Chapter 44

European Union Customs Law

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§ 44:1 Checklist

EU CUSTOMS LAW

The following are among the regulatory issues to be considered before importing goods or merchandise into the European Union (EU):

☐ The European Union as a Customs Union
☐ Entry of Imported Goods into the European Union
☐ Duty Assessment
☐ Inward and Outward Processing
☐ Determination of Country of Origin
The customs union is an essential foundation of the EU and has been in place since 1968. The customs union has two dimensions: an internal and an external one. Internally, all barriers relating to the free movement of goods, services, workers, and capital have—at least theoretically—been removed to create the Single Internal Market. Consequently, customs duties and charges having a similar effect are forbidden between Member States.Externally, it has to be ensured that for customs purposes, goods from non-EU states are treated the same regardless of the Member State via which they are imported to the EU.

When laying down rules and regulations in the field of customs, the EU can, however, not act completely autonomously. Since the EU in its own rights and its 28 Member States are members to the World Trade Organization (WTO), the EU is bound by WTO law as far as the setting of tariff rates and other customs rules and procedures are concerned. Furthermore, the EU and its Member States have negotiated several bilateral trade agreements and preferential arrangements with third countries which are to be given effect at EU level and which are to be applied uniformly within the customs union.

In order to harmonize the customs rules and regulations within the EU, the Council adopted the Community Customs Code (CCC)\(^1\) as Regulation (EEC) No 2913/92/EWG on October 12, 1992, and the Commission, which had been tasked with the implementation of the CCC, adopted the CCC’s implementing provisions (CCIP) as Regulation (EEC) No 2454/93 on July 2, 1993.\(^2\)

\[\text{Section 44:2}\]

\(^1\)OJ L302/1 (October 19, 1992), as amended.

\(^2\)OJ L253/1 (October 11, 1993), as amended.
In 2008, the Modernised Customs Code (MCC) was published (Regulation (EC) No 450/2008). It was meant to replace the CCC and to be applied from June 2013 onwards. Yet, as a result of the entry into force of the Treaty of Lisbon on December 1, 2009, and delays in the development of EU-wide IT systems, only the provisions enabling the European Commission to adopt implementing provisions ever entered into force. Since such implementing provisions were subsequently not enacted the MCC never became applicable.

In the beginning of 2012 the European Commission submitted a draft of a new customs code, the Union Customs Code (UCC), to repeal and replace the MCC. It was adopted on October 9, 2013, as Regulation (EU) No 952/2013 by the European Parliament and the Council and entered into force on October 30, 2013, with its substantive provisions entering into force on May 1, 2016. However, certain aspects of the UCC that depend on the development of new IT systems or the upgrade of existing ones are not required to become operative before the end of the transition period which lasts until December 31, 2020, at the latest.

The main objectives for the adoption and implementation of the UCC were to streamline and simplify customs legislation and procedures, to offer greater legal certainty and uniformity to businesses and customs officials, to complete the shift by customs to a paperless and fully electronic environment, and to reinforce swifter customs procedures for compliant and trustworthy economic operators.

Following the entry into force of the UCC, the European Commission, together with the Member States, drew up implementing provisions. Due to the provisions of the Treaty of Lisbon, the implementing legislation to the UCC had to be divided into two different legal acts.

According to Article 290 Treaty on the Functioning of the European Union (TFEU), a legislative act may delegate to the European Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. Based on this authori-

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\(^3\)OJ L145/1 (June 4, 2008), as amended.
\(^4\)OJ L269/01 (October 10, 2013), as amended.

According to Article 291 TFEU legally binding Union acts which need uniform conditions for their implementation shall confer implementing powers on the European Commission. Based on this authorization, Implementing Regulation (EU) No 2015/2447 of 24 November 2015 ("Implementing Act”—IA) was adopted.

Together, DA and IA replace the CCIP.

According to its Title IX Chapter 1, the UCC envisages the gradual implementation of EU-wide harmonized IT procedures and common databases by December 31, 2020.

Therefore, in addition to the above-mentioned legal acts, rules for the exchange and storage of data for the period until the commissioning of the respective IT system or the respective database have been laid down in a transitional act—Delegated Regulation (EU) No 2016/341 of 17 December 2016 ("Transitional Delegated Act”—TDA).

Like the UCC, the DA, IA and TDA have been applicable since May 1, 2016.

The UCC and the related delegated and implementing acts contain inter alia provisions regarding the extent of the customs territory, the factors on the basis of which customs duties are applied (including rules of origin), the customs procedures applicable to goods entering the customs territory, various customs-approved treatments, and the regulation of customs debts.

Since the UCC as well as the DA, IA and TDA are EU regulations, they apply directly, automatically, and uniformly throughout the EU customs territory without the need for national implementing legislation. The European Commission issues guidance on a regular basis to help the Member States to implement EU customs legislation correctly.

§ 44:3 Allocation of responsibilities and powers inside the EU for customs matters

Responsibility for the formulation of customs law, policy, and regulation falls within the exclusive competence of the EU.

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5OJ L343/1 (December 29, 2015), as amended.
6OJ L343/558 (December 29, 2015), as amended.
7OJ L69/1 (March 15, 2016), as amended.
Measures to facilitate the achievement of these objectives must be adopted at the EU level. So, for example, customs duty rates for specific trading partners are set by the Council of the European Union after a proposal from the European Commission. Implementing powers relating to policy issues are also conferred on the European Commission as the executive agency of the EU. Inside the European Commission itself, Directorate General for Taxation and Customs Union (known as DG-TAXUD) is tasked with handling these specific matters. In discharging some of these responsibilities at EU-level, the European Commission is assisted by a Customs Code Committee comprising officials from both DG-TAXUD and the 28 EU Member States.

Yet, it is the EU Member States that are tasked with the actual day-to-day implementation, administration, and enforcement of the specific customs-related measures adopted by the EU. In reality, corporations involved in trading goods with the EU will seldom come into contact with the European Commission or one of the other EU-level agencies unless they are involved in anti-dumping or anti-subsidy proceedings. Regular customs clearance procedures are all handled at the national EU Member State level by agencies like HM Customs and Excise in the United Kingdom or the Hauptzollamt in Germany. This is true of both the administration of EU customs law and first instance appeals to administrative bodies and tribunals concerning specific customs decisions.

At national level inside the EU, national customs authorities assess and collect customs duties and manage local customs administration. The EU Member States also lay down their own detailed rules and conditions where the EU rules are silent or where EU legislation specifically foresees the application of national rules such as, for example, penalties for custom offences. It is therefore necessary to look not only at the EU-level rules and regulations but also the national customs procedures when contemplating import or export relationships with enterprises inside the EU.

Not surprisingly, the EU Member States also cooperate among themselves with regard to recovery of customs duties through the exchange of information regarding customs debts and the actual execution of such recovery. Customs officials in the Member States also interact with each other, as well as with the EU, to ensure the proper and harmonious application of customs laws in the EU, mainly through exchange of information. For this purpose, the Customs Information System
(CIS) has been established which is a central database accessible via terminals in all Member States and inside the EU designed to provide information necessary to prevent, investigate, and prosecute breaches of customs legislation.

In principle, this system means that the same customs rules are applied throughout the combined customs territory of the EU and its Member States. For this purpose, the Customs Territory of the EU comprises the territories of all the 28 EU Member States and includes the territorial waters, the inland maritime waters and their airspace. Certain European microstates such as Andorra, the Vatican City, and San Marino are not included in the EU Customs Territory. However, these states have various customs agreements either with the EU or with neighboring states (for example, France, Italy, and Spain).

§ 44:4 The Common Customs Tariff

The Common Customs Tariff (CCT) is the conceptual name for the sum of all EU rules regulating the fixing of import and export duties and duty exemptions with regard to goods, including preferential duties, tariff quotas, and tariff suspensions. Specifically, the CCT includes:

1) The Combined Nomenclature (CN) of goods;
2) Supplementary nomenclatures established by EU provisions governing specific fields;
3) The conventional or normal autonomous customs duty applicable to goods covered by the CN;

[Section 44:3]

1The precise scope of the territorial application is as follows: Austria; Belgium; Bulgaria; Croatia; Cyprus; the Czech Republic; Denmark, except the Faeroe Islands and Greenland; Estonia; Finland, including the Åland Islands; France, including Monaco and the overseas departments Guadeloupe, French-Guiana, Martinique, and Réunion, and except the overseas territories and Saint-Pierre and Miquelon and Mayotte; Germany, except the Island of Heligoland and the territory of Buesingen; Greece; Hungary; Ireland; Italy, except the municipalities of Livigno and Campione d’Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio; Latvia; Lithuania; Luxembourg; Malta; the territory of the Netherlands in Europe; Poland; Portugal; Romania; the Slovak Republic; Slovenia; Spain, except Ceuta and Melilla; Sweden; the United Kingdom of Great Britain and Northern Ireland as well as the Channel Islands and the Isle of Man; Article 4 UCC.

[Section 44:4]

1Article 56(2) UCC.
4) Preferential tariff measures under free trade agreements;
5) Unilateral preferential tariff measures;
6) Autonomous measures providing for a reduction in or relief from import duties chargeable on certain goods;
7) Favourable tariff treatment specified for certain goods by reason of their nature or end-use;
8) Other tariff measures provided for by EU legislation.

The CCT consists of a large number of legislative acts and regrettably there is no codified format of the whole program. These acts are typically EU Regulations which are directly applicable in the EU Member States without specific implementation. Many of the measures included under the CCT can be found in the EU online customs tariffs database (TARIC). The basic elements, particularly the customs duty rates applied to trading partners, are published by the European Commission each year in the form of a Commission Regulation adopting the CN applicable for that period.

§ 44:5  Entry of imported goods into the EU—Customs entry and declaration for merchandise

When merchandise from a non-EU country enters the EU customs territory it is subject to “supervision” by the EU customs authorities which means that the customs authorities can take action to ensure that the applicable EU customs rules are observed. The goods will remain under supervision until they have been assigned a so-called “customs-approved treatment or use.”

In general, all goods that enter the EU customs territory must be covered by a so-called “summary declaration.” The summary declaration is to be submitted to the customs office of entry, i.e., the customs office at which the goods are to be subject to appropriate entry control, between one and 24 hours before entry into the EU customs territory, depending on

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[Section 44:5]

1Article 134(1) UCC.
2Article 127(1) to (3) UCC.
whether the goods are carried by sea, air, rail, or road. The summary declaration is submitted by the person who brings the goods into the EU (i.e., generally the owner of the goods or a person acting on behalf of the owner), or who assumes responsibility for the carriage of the goods into the customs territory of the EU (i.e., an agent). The customs office of entry may waive the obligation to submit a summary declaration where a full declaration has been submitted or in respect of goods for which, prior to the expiry of the time-limit for lodging that declaration, a “temporary storage” declaration is lodged.

At the time of presenting the goods to customs following their entry into the EU customs territory, a customs declaration needs to be lodged with the customs office where the goods were or will shortly be presented. A person may only dispose of non-union goods originating in non-EU countries in the intended manner once the goods have been declared for a customs procedure and released by the customs office.

The customs declaration must contain all the particulars necessary for application of the provisions governing the customs procedure for which the goods are declared. In addition, all necessary documents (for example, invoices and transport documents) must be kept available and submitted to the customs office on request.

Customs declaration shall principally be lodged electronically. Various simplified procedures for customs declarations are available. Normally, special authorization is required for using such simplified procedures, and the declarant must complement the individual declarations with periodic declarations giving all the necessary information. It is also possible to receive a Single Authorization and centralized clearance involving entry of goods in one or several other Member States.

Goods that have been presented to customs are considered to be in “temporary storage” while waiting to be assigned a

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3 Articles 105 to 110 DA.
4 Article 127(4) UCC.
5 Article 130 UCC.
6 Article 162 UCC.
7 Article 163 UCC.
8 Article 6(1) UCC.
customs-approved treatment or use.\textsuperscript{9} Non-Union goods in temporary storage shall be placed under a customs procedure or re-exported within 90 days of their presentation to customs upon entry into the EU customs territory.\textsuperscript{10}

When the acceptance of the customs declaration gives rise to the entry into the accounts of a customs debt, the customs debt must be paid or secured before the goods can be released.\textsuperscript{11} The customs authorities may confiscate and destroy or sell goods that have not been removed within a reasonable period of time after their release, for example, because the customs debt has not been settled, because the goods are subject to bans or restrictions, or because they have been abandoned.\textsuperscript{12}

§ 44:6 Entry of imported goods into the EU—Placing merchandise under EU customs clearance procedures

Imported goods must normally be assigned a “customs procedure” to enable the customs authorities to deal with the goods in the proper way. The UCC provides for three different types of customs procedures:\textsuperscript{1}

1) Release for free circulation;
2) Special procedures; and
3) Re-export.

The following categories of “special procedures” are available under the UCC:\textsuperscript{2}

1) Transit, which shall comprise external and internal transit;
2) Storage, which shall comprise customs warehousing and free zones;
3) Specific use, which shall comprise temporary admission and end-use; and
4) Processing, which shall comprise inward and outward processing.

\textsuperscript{9}Article 144 UCC.
\textsuperscript{10}Article 149 UCC.
\textsuperscript{11}Article 195(1) UCC.
\textsuperscript{12}Article 198(1) UCC.

[Section 44:6]
\textsuperscript{1}Article 5(16) UCC.
\textsuperscript{2}Article 210 UCC.
By far the most common treatment is release for free circulation.

§ 44:7 Entry of imported goods into the EU—Release for free circulation inside the European Union

If goods are being imported for consumption or sale in the EU, the customs declaration must be made as required under the customs legislation, i.e., as a general rule, by using electronic data-processing techniques. The customs declaration must contain all the information necessary to determine the import duties, and if the goods are subject to import restrictions, all necessary licenses as well as other documents must be attached. Proof concerning origin must also be submitted. On the basis of this information, the customs debt is determined. The goods will be released for free circulation within the EU when the customs debt has been paid and all other import formalities met.

The term “free circulation” means that after non-Union goods are imported into the EU, they are in principle entitled to the same status and treatment as Union goods and may move freely among the EU Member States. In a number of limited instances, the goods released in this way will, however, remain under customs supervision, for example if the goods are released in accordance with a reduced duty rate on account of their end use.

§ 44:8 Duty assessment

The duty assessment procedure under the CCT requires examination of a wide range of factors such as the classification and valuation of the goods to determine the appropriate duty rates, liability for special duties that may be applicable such as anti-dumping and countervailing duties, as well as other specific import formalities such as quotas and licenses.

§ 44:9 Duty assessment—Tariff classification (CN and TARIC)

All imported products are classified in accordance with a system of numerical codes through which they are assigned a
specific CN number. The CN is divided into 21 different sections covering all products ranging from live animals, through textiles and textile articles, to vehicles, aircraft, and vessels and associated transport equipment. Each section is divided into chapters where the products are further specified. The CN contains 99 different chapters. Each chapter is in turn further divided into headings and subheadings down to 8-digit codes. The codes are designed so that raw materials are classified as early as possible in the CN hierarchy while processed goods are classified later in the scheme. These classification codes are used by all customs authorities throughout the EU.

The first 6-digits of the CN code are based on the international Harmonized System (HS) nomenclature run by the World Customs Organization (WCO). The HS has been negotiated between the WCO member countries and is applied by most countries in the world, including the United States. The two last additional digits of the CN code have been added by the EU to meet specific EU adaptations. If no specific EU subdivision applies, the eight-digit CN code will end with “00.”

EU customs law further requires importers to add more details to their import classifications by referring to the TARIC database which adds an extra two digits to identify products that are subject to specific EU measures such as tariff suspensions, quotas, preferences, and anti-dumping and countervailing duties. The TARIC 10-digit identification code must be used when importing from third countries. If no specific EU measures apply, the TARIC code for an imported product will end with “00.” The TARIC classification is, however, not required for exports.

Given the complexity of this system, it seems sensible to refer to a hypothetical example. In the EU system, “synchronous motors of an output not exceeding 18W” are assigned CN Code 8501 1010 under Chapter 85 and Section XVI of the CN code. The TARIC classification adds the following specification under TARIC code 8501 1010 10 if these motors are “for use in certain types of aircraft.” The products identified under this specification are subject to specific duty suspension arrangements. For
this specific product, the classification system may consequently
be summarized in the following way:

<table>
<thead>
<tr>
<th>Description</th>
<th>Number of digits</th>
<th>Illustration</th>
</tr>
</thead>
<tbody>
<tr>
<td>HS chapter</td>
<td>—2 digits</td>
<td>example: 85</td>
</tr>
<tr>
<td>HS heading</td>
<td>—4 digits</td>
<td>example: 8501</td>
</tr>
<tr>
<td>HS subheading</td>
<td>—6 digits</td>
<td>example: 8501 10</td>
</tr>
<tr>
<td>CN subheading</td>
<td>—8 digits</td>
<td>example: 8501</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1010</td>
</tr>
<tr>
<td>TARIC classification</td>
<td>—10 digits</td>
<td>example: 8501</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1010 10</td>
</tr>
<tr>
<td>Possible additional</td>
<td>—14 digits</td>
<td>example: 8501</td>
</tr>
<tr>
<td>classification</td>
<td></td>
<td>1010 10 1000</td>
</tr>
</tbody>
</table>

When classifying a product under this system, it is of course
necessary to know the materials included in the product as
well as the specific characteristics of the product. It is also nec-
essary to understand what type of products falls under the dif-
ferent HS and CN codes. For this purpose, it is necessary to
consult the various pieces of legislation making up the EU
Common Customs Tariff, including the general rules for the in-
terpretation of the CN. An additional aid is provided by the
specific Explanatory Notes to each chapter and heading of the
HS published by the WCO as well as specific CN chapter and
heading interpretative notes.

When imported goods are declared to customs authorities,
the importer should state under which subheading of the CN
code the goods are considered to fall, including the applicable
TARIC classification. The owner or his/her representative is
responsible for the declared classification. If the owner realizes
that the goods have been wrongly classified, he/she should im-
mediately apply for a reclassification and may recover possible
duties paid wrongly.\(^2\) The owner or representative has up to
three years to submit an application for reclassification and
repayment.\(^3\) The customs authority may also carry out inspec-
tions to control the classification of specific goods and reclassify
goods on their own initiative. In such cases, depending on
national provisions of the EU Member States, the customs
authority may also decide to impose punitive duties.

In order to provide better certainty for the classification of

\(^2\)Article 116(1)(a) UCC.

\(^3\)Article 121(1)(a) UCC.
merchandise, it is possible to apply for a Binding Tariff Information (BTI), according to which the goods are classified by the customs authority in advance. The BTI is a written confirmation of the product code that will apply to the goods in question upon importation or exportation. The classification is normally valid for a period of three years but only for the holder of the BTI in question. Other importers and exporters may, however, rely on BTIs issued to other traders as guidance on how to classify their goods. The BTIs are issued by the customs authorities of the EU Member States. A BTI issued in one Member State is valid throughout the EU. An importer or exporter in possession of a valid BTI is obliged to inform the customs authority of the BTI upon importation or exportation. This is done on the customs declaration. All BTIs issued by the national customs authorities are introduced into the European Binding Tariff Information database (EBTI-database) run by the European Commission.

§ 44:10 Duty assessment—Rates of duty

Once it has been established that imported products fall under a specific classification code, this code will determine the specific tariffs and other charges as well as quotas and preferential treatments that will apply to the goods in question. Information concerning tariffs, charges, and other applicable measures that correspond to the different codes can be found in the TARIC database. Specifically, the TARIC database contains information concerning: (i) tariff measures, such as duty rates, suspensions of duties, tariff quotas, and tariff preferences; (ii) agricultural measures, such as agricultural components and refunds for export of non-processed agricultural goods; (iii) commercial policy measures, such as antidumping measures and countervailing duties measures; and (iv) measures relating to restriction of movements, such as import and export prohibitions and restrictions and quantitative limits.

The duty to be paid when importing a specific product is normally expressed as a percentage of the value of the product in question, i.e., a so-called “ad valorem duty.” For example, if the value of the product is EUR 1,000 and the ad valorem duty rate to be applied is stated as 1.5%, the payable duty will be

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4Article 33 UCC.
EUR 15. However, sometimes the duty is expressed as a specific duty per quantity of the product. The quantity is expressed either per item or in weight or volume. Occasionally, the duty is also expressed as a combination of an ad valorem and a specific duty.

Additional tariff-like duties may apply because of anti-dumping and countervailing measures introduced by the EU. These are marked next to the normal duty rate in the TARIC. Individual anti-dumping and countervailing duty rates that apply to individual producers are identified through the addition of additional digits to the customs classification code and should be declared in the customs declaration. As long as provisional duties are imposed, the collection of these kinds of duties can be deferred by lodging security (i.e., a bank guarantee). Once final anti-dumping or countervailing duties are in place, the duties will be levied on a retroactive basis.

Likelihood to customs duties may also be wholly or partly suspended for certain products because suspension is considered necessary for the achievement of certain important policy goals, such as the stimulation of economic activity in EU industries, improving their competitive capacity, creating employment, modernizing structures, etc. Duty suspension may also apply to raw materials, semi-finished goods or components that are not available in the EU. Duties may be suspended temporarily or on a permanent basis. Normally, duty suspension is applied equally to all operators in the EU that are importing and exporting the product under the CN code in question. In more rare cases, duty suspension is only applied to goods that have a specific nature or end use. The special conditions that apply to products benefiting from such suspension are stated in footnotes to the product codes. In these cases, special permission may be required from the customs authorities in question.1

§ 44:11  Duty assessment—Valuation

To determine the applicable customs debt that is to be paid, it is necessary to determine the value of the imported products.

[Section 44:10]


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Even if a product enters the EU customs duty free or if the duty is expressed in another way, for example, according to the weight of the product, an importer/exporter must still declare the value of the goods in order for the customs authorities to determine whether any other charges, such as VAT, may be due.

The EU rules on customs valuation are based on the equivalent WTO rules. The value is in the first place determined on the basis of the transaction value, i.e., typically the price actually paid or payable for the goods when sold for export to the EU. If it is not possible to determine the actual transaction value, alternative means are used, for example: the transaction value for identical or similar goods, the unit price of the goods when sold in the EU, the computed value based on the production value of the product, or a value determined by any other reasonable means.¹

Unlike the United States, this assessment is made on the CIF value of the merchandise and not the FOB value. To be included in the value declaration for the goods—even if not included in the transaction price stated on the invoice—are, inter alia, transportation costs to the borders of the EU customs territory, loading costs, insurance costs, packaging costs as well as certain royalties and license fees, commissions and brokerage, and development and design works necessary for the production of the imported goods if undertaken elsewhere than in the EU. On the other hand, customs duties and charges, transport costs inside the EU, etc. should not be included in the value of the goods even if they are included in the transaction value.

§ 44:12 Duty assessment—Tariff rate quotas and import licensing

Quantitative restrictions—or quotas—are measures that prohibit or restrict the quantity of a product that may be imported to the EU during a specified period of time. Unlike customs duties, quantitative restrictions impose physical limits on import volumes. Although generally prohibited by the WTO General Agreement on Tariffs and Trade (GATT), quotas still exist in some import sectors.

Tariff Rate Quotas (TRQs), on the other hand, set a maximum

¹Articles 69 to 76 UCC.
quantity that can be imported at a certain duty rate. These kinds of measure are quantitative limitations combined with a two-tiered tariff. A lower “in-quota tariff” is applied to the quantitative limitation and a higher “over-quota tariff” is applied to all imports above that quantity. TRQs are not considered to be quantitative restrictions in the above-described sense because they do not prohibit imports per se. An importer may always import by paying the over-quota tariff. The EU at least believes that TRQs are allowed under the WTO system if administered in a non-discriminatory manner.

The EU applies TRQs mainly to agricultural products. The purpose of these TRQs is either to secure import of products which are not produced in the EU in sufficient quantities or to restrict importation of certain goods, if imports are hurting the domestic EU industry. In the latter case, importers of the product in question often need specific licenses. TRQs are sometimes broken up in shares and allocated according to the country of origin of the product.

The lower in-quota tariff applies to all products imported into the EU until the quota is full. The quota level is typically determined on a yearly basis and is common for the whole of the EU. It is typically allocated among importers on a first come first served basis, according to the time of registration of customs declarations.\(^1\) The importer must apply for quota treatment by stating the applicable six-digit quota number in the customs declaration. The quota number can be found next to the quota duty rate in the CCT.

Special tariff ceilings are sometimes applied instead of TRQs. In common with TRQs, tariff ceilings also set a reduced tariff level to be applied up to a quantitative ceiling for imports of certain products, typically products of preferential origin. The main difference is that the lower in-quota is not automatically suspended when the quota is full; such suspension requires a specific decision by the European Commission.\(^2\)

Licensing requirements are commonly imposed by the EU due to commercial and/or economic considerations. For example, import licenses are sometimes required when a product is subject to a TRQ and are also occasionally required for surveillance purposes. In addition, import licenses may be

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\(^1\) Article 56(4) UCC and Articles 49 to 54 IA.

\(^2\) Article 56(4) UCC.
required due to environmental, health, security, or political reasons, for example, with regard to products such as alcohol, pharmaceuticals, chemicals, and weapons and ammunitions.

The EU also requires importers to be in possession of import licenses if they, for example, want to import certain agricultural products or specific industrial goods such as textile and iron or steel products from certain countries. These license requirements are either imposed on the basis of bilateral agreements or unilateral arrangements. If licenses are required on the basis of bilateral agreements, the goods need both an export license issued by the authorities in the country of origin and an import license issued in the EU. Licenses under these agreements are typically valid for a period of between six and nine months.

EU import licenses are issued by designated authorities in the EU Member States and a license issued by one Member State authority is valid throughout the whole of the EU. A request for a license must be submitted before importation. The license is issued once the European Commission has confirmed that the applicable quota is not full. It is possible to search for available quota space in the EU Système Intégré de Gestion de Licences (SIGL) databases.

§ 44:13 Inward and outward processing—Inward processing

When goods are imported into the EU for the purpose of being processed into other products, or repaired by EU manufacturers, and then re-exported with added value, they may be assigned to a special procedure called “inward processing.” Under this customs procedure, EU manufacturers may, if certain conditions are met, be wholly or partly exempted from the requirement to pay customs duties on the goods that are to be processed, since these goods are only temporarily permitted into the EU. Typical products permitted import processing treatment include raw materials and semi-manufactured goods.

Specific authorization from the customs authorities is required for the use of this procedure, and a number of criteria

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3For example, with regard to textiles, bilateral agreements have been concluded, inter alia, with China, Belarus, India, Vietnam and Pakistan.
4http://trade.ec.europa.eu/sigl/.

[Section 44:13]

1Article 210(1)(d) UCC and Articles 256 to 258 UCC.
must be met to qualify for authorization.² The manufacturer must be established in the EU and other EU manufacturers of similar products should not be adversely affected. Manufacturers may apply for authorization either on a specific form before the goods are imported or, if certain conditions are met, upon importation on the customs declaration itself. Applications can be made for Single Authorization, i.e., authorization involving different customs administrations covering entry for and/or discharge of the arrangement, storage, successive processing operations, or uses. Authorizations are granted for as long as required for the processing procedure to take place, but in general up to a maximum of five years.

The inward processing procedure begins when the goods are imported and ends with the finished goods being exported or, in the case of suspensive arrangements, assigned to another customs-approved treatment or use. The customs declarations must indicate which goods are assigned to the inward processing procedure and refer to a valid permission, if applicable. Duties and taxes due upon importation may either be suspended or, if certain conditions are met, paid and later repaid when the goods are exported (duty drawback). The latter procedure should not be used if the goods are subject to, for example, quotas or licensing requirements.

When duties are suspended under an inward processing arrangement, the manufacturer may be required to provide security. When the processing procedure is finished and the goods exported or assigned to any other customs-approved treatment or use, the manufacturer must submit a bill of discharge, i.e., a statement with necessary information linking the importation and the exportation of the goods and, in case duties have been paid, including an invoice for the repayment of duties.

§ 44:14 Inward and outward processing—Outward processing

Outward processing mirrors inward processing in the sense that outward processing concerns EU-made merchandise exported from the EU to be manufactured, processed, or repaired in a third country and then re-imported with added

²Articles 210 to 225 UCC and Articles 161 to 164 and 166 to 176 DA.
value into the EU.\textsuperscript{1} As in the case of inward processing, the EU manufacturer is exempted wholly or partly from paying duties and taxes when the goods are re-imported since the goods have only temporarily been outside the EU. Under certain circumstances, replacements products may be imported even prior to the compensating products being exported.

Again, authorization from the customs authorities in the EU is required in order to benefit from this customs procedure.\textsuperscript{2} Similar criteria as with inward processing must be fulfilled, including the pre-condition that the manufacturer must be established in the EU and that manufacturers of similar products within the EU must not be adversely affected. As with inward processing, authorizations are generally granted for as long as required for the processing procedure, but up to a maximum of five years.

If the products have been processed in a third country, the duties to be paid upon importation may be calculated in accordance with one of the following two general methods: (i) by calculating the duties applicable to the re-imported products and then extracting the duties that would have been applicable to the exported products on the same day; or (ii) by calculating the duties on the added value of the re-imported products, i.e., generally the cost for the processing plus the transport costs.

\textbf{§ 44:15 Determination of country of origin}

Rules of origin determine the place of production of merchandise for the primary purpose of establishing the manner in which national customs authorities should treat the product in question upon importation.

The EU rules of origin are split into preferential and non-preferential rules. The former refers to special rules contained in specific preferential arrangements between the EU and third countries—such as in origin protocols of bilateral free trade agreements and the origin rules of autonomous arrangements such as the EU Generalised Scheme of Preferences (GSP). Non-preferential rules of origin are the general rules applicable to all products not benefiting from special rules defined in the preferential arrangements. Unlike the preferential rules of

\textsuperscript{1}Article 210(1)(d) UCC and Articles 259 to 262 UCC.

\textsuperscript{2}Articles 210 to 225 UCC and Articles 161 to 164, 166, 169 and 171 to 176 DA.
In very general terms, whether preferential or non-preferential, EU rules of origin distinguish between products that have a single origin (because they are either "wholly obtained" in one country or altogether produced in that country) and products that are produced in more than one country. Products are considered "wholly obtained" in one country if they have been obtained in a natural and unprocessed state such as, inter alia, mineral products extracted from the soil, vegetable products harvested, animals born and raised, products of hunting and fishing, products taken from the sea or seabed, waste and scrap derived from manufacturing operations as well as products exclusively produced from these products in the country in question. If two or more countries are involved in the production of a good, the concept of "last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture" is used to determine the origin of the product. Origin is consequently determined on the basis of the last change that satisfies this test, regardless of whether or not the country in which this last change has occurred is the place where the major part of the production has been carried out.

In general "last substantial transformation" is expressed in accordance with one or more of three basic rules:

1) Change of tariff heading. According to this rule, a substantial transformation is considered to have occurred if the materials included in the finished product have been transformed in such a way as to require a change in the tariff heading used to describe the product under the Harmonized System nomenclature. When this method is used, the rule of origin normally indicates, for each specific product, the number of digits in the tariff heading of the Harmonized System that are required to change for the product to acquire origin.

2) Manufacturing or processing operations. Under this rule, it is predetermined that certain manufacturing or processing operations will or will not be considered to constitute last substantial transformation for the purpose of determining the origin of a specific product. For example, if
the product has undergone an established technical transformation, enough to confer origin, the goods will be considered of the origin of that process.

3) **Domestic content.** This rule will either determine the minimum required amount of domestic content of a product or the maximum allowed amount of foreign content for that product to be considered originating in a specific country. Minimum or maximum amounts required or allowed will be determined in accordance with a percentage rule (sometimes referred to as an “ad valorem” rule). This is normally either the percentage of content or the percentage of the ex-works price or value of the product added by content.

The rules on cumulation allow, under certain conditions, non-EU countries to take into account processing outside their own territories for the purpose of acquiring origin, for example, processing within a free trade area (unilateral, bilateral, or regional cumulation). When partial cumulation is applied, a party to a preferential trade arrangement may take into account processing that has conferred origin in other members of the arrangement. When full cumulation is applied, a party to a free trade area may take into account processing in other members of the free trade area, regardless whether that processing has conferred origin or not.

General tolerance rules permit manufacturers to use non-originating materials up to a specified percentage value of the ex-works price. However, tolerance rules may also be specified for individual products. A specific tolerance rule will prevail over the general rule. Rules on minimal operations identify operations that, for the product in question, are of such minor importance that, when carried out either individually or in combination, can never confer originating status, for example, packaging, labelling, and simple assembly operations.

§ 44:16 **Determination of country of origin—Non-preferential origin**

Non-preferential rules of origin are general rules applicable to all products not benefiting from special rules defined in the
preferential arrangements. EU non-preferential rules of origin are contained in the UCC,\(^1\) the DA\(^2\) and the IA.\(^3\)

For products unable to claim preferential treatment, origin is determined in accordance with the last substantial transformation rule.

\section*{§ 44:17 Determination of country of origin—Preferential origin}

Rules of origin for the operation of free trade arrangements can—regrettably—set down different rules or, alternatively, modify the basic rules by adding additional requirements, specifications, and precision. It appears that the rules of origin in each preferential arrangement have been written to deal with trade with each specific trading partner. For this reason, the rules in each case can be very different and require careful and specific evaluation. Some of these preferences are unilateral in the sense that they are granted to certain groups of countries without requiring any reciprocal commitment (for example, countries benefiting from the EU GSP and the Everything But Arms Initiative), while others are included in traditional reciprocal free trade agreements (for example, free trade agreements with the EFTA countries (Iceland, Norway, Liechtenstein and Switzerland), Korea, South Africa, Mexico, and Chile).

The preferential rules of origin are contained in each preferential agreement or arrangement separately.\(^1\) The applicable benchmark rules, rules of cumulation, etc. will consequently be stated in the agreement/arrangement itself. These rules provide, unless the product is wholly obtained in one country, the minimum amount of working and/or processing in the beneficiary country that the products must undergo to be considered as “originating” in this country. Some general rules are contained in the UCC,\(^2\) the DA\(^2\) and the IA.\(^4\)

To make sure that goods entering the EU under preferential

\footnotesize

\begin{itemize}
  \item \textbf{[Section 44:16]}  
  \begin{itemize}
    \item \(^1\) Articles 59 to 63 UCC.
    \item \(^2\) Articles 31 to 36 and Annex 22-01 DA.
    \item \(^3\) Articles 57-59 IA.
  \end{itemize}

  \item \textbf{[Section 44:17]}  
  \begin{itemize}
    \item \(^1\) Article 64(2) UCC.
    \item \(^2\) Article 64 UCC.
  \end{itemize}
\end{itemize}

\footnotesize
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agreements truly originate in the beneficiary country, and to prevent circumvention, origin is not conferred if the sole purpose of the working or processing of a product in a specific country is to circumvent non-preferential treatment. Furthermore, goods arriving from beneficiary countries must comply with direct transport rules, i.e., that the goods are generally transported directly from the beneficiary country in question to the EU without passage through other countries. The purpose of direct transport is to ensure that the goods arriving in the country of import are the same as those which left the country of export. However, if for any reason the goods pass through or stop-over in, the territory of a third country provided that they stay under customs supervision, the conditions of direct transport are considered to have been fulfilled. Proof of compliance with the direct transport rule may be given by a single transport document covering the passage of the goods through the country of transit or, for example, a “non-manipulation certificate” issued by the authorities of that country.

\[\text{§ 44:17} \]  
INTERNATIONAL CONTRACT MANUAL

\[\text{§ 44:18 \ Distance of country of origin—} \]
\[\text{Certification of preferential origin} \]

When goods are claimed to have a particular preferential origin, the origin of the products has to be proved upon importation (or in certain cases retrospectively). In this context, a distinction has to be drawn between formal and non-formal proofs of origin.

Formal proofs of origin are issued by the customs authority or another duly authorized authority in the country of origin. The certificate must contain all the particulars necessary for identifying the product and must certify unambiguously that the product originates in the country in question. The different preferential arrangements require specific proofs of origin relevant to specific arrangements (certificate of origin Form A or movement certificates EUR.1, EUR-MED or A.TR.).

Non-formal proofs of origin are issued by the exporter himself via a declaration on certain commercial documents (an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified—the so-called “invoice declaration”). This

\[3\text{Articles 37-70 DA and Annexes 22-02, 22-03, 22-04, 22-05, 22-11 and 22-13 DA.} \]

\[4\text{Articles 60-126 IA.} \]
self-certification is the rule within the framework of the prefer-
tential trade agreement with South Korea since this agreement
does not provide for the issuance of formal proofs of origin.
With regard to all other preferential trade agreements the non-
formal proof of origin can replace the formal proof of origin
subject to prior authorization by the customs authorities
granted to approved exporters or for consignments under a
certain value.

The UCC provides for a new system of certification of origin
of goods—the Registered Exporter system (“REX”).¹ It shall be
progressively introduced and will first be applied in the GSP,
through which the EU unilaterally grants tariff preferences to
developing countries. It will next be applied in other unilateral
arrangements and trade agreements of the EU. The REX
system is based on a principle of self-certification by economic
operators who will provide “statements on origin.” To be
entitled to make such statements, an economic operator must
be registered in a database by its competent authorities as a
“Registered Exporter.”

The REX system will be applied as from January 1, 2017, by
the beneficiary countries of the EU GSP scheme with some
countries having notified the European Commission that they
prefer to apply the REX system at a later stage, i.e. as from
January 1, 2018, or as from January 1, 2019. A progressive
transition from the current system of certification with certifi-
cates of origin Form A to the REX system is intended, i.e. both
systems will be applied in parallel for a period of up to 1.5
years from the date when the beneficiary country starts apply-
ing the REX system.

§ 44:19 Other customs procedures and specific relief—
Transit

Transit is a customs procedure that allows goods to move
across borders through one or several countries without paying
duties or taxes in these countries. When goods are put under a
transit procedure, the customs debt is temporarily deferred
until the goods have arrived at their final destination.

There are two types of transit procedures: “Union transit”
and “common transit.” The Union transit procedure is used for

¹Articles 70 to 108 IA.
customs transit operations between the 28 EU Member States (as well as to and from Andorra, San Marino and the “special territories” of the EU, i.e., the Channel Islands, the Canary Islands, Guadeloupe, Martinique, French Guiana, Réunion, Mount Athos and the Åland Islands) and is in general applicable to the movement of non-Union goods for which customs duties and other charges at import are at stake, and of Union goods, which, between their point of departure and point of destination in the EU, have to pass through the territory of a third country. The common transit procedure, whose rules are effectively identical to those of Union transit, covers the movement of goods between the EU Member States, the EFTA countries, Turkey (since December 1, 2012), the Former Yugoslav Republic of Macedonia (since July 1, 2015), and Serbia (since February 1, 2016).

The principal rules governing Union transit are contained in the UCC,\(^1\) the DA\(^2\) and the IA.\(^3\) The rules governing common transit are contained in the Convention between the EU and the EFTA Countries on a Common Transit Procedure.\(^4\) In addition, the EU typically applies the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) of 1975 when goods move between two or more EU Member States via the territory of a third country or when the movement of goods either starts or ends in a third country.

To use Union or common transit, traders must submit a transit declaration at the customs office of departure. Upon receipt of such a declaration, the customs office will issue a Transit Accompanying Document (TAD) that must accompany the goods until their final destination. Security must also be provided for the deferred customs debt.

Since July 1, 2005, all declarations for the customs transit must be made electronically using the New Computerised Transit System (NCTS). Paper declarations are only allowed during fallback, i.e., when the NCTS is unavailable and for private travelers with goods in excess of their duty free allowances. A trader must be registered as an economic opera-

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\(^{1}\)Articles 210 to 225 and 226 to 236 UCC.

\(^{2}\)Articles 184 to 200 DA.

\(^{3}\)Articles 159 to 164 IA.

tor in order to be able to use the NCTS; once registered, the trader is to use his/her EORI number on the NCTS declarations.

When the goods are in transit between the customs office of departure and the customs office of destination, they remain under customs supervision. To ensure that the goods are not transformed or replaced during transport, the container or truck, etc. in which the goods are transported must be sealed. The transit procedure may be simplified in various ways, for example, by applying for approved sender status under the NCTS or approved receiver status in order to be able to receive goods that have been transported without presenting them for the customs office of destination. It is also possible to apply for the possibility to use own seals and provide security for several consignments at the same time, etc.

§ 44:20 Other customs procedures and specific relief—Warehousing

If it is not clear at the time third country goods enter the EU territory under which customs procedure they should be placed, the goods may be put in a customs warehouse.\(^1\) This procedure allows non-Union goods to be stored in a customs warehouse in the EU without being subject to customs duties or other charges.

Goods in customs warehouses remain under customs supervision and should, as a general rule, not be processed. The goods may, however, be handled for the purpose of preserving them, improve their appearance or marketable quality, or to prepare them for distribution or resale. Subject to the prior authorization by the competent customs authorities the goods may be temporarily removed from the warehouse and may be transferred from one warehouse to another. There is, in theory, no time limit for how long the goods may remain in the warehouse.

Customs warehouses may be public or private. Any trader may place goods in a public warehouse, while private warehouses are typically established by the depositor himself and used for the depositor’s own purposes. The operation of a warehouse is subject to authorization by the customs authorities.

\(^{1}\)Articles 210 to 225 and 237 to 242 UCC and Articles 201 to 203 DA.

[Section 44:20]
To place goods in a customs warehouse, the trader must first obtain an authorization from the customs authorities. The trader should also contact the warehouse in order to make sure that the warehouse is authorized to store the goods in question and arrange for their deposit. A customs declaration must thereafter be submitted to the customs authorities indicating that the goods should be assigned to this particular customs procedure.

§ 44:21 Other customs procedures and specific relief—Temporary admission

When goods are imported temporarily for certain specific purposes, they may be exempted from customs duties and other charges if the intention is that the goods are to be re-exported when they have fulfilled their function in the EU. For example, this may apply to goods imported for exhibition at trade fairs; containers and other packaging in which goods have been transported; machinery to be used temporarily; sample products; and pieces of art for exhibitions, etc. Security must, in most cases, be provided for the customs debt that would have, in normal circumstances, been due.

To receive authorization, again certain conditions must be met. For example, except for normal usage, the goods must stay in the same condition, i.e., value must not be added or removed, and it must be possible to identify the temporarily imported goods. If all the conditions for this customs procedure are not met, the importer may benefit from partial exemption from duties and charges. When the authorized time period expires, the goods must be placed under another customs procedure or be re-exported.

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2Articles 210 to 213 UCC and Articles 201 to 203 DA.

[Section 44:21]

1Articles 250 to 253 UCC and Articles 204 to 238 DA.

2Articles 211 to 214 UCC and 204 to 207 DA.
§ 44:22 Other customs procedures and specific relief—
Re-exportation

When re-exporting goods subject to either of the special procedures processing, temporary admission, or customs warehousing, the same rules as for the export procedure apply.¹

§ 44:23 Export controls

Certain merchandise is subject to EU export controls. Generally, EU export controls cover merchandise covered by:

1) EU measures imposing sanctions/embargoes against specific third countries (typically authorized by the United Nations; however, there are also “autonomous” restrictive measures imposed by the EU);

2) Council Common Position 2008/944/CFSP of December 8, 2008, Defining Common Rules Governing Control of Exports of Military Technology and Equipment;² EU Member States are committed to apply the criteria of the EU Common Position when making decisions on issuing export licenses and to apply controls on the export of all goods covered by the EU Common Military List, as amended;³

3) Council Regulation (EC) No 428/2009 (Dual Use Regulation);⁴

4) EU measures applying to other products, such as agricultural products, arts, and endangered animal and plant species, etc.

The exportation of goods falling under these measures may be completely prohibited, prohibited to certain destinations, or conditions or may require an export license.

The Dual Use Regulation defines dual use items as items,

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¹Article 270(2) UCC.


³OJ L129/1 (April 21, 2015).

including software and technology, which can be used for both civil and military purposes, including all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices. Competence with regard to dual use goods is divided between the EU and the Member States. An export authorization is required for the export of the dual use items listed in Annex I of the Dual Use Regulation (EU competence). However, the EU Member States are also competent to require an authorization for the export to all or certain destinations of certain dual use items not listed in Annex I. Decisions about approving or denying a given transfer are taken by the competent authorities of the EU Member States, which are required to provide enforcement and penalty power. The national authorities make the final decision either after the receipt of an application or ex officio.

Under the Dual Use Regulation, the EU Member States grant Union General Export Authorisations (Article 9(1) and Annexes IIa to IIi. See, e.g., Union General Authorisation No. EU001) for the items listed in Annex I of the Regulation, excluding the most sensitive listed dual use items (set out in Annex IIg), for seven “like-minded” third countries (Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Liechtenstein), and the U.S.), and individual, global, or general authorizations (Article 9(2)) for all other exports of the items listed in Annex I. The Member States may also issue authorizations for other items (not listed in Annex I) deemed to be falling under the so-called “catch-all clauses” (Articles 4 and 8). The application of the catch-all clauses depends on the specific use of the items on a case-by-case basis (specifically weapons of mass destruction end use) or the existence of general EU or national arms embargoes and is normally only applied to sensitive countries.

It should also be noted that the EU’s so-called Blocking Regulation (Council Regulation 2271/96 of November 22, 1996 Protecting against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom), as well as certain national laws, prevent the extraterritorial application of certain specific provision of U.S. export control law, such as the Cuban Liberty and Democratic Solidarity Act of 1996 (Helms-Burton Act), the sanctions provisions of the Cuban Democracy Act

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§ 44:24 Administrative and judicial review

The UCC contains rules that allow traders to recover duties wrongly due or paid. This is either done through repayment or remission of customs duties. Repayment means the total or partial refund of import or export duties which have been paid. Remission refers to a decision to waive all or part of the amount of a customs debt and to a decision to render void an entry in the accounts of all or part of an amount of import or export duty which has not been paid.¹

Remission or repayment of customs debts communicated to the debtor is possible on the following grounds: (i) overcharged amounts of import duties; (ii) defective goods or goods not complying with the terms of the contract; (iii) error by the competent authorities; and (iv) equity.² Special circumstances allowing for remission/repayment based on equity as well as an error by the competent authorities allowing for remission/repayment may only be assumed if no deception or obvious negligence can be attributed to the debtor.³

Applications for repayment or remission under Article 116 UCC must generally be submitted to the competent customs authority within three years of the date of notification of the customs debt; only in case of defective goods or goods not complying with the terms of the contract, the application must be made within one year of the date of notification of the customs debt.⁴

The application must be made by the person who paid or is liable to pay the duties or the persons who have taken over rights and obligations of such person or their representative. The application must be accompanied by necessary information and documentation for the authorities to take a decision. The national customs authorities will determine whether one of the situations discussed above is at hand. In case the ap-

[Section 44:24]

¹Article 5(28) and (29) UCC.
²Article 116 UCC.
³Articles 119(1) and 120(1) UCC.
⁴Article 121 UCC.
application refers to an “error by the competent authorities” or “equity” the national authority must transmit the case to the European Commission for decision where the customs authorities consider that the special circumstances are the result of the Commission failing its obligation or that the error was committed by the Commission, or where the threshold value of EUR 500,000 is met; a transmission to the Commission shall, however, not take place if the Commission has already issued a decision on or is already concerned with a case involving comparable issues of fact and law. When duties are not legally owed, the customs authorities shall also repay or remit duties on their own initiative.

The UCC does not provide for the payment of interest on this amount. Only if the decision to grant a request for repayment is not implemented within three months from the date on which the decision was adopted interest is to be paid.

The customs authorities may also, in certain circumstances, recover duties that have not been entered in the accounts or have been entered in the accounts at a level lower than the amount legally owed, by way of so-called post-clearance recovery. As a general rule, no customs debt shall be notified to the debtor after the expiry of a period of three years from the date on which the customs debt was incurred. Where the notification of the customs debt results from a post-release control, interest on arrears in the amount of two percentage points above the base interest rate shall be charged from the date on which the customs debt was incurred until the date of its notification.

A customs debt cannot only be remitted but may also be extinguished, even in cases of non-compliance, provided that the failure does not have any significant effect on the operation of the customs procedure concerned and does not constitute an attempt at deception, and that all of the formalities necessary to regularize the situation of the goods are subsequently car-

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5Articles 116(3) UCC.
6Articles 116(4) UCC.
7Article 116(6) UCC.
8Article 105(4) UCC.
9Article 103(1) UCC.
10Article 114(2) UCC.
ried out.\textsuperscript{11} Furthermore, a customs debt shall be extinguished in cases of non-compliance if the customs debtor submits evidence that the goods have not been used or consumed, and have been taken out of the customs territory of the Union provided there has been no attempt at deception.\textsuperscript{12}

EU law provides that any person must have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation and which concern him/her directly and individually. It is also possible to appeal where no decision has been issued after a request relating to the application of customs legislation has been submitted. It is, however, up the individual EU Member States to set up detailed procedures for such appeal systems. The Member States are, for example, free to choose whether such appeal procedures should include one or two steps, either involving both an administrative review before the customs authorities designated for that purpose and a judicial review before an independent body, or only involving a judicial review directly before an independent body.\textsuperscript{13}

\section*{§ 44:25 Penalties}

The UCC does not set any common EU rules with regard to administrative or criminal penalties that the customs authorities may collect when customs formalities are not complied with. Such penalties are generally decided on the national level in the EU Member States. The Member States may, for example, decide to impose administrative or criminal penalties for the submission of false information or for the illegal importation or exportation of goods, etc. Penalties for customs offences consequently vary from Member State to Member State, but may include both fines and imprisonment.

\begin{flushleft}
\textsuperscript{11}Article 124(1)(h) UCC.
\textsuperscript{12}Article 124(1)(k) UCC.
\textsuperscript{13}Article 44 UCC.
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