livestock bred at these holdings for the reason of field works, grazing or wintering,

10) for fire-prevention and fire-fighting equipment,

11) for objects which domestic or foreign citizens with permanent residence in the Republic have inherited in a foreign country,

12) for goods used for reconstruction, maintenance and restoration of the registered cultural landmarks, subject to opinion of the competent authorities,

13) for goods directly used for museum, archival, restoration, literary, art, musical and stage, and film activities, subject to opinion of the competent ministry,

14) for goods which have been donated to cultural institutions and other non-profitable legal persons in the field of culture, freelance artists or artists for performance of their activities, subject to opinion of the competent ministry,

15) for goods which are brought in from a foreign country by scientists, authors and artists as their own works.

16) for goods which are brought in as an investment by a foreign party in accordance with a special law.

17) for goods imported by public authorities to be used in performance of their duties, provided no such goods are produced in the Republic.

18) goods sold in duty free shops.

Relief referred to in item 5) and 5a) of this Article shall not apply to alcohol and alcoholic drinks, tobacco products and motor vehicles, and shall be granted solely to organizations whose entries in the accounts and actions enable the customs authorities to verify operations involving such goods.

Goods released for free circulation which have been granted a relief pursuant to items 1, 10, 13, 14, 16, and 17 of this Article shall not be sold, lent, given for use to other persons, pledged,

rented, or provided as a security for other obligations without prior notification to the customs authorities and payment of customs duty, before the expiry of a 36-month period from the day when they were released for free circulation.

Treatment of goods in any of the said manners from the paragraph 3 of this Article shall entail payment of customs duty at the rate applicable on the day of the treatment of the goods of such nature and customs value as that determined or accepted by the customs authorities on that day.

The Government shall prescribe the procedure for exercising the rights to relief from customs duty.

## ***CHAPTER 2***

### ***RETURNED GOODS***

#### **Article 185**

Domestic goods, which having been exported from the customs territory, are returned to that territory within a period of two years and released for free circulation shall be granted relief from customs duties at the request of the declarant.

At the request of the declarant the 2-year period may be extended where required so by special circumstances.

Where re-imported goods, prior to their exportation from the customs territory had been released for free circulation at a reduced customs duty on account of their end-use, exemption from customs duty shall be granted only where they are re-imported for the same purpose.

Where the goods are not reimported for the same purpose, the amount of customs duty shall be reduced by the amount of the duty paid on their first release for free circulation.

Where the amount of the previously paid customs duty is higher than the amount of duty payable on reimportation, refund shall not be granted.

Relief from import duties provided for in paragraph 1 of this Article shall not be granted in the case of:

- a) goods exported from the customs territory under the outward processing procedure unless those goods remain in the state in which they were exported,
- b) goods which have been subject to measures involving their exportation to another country, unless the Government prescribes the circumstances in which and detailed conditions under which relief may be granted.

#### **Article 186**

The relief from customs duties pursuant to Article 185 of this Law shall be granted if goods are reimported in the same state in which they were exported.

The Ministry of Finance shall lay down the circumstances in which and detailed conditions under which this requirement referred to in paragraph 1 of this Article may be waived.

#### Article 187

Articles 185 and 186 of this Law shall apply *mutatis mutandis* to compensating products previously exported or re-exported subsequent to an inward processing procedure.

The amount of customs duty shall be determined on the basis of the rules applicable under inward processing procedure, the date of re-export being regarded as the date of release for free circulation.

### **CHAPTER 3**

#### ***PRODUCTS OF SEA-FISHING AND OTHER PRODUCTS TAKEN FROM THE SEA***

#### Article 188

Without prejudice to Article 24 paragraph 2 indents 6 and 7, the following shall be exempt from import duties when they are released for free circulation:

- (a) products of sea-fishing and other products taken from the territorial sea of a third country by vessels registered or recorded in Montenegro and flying the flag of that state;
- (b) products obtained from products referred to in (a) on board factory-ships fulfilling the conditions laid down in that item.

### **PART VII**

#### **CUSTOMS DEBT AND COMPUTATION OF CUSTOMS DUTIES**

#### **CHAPTER 1**

#### **SECURITY TO COVER CUSTOMS DEBT**

#### Article 189

Where, in accordance with customs rules, the customs authorities require security to be provided in order to ensure payment of a customs debt, such security shall be provided by the person who is liable, or who may become liable for that debt.

The customs authorities may require only one security to be provided in respect of one customs debt.

The customs authorities may authorize the security to be provided by a person other than the person from whom it is required.

Public authorities shall not be required to provide security to cover a customs debt.

The customs authorities may waive the requirement for provision of security where the amount to be secured does not exceed 500 EUR.

#### Article 190

Where the provision of security is optional under the customs rules, such security shall be required at the discretion of the customs authorities in so far as they consider that a customs debt which has been or may be incurred is not certain to be timely paid.

In lieu of the security referred to in paragraph 1 of this Article, the customs authorities may request the person concerned to undertake in writing to comply with obligations he is legally obliged to fulfill.

The security referred to in paragraph 2 of this Article may be required:

- 1) at the time of application of the rules requiring such security to be provided, and
- 2) at any subsequent time when the customs authorities find that the customs debt which has been or may be incurred will not be paid within the prescribed period.

#### Article 191

At the request of the person liable, or who may become liable for a customs debt, the customs authorities may permit comprehensive security to be provided to cover two or more operations in respect of which the customs debt has been or may be incurred.

Where the comprehensive security referred to in paragraph 1 of this Article is provided for operations whose number is not possible to establish in advance or for all operations performed over a certain period of time, the permission referred to in paragraph 1 of this Article shall be granted by customs authority.

The finance minister shall lay down detailed conditions and procedures pertaining to security in accordance with paragraphs 1 and 2 of this Article.

#### Article 192

Where the customs rules make it compulsory for security to be provided, the customs authorities shall fix the amount of such security at a level equal to:

- 1) the precise amount of the customs debt or debts for which security is provided, where that amount can be established with certainty at the time when the security is provided, or
- 2) the maximum amount, as estimated by the customs authorities, of the customs debt or debts which have been or may be incurred.

Where comprehensive security is provided for customs debts which vary in amount during the secured period, the amount of such security shall be set at a level enabling the customs debts in question to be covered at all times.

Where the customs authorities require security to cover a customs debt in the case in which its provision is optional under the customs rules, the amount of security shall not exceed the level provided for in paragraph 1 of this Article.

Security to cover a customs debt shall include also security to cover charges which the customs authorities is obliged to charge on importation or exportation of goods in accordance with the provisions in force.

#### Article 193

Security may be provided by a cash deposit, or a guarantee.

#### Article 194

A deposit of documents recognized by the customs authorities as a means of payment, considering their drawer, conditions and method of collection, shall also be deemed as a cash deposit.

The Government shall lay down detailed conditions and the method of cash deposits and deposits of other corresponding documents.

#### Article 195

The guarantor shall undertake in writing to pay jointly and severally with the debtor the secured amount of a customs debt which falls to be paid, including interest and costs incurred in the procedure of collecting the outstanding customs debt, within the maturity period.

The guarantor may be a third person established in the Republic, whose security is estimated as acceptable by the customs authorities.

The customs authorities may refuse to approve the guarantor or type of security proposed where it estimates that it does not ensure timely payment of the customs debt.

#### Article 196

The person required to provide security shall be free to choose between the types of security laid down in the Article 193 of this Law.

The customs authorities may refuse to accept the type of security proposed where it is incompatible with the required customs procedure.

#### Article 197

The finance minister may also lay down other types of security and cash deposits in a currency which is not the legal tender if they ensure collection of the customs debt.

#### Article 198

Where the customs authorities establish that the security provided does not ensure payment of the customs debt in full or within the prescribed period, they may require the debtor to provide additional security, or to replace the original security with a new security.

#### Article 199

The security to cover the customs debt shall not cease to be valid until such time as the customs debt in respect of which it was given is extinguished or can no longer arise.

Once the customs debt is extinguished or can no longer arise, the security shall cease to be valid forthwith.

Once the customs debt, which might be incurred for goods placed under a suspensive arrangement is secured by means of a guarantee, but the customs authorities fail to inform the guarantor that the procedure has been completed within the period of one year from the date of its completion, the security shall cease to be valid with the expiry of that period.

Once the customs debt has been extinguished in part or may arise only in respect of part of the amount which has been secured, security shall be reduced accordingly at the request of the person concerned, unless the amount involved does not justify such action.

#### Article 200

The finance minister may lay down methods of derogation from the provisions of Articles 189 to 199, when this is required in order to comply with obligations undertaken under international agreements.

### **CHAPTER 2**

### ***INCURRENCE OF A CUSTOMS DEBT***

#### Article 201

A customs debt on importation shall be incurred through:

- 1) the release of goods for free circulation, or
- 2) the placing of goods under the temporary importation procedure with partial relief from import duties.

A customs debt shall be incurred at the time of acceptance of the customs declaration.

The debtor shall be the declarant, while in the event of indirect representation, the debtor shall be the person on whose behalf the customs declaration is made.

If the customs declaration is drawn up on the basis of incorrect information which leads to all or part of the duties legally owed not being calculated and collected, the person who provided the information required to draw up the customs declaration and who knew, or who ought reasonably to have known that such information was false, shall also be considered debtor.

#### Article 202

A customs debt on importation shall be incurred also through:

- 1) the unlawful introduction of goods into the customs territory,
- 2) the unlawful introduction of goods from a free zone or free warehouse into other parts of the customs territory.

For the purpose of this Article, unlawful introduction means any introduction of goods in violation of the provisions of Articles 47 to 51 and Article 177 paragraph 1 item 2 of this Law.

The customs debt shall be incurred at the moment when the goods are unlawfully introduced into the customs territory.

Where the amount of the customs debt cannot be precisely established, it shall be established by the customs authorities on the basis of a tariff classification for the goods in question, having the highest rate of duty within the corresponding tariff classification.

The debtors shall be:

- 1) the person who unlawfully introduced the goods into the customs territory or introduced them from a free zone or free warehouse into other parts of the customs territory of the Republic,
- 2) the person who participated in the unlawful introduction of the goods and who was aware or should reasonably have been aware that such introduction was unlawful, or
- 3) the person who acquired or held the goods in question although he was aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had



been introduced unlawfully into the customs territory of the Republic or had been introduced from a free zone or free warehouse into other parts of that territory.

#### Article 203

A customs debt on importation shall be incurred through an unlawful removal of goods from customs supervision.

The customs debt referred to in paragraph 1 of this Article shall be incurred at the time when the goods are removed from customs supervision.

Where the amount of the customs debt cannot be precisely established, it shall be established by the customs authorities on the basis of a tariff classification for the goods in question, having the highest rate of duty within the corresponding tariff classification.

The debtors liable for the customs debt referred to in paragraph 1 of this Article shall be:

- 1) the person who removed the goods from customs supervision,
- 2) the person who participated in the removal of goods, although he was aware or should reasonably have been aware that they had been removed from customs supervision,
- 3) the person who acquired or held such goods, although he was aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision, and
- 4) the person required to comply with obligations arising from temporary placing of goods or from the use of the customs procedure under which those goods are placed.

#### Article 204

A customs debt on importation may be incurred through:

- a) non-fulfillment of obligations arising from their temporary placement status or from the use of another customs procedure under which the goods have been placed, or
- b) non-compliance with some of the conditions governing the placing of the goods under the relevant customs procedure or the granting a preferential tariff treatment by virtue of the end-use of the goods, unless it is established that those failures had no significant effect on the correct operation of the temporary placing or customs procedure concerned.

The customs debt shall be incurred at the time when the obligation whose non-fulfillment gives rise to the customs debt ceases to be met or at the time when the goods are placed under the customs procedure concerned where it is established subsequently that one of the conditions governing the placing of the goods under the said procedure or the granting of a preferential tariff treatment by virtue of the end-use of the goods, was not fulfilled.

The debtor shall be the person who is required to comply or should have complied with the prescribed obligations which arise from the temporary placing of goods or their placing under the customs procedure concerned.

#### Article 205

An import customs debt shall be incurred through the use of goods in a free zone or free warehouse under conditions or in a manner which do not comply with the provisions in force.

Where goods in a free zone or free warehouse disappear and where their disappearance cannot be explained to the satisfaction of the customs authorities, those authorities may regard the goods as having been used under conditions and in a manner which do not comply with the provisions in force.

The customs debt referred to in paragraph 1 of this Article shall be incurred at the time when the goods are consumed or are first used under conditions and in a manner which do not comply with the provisions in force.

In the case referred to in paragraph 1 of this Article, the customs debtor shall also be the person who consumed or used the goods and the person who participated in the consumption or use of the goods, although he was aware or should reasonably have been aware that the goods may be consumed or used only in accordance with the provisions in force.

Where a customs debt is incurred in respect of the goods which have disappeared from a free zone or free warehouse and it is not possible to establish the person liable for payment of the customs debt in accordance with paragraph 4 of this Article, the person last known to the customs authorities to have been in possession of the goods shall be liable for payment of the customs debt.

#### Article 206

By way of derogation from Article 202 and Article 204 paragraph 1 item 1) of this Law, the customs debt for the goods concerned shall not be incurred where the person proves that the obligations which arise from:

- 1) Articles 47 to 51 of this Law and Article 177 paragraph 1 item 2) of this Law, or
- 2) temporary placing of the goods in question, or
- 3) the use of the customs procedure under which the goods have been placed could not have been fulfilled because of a total destruction or irretrievable loss of the said goods as a result of the actual nature of the goods or circumstances of force majeure, or as a consequence of authorization by the customs authorities.

For the purposes of paragraph 1 of this Article, goods shall be considered irretrievably lost when they are rendered unusable by any person.

A customs debt shall not be deemed to have been incurred in respect of goods released for free circulation with preferential tariff treatment by virtue of their end-use, where such goods are exported or re-exported with the permission of the customs authorities.

#### Article 207

Where, in accordance with the provisions of the Article 206 paragraph 1 of this Law, no customs debt is incurred in respect of goods released for free circulation with preferential tariff treatment on account of their end-use, waste and scraps resulting from the destruction of such goods shall be deemed to be foreign goods.

#### Article 208

Where, in accordance with Articles 203 and 204 of this Law, a customs debt is incurred in respect of goods released for free circulation at a reduced rate of import duty on account of their end-use, the amount paid when the goods were released for free circulation shall be deducted from the amount of the customs debt.

Paragraph 1 of this Article shall apply *mutatis mutandis* also where a customs debt is incurred in respect of scrap or waste resulting from the destruction of such goods.

#### Article 209

Deleted.

#### Article 210

Deleted.

#### Article 211

Deleted.

#### Article 212

The customs debt referred to in Articles 201 to 205 and Articles 209 to 211 of this Law shall be incurred even in the respect of goods subject to measures of prohibition or restriction on importation or exportation of any kind whatsoever.

Exceptionally, the customs debt shall not be incurred on the unlawful introduction into the customs territory of counterfeit currency and, contrary to specific regulations, of psychotropic drugs or narcotic substances which do not enter commercial channels, or which, with a view to their medical or scientific purposes, are subject to strict supervision by competent bodies.

For the purposes of implementation of penal provisions pertaining to customs offences, the customs debt shall be deemed to have been incurred where the amount of customs duties is the basis for determining penalties, or the existence of a customs debt is grounds for initiating criminal proceedings, as provided for in the penal provisions.

#### Article 213

Exemption from import or export duties laid down in customs rules (Articles 184 to 187) shall also apply in cases where a customs debt is incurred pursuant to Articles 202 to 205 and Articles 210 or 211 of this Law where the debtor has not acted deliberately or with gross negligence and he produces evidence that the other conditions for the application of the exemption have been satisfied.

#### Article 214

Where several persons are liable for payment of a customs debt, they shall be jointly and severally liable for that debt.

#### Article 215

Save as otherwise provided by this Law, the amount of the import or export duty applicable to the goods concerned shall be determined on the basis of the rules of assessment of the amount of the customs duty which were in force for those goods on the date when the customs debt was incurred.

Where it is not possible to determine precisely when the customs debt was incurred, the time to be taken into account in determining the basis for computation of the customs debt shall be the time when the customs authorities conclude that the goods are in a situation in which a customs debt is incurred.

Where the circumstances known to the customs authorities enable them to establish that the customs debt was incurred prior to the time referred to in paragraph 2 of this Article, the amount of import or export duty payable shall be determined according to the basis which was applicable for the goods in question at the earliest time when existence of the customs debt may be established from the information available.

#### Article 216

A customs debt shall be incurred at the place where the circumstances from which it arises occur.

Where it is not possible to determine the place referred to in paragraph 1 of this Article, the customs debt shall be deemed to have been incurred at the place where the customs authorities conclude that the goods are in a situation in which a customs debt was incurred.

Where a customs procedure is not conducted for the goods in question, the customs debt shall be deemed to have been incurred at the place where the goods:

- 1) were placed under the relevant customs procedure, or
- 2) enter the customs territory under that customs procedure.

Where the circumstances known to the customs authorities enables the customs authorities to conclude that the customs debt was already incurred when the goods were in another place, the customs debt shall be deemed to have been incurred at the place in which the goods were located at the earliest time when existence of the customs debt may be established.

#### Article 217

In so far as an agreement concluded between the Republic and another country provides for the granting of preferential tariff treatment in cases where the goods have been obtained in the Republic under inward processing procedure, the customs debt shall be incurred in respect of all foreign goods which, under inward processing procedure, were used and consumed in respect of the compensating product by means of validation of a document which enables preferential tariff treatment to be obtained in another country.

The customs debt referred to in paragraph 1 of this Article shall be incurred at the time when the export declaration relating to the goods in question is accepted.

The debtor shall be the declarant, while in the event of indirect representation, the debtor shall be the person on whose behalf the declaration is lodged.

The amount of customs duties corresponding to this customs debt shall be determined in the same manner as in the case a customs debt which would have been incurred had a customs declaration had been lodged for release for free circulation of such goods originating in a third country, after the inward processing procedure was terminated.

### **CHAPTER 3**

#### **RECOVERY OF CUSTOMS DEBT**

##### **1. Entry in the accounts**

#### Article 218

Each and every amount of import duty or export duty resulting from a customs debt (hereinafter referred to as: amount of duty), shall be calculated by the customs authorities, as soon as they have the necessary particulars, and entered in the accounting records.

Paragraph 1 of this Article shall not apply:

- 1) where a provisional anti-dumping or countervailing duty has been introduced,
- 2) when the amount of duty legally due exceeds that determined on the basis of binding information.

The customs authorities may extinguish the debt in cases referred to in Article 222 paragraph 3 of this Law where they could not communicate to the debtor the amount of the debt after the end of the time allowed.

The finance minister shall specify in detail the method and procedure for the entry in the accounts.

The Government may determine the amount of duty which shall not be subsequently entered in the accounts.

#### Article 219

If customs debt had occurred by accepting customs declaration for another customs procedure not related to temporary import with partial deduction of such payment of levies or other document with the same legal action, the amount of such customs debt is entered into accounting records as soon as the calculation of customs debt amount is finished.

Exceptionally from Paragraph 1 herein, when the customs debt occurs by accepting commercial or official document or entering the commodities in the accounting records of verification holder in the sense of simplified procedure from the Article 84 Paragraph 1 Points 2) or 3) herein, the total amount of levies regarding all commodities released for the same person within the timeframe prescribed by the customs organ, which cannot exceed 31 day, is to be calculated all at once.

#### Article 220

The time limits for entry in the accounts laid down in Article 219 of this Law may be extended for 14 days maximum, where special circumstances prevent the customs authorities from making an entry in the accounts within the said time limits.

#### Article 221

Where the amount of duties resulting from a customs debt has not been entered in the accounts in accordance with Articles 219 and 220 of this Law or has been entered in the accounts at a level lower than the amount owed, the amount of duty to be recovered or which remains to be recovered shall be entered in the accounts within two days from the date on which the customs authorities establish, calculate the actual amount of the debt and determine the debtor (subsequent entry in the accounts).

The time limits referred to in paragraph 1 of Article may be extended in accordance with Article 220 of this Law.

Except in cases referred to in Article 218 paragraphs 2, 3 and 5 of this Law, subsequent entry in the accounts shall not occur where the decision not to enter the debt in the accounts or to enter it in the accounts in the amount less than the duty actually owed was taken on the basis of provisions invalidated at a later date.

## Article 222

As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures.

Where the amount of duty payable has been entered in the customs declaration, the customs authorities shall not communicate it to the debtor separately but the amount shall rather be deemed to have been communicated to the debtor where the customs authorities have released the goods to the declarant, save in cases referred to in Article 219 paragraph 2 of this Law.

Where the amount of duty entered in the customs declaration is not the same as that calculated by the customs authorities, the customs authorities shall communicate the amount of duty to the debtor in accordance with appropriate procedures.

Communication to the debtor shall not take place after the expiry of a three-year period from the date on which the customs debt was incurred.

Where as a result of an act that could give rise to criminal proceedings, the customs authorities were unable to determine the exact amount of the debt, the communication may be made after the expiry of the three-year period, in so far as the provisions in force allow.

## **2. Time limit and procedures for payment of the amount of duty**

### Article 223

The amount of duty communicated to the debtor in accordance with Article 222 of this Law shall be paid within the period of eight days from the date of communication to the debtor in case the debt was covered by a single entry in the accounts within 10 days from the date of expiry of the time limit allowed.

An extension shall be granted automatically where the debtor received the communication too late to enable him to make payment within the period prescribed.

The Government shall lay down detailed conditions under which recovery of the debt may be suspended where an application for remission of duty is made in accordance with Articles 229 to 231 of this Law or where goods are seized with a view to subsequent confiscation in accordance with Article 227 item 3) indent 2 or item 4) of this Law.

### **Article 223 a**

The customs organ may, as requested by the interested person, for the goods registered for some customs procedure prescribing obligation of customs levies payment, can grant grace period for that levies payment under the conditions prescribed by Articles 223 b and 223 c herein.

### **Article 223 b**

The customs organ shall, when deciding upon grace period for levies amount payment, check if debtor fulfills the following conditions:

- being reliable and financially stable,
- regularly fulfills customs obligations,
- keeps accounting records which warranties uninterrupted control and
- it did not commit customs and taxation misdemeanor during past three years.

Verification for grace period for levies payment may be given providing that the applicant submits the security according to the Article 193 herein.

#### **Article 223 c**

Payment of levies may be postponed for up to 30 days. Deadline shall be determined as follows:

a) if payment had been postponed according to the Article 219 Paragraph 1 herein, the deadline is calculated from the first non-working day from the day of calculation of levies by the customs organ, and

b) if the payment had been postponed according to the Article 219 Paragraph 2 herein, the deadline is calculated to:

- twenty-third day from the date of expiry of deadline for declaration submitting if deadline for additional declaration submitting is one week and
- sixteenth day in the month after the month when the simplified procedure was allowed, if deadline for submitting declaration is one month.

The customs debtor who was granted grace period for payment may pay the full amount of levies or part of the amount before expiry of grace period.

#### **Article 224**

Payment shall be made in cash in the currency officially used or by any other means of payment in accordance with the provisions in force.

#### **Article 225**

The customs debt may be paid by a third party instead of the debtor, under conditions and in a manner laid down by the Ministry of Finance.

#### **Article 226**

Where the amount of duty has not been paid within the prescribed period:

- 1) the customs authorities shall avail themselves of all options open to them under the legislation in force, including debt enforcement.



- 2) interest on arrears shall be charged over the amount of duty in accordance with the law which regulate tax procedure.

The customs authorities may waive collection of interest on arrears referred to in the paragraph 1 item 2) of this Article:

- 1) where, because of the situation of the debtor, it would be likely to create serious economic or social difficulties;
- 2) if the duty is paid within five days of the expiry of the period prescribed for payment.

Recovery of a customs debt under the enforcement procedure shall be made on the basis of a final decision issued by the customs authorities and the customs declaration under which customs clearance was completed.

The debtor's orders for payment of the customs debt and the enforcement decision referred to in paragraph 3 of this Article shall be executed prior to all other obligations for which the debtor is liable, by organizations authorized to carry out payment operations.

The Government may lay down the amount of customs duties and interests the payment of which shall not be enforced.

## ***CHAPTER 4***

### ***EXTINCTION OF CUSTOMS DEBT***

#### *Article 227*

A customs debt shall be extinguished:

- 1) by payment of the amount of duty,
- 2) by remission of the amount of duty,
- 3) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties:
  - the customs declaration is invalidated,
  - the goods, before their release or seizure, were simultaneously or subsequently confiscated, destroyed on the instructions of the customs authorities, destroyed or surrendered to the government in accordance with Article 182 of this Law, or destroyed or irretrievably lost as a result of their nature or of unforeseeable circumstances of force majeure;

- 4) where the goods, in respect of which a customs debt is incurred in accordance with Article 202 of this Law, are seized due to their unlawful introduction and are simultaneously or subsequently confiscated.

A customs debt shall be extinguished in accordance with the provisions in force relating to the time-barring of a customs debt or non-recovery of such a debt in the event of the legally established insolvency of the debtor.

In the event of seizure or confiscation, the customs debt shall nonetheless be deemed not to have been extinguished where a customs debt provides the basis for determining penalties or its existence is grounds for taking criminal proceedings.

A customs debt which is incurred pursuant to Article 217 of this Law shall be extinguished after all formalities and procedures, which were carried out in order to enable preferential tariff treatment referred to in Article 217 of this Law to be granted, have been cancelled.

#### **Article 227 a**

Right to collect debt becomes null and void within three years, starting from the end of the year when the debt had occurred.

Outdating is terminated by each official action taken by the customs organ, aiming towards establishing or collection of debt with which the debtor is familiar, together with each action taken for establishing misdemeanor responsibility.

After taking actions from Paragraph 2 herein, outdating period restarts.

Right to collect the debt becomes outdated anyway after expiry of six years, starting from end of the year when the debt had occurred.

### **CHAPTER 5**

#### ***REPAYMENT AND REMISSION OF CUSTOMS DEBT***

##### **Article 228**

Import duties or export duties shall be repaid up to the amount of duties for which it is established that it was not due at the time when it was actually paid or that the amount has been entered in the accounts contrary to Article 221 paragraph 2 of this Law.

Import duties and export duties shall be remitted in so far as it is established that when they have been unlawfully entered in the accounts or that they have been entered in the accounts contrary to Article 221 paragraph 2 of this Law.

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.

Import duties or export duties shall be repaid or remitted upon submission of an application to the customs authorities within a period of three years from the date on which the amount of those duties was communicated to the debtor.

The period referred to in paragraph 4 of this Article shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances of force majeure.

The customs authorities shall repay or remit the duties by virtue of their office, if they discover within the period of three years from the date on which the amount of duties was communicated to the debtor, that the situations described in paragraph 1 of this Article exist.

#### Article 229

The amount of import duties or export duties shall be repaid where a customs declaration is invalidated and the duties have been paid.

Repayment shall be granted upon submission of an application by the person concerned within the period laid down for submission of the application for invalidation of the customs declaration in accordance with Article 74 of this Law.

#### Article 230

Import duties shall be repaid or remitted in the amount which was entered in the accounts relating to goods placed under the customs procedure in question, where the importer proves that he has returned the goods because they were defective or did not comply with terms of the contract on the basis of which they were imported.

Repayment or remission of import duties shall be granted on condition that:

- 1) the goods have not been used, except for such use as may have been necessary to establish that they were defective and did not comply with the terms of the contract, and
- 2) the goods are exported from the customs territory.

At the request of the person concerned, the customs authorities shall permit the goods to be destroyed or to be placed, with a view to re-export, under the transit procedure or the customs warehousing procedure, in a free zone or free warehouse, instead of being exported.

For the purposes of being assigned one of the customs-approved treatments or uses, the goods shall be deemed to be foreign goods.

Import debt shall not be repaid or remitted in respect of goods which, before being released for free circulation, were imported temporarily for testing, unless it is established that the fact that the goods were defective or did not comply with the terms of the contract could not normally have been detected in the course of such tests.

Import debt shall be repaid or remitted for the reasons set out in paragraph 1 of this Article where the person concerned submits an application to the customs authorities within 12 months from the date on which the amount of those duties was communicated to the debtor.

The customs authorities may extend this period in case of exceptionally justified and timely reported reasons.

#### Article 231

The Government may also determine cases of repayment or remission of import duties or export duties other than those referred to in Articles 228, 229 and 230 of this Law, resulting from circumstances in which no deception or gross negligence may be attributed to the debtor or other participants in the relevant customs procedure, and lay down detailed conditions and procedure enabling the repayment or remission of duties to be granted.

Duties shall be repaid or remitted for the reasons set out in paragraph 1 of this Article where the declarant submits an application to the customs authorities within 12 months from the date on which the amount of those duties was communicated to the debtor.

#### Article 232

The Government shall determine the amount of customs debt for which repayment or remission shall not be granted.

#### Article 233

Where the customs authorities repay the amount of import duties or export duties, including the amount of interest or interest on arrears they charged on payment of such duties, they shall have no obligation to pay the interest.

By exception to paragraph 1 of this Article, the interest shall be paid if:

- 1) the decision whereby the repayment is approved has not been executed within three months from its adoption;
- 2) so provided by national regulations.

The amount of such interest shall be calculated in such a manner so that it would be equal to the amount that would be calculated, for the same purpose, at the national monetary or financial market.

#### Article 234

Where a customs debt has been remitted or repaid unlawfully or in error, the original debt shall again become payable.

In case referred to in paragraph 1 of this Article the debtor is to repay any interest paid under Article 233 of this Law.

Interest on arrears shall be calculated and charged on the amount of debt referred to in paragraph 1 of this Article in accordance with the rules governing interest on arrears.

### **PART VIII**

#### **PENALTY PROVISIONS**

##### **Article 235**

Deleted.

##### **Article 236**

Deleted.

##### **Article 237**

Deleted.

##### **Article 238**

Deleted.

##### **Article 239**

Deleted.

##### **Article 240**

Financial penalty ranging from hundred- to three-hundred-fold amount of minimal wage in Montenegro shall be forced upon juridical person or entrepreneur if it:

- 1) does not register with the border customs office or other authorized customs office all the commodities entering or leaving customs area (Article 47 Paragraph 1);

- 2) does not submit a manifest to the customs office for all commodities transported as a cargo by that vessel or aircraft instantly after arrival and before unloading, i.e. before departure (Article 47 Paragraphs 2 and 3);
- 3) does not confirm that the manifest presents complete, truthful and correct data on the commodities transferred by that vessel or aircraft (Article 47 Paragraph 5);
- 4) enters the commodities from free zone or free storage in another part of customs area against provisions of this Law (Article 177 Paragraph 2).

Responsible person within the juridical person shall also be fined for misdemeanor mentioned in Paragraph 1 herein in the form of financial penalty ranging from ten- to twenty-fold amount of minimal wage in Montenegro.

Private person shall be fined for misdemeanor mentioned in Paragraph 1 herein in the form of financial penalty ranging from ten- to twenty-fold amount of minimal wage in Montenegro.

Persons listed in Paragraphs 1, 2 and 3 herein shall also be fined for attempt misdemeanor mentioned in Paragraph 1 herein.

For the misdemeanor noted in Paragraph 1 Point 1 herein, the authorized customs officer shall fine private person instantly with financial penalty amount triple minimal wage in Montenegro, providing that value of commodities subject to misdemeanor does not exceed the amount of 1.000 €.

#### **Article 241**

Financial penalty ranging from hundred- to three-hundred-fold amount of minimal wage in Montenegro shall be forced upon juridical person or entrepreneur if it:

- 1) does not transport, without delay, commodities entered in the customs area, via the route and in the manner prescribed by the customs office to the customs office, other location determined or granted by the customs office or to the free zone (Article 47 Paragraph 6);
- 2) does not inform authorized customs office instantly that, due to the unforeseen circumstances or force major, obligations from Article 47 Paragraph 6 herein cannot be fulfilled or does not inform the nearest customs office of the place the commodities are stored (Article 48 Paragraphs 1 and 2);
- 3) does not inform authorized customs office instantly that, due to the unforeseen circumstances or force major, when there is a necessity to stop or temporary reside in customs area, without the possibility to fulfill the obligation mentioned in Article 47 Paragraphs 2 and 3 herein (Article 49 Paragraph 1);
- 4) does not submit the unique customs document to the customs office for the purpose of registering commodities when it enters customs area or in extended deadline for registration application (Article 53);
- 5) unload or reload commodities from transport vehicle without prior consent of customs office or in location which is not determined or allowed for such action (Article 56 Paragraph 1);
- 6) does not inform customs office immediately on unloading the commodities or part of commodities due to direct danger (Article 56 Paragraph 2);

- 7) transfers the commodities from the initial storage location without prior consent of customs office (Article 57);
- 8) stores commodities in temporary storage on the locations and under conditions contrary to the ones allowed by the customs office (Article 61 Paragraph 1);
- 9) takes actions which alter appearance or technical characteristics of commodities in temporary storage (Article 62);
- 10) does not submit the appropriate customs declaration to the authorized customs office covering all commodities subject to customs procedure (Article 68 Paragraph 1 and Article 69 Paragraph 1);
- 11) submits customs declaration in written form without signature or does not contain all data necessary for application of legislation which regulates custom procedure for which the commodities are submitted (Article 70 Paragraph 1 and Article 85 Paragraph 1);
- 12) removes or destroys customs mark from the commodities or vehicles without customs office prior consent (Article 80 Paragraph 2);
- 13) does not inform customs office immediately on all facts occurring after presenting verification for customs procedure with economic or delayed effect, which may influence its further application or contents (Article 95 Paragraph 2);
- 14) acts contrary to the provisions of Article 102 Paragraph 1 Point 1 and Paragraph 2 herein;
- 15) does not respect obligations and conditions taken over as customs storage holder or customs storage user (Article 108 and Article 109);
- 16) temporarily takes commodities from customs storage without customs office prior consent (Article 116 Paragraphs 1 and 2);
- 17) moves commodities under the procedure of customs storing from one customs storage facility to another without customs office prior consent (Article 117);

Responsible person within the juridical person shall also be fined for misdemeanor mentioned in Paragraph 1 herein in the form of financial penalty ranging from ten- to twenty-fold amount of minimal wage in Montenegro.

Private person shall be fined for misdemeanor mentioned in Paragraph 1 herein in the form of financial penalty ranging from ten- to twenty-fold amount of minimal wage in Montenegro.

#### **Article 242**

Financial penalty ranging from fifty- to two-hundred-fold amount of minimal wage in Montenegro shall be forced upon juridical person or entrepreneur if it:

- 1) does not submit an appropriate additional declaration or does not submit it within prescribed deadline (Article 84 Paragraph 3);
- 2) does not keep records on commodities currently in customs storage procedure in the manner certified by the customs office or does not register the commodities in records as soon as it enters customs storage facility (Article 112 Paragraphs 1 and 2);
- 3) performs or organizes active upgrading of commodities before prior consent by the customs office (Article 121 Paragraph 1);
- 4) fails to export or re-export obtained products within a deadline prescribed by the customs office or fails to meet the deadline requiring other procedures prescribed by customs (Article 122, paragraph 1);

- 5) performs or organizes processing of commodities without prior consent for processing under customs supervision (Article 135);
- 6) organizes passive upgrading of commodities before prior consent by the customs office (Article 150 Paragraph 1);
- 7) imports replacement products before temporary commodities export (previous import) before consent by the customs office or in the case of previous import does not export the commodities within the prescribed deadline (Article 157 Paragraph 4 and Article 160 Paragraph 1);
- 8) sells commodities to passengers who do not fulfill conditions to buy such commodities in duty free shops (Article 181a Paragraph 2);
- 9) acts with commodities in contrary with provisions of Article 184 Paragraph 3 herein.

Responsible person within the juridical person shall also be fined for misdemeanor mentioned in Paragraph 1 herein in the form of financial penalty ranging from five- to twenty-fold amount of minimal wage in Montenegro.

Private person shall be fined for misdemeanor mentioned in Paragraph 1 herein in the form of financial penalty ranging from five- to twenty-fold amount of minimal wage in Montenegro.

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**Article 273**

Natural person, both domestic and foreign, who fails to declare to the customs office the goods he brings into the customs territory, import of which is not banned, intended for his personal use, for personal use of his immediate family and household members, shall be fined an amount equal the value of the goods being subject to the offence.

Where the value of goods referred to in paragraph 1 of this Article does not exceed 50,000 EUR, the customs officer shall collect 9,000 EUR fine, as well as import customs duties.

#### **Article 273 a**

Juridical person, responsible person within the juridical person, entrepreneur or private person in possession of commodities or buying, selling, handing over, taking as a gift, hiding, taking for safekeeping or transport or for any other purposes the commodities for which he knows or should have known that it was a subject of misdemeanor mentioned in Articles 240, 241 and 242 herein shall be fined as if the misdemeanor was committed by him, with the same fine prescribed for perpetrator.

### **3. Protective measures**

#### **Article 274**

For misdemeanor mentioned in Article 240 and 241 Paragraph 1 Points 2) and 7) herein, together with fine, protective measure of object confiscation shall also be enforced.

For misdemeanor mentioned in Article 241 Paragraph 1 Point 12) herein, together with fine, protective measure of object confiscation may also be enforced.

Subject of customs misdemeanor, for which the protective measure was prescribed by Paragraph 1 herein shall temporary be confiscated and put under custom supervision until the end of misdemeanor procedure.

Subject of customs misdemeanor, for which no protective measure of object confiscation was enforced, and which did not go through customs procedure, shall be seized until the end of customs procedure.

Customs office may instantly sell short duration commodities, if there is no possibility for the decision on misdemeanor to be made within 24 hours.

#### **Article 275**

Transportation, transmission and other assets used for the commodities subject to misdemeanor mentioned in Article 240 herein transport or concealing shall be confiscated if value of such commodities exceed one-third of value of such transportation, transmission or other asset established according to the provisions of this Law.

Transportation, transmission or other assets mentioned in Paragraph 1 herein with installed special space for concealing commodities, which had been used for transport of commodities subject to misdemeanor, shall be confiscated regardless of commodities value.

#### Article 276

Where it was determined, after the customs offence proceedings performed, that the customs offence was not committed, the owner of the goods placed under customs supervision in respect of Article 275 of this Law shall have the right to compensation of damages, on the expense of the budget of the Republic.

#### Article 277

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#### Article 278

Where the protective measure of confiscation of goods being subject to customs offence was adopted, the customs office may, upon the request of a person who has committed the offence, return the goods where justifiable, provided that such person pays the value of goods, customs duties and other charges.

#### Article 279

The customs office that performed customs offence proceedings in the first instance may allow the fine and the value of goods to be paid in installments, within the period that cannot exceed 12 months.

### **4. Customs Offence Proceedings**

#### Article 280

Customs offence proceedings of the first instance shall be administered and decided by the Offence Commission (hereinafter: Commission) of the Customs office, comprising of the president and two members. The President and members of the Commission may have deputies.

The Commission may authorize any particular member to carry out specific activities during the course of proceedings.

The Director shall appoint the president and members of the Commission.

#### Article 281

Where customs offence proceeding was initiated against the person residing out of the customs district, and all requirements for administering the proceeding and decision making were met, the proceeding shall be deemed urgent and decision shall be adopted within 48 hours from the initiation of the proceeding.

## Article 282

The request for instigation of customs offence proceedings shall be filed by customs post or other organizational unit of the customs office, Customs Administration and other governmental bodies.

A request for initiation of offence procedure shall be filed by customs and other state authority.

The request for instigation of customs offence proceedings shall be filed immediately after it becomes known that customs offence has been committed, and not later than 15 days after such date.

Minutes in writing shall be made on the offence committed.

Minutes in writing shall be submitted and filed with the competent customs office, and shall be signed by the customs officer.

Provisions of this Article shall apply, where some other law has been violated, if such minutes in writing are required by the customs office.

In order to prevent and reduce violations of customs legislature, Customs authorities may perform any control deemed necessary in companies, their warehouses, and other places of business, as well as in places where business books and accounts are kept.

## Article 283

Minutes referred to in Article 282 paragraph 3 of this Law must contain:

- 1) Venue, date and time it was made at;
- 2) Names of the persons who sign it and the bodies they are representing;
- 3) Data related to the identity of the offender(s);
- 4) Description of the offense;
- 5) Description of the way the offense was committed;
- 6) Identification of means of transport;
- 7) Quantity, quality, value, origin and type of goods;
- 8) Description and identification of goods that should be seized;
- 9) Signature of customs officers, and if possible, signature of the offender.

Offense Commission shall immediately inform an offender about the initiation of the proceeding.

Where it is possible, depositions from the defendant and witnesses shall be taken immediately. If this is not the case, Commission shall summon the defendant and witnesses to the premises of the customs office, at the specified date and time to give deposition personally, or to submit the written one. This shall be done not later than 10 days after the summons. The witnesses shall be considered all persons having any knowledge whatsoever about the offense, and customs officers who have determined that a customs offence has been committed and signed the related minutes.

Minutes of deposition or any testimony or statement must be signed by the offender, by the witnesses if they are present, and by the customs officers who have performed the deposition.

Where an offender is a foreign citizen, the interview shall be conducted in the presence of a translator.

#### Article 284

After concluding the offense proceeding and completing the documentation, the Commission shall decide the case, either verbally or in writing (a ruling).

The documentation shall be considered complete if including:

- 1) Duly registered minutes of the offence determination as provided by Article 283 of this Law;
- 2) Corresponding documents;
- 3) Statements and testimonies of the offenders and the witnesses;
- 4) Minutes of deposition;
- 5) Minutes of deliberation.

#### Article 285

The ruling shall be made within five days from the day the passing of such ruling is made possible.

#### Article 286

The defendant may lodge an appeal against the ruling of the Commission within the period of 8 days from the day of receiving the ruling or its oral declaration.

The appeal shall be decided by the Customs Administration.

Where, by a ruling of the Customs Administration, a person has been relieved from paying the fine or fines pronounced at the level that is lower than the amount paid in accordance with the previous paragraph, the amount or the excess amount paid shall be returned to the appellant.

The Customs Administration shall rule on the lodged appeal within 30 days from the day when such ruling is made possible.

#### Article 287

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#### Article 288

The customs related offense proceeding may not be initiated where 3 years have elapsed after the custom offense was committed,

Statute of limitations shall be suspended where offense proceeding cannot be conducted according to the regulations.

Statute of limitations shall cease to run upon any procedural action by a competent authority.

After any such cessation, the statute of limitations begins to run again.

In any event, the statute of limitations applicable to the offence occurs after expiry of six years from the day such offence was committed.

#### Article 289

The Commission shall suspend the proceeding:

- 1) if whereabouts of the defendant is not known, in case of the absconding defendant or if the defendant is abroad for unspecified period of time or if he is not reachable to the authorities for some other reason;
- 2) if defendant develops temporary mental illness or mental disorder;

The suspended proceeding shall resume when conditions, which caused it, cease to exist.

The decision on a suspension of the proceeding shall also determine the outcome with regard to the object of the offense.

#### Article 290

The provisions of the Law on Offences shall be applicable on the customs offense proceedings, save this Law provides otherwise.

### PART IX

#### FEE FOR CUSTOMS SERVICES

#### Article 291

The Customs Administration shall, for the services provided within the customs proceeding, charge a fee at the level corresponding to the service provided.

The amount of the fee from paragraph 1 of this article may not exceed the real expenses of the customs authority for services provided in customs procedure and cannot represent indirect protection of domestic products or indirect taxation of imports or exports.

The Government shall prescribe the type, amount and the manner of payment from paragraph 1 of this Article.

## **PART X**

### **SALE OF GOODS AND ALLOCATION OF REVENUES**

#### Article 292

The goods seized in accordance with this Law, namely the goods which according to the provisions of this Law are subject to public sale, shall be sold.

Customs offices shall be free to sell easily degradable goods and animals detained in accordance with Article 275 of this Law.

#### Article 293

Customs office shall sell the seized goods by exhibiting it at a public state, in a procedure prescribed by the regulations.

The Government may cede without compensation the seized goods that is of historical, archeological, ethnographic, cultural, artistic, or scientific value, if intended for humanitarian purposes, to state authorities, cultural institutions in charge of protection of cultural goods in the Republic, humanitarian organizations and other beneficiaries of humanitarian aid.

If such goods cannot be sold or used for medical, veterinary, phytopathological, security and other reasons prescribed by this Law, it shall be destroyed under customs supervision and control, in accordance with relevant regulations.

The costs of such destruction shall be borne by the owner or importer of goods at the time of seizure, and, if they are unknown or inaccessible, the costs of destruction shall be borne by the customs office.

#### Article 294

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## **PART XI**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### Article 295

The Government is authorized to adopt all by-laws related to application and implementation of this Law.



The Ministry of Finance and the customs service are responsible and authorized to propose and forward such by-laws to the Government.

The Ministry of Finance and the customs service are also responsible to ensure that all by-laws forwarded to the government are in compliance with this Law, requirements of the World Trade Organization, and World Customs Organization.

#### Article 295a

Until common market is formed, the Government may prescribe a special procedure for dealing with the goods and passengers, point of entry and exit of goods across the border between the Member States of the state union Serbia and Montenegro, and also release from payment of customs duties for the goods the origin of which is the Republic of Serbia.

#### Article 296

The entitlements from the rulings concerning the release from payment of customs duties or other customs reliefs passed by competent authorities that are not completely consumed or are only partly used until the day this Law starts to apply, may be used within the terms specified in such documents.

If, for the goods imported with customs exemption, it was envisaged in the regulations which shall cease to apply on the day this Law starts to apply that within a certain period such goods may not be alienated, given to be used by a third person, or used for purposes other than those for which customs exemption was granted, relevant provisions of such regulations concerning the period within which the goods may not be disposed of freely shall continue to apply after the day this Law starts to apply and for as long as the period in which such goods may not be alienated, given to be used by a third person, or used for other purposes, expires.

#### Article 297

Customs procedures initiated prior to the day this Law starts to apply shall be concluded in accordance with the regulations in force until the day this Law starts to apply.

#### Article 298

All offence proceedings initiated prior to the day this Law starts to apply shall be concluded in accordance with the provisions of this Law, if that is more beneficial to the offender.

All offence proceedings initiated prior to the day this Law starts to apply, which do not constitute an offence as prescribed by this Law shall be terminated.

#### Article 299

For the goods that were temporarily imported prior to the day this Law starts to apply, which are subject to payment of customs duties in accordance with the regulations in force until the day this

Law starts to apply, the customs duty shall be determined and paid in accordance with such regulations.

#### Article 300

Railway customs warehouses, customs warehouses, and customs storage spaces that are opened according to the regulations which shall cease to apply on the day this Law starts to apply may continue their business as customs warehouses in accordance with the provisions of this Law, provided the owner of the warehouse, within three months from the day this Law starts to apply, receives the ruling on foundation and business operation of customs warehouse in accordance with this Law and ensures that his business operations are in conformity with this Law.

The request for opening of customs warehouse in accordance with this Law may be submitted prior to the day this Law starts to apply and in this case the ruling shall apply from the day this Law starts to apply.

If the owners of premises referred to in paragraph 1 of this Article fail to submit the request for opening of customs warehouse in accordance with this Law, or the customs office determines that the owner does not meet the requirements that are prescribed by this Law with regard to founding and carrying out the business operation of a customs warehouse, the customs office shall pass the ruling to terminate the business operation of such customs warehouse.

#### Article 301

Consignment stocks, central warehouses, and specialized warehouses for foreign goods and goods of domestic production, which are opened according to the provisions of former regulations, shall cease their business operations on the day this Law starts to apply.

The goods that is found in the premises referred to paragraph 1 of this Article on the day this Law starts to apply shall be treated according to the provisions of this Law.

#### Article 302

The regulations on execution of this Law shall be passed before 1 April 2003.

#### Article 303

On the day this Law starts to apply, the Decree on Customs Operations (“Official Gazette of RM”, Nos. 33/2000 and 50/2001) and the Decree on the Procedure for Obtaining the Right to Exemption from Payment of Customs Duties for Special Cases of Exemption (“Official Gazette of RM”, No. 51/2001) shall cease to apply.

The Decree on Customs Tariff (“Official Gazette of RM”, Nos. 38/00 and 53/00) shall apply until the Law referred to in Article 20 paragraph 1 of the Customs Law is adopted and starts to apply.

#### Article 304

This Law shall come to force eight days after being published in the “Official Gazette of the Republic of Montenegro” and shall apply from 1 April 2003.