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**SPECIAL PROCEDURES – Title VII UCC/  
“guidance for MSs and Trade”**

A Customs 2020 Project Group was set up to draft guidance related to the UCC and its related Commission acts. The content of this document reflects the outcome of the discussions with Member States and Trade.

*Disclaimer: "It must be stressed that this document does not constitute a legally binding act and is of an explanatory nature. Legal provisions of customs legislation take precedence over the contents of this document and should always be consulted. The authentic texts of the EU legal instruments are those published in the Official Journal of the European Union. There may also exist national instructions or explanatory notes in addition to this document."*

## Structure of UCC for Special Procedures other than Transit –summary-

(the page number refers to the page of the OJ UCC Regulation text - L269, 10 October 2013)

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**References:**

- UCC Union Customs Code. Regulation (EU) No 952/2013
- IA Implementing act. Commission Implementing Regulation (EU) 2015/2447
- DA Delegated act. Commission Delegated Regulation (EU) 2015/2446
- TDA Transitional delegated act. Commission Delegated Regulation (EU) 2016/341

**Abbreviations:**

- AEOC Authorised Economic Operator Customs Simplification
- AEOS Authorised Economic Operator –Safety and Security
- CC Community Customs Code (Regulation EC 2913/92)
- CCIP Customs Code Implementation Provisions (Regulation EC 2454/93)
- Commission European Commission
- CPEI Customs Procedures with Economic Impact
- FTA Free Trade Agreement
- IP Inward Processing
- IP suspension system Inward Processing suspension system
- MRN Master Reference Number
- EIDR Entry Into the Declarant's Records
- PCC Processing under Customs Control
- SPE Special Procedures
- TORO Transfer Of Rights and Obligations

## **Introduction**

### UCC – DA/IA

The Union Customs Code (Regulation (EU) No 952/2013 of the European Parliament and of the Council) entered into force on 9 October 2013 and is entirely applicable as from 1 May 2016. The related Commission acts, delegated and implementing acts, which replace the Customs Code Implementing Provisions, and allow a full application of the Code, were published on 29 December 2015 (Official Journal of the European Union, L 343, 29 December 2015). Both the delegated and implementing acts establish provisions to allow a smooth transition from the Customs Code and its Implementing Provisions to the UCC and its related acts. These rules can be found in Title IX of DA and IA.

Nevertheless, many provisions require adaptation or new electronic exchange of information between customs, trade and the Commission. Therefore a UCC (IT) Work Programme (Commission Implementing Decision 2014/255/EU) has been set up to draw up the development and deployment of the electronic systems.

In parallel, a delegated act regarding transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational (TDA) was published on 15 March 2016 (Commission Delegated Regulation (EU) 2016/341).

### **Transitional periods (IT and legal)**

- The administrative transition (Title IX DA and IA) encompasses the period of progressive conformity of all the customs authorisations/decisions with the new rules.
  - titles IX DA/IA cover the transitional measures and the validity of each type of customs decisions/authorisations;
  - for authorisations without a limited period of validity, the latest date is 1 May 2019 (Article 345IA), however it can be earlier depending on the type and conditions of the respective authorisation;

This administrative transition is related to the reassessment of the conditions and criteria, the use of new forms, if applicable, and of IT tools for the granting phase.

- The IT transition concerns transitional measures to apply where the electronic systems which are necessary for the application of the provisions of the Code are not yet operational.
  - The transitional measures are split between the Transitional Delegated Act, Delegated Act and the Implementing Act.
  - The application period of these measures is linked with the deadlines for the deployment or upgrading of the relevant IT systems, as referred to in the UCC Work Programme. The ultimate deadline is December 2020, according to Article 278 UCC.

Certain systems might be ready before that and respectively the transitional periods depend on each system concerned.

While the MS adapt the current IT solutions during the transitional period, they will ensure that the benefits of the simplifications, adapted to the UCC, remain. Therefore, most of the transitional measures maintain the current solutions.

# Guidance

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## **TITLE VII**

### **SPECIAL PROCEDURES**

#### **CHAPTER 1**

##### **General provisions**

###### Art. 210 UCC

###### **Scope**

Customs procedures with economic impact (CPEI) are named as "Special Procedures".

- Storage;
- Specific use;
- Processing.

The former PCC and IP suspension system have been merged under "Inward Processing" (IP).

The former IP drawback system is abolished but business activities may continue under the IP rules.

End-use and free zones have become special procedures under the UCC.

###### Art. 211 UCC

###### **Authorisation**

(1) Authorisation is a favourable decision as referred to in Art. 22 and 5(39) UCC.

Except authorisations that are granted based on a customs declaration and authorisations for the operation of storage facilities for the customs warehousing of goods, the maximum period of validity of the authorisation for inward or outward processing, temporary admission or end-use has been extended to 5 years.

For goods which are covered by Annex 71-02-DA (mainly sensitive agricultural goods) the maximum period of validity of the authorisation has been extended to 3 years.

As today the period of validity of authorisation and the period of discharge of the SPE are not the same. In addition, the periods of 3 or 5 years are not relevant to the authorisations which have been granted by release of goods for the relevant customs procedure (Art.163 DA). For those "individual" authorisations the period of validity is limited to one logical second and they can only be used for one customs declaration.

With reference to the second subparagraph of Art.211(1) UCC, where an economic operator intends to use more than one special procedure, it is advised to submit separate applications for each procedure to customs. This will allow the holder of the authorisation to clearly identify which rights and obligations apply for each procedure. Moreover the current UCC related Commission acts do not support the possibility to apply for more than one procedure per individual application.

(b) Authorisations for the operation of storage facilities for the customs warehousing of goods may be granted also in case where the intended usual forms of handling would predominate over the storage of the goods.

Regarding outward processing IM-EX as mentioned in Art 242(1) DA, the period within which the Union goods must be placed under outward processing IM-EX is not a 'period for discharge' as defined in Art.1 (23) DA. This indicates that outward processing IM-EX is a special case which has following consequences:

- Regarding the period of validity of the authorisation, the authorisation for outward processing IM-EX must be valid on the date of acceptance of the customs declaration for release for free circulation relating to the processed products obtained from the corresponding equivalent goods.

- If Union goods are declared for outward processing IM-EX within the specified period as referred to in Art. 242(1) DA, the authorisation for outward processing does not need to be valid anymore.

(2) An authorisation can be granted with retroactive effect when the conditions of Article 211(2) UCC are met. However, an authorisation cannot be granted again with retroactive effect if an authorisation with retroactive effect has been granted for the same special procedure within the 3 previous years (see Art. 211(2)(e) UCC).

An authorisation has a retroactive effect if the period of validity starts before the date on which the authorisation was issued.

Example 1:

An economic operator has been granted a retroactive end-use authorisation. He asks for a retroactive renewal of that authorisation. This will not be possible but if he had asked for a retroactive authorisation for inward processing, that authorisation could have been granted.

Example 2:

A company requests a renewal of inward processing authorisation which validity ended on 29 April 2017. This request was received by customs on 30 May 2017. Customs issue an authorisation on 10 August 2017. Such authorisation is a favourable decision with retroactive effect and can be only issued once within 3 years (see Art. 211(2)(h)UCC). In order to avoid that the business activities cannot be carried out under inward processing because the IP authorisation is not valid anymore, it is suggested that the holder of the authorisation submits the request for renewal at least 3 months before the end of period of validity of the existing authorisation. This information should be provided in the authorisation as a good practice.

Art. 163 (1)(e) and (f) of the DA as *lex specialis* may be applied more than once within the 3 years period<sup>1</sup>. This rule may cover authorisation based on a customs declaration and also authorisation issued in accordance with Annex 12 to TDA or electronically issued in accordance with Annex A to DA.

With regard to Art. 172(3) DA the retroactive effect is limited to 3 years because of Art. 211(2)(h) UCC.

If the replacement products are to be released for free circulation using the standard exchange system and an authorisation for OP has not been issued, such authorisation may be issued with retroactive effect only in the standard form but not based on the customs declaration (see Art. 163(1)(e) DA).

- (3) (a) Authorisations may be granted to person established in the Customs territory of the Union. However it is possible under certain conditions to grant an authorisation for IP and end-use to a person who is established outside the Territory (see Art. 161 DA). As this article is derogation from the principle, the interpretation regarding the scope of this provision should be restricted.

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<sup>1</sup> Art. 163 (1)(e) of the DA covers both situations, namely with or without prior importation of replacement products.

The following examples indicate the scope of this provision.

Example 1:

An airline which is established outside the customs territory of the Union applies for an end-use authorisation so that it can import goods for repairing of civil aircraft and parts thereof.

In this case the use of end-use is not incidental. For that reason the applicant should be established inside the EU and consequently the application should be rejected.

Example 2:

A natural person, resident in a third country, operating his own aircraft, may apply for an authorisation for end-use so that a replacement engine can be imported under the end-use procedure.

The authorisation should be granted in this case.

Art. 161 and 162 DA may apply for applications made using the form set out in Annex 12 to TDA or electronically made in accordance with Annex A to DA and applications based on a customs declaration.

- (b) AEOC is deemed to provide the necessary assurance of the proper conduct of the operations, unless information is available to the contrary without further check. For non AEOC, customs will need to check background records of applicants regarding their activities in the field of customs and taxation.
- (c) The provision of a guarantee is compulsory. However exceptions are described/listed under "final provisions".

The purpose of the guarantee is to cover a potential customs debt which may be incurred for goods that have been placed under a special procedure. Therefore the guarantee has to be provided or to be available at the latest before the release of goods for a special procedure.

Article 211(3)(c) UCC must be understood as introducing the requirement of the provision of a guarantee by a person applying for an authorisation as referred to in Article 211(1) UCC. Article 195(1) the third sub-paragraph UCC should be interpreted as indicating the latest moment when the above mentioned requirement must be fulfilled (before the release of good for the procedure). It is linked with the rule whereby a person may choose between a comprehensive and an individual guarantee to be

provided, even for the purposes of the authorisation for a special procedure covering more than one operation. Different forms of Guarantee may be authorised by Customs and the provision of a Guarantee must take place at the latest before the release of goods for a special procedure.

In the case of the use of a comprehensive guarantee, the authorisation has to be modified, namely the guarantee reference number has to be indicated. In the case of a one-off transaction (which means no other transactions are carried out) regarding the use of a special procedure on a customs declaration, an individual guarantee must be provided. In such case it is not possible to apply for reduction or waiver because that flexibility is possible only for comprehensive guarantee. This means that 100% of the guarantee has to be provided even if the person concerned has an AEOC status.

A guarantee shall not be required by Customs in the following cases: Inward Processing EX/IM, Temporary Admission (oral declaration or declaration by any other act). In addition a guarantee is not required for free-zones and outward processing EX/IM.

The reference amount should be equal to the amount of the import duty and other charges (e.g. VAT and excise duties) that may come due for the goods which are under a special procedure at a certain moment in time.

When the guarantee is not used outside one Member State the reference amount should cover at least the amount of the import duty.

An example is available in the <b>Annex I</b> of this Document.
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Regarding the use of customs warehousing a guarantee is not required because only the operation of storage facility for customs warehousing of goods requires guarantee, which means that only the holder of the customs warehousing authorisation has to provide a guarantee and not the holder of the procedure.

It is suggested that a guarantee is provided before an authorisation for the operation of storage facilities for the customs warehousing of goods is granted. If so, a 'guarantee-check' is not required at the time of submitting a customs declaration for customs warehousing.

- (d) The holder of the authorisation for outward processing does not need to arrange for the processing operations that are to be undertaken outside of the Union. In addition this person does not need to be the exporter of the goods which will be taken out of the

customs territory of the Union under outward processing. Nevertheless, the export formalities must be respected (see Art. 269 (2) and (3) UCC).

- (4) The calculation method may have an impact on the requirement to examine economic conditions. Therefore the calculation method has to be mentioned in the application for the authorisation. The calculation method must be stipulated in the authorisation. In case of incurrance of a customs debt the calculation of the amount of import duty must be made in accordance with the method as stipulated in the authorisation. If the calculation method has no impact on the requirements to examine the economic conditions, it is suggested to provide for flexibility for the holder of the authorisation/declarant regarding the calculation method.

This means that where goods intended to be placed under the inward processing procedure would not be subject to an agricultural or a commercial policy measure, a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation, the authorisation may stipulate a calculation method to be applied either in accordance with Art. 85 (1) or 86(3) UCC. Therefore the applicant may apply in data element 8/13 for the calculation of method to be made in accordance with Art. 86(3) UCC and indicate in the data field 'Additional information' that the calculation may be made also in accordance with Art. 85 UCC. As an alternative, if the applicant does not apply for the calculation method to be made in accordance with Art. 86(3) UCC (which means the application of Article 85 UCC), he may indicate in the data field 'Additional information' that the calculation may be also made in accordance with Art. 86(3) UCC at the request of the declarant.

- (5) To decide whether the economic conditions have to be examined or not, see flowchart in **Annex II**
- (6) All the examinations of the economic conditions must be carried out at the Union level.

Where, after the issuing of an authorisation for inward processing anti-dumping measures are imposed on the goods placed under the IP procedure, an examination of the economic conditions may be required in accordance with Article 259 (2) or (3) IA. Such examination is possible only where evidence exists that the essential interests of the Union producers are likely to be adversely affected by the use of the authorisation.

'Evidence' could mean for instance, a substantiated complaint including concrete elements lodged by associations which explain why the use of the inward processing has affected the essential interests of the Union producers.

(7) "Other means of electronic exchange of information" in relation with Art. 176(1)(a) DA can be used either for the outward processing or the inward processing procedure. They may include data files (i.e. Excelsheet, Concurrent Versions System (CVS), etc.) but must provide all data elements which are required under Annex 71-05 DA or Annex 13 TDA. Concerning outward processing regime, data files may be provided under the conditions that the information about the "balance" is available to the competent customs office by the time of release for free circulation. This enables the competent customs authority to decide which quantity of processed products can be released for free circulation after outward processing.

## **Final Provisions**

The use of the authorisations in force on 1 May 2016 issued under the CC and CCIP is allowed. However the UCC and its related Commission acts must be respected (Table of correspondence referred to Art. 254 of the DA (Annex 90 of the DA)). This means that, for example, procedure codes 41 and 91 cannot be used in the first subdivision of box 37 of the customs declaration for placement of goods under these procedures but they may be used in the second subdivision of box 37 of the customs declaration for indicating the previous procedures in the context of discharge of these procedures.

The use of authorisations already in force on 1 May 2016 issued under the CC and CCIP is allowed without any amendment.

Example: the PCC authorisations may be used without any amendment under the UCC rules of the IP.

An amendment under UCC conditions of an existing authorisation is possible. It is not required to issue a new UCC authorisation to replace the existing one. However if there is a request for a significant amendment which would affect the customs supervision of the authorisation, it is suggested to carry out re-assessment of the authorisation for the operation of storage facilities for customs warehousing of goods.

Example: PCC authorisations may be amended under the UCC conditions. It would be allowed to add in box 7 additional goods, which can be placed under procedure if no examination of economic conditions is necessary.

Where the existing authorisations have been issued without provision of a guarantee or with partial guarantee, the authorisations may be used nevertheless without obligation to provide additional guarantee.

The use of an existing authorisation issued without an examination of economic conditions is permitted even where the UCC requires an examination of the economic conditions before an authorisation is issued. However, as foreseen by the UCC, a future examination of these economic conditions is not precluded.

The use of an existing authorisation issued with an examination of economic conditions is permitted even without a second examination under the UCC conditions.

T5 and INF sheets, which have been used for transactions started before 1 May 2016 and not completed on that date, may be used on or after 1 May 2016. Where applicable, the document may be used also for the purposes of discharging the procedure for the goods placed under the relevant procedure before 1 May 2016.

Authorisation for inward processing suspension system with prior exportation issued before the 1 May 2016 which covers import goods subjected to antidumping duties may be used on or after 1 May 2016. There is no necessity to amend the authorisation in such cases if the solutions as indicated in Annex VI are used. Under the UCC provisions it is not possible to use equivalent goods if the non-Union goods were subject to antidumping duties (see Art. 169 DA). More information is provided in **Annex VI** to this document.

Re-assessment of authorisations for the operation of storage facilities for the customs warehousing of goods shall be carried out by 1 May 2019 by Customs according to their national work plan. The request of the holder of the authorisation for re-assessment is not required. Before customs authorities re-assess an authorisation, it is suggested to ask holders of the authorisations whether they wish to continue to use the authorisation or they intend to submit a new application for authorisation. If there is no expression of interest to continue using the authorisation within the set time limit, or no intention to submit an application, the authorisation should be re-assessed.

After re-assessment, the existing authorisation must be revoked in any case. Where the person concerned has provided all required additional information, the new authorisation must be issued in line with the UCC terminology and the UCC provisions. In cases where the holder of the authorisation has submitted a new application for an authorisation before re-assessment, such re-assessment by Customs is not required (see Art. 345(1) and 349 IA, and Art. 250 DA).

The PCC authorisations which remains valid after 1 May 2016 may be used as IP authorisations (see Annex 90 DA) under the conditions that the calculation of import duty with regard to processed products or goods in an unaltered state or semi processed products is made in accordance with Art. 85 UCC.

For the inward processing authorisation granted before 1 May 2016, the calculation of the amount of import duty for the processed products declared for release for free circulation should be made in accordance of Art.86(3) UCC. In those cases, where for an IPR authorisation granted before 1 May 2016 the holder of the authorisation has applied for application of Art. 122 (c) CC, calculation of import duties may not take place on the basis of Art. 85(1) UCC because such case is not mentioned in Annex 90 point 15 DA.

**Example 1:**

The import goods were placed under the inward processing suspension system procedure before 30.04.2016.

Part of them in the form of main processed products was re-exported.

After the 01.05.2016 the second part of import goods is declared for release for free circulation in the following forms:

- main processed products,
- waste (secondary processed products),
- goods in unaltered state.

Calculation of the amount of import duty:

- for the main processed products must be made in accordance with Article 86 (3) UCC unless the case is covered by Art. 167(1) (h) (i) (m) (p) (r) or (s) DA;
- for waste (secondary processed products) must be made in accordance with Article 85 UCC, unless a request was made to apply Art. 86(3) UCC;
- for goods in unaltered state must be made in accordance with Article 85 (1) UCC.

**Example 2:**

The import goods were placed under PCC procedure before 30.04.2016.

After the 01.05.2016 the import goods are declared for release for free circulation in the following forms:

- main processed products,
- waste (secondary processed products),
- goods in unaltered state.

Calculation of the amount of import duty:

- for the main processed products must be made in accordance with Article 85 (1) UCC;
- for waste (secondary processed products) must be made in accordance with Article 85 UCC, unless a request was made to apply Art. 86(3) UCC ;
- for goods in unaltered state must be made in accordance with Article 85 (1) UCC.

## Art. 214 UCC

### **Records**

- (1) Records for temporary admission must be kept only at the request of the Customs authorities<sup>2</sup>.
- (2) AEOC automatically complies with the obligation to keep records in the appropriate form as required by Customs authorities, if Customs authorities have verified that the conditions on which the authorisations are issued are sufficient to fulfil the requirements of this article (see Art. 214(2) UCC).

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<sup>2</sup> See Art. 178 (4) of the DA

## Art. 215 UCC

### **Discharge of a special procedure**

The terminology in Art. 215(1) UCC and Art. 89(1) CC is different, but the rules of discharge of special procedure are the same, meaning no change in the substance. However the discharge of special procedure is also possible by destruction of goods with no waste remaining.

When goods are held under a special procedure, the assignment of those goods to another customs procedure or to re-export needs not be made by the holder of the authorisation for the original procedure.

Compensatory interest is no longer applied to goods which have been placed under temporary admission or inward processing. For temporary admission or inward processing procedures, which have started before 1 May 2016 and are not discharged on that date, compensatory interest is calculated for the period which ends on 30 April 2016.

Where the discharge of the Inward Processing takes place by release for free circulation, import duty must be paid. Regarding the calculation of the amount of the import duty, the rate that has to be applied must be the rate that is valid on the date the customs debt is incurred. Where applicable, import duty rate includes antidumping, countervailing duty, etc. This calculation method applies both for calculation on the basis of Art. 85(1) and 86(3) UCC.

Where the calculation takes place in accordance with Art 86(3) UCC for processed products as defined in Art. 5(30) UCC, the customs value including the exchange rate and the other elements mentioned in this article are those that apply on the date on which the customs declaration was accepted for the goods which were placed under inward processing and processed.

## Art. 218 UCC

### **Transfer of rights and obligations**

T5 control copy cannot be used for the transfer of rights and obligations with regards to transactions which start after 30 April 2016.

The conditions under which the transfer of rights and obligations is permitted should be laid down in the relevant authorisation.

The TORO does not require any use of a subsequent customs authorisation because the rights and obligations which may be transferred to another person have been established in accordance with the authorisation under which goods have been placed under a special procedure. In addition TORO does not require any subsequent customs declaration for the same procedure.

More information is provided in <b>Annexes III and V</b> to this document.
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Art. 219 UCC  
**Movement of goods**

Art. 219 UCC allows movement within the scope of one special procedure authorisation as well as between two authorisations holders. Information about movement must be provided in the records. Additional customs formalities regarding the movement of goods are not required.

Examples are available in the <b>Annexes I, IV and V</b> to this Document.
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The Article 219 UCC is complemented by Art. 179 DA and Art. 267 IA.

With reference to Art. 179(3) and (4) DA, the time limits are provided for the movement under customs warehousing because for the customs warehousing procedure a period of discharge does not exist.

With reference to Art. 179(3) DA there is a time limit for physical movement of goods under customs warehousing, namely 30 days after goods have been removed from the storage facilities for the customs warehousing of goods.

With reference to Art. 179(4) DA, there is an obligation to provide information about the exit of goods within 100 days after goods have been removed from the storage facilities for the customs warehouse.

"[...]shall provide information about the exit of the goods" means that information must be available in the records which are kept by the holder of the authorisation or where applicable, by the holder of the procedure. It does not mean that this information must be sent to the supervising customs office, unless it has been requested by this office.

Art. 220 UCC  
**Usual forms of handling**

Usual forms of handling do not need to be authorised by Customs.

Art. 223 UCC  
**Equivalent goods**

The scope of the use of equivalent goods has been enlarged. The use of equivalent goods is now also permitted for customs warehousing, end-use, temporary admission and outward processing. However, some restrictions exist regarding the use of equivalent goods (see Art. 169 DA), for example:

the use of equivalent goods is not authorised for goods or products that have been genetically modified or contain elements that have undergone genetic modification (Art.169(5) DA).

Under Customs warehousing, inward and outward processing it is not permitted to replace organic goods by conventionally produced goods, and conventionally produced goods by organic goods.

Until the deployment of new relevant national IT-system, goods declared for release for free circulation in the context of the outward processing IM/EX should be declared with procedure code 48 and subcode B07. INF OP IM/EX, or any other electronic means of standardised exchange of information, cannot be used because it does not exist in the transitional period. Guarantee must be provided in this business case (see Art 242(2) DA).

Under any customs warehousing type the use of equivalent goods is permitted, unless the goods which are replaced by equivalent goods are covered by Annex 71-02 DA.

The use of equivalent goods shall not be authorised in case of prohibition of duty drawback (see Art 223(3)(b) UCC).

Concerning those restrictions and according to Art. 223(3)(b) and Art. 78 UCC, economic operators are nevertheless allowed to re-export under a proof of origin the main processed products manufactured with non-originating goods if the customs duties on those non-originating goods have been paid.

When an FTA does not contain a no-drawback rule, the use of equivalent goods is permitted and a proof of origin can be issued, or made out, for processed products without payment of import duty.

The concept of accounting segregation has been extended and it can be used also in the context of the use of equivalent goods (see Art. 268(2) IA). However, some restrictions exist regarding the use of equivalent goods (see Art. 223(3) UCC and Art.169 DA).

Equivalent goods may be stored together with other Union goods or non-Union goods. Accounting segregation is allowed to identify each type of goods (see Art. 268(2) IA).

The use of equivalent goods is allowed under customs warehousing and may be combined with inward processing or end-use. If so, accounting segregation is required with regard to these procedures, unless the different types of goods can be physically separated.

Equivalent goods may be at a more advanced stage of manufacture than the non-Union goods they replace (Art.169(6)(a) DA). The authorisation for IP must indicate that such equivalent goods may be used.

Example:

Company A has an IP authorisation to process steel bars (goods placed under the procedure) into steel chairs (main processed products). There are two intermediate stages of processing. The steel bars are first flattened into plates of steel, the steel plates are then cut into strips and finally the strips are made into chairs. In each of the steps some of the steel is lost as scrap.

100 kg of bars --> 90 kg of flattened steel --> 80 kg of steel strips --> 70 kg of steel chairs.

Company A has an authorisation that allows the use of equivalent goods.

Question 1:

Which goods may be considered goods in a more advanced stage of manufacture?

Answer:

The flattened steel and the steel strips. Equivalent goods are goods that are processed instead of non-Union goods. The flattened steel and the steel strips are processed. The steel chairs are not processed further and therefore can not be considered as equivalent goods.

Question 2:

Can IP EX/IM be used for the steel chairs obtained from equivalent goods and if so how much steel may be placed under the IP procedure?

Answer:

The steel chairs can be exported under the IP EX/IM procedure. If 70 kg of chairs were exported this gives the right to place 100 kg of steel bars under the procedure (which customs status changes immediately upon placement).

## **CHAPTER 3**

### **Storage**

#### **Section 1**

##### **Common provisions**

Art. 237 UCC

##### **Scope**

There are no changes in this article.

Art. 238 UCC

##### **Duration of a storage procedure**

There are no changes in this article.

#### **Section 2**

##### **Customs warehousing**

Art. 240 UCC

##### **Storage in customs warehouses**

The names of the two categories of customs warehouses, public and private, have been renamed (see Annex 90 DA points 17, 18 to 22), but the transaction value may be determined in accordance with Art 128(1) IA.

Customs warehouse type D is deleted.

Type of customs warehouses.

Public customs warehouses are identified as follow:

- a) type I when the responsibility lies with the holder of the authorisation and with the holder of the procedure;
- b) type II when the responsibility lies with the holder of the procedure (ex type B);
- c) type III when the warehouse is operated by the customs authority.

Private customs warehouses, where the responsibility lies with the holder of the authorisation who is also the holder of the procedure but not necessarily owner of the goods, are identified as follow:

d) private customs warehouses where the arrangements apply although the goods need not be stored in a place but in any other location approved as a customs warehouse (ex type E);

e) private customs warehouses where the above situation does not apply (ex type C).

In customs warehouses mentioned in a), records should be kept by either the holder of the authorisation or the holder of the procedure. This has to be decided by the Customs authorities in agreement with the persons concerned.

In customs warehouses mentioned in d) and e), the holder of the authorisation has to keep records.

The records shall at all times show the current stock of goods which are under the customs warehousing procedure. Information on the temporary removal of goods shall appear in the records too. Goods may be temporarily removed for a period which has to be established in the authorisation for the removal.

Where goods are entered for the customs warehouse mentioned in d), the entry in the records shall take place when they arrive at the holder's storage facilities or other approved or designated places where the goods may be located at the time the declaration is lodged (e.g. port or airport location where goods arrived in the Customs territory of the Union).

Records have to contain information that is updated immediately concerning any movements of goods (e.g. in the context of temporary removal or to the customs office of exit or to the customs office of discharge), and at the latest when goods have left the premises of the customs warehouse.

- (2) Premises or any other location may be approved as more than one type of customs warehouse at the same time, as long as customs supervisions can be ensured.

Authorisations which involve more than one Member State may be granted also for public customs warehouse.

Authorisations shall not be granted if the premises of the customs warehouse or the storage facilities are used for the purpose of retail sale. An authorisation may, however, be granted, where goods are retailed remotely (see Art. 201 DA), including via the Internet, mail or phone and are delivered to the buyer or consignee at a location other than the customs warehouse.

For the use of the accounting segregation related to special procedures (177 DA) no separate authorisation is necessary because it must be set out in the authorisation for the Special Procedure. For the use of accounting segregation on the basis of Art 58 DA (origin of goods) a separate authorisation is necessary.

## Art. 241 UCC

### **Processing**

Processing may take place under the end-use procedure in a customs warehouse and not just under the inward processing procedure.

## Art. 242 UCC

### **Responsibilities of the holder of the authorisation or procedure**

There are no changes regarding the responsibilities of the holder of the authorisation or procedure. However information should be provided regarding the type of responsibilities (see Art. 242(2) UCC).

## **Section 3**

### **Free zones**

## Art. 243 UCC

### **Designation of free zones**

The free zones under the UCC correspond to free zones type 1 under the CC.

The free zones type 2 and free warehouses under CC do not exist anymore.

Free zones are not subject to the authorisation referred in Art 211 UCC. The authorisation to set up a free zone is given at national level. Consequently also a guarantee is not compulsory for Free Zones.

Placement of goods under free zones does not require the lodgement of a customs declaration (Art. 158(1) UCC) but records have to be kept. The movement procedure does not apply (Art. 219 UCC).

## Art. 244 UCC

### **Buildings and activities in free zones**

There are no changes in this article.

## Art. 245 UCC

### **Presentation of goods and their placing under the procedure**

There are no changes in this article.

Art. 246 UCC  
**Union goods in free zones**

There are no changes in this article.

Art. 247 UCC  
**Non-Union goods in free zones**

Non-Union goods in free zones may also be placed under end-use procedure.

Art. 248 UCC  
**Taking goods out of a free zone**

There are no changes in this article.

Art. 249 UCC  
**Customs status**

Equivalent goods are Union goods which are stored instead of non-Union goods which have been entered in free zone. This may mean that movement of non-Union goods in free zones is not needed. However change of customs status is not provided for in Article 269 IA.

## **CHAPTER 4**

### **Specific use**

#### **Section 1**

#### **Temporary admission**

Art. 250 UCC  
**Scope**

- (1) “Internal traffic” as referred to Art. 555(1)(c) CCIP is not a restriction anymore for the use of temporary admission but the rules in the field of transportation must be respected. If the holder of the authorisation for temporary admission does not respect the rules in the field of transportation, a customs debt does not incur in accordance with Art. 79 UCC.
- (2) The supporting document presented in Annex 71-01 DA must be presented where a customs declaration is made orally (see Art. 165 DA).

Art. 251 UCC

**Period during which goods may remain under the temporary admission procedure**

(4) Goods may remain under temporary admission in the Union up to 10 years.

The period of discharge is 24 months but it can be reasonably extended in case of exceptional circumstances. The total period of discharge cannot exceed 10 years.

Art. 252 UCC

**Amount of import duty in case of temporary admission with partial relief from import duty**

There are no changes in this article.

**Section 2**

**End-use**

Art. 254 UCC

**End-use procedure**

(4)(b) The end use procedure may be discharged by taking goods out of the customs territory of the Union before their assignation to the end-use prescribed by the Tariff. Such export should be approved by customs in accordance with Art.124 1)(i) UCC.

Where goods are destroyed within the period for discharge, the customs supervision has ended and the customs debt is not incurred.

End use is subject to a bill of discharge. For instance, all the placements under the procedure for which the period of discharge ends during the calendar month, may be covered by one single bill of discharge which has to be submitted to the supervising customs office on the last day of the given calendar month. However, the supervising customs office may waive the obligation to present the bill of discharge where it considers it unnecessary.

(7) Where goods are destroyed under the end-use procedure and waste and scrap are obtained, such goods are deemed to be placed under customs warehousing procedure without a customs declaration. Waste and scrap have non-Union status (see Art. 154(c) UCC). The holders of end use authorisations have to keep records for customs warehousing, because they are still responsible for the goods which are under customs warehousing. An authorisation for operation of storage facilities is not needed. For the discharge there is no time limit to the length of the customs warehousing (see Art 238(1)UCC).

Waste and scrap may be re-exported, placed under inward processing or released for free circulation with payment of amount of import duty as established in accordance with Art 85 UCC. Destruction does not require a customs authorisation.

## **CHAPTER 5**

### **Processing**

#### **Section 1**

##### **General provisions**

Art. 255 UCC

##### **Rate of yield**

Standard rates of yield are no longer provided for Customs legislation. However where standard rates of yield are provided for example in agricultural legislation, those rates have to be applied by Customs and cannot be adjusted in accordance with Art 28 UCC. Other rates may be adjusted in accordance with this article.

#### **Section 2**

##### **Inward processing**

Art. 256 UCC

##### **Scope**

The holder of the authorisation for inward processing does not need to have the intention to re-export the processed products.

- (2) In cases of repair and destruction, the goods placed under inward processing do not need to be identified in the processed product.
- (3)(a) Inward processing procedure may also be used for goods which have to be in compliance with technical requirement for their release for free circulation. Nevertheless such goods may also be re-exported.

Art. 257 UCC  
**Period of discharge**

There are no major changes, however

- Specific periods for discharge for agricultural goods (procedure IM/ EX and EX/IM) do not exist anymore.
- Globalisation period for discharge is now extended to 6 months. This does not mean that the period for discharge should be limited to 6 months because such period has to be specified taking account of the time required to carry out the processing operations and to discharge the procedure.

In addition to the existing cases inward processing may be discharged by the delivery of main processed products for which the erga omnes import duty rate is 'free' or for which an airworthiness certificate as referred to in Article 1 of Regulation (EC) No 1147/2002 has been issued (see Art. 324 (1)(e) IA).

Customs authorities should establish precisely in the authorisation in close cooperation with the applicant at which moment non Union goods have been used for the first time because at this moment the inward processing procedure is discharged (see Art. 324(5) IA).

(3) The period within which the non-Union goods must be declared for the inward processing procedure EX-IM is not 'period for discharge' as defined in Art.1 (23) DA. This indicates that inward processing EX-IM is a special case which has following consequences:

- Regarding the period of validity of the authorisation, the authorisation for inward processing EX-IM must be valid on the date of acceptance of the export declaration relating to the processed products obtained from the corresponding equivalent goods.
- If non-Union goods are declared for the procedure within the specified period as referred to in Art. 257(3) 1<sup>st</sup> subparagraph UCC, the authorisation for inward processing does not need to be valid anymore.

Art. 258 UCC  
**Temporary re-export for further processing**

There are no changes in this article.

### Section 3

#### Outward processing

Art. 259 UCC

##### Scope

Regardless of the fact whether the holder of the authorisation for outward processing has arranged for the processing of the operations to be undertaken or not, goods may be re-imported by a third person who has obtained the consent of the holder of the authorisation.

Example:

Union tyres are exported under outward processing by company A, which is the holder of the OP authorisation. The tyres are used by a non-EU car manufacturer, and the cars are subsequently imported into the Union by company B. Reference is made by company B to the OP authorisation in the Customs declaration for free circulation. Company B can benefit from outward processing because it has obtained the consent of the company A. This information should be available, for instance, in the relevant INF OP EX/IM (during the transitional period INF2) or in the relevant authorisation.

The holder of the authorisation for outward processing does not need to arrange for the processing operations that are to be undertaken outside of the Union.

Where *ad-valorem* import duty rate has to be applied, the calculation of the amount of import duty is based on the cost of the processing operations, undertaken outside the customs territory of the Union. Cost of the processing operations undertaken outside the customs territory of the Union referred to in Art. 86 (5) UCC should mean the customs value of the processed products at the time of acceptance of the customs declaration for release for free circulation minus the statistical value of the corresponding temporary export goods at the time when they were placed under outward processing.

Example regarding application of Art 86 (5) UCC:

- Customs value of the process product (cars)	50.000 €
- Statistical value of the temporary export goods (tyres)	5.000€
- Cost of processing operation undertaking outside custom territories of the EU	45.000 €
- Amount of import duty (import duty rate 10%)	4.500 €

However, for goods subjected to specific import duties on the processed products the following procedure shall apply (Art 75 DA):

Example regarding application of Art. 75 DA:

- |   |                  |
|---|------------------|
| - Customs value of sugar (processed product)                | 400 euro per ton |
| - Statistical value of corresponding temporary export goods | 200 euro         |
| - Amount of import duty applicable to processed products    | 420 euro/per ton |

Amount of import duty shall be calculated:  $(400\text{euro} - 200\text{euro}) \times 420\text{euro} / 400\text{euro} = 210$  euro per ton

Art. 260 UCC

### **Goods repaired free of charge**

There are no changes in this article.

Art. 261 UCC

### **Standard exchange system**

There are no changes in this article.

Art. 262 UCC

### **Prior import of replacement products**

There are no changes in this article. However it should be clarified that:

The period within which the defective Union goods must be exported is not a 'period for discharge' as defined in Art.1 (23) DA. This indicates that prior import of replacement products is a special case which has following consequences:

- Regarding the period of validity of the authorisation, the authorisation for outward processing must be valid on the date of acceptance of the customs declaration for release for free circulation of the replacement products.
- If the defective Union goods are declared for export according to Art. 262(2) UCC, the authorisation for outward processing does not need to be valid anymore.

# Annex I

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## Examples

Art. 211UCC

### **Authorisation**

a) An example on Inward Processing of how the reference amount for the guarantee may be calculated is as follows:

- Total value of Goods which may be placed under Inward Processing during 5 years  
(see data field 7 of the authorisation) €600,000
- Duty Rate 10%
- VAT rate 20%<sup>3</sup>
- Period of Discharge 6 months
- Maximum value of goods which may be under inward processing at a given point in time according to business activities €50,000
- Calculation of the reference amount regarding import duty  
 $€50,000 \times 10\% = €5,000$   
The other charges are calculated as follows  
 $€5,000 \times 20\% = €1,000$
- Guarantee reference amount is determined as €6,000

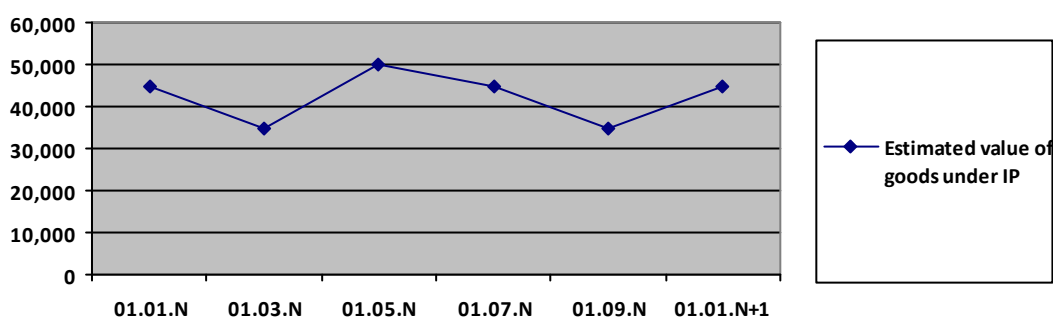
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<sup>3</sup> Highest VAT rate of Member States involved.

The above example illustrates that the guarantee must be provided only for those goods that can be actually under the inward processing procedure and not for those which could be placed theoretically under the procedure.

This means that the factual situation must be taken into account, i.e. the estimated value of goods corresponding to customs declarations for inward processing and the estimated value corresponding to the transactions by which the IP procedures are discharged (see 215(1) UCC), and their evolution during the period of reference. These data elements correspond to the estimate of the volume of intended operations as shown by the commercial documentation and accounts of the person requested to provide a guarantee (Article 155 (4) IA)

The maximum value of goods under IP (i.e. corresponding to the reference amount which is the maximum amount at stake) should also take into account historical data regarding inward processing operations during the previous 12 months.



The 10% duty rate may reflect the average import duty rate if more than one type of goods is concerned. In this case, the calculation of the reference amount is not based on the period of validity of the authorisation or on the period of discharge.

b) An example on customs warehousing of how the reference amount for the guarantee is calculated is as follows:

- Total value of goods which may be placed under customs warehousing is estimated to be per year  
€5,000,000
  - Value of goods which may have been placed under customs warehousing at a given point in time according to the storage capacity of the holder of the authorisation  
€1,000,000
  - Duty Rate 10%<sup>4</sup>
  - Average length of time goods remain under customs warehousing 6 months
  - VAT rate 20%<sup>5</sup>
  - Calculation of the reference amount regarding import duty  
€1,000,000 x 10% = €100,000
- The other charges are calculated as follows  
€1,100,000 x 20% = €220,000
- Guarantee reference amount is determined as €320,000.

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Art. 215 and 219 UCC

### **Discharge of a special procedure and movement of goods**

Company A, located in MS-1, imports aluminium ingots under its inward processing authorisation and processes it into aluminium sheets. Those aluminium sheets are forwarded to company B, holder of its own inward processing authorisation and located in MS-2, which transforms them into cans.

Company A is the holder of an IP authorisation involving more than one MS. The customs office of placement and the customs office of discharge are not the same, and therefore no prior consultation of MS-2 is necessary (see Art. 261(1)(c) IA). However the central contact point of MS-1 should send a copy of Company's A IP authorisation to the central contact point of MS-2, which would forward this copy to the customs office of discharge. The customs office of discharge of the authorisation of Company A has to be the customs office of placement of the authorisation of Company B.

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<sup>4</sup> The 10% duty rate as determined in accordance with Art. 155(3) IA.

<sup>5</sup> Highest VAT rate of Member States involved.

The goods are moved under the inward processing procedure without any customs formalities (Art. 179 DA), but company A has to provide information on the movement in its records.

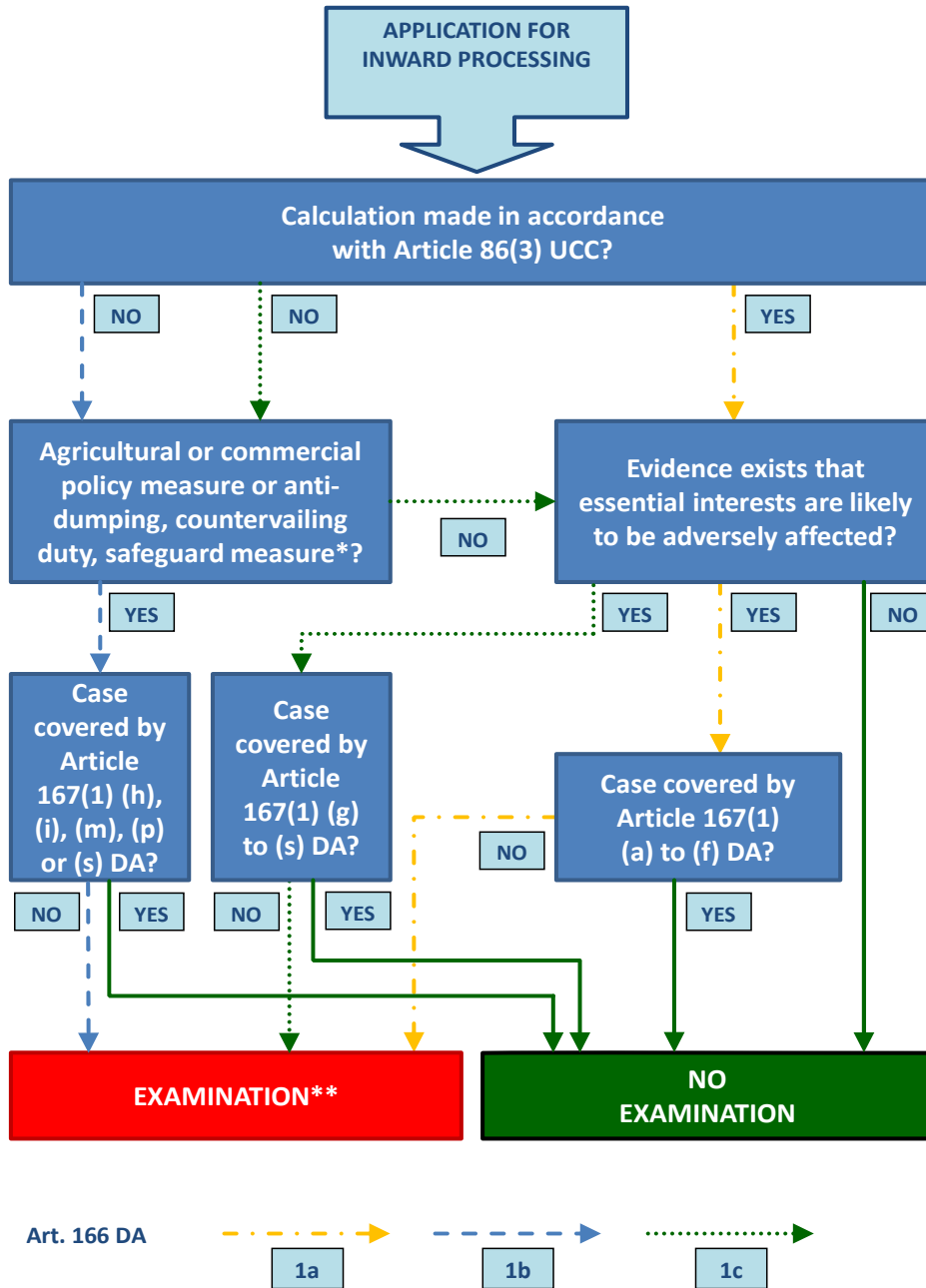
The discharge of the first IP procedure will be made by the placement of the goods under the second IP procedure (Art. 215 UCC). If the second holder:

- uses his simplified procedure, he sends a confirmation of receipt to the first holder stating the date when he placed the goods under its own procedure. Company A keeps the confirmation of the receipt in its records and his liability is discharged – MRN (Master Reference Number) or the internal reference number which was used for the EIDR (Entry Into the Declarant's Records);
- uses a standard customs declaration, he sends information about MRN and the date of placement under subsequent customs procedure to company A which has to enter this information in its records.

The practice described above cannot be applied for the end-use procedure.

# Annex II

## 1. Flowchart on APPLICATION FOR INWARD PROCESSING

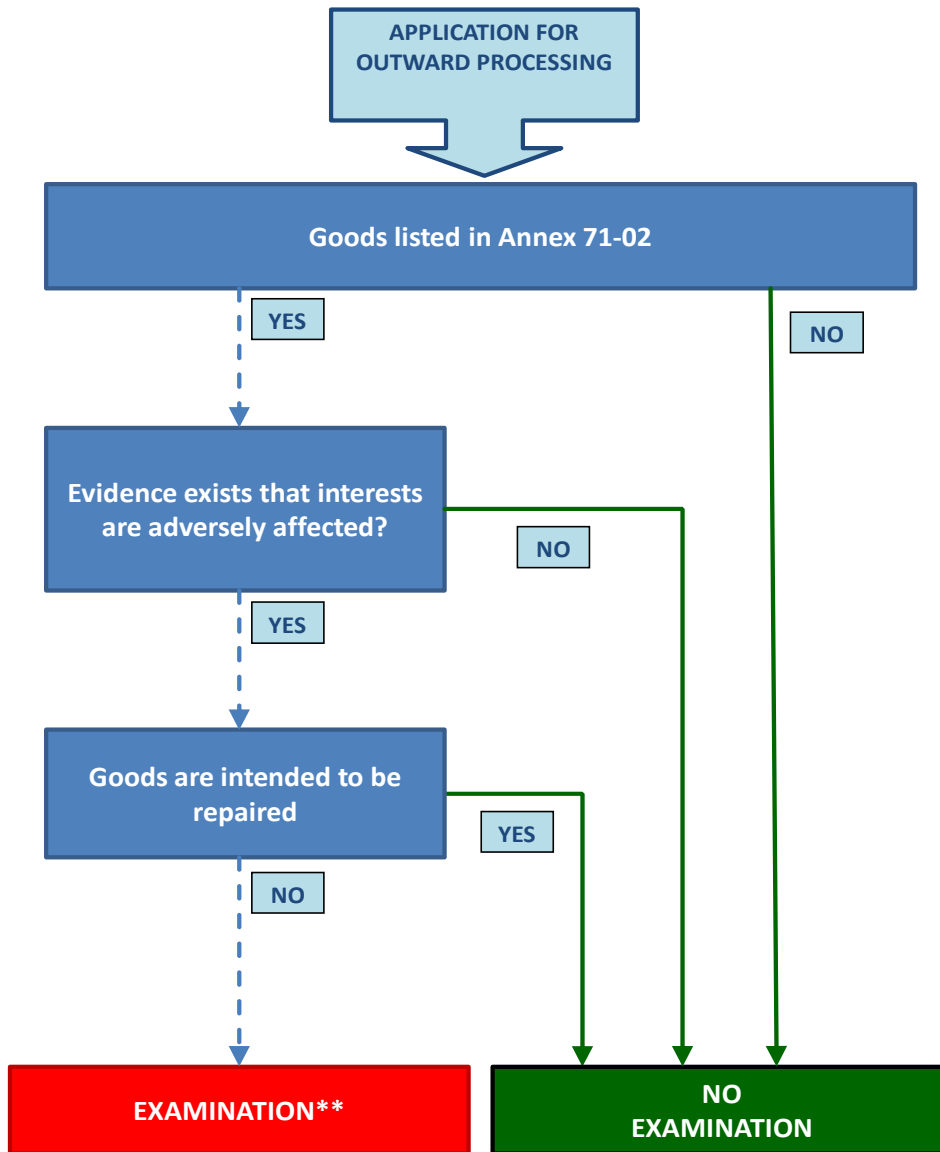


See complete terminology according to art 166(1)(b) and (c) DA

\*\* In case where an examination is required, the file must be sent to the Commission, unless the conclusion was drawn already on a similar case.

\*

## 2. Flowchart on application on outward processing



\*\* In case where an examination is required, the file must be sent to the Commission, unless the conclusion was drawn already on a similar case

# Annex III

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## TORO – Transfer of rights and obligations

### Reflection on the legal scope of Article 218 UCC - Transfer of rights and obligations (TORO)

A clear differentiation between "holder of the procedure" and "holder of the authorisation" should be made in order to have a full understanding of the procedure.

Procedure	Holder of the authorisation	Holder of the procedure	Competent Customs authority for TORO application	Comments/examples
<b>Inward processing</b>	Trader A	Trader A	Issuing customs authority	Issuing customs authority means the Customs office that issued the authorisation
<b>Inward processing</b> <b>EX/IM (ex INF5)</b>	Trader A	Trader A	Issuing customs authority	Trader B becomes the holder of the procedure at the moment when he declares the goods for inward processing and refers to the INF5 in the customs declaration
<b>Outward processing</b>	Trader A	Trader A	Issuing customs authority	The person re-importing the goods (current INF2 procedures) would become the holder of the procedure under Article 218 UCC
<b>Temporary admission</b>	Trader A	Trader A	Issuing customs authority	If a vehicle was declared to TA by any other act, the authorisation holder and the holder of the procedure would be the driver. If a 3 <sup>rd</sup> person (established

				outside the EU) met the conditions to use the vehicle, he would become the holder of the procedure under Article 218 UCC. However, such TORO requires a customs authorisation.
<b>Customs Warehousing Public Type I 1<sup>st</sup> example</b>	Trader A	Trader B	Customs office of placement	
<b>Customs Warehousing Public Type I 2<sup>nd</sup> example</b>	Trader A	Trader A	Issuing customs authority	
<b>Customs warehousing Public Type II 1<sup>st</sup> example</b>	Trader A	Trader B	Customs office of placement	
<b>Customs warehousing Public Type II 2<sup>nd</sup> example</b>	Trader A	Trader A	Issuing customs authority	
<b>Customs warehousing Public Type III</b>	Established through national legislation	Trader A	Customs office of placement	
<b>Customs warehousing Private</b>	Trader A	Trader A	Issuing customs authority	

<b>End-use</b>	Trader A	Trader A	Issuing customs authority	
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One operator could fulfill both functions, sometimes two or more operators could be involved in any particular chain but there cannot be more than one authorisation holder or more than one holder of the procedure at any specific time.

**Additional considerations on Transfer of rights and obligations (TORO)**

**Do both parties to the TORO need to hold an authorisation?**

No, a full or partial TORO does not require the transferee (recipient) of the goods to hold an authorisation. The transferee must abide by the transferred rights and obligations (including the need to provide a guarantee in case of full TORO). Due to the fact that the transferee does not have or use an authorisation with regard to the goods for which TORO is intended, the customs authorities must lay down explicitly which rights and obligations are transferred from the transferor to the transferee. The rights and obligations are always related to goods which have been placed under the special procedure. Some 'personal' rights and obligations cannot be transferred, such as 'AEO status' or 'providing the necessary assurance of the proper conduct of the operations' (see Article 211(3)(b) UCC).

**If no authorisation is held by the second party, how can customs approve the transfer?**

Where an application for TORO is received, it is the responsibility of the customs authority to confirm that the transferee (recipient) is able to meet and maintain the rights and obligations being transferred.

**Do customs have the right to decide where a TORO can apply and where a more formal movement/discharge must take place?**

Customs authorities cannot, as a matter of policy, decide that they will not allow TORO on a blanket basis. There must be an economic need but, beyond that, each application must be treated on its own merits.

**Can a TORO be allowed in reverse?**

Yes. For example, if a processor asks for and is authorised to make a TORO to a 3<sup>rd</sup> party, once processing is finalised, there can be a TORO back to the original authorisation holder for them to dispose of the processed products.

### **Can a TORO be the subject of a further TORO?**

Yes. If the authorisation holder cannot process goods and passes them onto a 3<sup>rd</sup> party under a TORO and that person (for whatever reason) cannot process the goods, a further TORO is possible.

### **How do guarantees operate within TORO?**

Where there is a full or partial TORO intended, the transferee may provide a guarantee based on Art. 266 IA. This should be agreed between transferor and transferee and it is dependent on the approval of Customs. If the transferee has provided a guarantee, based on Art. 266 IA, it can be called upon in case of non-voluntary payment of the debt by the debtor (the transferor).

If the transferee does not provide a guarantee, the guarantee provided by the holder of the authorisation must remain in place. The decision for TORO (Article 266 IA) has to indicate which guarantee is taken.

It should be noted that for the use of a public customs warehousing procedure, the transferee may not provide a guarantee because the holder of the authorisation provided a guarantee for the operation of storage facilities for the public customs warehousing of goods.

Taking into account that a bill of discharge must be submitted by the holder of the authorisation for inward processing and for end-use and not by the transferee, it is suggested that the guarantee provided by the holder of the authorisation should remain in place.

The above described practice should be applied also in case of successive TOROs.

### **Which customs authority is competent for an application for TORO? (see column 4 in the table above)**

Under IP, OP, E-U and TA, the holder of the procedure and the holder of the authorisation were normally the same person. Therefore, an application for TORO should be submitted to the customs authority which issued the authorisation for the use of IP, OP, E-U and TA.

Under customs warehousing the operators were normally more disconnected and therefore the holder of the procedure will not necessarily know where the issuing customs authority (or even the supervising office) is situated. In those cases, the competent customs authority would be the customs office of placement.

### **How would TORO work with inward processing EX/IM and the INF5 procedures?**

It was generally acknowledged that there could be difficulties with this concept because of the timing of the operation.

The holder of the procedure is also the holder of the authorisation (Trader A). As such, Trader A has the right to declare (the import) goods to IP but there are no obligations to pay duty due to the change of customs status. The right to import goods "duty free" can be transferred to Trader B. The INF5 is completed and certified by the customs authorities.

Trader B can then declare goods to IP and put these goods on the EU market without payment of duty. The fact that the transfer takes place before the goods are declared for IP was not considered to impact upon the principle of TORO. It was agreed that the holder of the authorisation (Trader A) must apply for TORO before the processed products are exported under IP EX/IM.

It is fairly common to find that the importer of the replaced goods in an INF5 process changes. If this arises, a second TORO is required. Trader B would request a TORO to Trader C from the issuing customs office. The INF5 would be modified. Trader A's authorisation would also require amendment to reflect the changes (including any change in the customs office of placement).

**Is it possible to have a TORO between (for example) customs warehousing and inward processing?**

Such a transfer is not possible.

**Who has to submit the bill of discharge after TORO?**

By the holder of the authorisation.

**Which rights and obligations of the holder of the end-use procedure may be transferred under TORO?**

Rights of the holder of the procedure:

- to use the goods;
- to move the goods;
- to export and benefit from the extinguishment of the customs debt (see Art.124(1) UCC)

Example: good A has a normal import rate of 10% and a reduced rate of 4%. If the good is not used for the prescribed end-use, a customs debt is incurred for the difference between the reduced and the normal import rate. However if the goods are exported with the approval of the customs authorities, the debt is extinguished.

Obligations of the holder of the procedure:

- to assign the goods to the prescribed end-use within the period of discharge;
- to keep records;
- to keep the goods available for customs supervision;
- to pay the import duty in case of customs debt incurred based on Art.79 UCC.

Conditions of TORO:

- need for customs approval/favourable decision either in the end-use authorisation Annex A DA/data element 8/8 or in a separate decision where the request for TORO was made after granting the end-use authorisation by release of goods for the procedure (Art 262 IA);

- the transferor has to inform the transferee about goods involved by the TORO and following data element are suggested to be provided, for instance on commercial documents, as a best practice:
  - EORI number, or name and address of the transferor and the transferee;
  - Number of the end-use authorisation and the indication of 'end use TORO';
  - Packages and description of goods;
  - Marks and numbers of goods;
  - Taric Code;
  - Gross mass;
  - Net mass;
  - MRN of the end-use customs declaraton;
  - Supplementary Units;
  - SCO (supervising customs office) and, if required, any other competent customs office;
  
- the transferor has to inform the transferee about the date by which the procedure must be discharged;
  
- the transferor and the transferee have to provide information about the date and time of TORO in their records.
  
- The transferee has to provide information about the discharge of the procedure to the transferor. The period witin which such information has to be provided must be set by the competent customs authority taking into account that the bill of discharge must be presented to the supervising customs office within 30 days after the expiry of the period for discharge.

**Is a consultation procedure necessary when more than one Member State is involved?**

Yes. The Member State where the transferee is located must be able to verify if the transferee only uses the goods in accordance with the specific end use and to levy import duties in case of non-compliance.

**Can equivalent goods used under end use be subject to TORO?**

No, because only goods which have been placed under end use may be subject to TORO.

**Additional guidance**

As regards the consultation procedure, Art. 260 IA should be applied *mutatis mutandis*.

**Is there an alternative to TORO in case of end-use?**

Regarding the case of economic operators who import goods to sell them to the customers, an alternative to TORO could be to keep the goods under temporary storage or placing them first under the customs warehousing procedure with subsequent placement of goods under the end-use procedure.

**Is there an alternative to TORO in case of special procedure other than end-use?**

Yes, there is no need to use TORO if goods are placed under a subsequent customs procedure because goods placed under special procedures other than end-use or outward processing are non-Union goods which are not in free circulation within the Union. Therefore for these goods it is possible to lodge another/subsequent customs declaration for the same procedure or for another procedure.

**Is there any form/model which may be used for TORO?**

Yes, for the purposes of TORO the following model may be used.

**Transfer of rights and obligations (TORO) in accordance with Article 218 UCC**

Notes:

The layout of the model is not binding. However if the model is used, the order numbers and the appropriate text should not be changed.

The model should be made out electronically.

The model may be used only if the competent Customs authorities have authorised TORO in accordance with Art.266 IA.

The model should be used in duplicate, and the transferee should send one copy to the transferor after the transferee has completed box 21.

## TORO in accordance with Article 218 UCC

<b>1</b>	<p><b>Customs Authorities have authorised TORO on</b></p> <p><b>Indicate the relevant decision number</b></p>	<p><b>Place and date    Signature or electronic authentication of the transferor</b></p>
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### Persons concerned

<b>2</b>	<b>EORI-number or name and address of the transferor</b>	
<b>3</b>	<b>EORI-number or name and address of the transferee</b>	
<b>4</b>	<b>Supervising Customs Office</b>	

### Details of goods which are subject to TORO

<b>5</b>	<b>MRN of the customs declaration placing the goods under the special procedure</b>	
<b>6</b>	<b>Taric Code</b>	
<b>7</b>	<b>Packages and description of goods</b>	
<b>8</b>	<b>Marks and numbers of goods</b>	
<b>9</b>	<b>Gross mass</b>	
<b>10</b>	<b>Net mass</b>	

11	<b>Supplementary Units, if applicable</b>	
12	<b>Date by which the special procedure must be discharged</b>	
13	<b>Period within which the transferee has to provide information to the transferor about the discharge of the special procedure</b>	
14	<b>Date and time of TORO</b>	
15	<b>Transferee confirms TORO</b>	<b>Place and date    Signature or electronic authentication of the transferee</b>
16	<b>Date on which the special procedure was discharged</b>	
17	<b>Date on which the transferor was informed about the discharge of the special procedure</b>	
18	<b>Confirmation of the transferee that transferor was informed about the discharge of the special procedure</b>	<b>Place and date    Signature or electronic authentication of the transferee</b>
19	<b>Where applicable, additional information</b>	

# Annex IV

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## **Movement of goods**

### **Reflection on the legal scope of Article 219 UCC and its relevant COM acts**

#### **Article 219 UCC – Movement of goods**

Under Article 219 UCC, there must be a physical movement of goods, meaning a movement of goods between different places in the customs territory of the Union. This is not necessarily the case when a transfer of rights and obligations is permitted. The overall aim of Article 219 UCC is to reduce, as far as possible, the use of the external transit procedure.

#### **Scope of Article 179(1) DA**

The reference to **Article 178(1)(e) DA** (Records) was vitally important to the movement procedure. Without accurate records, in particular details of the "location and particulars of any movement of goods", the envisaged movement procedure could not work. The reference to "without any additional customs formalities" was also important as this effectively defined the procedure.

#### **Movement of goods under Temporary Admission**

All movements of TA goods could be carried out under **Article 179(1) DA**. Records must be kept only, if required by the customs authorities.

#### **Scope of Article 179(2) DA**

Goods must have been declared to OP in order for a movement (within the scope of this article) to take place. For processed products and goods re-imported in the state in which they were exported under outward processing, movement should not be possible under Article 219 UCC but external transit procedure may be used.

#### **Outward processing goods moving from the office of placement to the office of exit**

**Article 269(2) (a) UCC** specifically says that OP goods are not under the export procedure. According to **Article 267 (2) IA** goods could be moved under OP while being in line with export formalities but not under the export procedure.

**Movements of goods other than end-use and OP goods from the office of placement to the office of exit.**

**Articles 158 to 195 UCC** would apply (as per **Article 179(2) DA**). Outward processing according to **Article 259(1) UCC** is not possible for non-Union goods, but in case of temporary re-export referred to **Article 258 UCC** it can be done. Temporary re-export for further processing is possible under customs procedure code 2151 and authorization for outward processing is not needed.

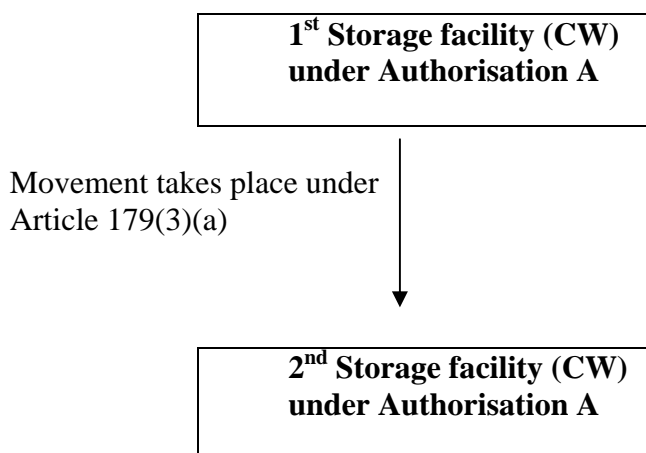
**Scope of Article 179(3) DA**

To assist in the understanding of the text, the following examples were prepared demonstrating the movement procedure.

**Example 1 – Article 179(3)(a) DA**

Movement between different storage facilities designated in the same authorisation (customs warehousing)

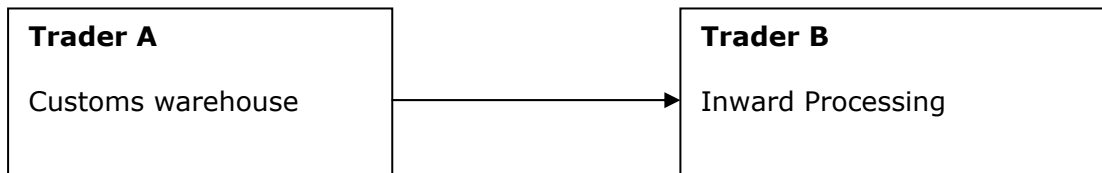
The following example was agreed:



A 30-days time limit for completing the movement was inserted to ensure certainty. If the movement was not completed within that time, a customs debt would be incurred in accordance with Article 79 UCC. The records must clearly show the precise location of the goods (Article 178(1)(e) DA refers).

**Example 2 – Article 179(3)(c) DA**

(c) from the storage facilities to the customs office of exit or any customs office indicated in the authorisation for a special procedure as referred to in Article 211(1) of the Code, empowered to release goods to a subsequent customs procedure or to receive the re-export declaration for the purposes of discharging the special procedures.



Where the movement was intended to result in a discharge of the procedure, the customs office of discharge must be stated in the authorisation. The customs office of discharge must also be the customs office of placement as indicated in Trader B's authorisation.

### **Movement of goods under ex "Type E" customs warehousing**

Although "type E" warehouses are not provided for under the UCC, **Article 240(1) UCC** permits the storage of non-Union goods in "any other location".

### **Export of end-use goods**

How should export of end-use goods be handled when (1) end-use had already been discharged by putting the goods to their prescribed use and (2) where they had not been discharged.

It was agreed that for situation (1) and provided that the correct discharge procedures had been followed, the goods were in free circulation without conditions and that the normal export rules would apply. The important tool would be the bill of discharge; specifically the documents/information relating to discharge and stating that goods have been assigned to their prescribed end-use (Article 175(3) DA refers).

For situation (2), the end use procedure may be discharged by taking goods out of the customs territory of the Union before their assignation to the end-use prescribed by the Tariff. Such export should be approved by customs in accordance with Art.124 (1)(i) UCC.

Article 179(1) DA allows the goods to travel to the customs office of exit without formalities but with record keeping requirements in place. A customs declaration for export according to Article 269(3) UCC has to be submitted, but goods are not placed under export procedure; they remain under end-use procedure until the exit from the customs territory of the Union has been confirmed (see Article 267(5) IA).

### **Additional considerations on movement of goods**

#### **(a) Records of the movement**

Movements to CW Type II from a CW Type I (to B from A under ex CCIP) would be possible because **Article 214(1) UCC** allows records to be required from any person involved in customs activities – that would include the holder of the procedure if they were carrying out the movement. In addition, **Article 242 UCC** clearly states the responsibilities of the holder of the authorisation and the holder of the procedure.

**(b) Movement of goods within centralised clearance**

Normally, goods are physically presented and all documentation lodged at the same place. Under centralised clearance, a declaration could be made in Brussels while the goods are physically presented in Antwerp where they are released (for example) to inward processing. In such circumstances, the goods can move to the place of processing without customs formalities but the movement must be reflected in the trader's records. Article 179(1) DA refers.

**(c) Movement of goods following an authorisation being obtained based on a customs declaration (Article 163 DA and Article 262 IA refer)**

It was confirmed that where such an authorisation is obtained, the goods can move to the place of processing or use under Article 179(1) DA – without customs formalities but reflected in the records. Regarding TA, records must be kept only, if required by the customs authorities. This would not impact on authorisations involving more than one Member State as this method cannot be used to obtain such authorisations. An Annex 12 TDA or Annex A DA based application/authorisation is always required with the exception of TA (Article 163(2)(d) DA refers).

**(d) Incomplete movements**

The following scenario was discussed.

Goods move from a customs warehouse in The Netherlands to an office of exit in Germany. The goods travel **Article 179(3) DA** – the re-export declaration having been lodged in The Netherlands. The goods do not leave the Union within 30 days.

A customs debt is incurred (Article 79 UCC) under **Article 87(1) UCC** at the place where the re-export declaration was lodged.

**(e) Free Zones**

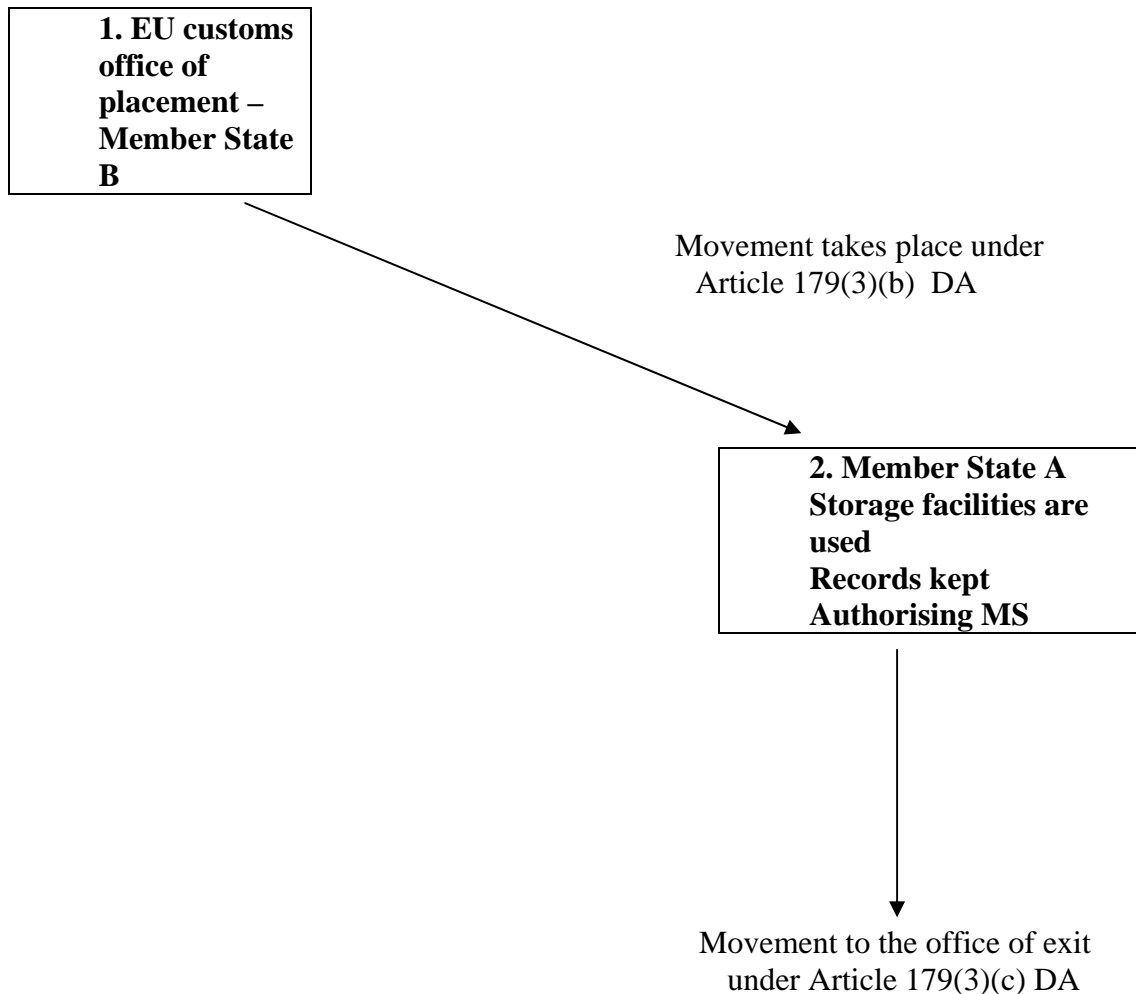
Discussions established that Article 219 UCC did not allow the movement of goods between different free zones, only within the specific free zone which the goods were placed in. Therefore, transit was the only option.

**Movement of goods – Examples**

*(see next page)*

### **Example 1 - Authorisation which involves more than one Member State with no prior consultation**

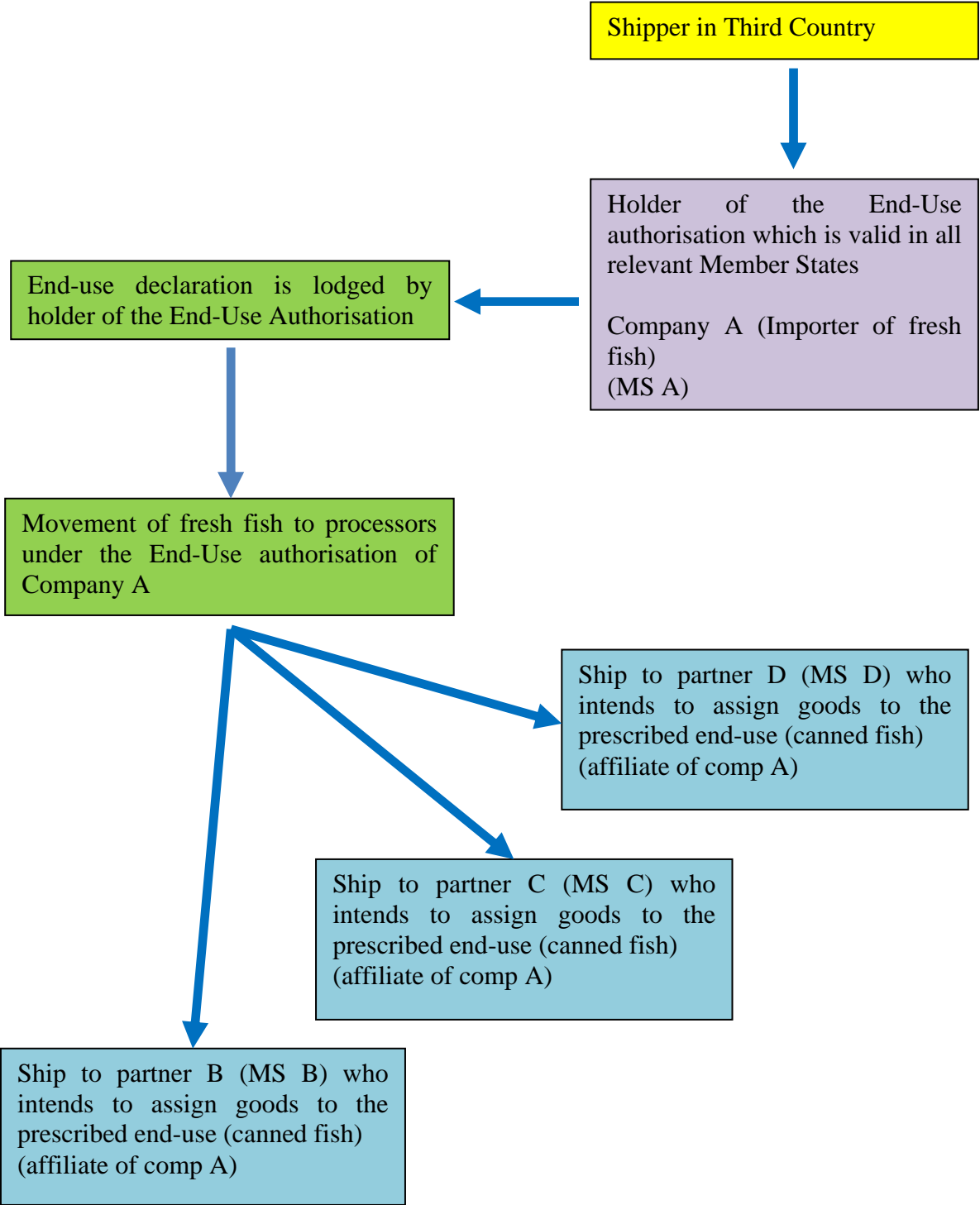
The following example was discussed and agreed:



### **Authorisation which involves more than one Member State - need for consultation**

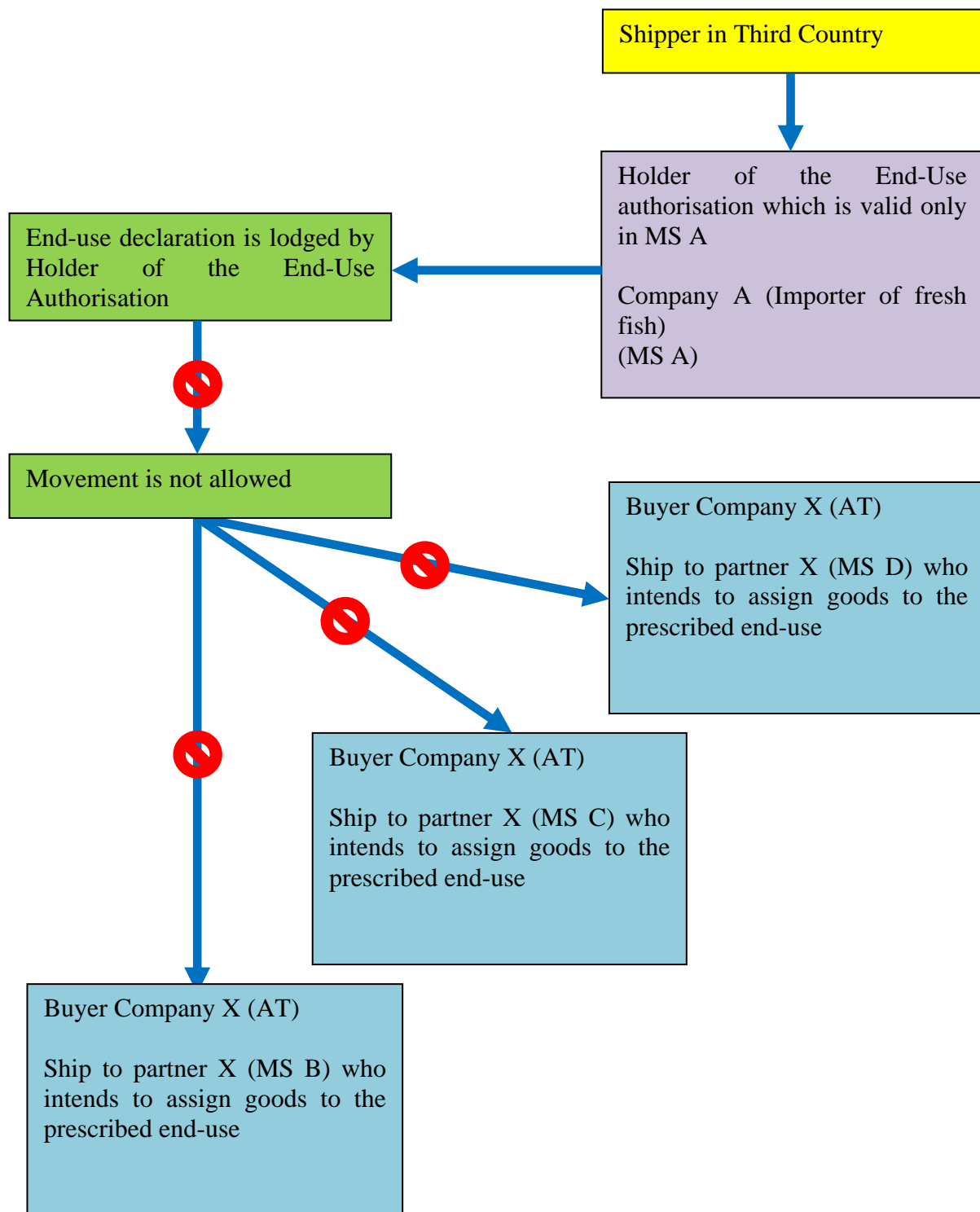
The consultation was dependent upon the circumstances. For example, if there was an authorisation involving storage in both MS, then consultation would be necessary. However, if only the movement of goods were involved, no prior consultation was necessary although it was always advisable to ensure that the customs authorities in other MS were aware of what was happening to prevent difficulties arising.

Example 2: End-Use movement without customs formalities: A multinational company has several affiliates in several MS



This is not a TORO but a movement of goods under an End-Use authorisation valid in several Member States. No customs formalities are required except providing information in the records about the location of goods and other details of such movement (see art. 178 (1) (e) DA). Customs supervision is carried out by one Customs office according to the details of the authorisation. Company A remains responsible for the end-use procedure.

Example 3: End-Use movement with or without customs formalities – no linked companies in several Member States



Due to fact that goods intended to be assigned in MS B, C and D, an End-Use authorisation which is valid in more than one MS is required. Company A's authorisation is valid only in MS A. Consequently, movement of goods to partners in MS B, C and D are not permitted. However, if end-use authorisation of company A is amended and become valid in MS B, C and D, movements are allowed, as described in example no. 1. Company A remains responsible for the end-use procedure.

# Annex V

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## **TORO and movement of goods**

### **Practical cases which may occur regarding transfer of rights and obligations and movement of goods**

#### **Case 1 - Fish under end-use**

The basic scenario was that the holder of the authorisation was a fish broker who declared stock to end-use. The holder of the authorisation does not intend to carry out the processing himself but passes the goods to a processor who cans the fish and disposes of the processed product to the home market.

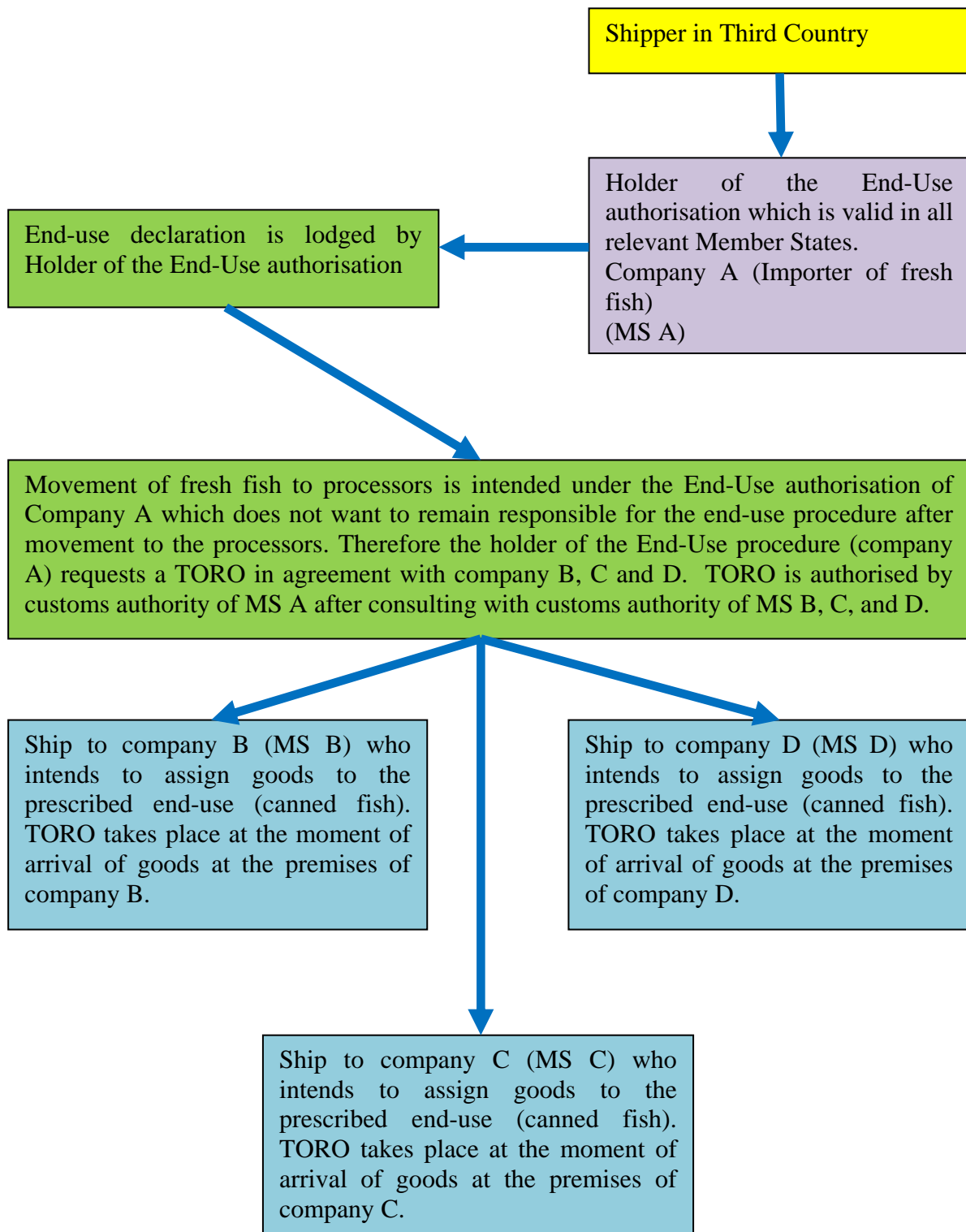
Two possibilities exist here;

**(a)** The fish remains under the control of the authorisation holder. The canner would be named as a processor on the authorisation and the movement of the goods from the authorisation holder to the processor would be covered by **Article 179(1) DA**;

**(b)** There is a transfer of rights and obligations between the authorisation holder and the processor under **Article 218 UCC** – either with or without a movement of goods. Where a movement did take place, it would be covered by **Article 179(1) DA**.

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Case 2: End-Use movement without customs formalities combined with TORO



This is a combination of movement of goods accordance with Art 219 UCC and TORO in accordance with Art. 218 UCC. For the purpose of TORO, company A may use the model laid down in Annex III to this guidance.

In this example the TORO takes place when the goods arrived at the premises of the processor. However, it is also possible, that TORO takes place at an earlier stage, e.g. when company A passes on fresh fish to the processors at the premises of company A.

# Annex VI

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## **Inward Processing**

### **Use of equivalent goods under the Union Customs Code**

#### **Purpose of this document and background**

A law firm asked the Commission to give guidance on the use of equivalent goods under the Union Customs Code. The law firm considered the new rules as problematic and requested a modification of the UCC related COM acts so that certain business activities may be carried out as it is possible under current legislation.

The focus was mainly on Article 169(2) DA:

#### *Article 169*

#### *Authorisation for the use of equivalent goods*

#### *(Articles 223(1) and (2) and 223(3)(c) of the Code)*

- The use of equivalent goods as referred to in the first subparagraph of Article 223(1) of the Code shall not be authorised where the goods placed under the special procedure would be subject to a provisional or definitive anti-dumping, countervailing, safeguard duty or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation.*

#### *Article 223 UCC*

#### *Equivalent goods*

*1. Equivalent goods shall consist in Union goods which are stored, used or processed instead of the goods placed under a special procedure.*

*Under the outward processing procedure, equivalent goods shall consist in non-Union goods which are processed instead of Union goods placed under the outward processing procedure.*

*Except where otherwise provided, equivalent goods shall have the same eight-digit Combined Nomenclature code, the same commercial quality and the same technical characteristics as the goods which they are replacing.*

It was argued that Article 169(2) DA would have a negative impact on business activities in the EU because it was no longer allowed anymore to export EU raw materials used as equivalent goods in the form of processed products and to import the corresponding quantity of non-Union raw materials duty-free into the EU.

## Legal aspects and reasoning behind the new restriction

### Article 269 IA

#### *Status of equivalent goods*

##### *(Article 223 of the Code)*

2. *In case of inward processing, the equivalent goods and the processed products obtained therefrom shall become non-Union goods and the goods which they are replacing shall become Union goods at the time of their release for the subsequent customs procedure discharging the procedure or at the time when the processed products have left the customs territory of the Union.*

*However, where the goods placed under the inward processing procedure are put on the market before the procedure is discharged, their status shall change at the time when they are put on the market. In exceptional cases, where the equivalent goods are expected not to be available at the time when the goods are put on the market, the customs authorities may allow, at the request of the holder of the procedure, the equivalent goods to be available at a later time within a reasonable period to be determined by them.*

3. *In case of prior export of processed products under inward processing, the equivalent goods and the processed products obtained therefrom shall become non-Union goods with retroactive effect at the time of their release for the export procedure if the goods to be imported are placed under that procedure.*

*Where the goods to be imported are placed under inward processing, they shall at the same time become Union goods.*

The reasoning behind the restriction as laid down in Article 169(2) DA is to ensure the effectiveness of the EU trade defence instruments (European Union anti-dumping, anti-subsidy, or safeguard measures).

Example:

One ton of Union goods A (equivalent goods) are processed into two tons of processed product B which are exported under inward processing EX/IM.

Subsequently one ton of non-Union goods A are imported and placed under inward processing. At the moment of placement of such goods under inward processing they become Union goods (second subparagraph of Article 269(3) IA). Consequently, goods A are in free circulation and not subject to customs supervision anymore.

Non-Union goods A were put on the EU market without payment of any amount of import duty.

Regarding *erga omnes* import duty the "non-payment" is not problematic because the use of the inward processing procedure should stimulate export activities in the EU so that processed products may be sold at a more competitive price on the world market.

However, where non-Union goods A intended to be placed under inward processing would be subject to a provisional or definitive anti-dumping, countervailing, safeguard duty or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation, the non-payment of such duties is problematic. The effectiveness of the EU trade defence instruments is not ensured. That is the reason why Article 169(2) DA does not allow the use of equivalent goods in such situations.

### **Practical solutions**

Current business activities may be carried out under the UCC without any change. However, where a customs debt is incurred, the payment of anti-dumping duties, countervailing duties etc. must be ensured so that the EU trade defence instruments cannot be undermined.

Article 86(3) UCC refers to origin of goods:

#### *Article 86 UCC*

*3. Where a customs debt is incurred for processed products resulting from the inward processing procedure, the amount of import duty corresponding to such debt shall, at the request of the declarant, be determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure at the time of acceptance of the customs declaration relating to those goods.*

### **The following two examples illustrate how business activities could be carried out under inward processing without the use of equivalent goods:**

1. 20 tons of raw materials A which would be subject to *erga omnes* import duty and ADD (if they were declared for release for free circulation), 30 tons of raw materials A which would only be subject to *erga omnes* import duty (if they were declared for release for free circulation) and 50 tons of EU raw materials A are stored in bulk. The three types of raw materials are stored in a silo which is used as a storage facility for the customs warehousing of goods.

Accounting segregation is carried out in accordance with Article 177 DA with regard to the three types of raw materials A.

#### *Article 177 DA*

#### ***Storage of Union goods together with non-Union goods in a storage facility***

##### ***(Article 211(1) of the Code)***

*Where Union goods are stored together with non-Union goods in a storage facility for customs warehousing and it is impossible or would only be possible at disproportionate cost to identify at all times each type of goods, the authorisation as referred to in Article 211(1)(b) of the Code shall establish that accounting segregation shall be carried out with regard to each type of goods, customs status and, where appropriate, origin of the goods.*

The total quantity of 100 tons of raw materials A are processed under inward processing into 200 tons of processed products B. Rate of yield is 100%. 100 tons of processed products B are re-exported and the other 100 tons of processed products are declared for release for free circulation. The declarant requests the calculation of the amount of import duty to be made in accordance with Article 86(3) UCC.

This means that *erga omnes* import duty and ADD must be paid for 10 tons of raw materials A. In addition, *erga omnes* import duty is due for 15 tons of raw materials A.

2. 20 tons of raw materials A which would be subject to *erga omnes* import duty and ADD (if they were declared for release for free circulation) , 30 tons of raw materials A which would only be subject to *erga omnes* import duty (if they were declared for release for free circulation) and 50 tons of EU raw materials A are stored in bulk. The three types of raw materials are stored in a silo which is used as a storage facility for the customs warehousing of goods.

Accounting segregation is carried out in accordance with Article 177 DA with regard to the three types of raw materials A.

20 tons of raw materials A which would be subject to *erga omnes* import duty and ADD (if they were declared for release for free circulation) are placed under inward processing and processed into 40 tons of processed products B which are re-exported. Import duty is not due.

30 tons of raw materials A which would be only subject to *erga omnes* import duty (if they were declared for release for free circulation) are placed under inward processing and processed into 60 tons of processed products. The processed products are declared for free circulation. The declarant requests the calculation of the amount of import duty to be made in accordance with Article 86(3) UCC.

This means that *erga omnes* import duty must be paid for 30 tons of raw materials A.

50 tons of EU raw materials A are processed into 100 tons of processed products which are put on the EU market without a customs declaration because the products have Union status and therefore they are in free circulation.

**The following example illustrates how business activities could be carried out under inward processing with the use of equivalent goods:**

3. 20 tons of raw materials A which would be subject to *erga omnes* import duty and ADD (if they were declared for release for free circulation), 30 tons of raw materials A which would only be subject to *erga omnes* import duty (if they were declared for release for free circulation), 30 tons of equivalent goods and 20 tons of Union raw materials A are stored in bulk. The four types of raw materials are stored in a silo which is not used as a storage facility for customs warehousing of goods.

Accounting segregation in accordance with Article 268(2) IA is carried out with regard to the four types of raw materials A.

*Article 268 IA*

***Formalities for the use of equivalent goods***  
**(Article 223 of the Code)**

1. *The use of equivalent goods shall not be subject to the formalities for placing goods under a special procedure.*
2. *Equivalent goods may be stored together with other Union goods or non-Union goods. In such cases, the customs authorities may establish specific methods of identifying the equivalent goods with a view to distinguishing them from the other Union goods or non-Union goods.*

*Where it is impossible or would only be possible at disproportionate cost to identify at all times each type of goods, accounting segregation shall be carried out with regard to each type of goods, customs status and, where appropriate, origin of the goods.*

The 20 tons of raw materials A which would be subject to *erga omnes* import duty and ADD (if they were declared for release for free circulation) are processed, 30 tons of equivalent goods are processed instead of 30 tons of raw materials A which would be only subject to *erga omnes* import duty (if they were declared for release for free circulation) and 20 tons of Union raw materials A are processed into total 140 tons of processed products B. Rate of yield is 100%. 70 tons of processed products B are re-exported and the other 70 tons of processed products are declared for release for free circulation. The declarant requests the calculation of the amount of import duty to be made in accordance with Article 86(3) UCC.

This means that *erga omnes* import duty and ADD must be paid for 10 tons of raw materials A. *Erga omnes* import duty is due for 15 tons of raw materials A which were used as equivalent goods and which have changed their customs status. The 30 tons of raw materials A which would only be subject to *erga omnes* import duty (if they were declared for release for free circulation) have changed their customs status and are in free circulation (see Article 269 IA).