

***REPUBLIC OF MONTENEGRO***  
***THE CUSTOMS LAW***

## **TITLE I**

### **GENERAL PROVISIONS**

#### **CHAPTER 1**

##### **1. SCOPE AND BASIC DEFINITIONS**

###### **Article 1**

This Law and its by-laws shall regulate the rights and obligations of persons and powers of the customs authorities of the Republic of Montenegro in respect of goods in passenger traffic and trade between the customs territory of the Republic of Montenegro and foreign customs territories.

###### **Article 2**

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

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

##### **CUSTOMS CROSSING**

###### **Article 3**

Goods shall enter or leave the customs territory through border crossings.

Border crossings and their classification, categorization and work hours shall be determined by the Government.

Transport of goods subject to sanitary, veterinary and other manners of prescribed control, shall be permitted only through those border crossings that have been designated, in accordance with special regulations, for the transport of such goods.

Design, construction, or reconstruction of a border crossing for international traffic, for the part designated for conduct of customs supervision and customs procedures, shall be done on the approval of the Director of the Customs Service (hereinafter referred to as: the Director).

## **CUSTOMS GOODS**

### **Article 4**

For the purposes of this Law, customs goods mean:

any goods introduced into the customs territory that have not been released for free circulation;

any goods declared for export from the customs territory.

In terms of paragraph 1 of this Article, customs goods also include:

live animals that arrive or depart;  
electricity, gas or liquid that are entered into or taken out through electric lines, gas, oil and water pipelines, or in some other manner;  
means of transport by which goods and passengers are transported across the customs line or which are intended for the transport of goods and passengers across the customs line;  
ships purchased abroad by companies, if they are used for commercial purposes before crossing the customs line;  
things arriving to the customs territory of the Republic in any manner;  
domestic goods transported from one point in the Republic to another one, across the foreign customs territory;  
domestic goods that are, in terms of special regulations, equivalent to the goods that are imported, or exported.

In terms of paragraph 1 of this Article, customs goods do not include:

public documents;  
goods in postal traffic not containing customs goods;  
commercial correspondence, business books and legal, financial and documentation related to goods;  
cheques, bills of exchange, bonds, shares and effective money.

## **BASIC DEFINITIONS**

### **Article 5**

For the purposes of this Law, the following definitions shall apply:

“person” means any natural or legal person, including association of persons, established in the Republic;

“Customs Service” (hereinafter referred to as: the Service) means the competent public authorities responsible for performing operations laid down by customs and other regulations;

“Montenegrin Customs Service” (hereinafter referred to as: the Customs Service) means the organizational unit that runs the Service;

“customs office” means a part of customs authorities, which performs all activities determined by Customs and other regulations;

“customs status” means the status of goods as Montenegrin or non-Montenegrin goods in the customs procedure. “domestic goods” means:

a) goods wholly obtained or produced in the customs territory under the conditions laid down in Article 24 of this Law, not incorporating goods imported into the customs territory;

b) goods imported from other countries that have been released for free circulation;

c) goods obtained or produced in the customs territory, either wholly obtained or produced from the goods referred to in item (b), or wholly obtained or produced from the goods referred to in items a) and b);

“foreign goods” means all goods which have not been defined as domestic goods, as well as domestic goods that have left the customs territory, unless the provisions of Articles 165 and 166 are to be applied;

“customs debt” means the obligation on a person to pay all duties and other charges that apply to specific goods under provisions in force;

“import duties” means customs duties and charges having an effect equivalent to customs duties payable on the importation of goods;

“export duties” means customs duties and charges having an effect equivalent to customs duties payable on the exportation of goods;

“debtor” means any person liable for payment of a customs debt;

“supervision by the customs authorities” means the performance of all the necessary measures with a view to ensuring that customs rules and other regulations applicable to goods are observed until the customs procedure has been completed;

“control by the customs authorities” means the performance of specific acts such as examining goods, verifying the existence and authenticity of documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed;

“customs-approved treatment or use of goods” means the placing of goods under a customs procedure, their entry into a free zone or free warehouse, their re-exportation from the customs territory of Montenegro, their destruction, their abandonment to the Republic of Montenegro;

“release of goods” means the act whereby the customs authorities make goods available for the purposes stipulated by the customs procedure under which they are placed;

“customs procedure” means release for free circulation, transit, customs warehousing, inward processing, processing under customs supervision, temporary admission, outward processing and exportation;

“customs declaration” means document whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure;

“declarant” means the person making the customs declaration in his own name or in the name of the person in whose name a customs declaration is made;

“holder of authorisation” means a person to whom an authorisation has been granted;

“presentation of goods to customs” means the notification to the customs authorities, in the manner laid down, of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities;

“border crossing” means a designated point of crossing for persons and for goods entering and leaving the customs territory;

“prohibited goods” means goods whose importation or exportation is prohibited in accordance with the provisions;

“restricted goods” are goods the importation or exportation of which is subject to control by the issue of authorization by the appropriate government authority.

“identical goods” means goods that are produced in the same country and that are identical in every respect, including their physical characteristics, quality and reputation; minor differences in their appearance shall not be a reason that the goods which otherwise fulfil the conditions specified in this definition should not be deemed as identical good;

“similar goods” means goods produced in the same country that, although not being identical in every respect, have similar characteristics and similar components, which allow them to perform the same functions and to be commercially interchangeable; factors that should be taken into account when determining whether the goods are similar or not include the quality of goods, their reputation and the existence of a trademark;

“goods of the same class or kind” means goods belonging to a class or range of goods produced by a particular industry, including identical or similar goods;

“remission of customs debt” means a waiver of collection of the importation or exportation debt, which is entirely or partially outstanding;

“repayment” means full or partial repayment of paid export or import debt;

## **CHAPTER 2**

### **RIGHTS AND OBLIGATIONS OF PERSONS**

#### **RIGHT OF REPRESENTATION**

##### **Article 6**

Any person whose rights and obligations are decided upon may appoint a representative in all or some of his dealings in the procedure conducted by the customs authorities.

Such representation may be:

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

A representative must be established within the Republic.

A representative must state that he is acting on behalf of the person represented and specify whether the representation is direct or indirect. The customs authorities may require a representative to produce valid evidence of his powers to act as a representative.

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

A representative may perform operations of representation at the clearance of goods in accordance with a special regulation that shall be passed by the Government.

#### **APPLICATION OF RULES GOVERNING THE GENERAL ADMINISTRATIVE PROCEDURE**

##### **Article 7**

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

##### **Article 8**

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

The decision shall be made without delay and not later than within a period stipulated by the Law on General Administrative Procedure.

An appeal may be lodged against the first-instance decision issued by the customs office to the Customs Service.

The appeal shall not postpone the enforcement of the decision.

In exceptional cases, the enforcement of the decision may be fully or partially postponed if the customs authorities:

- a) have justified reason to believe that the decision, against which an appeal was lodged, or some other legal expedient is not in accordance with the customs rules, or
- b) assess that the enforcement of that decision may cause irreparable damage to the person to whom the decision is addressed.

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

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

## **SPECIFIC CASES WHERE A DECISION MAY BE ANNULLED, REVOKED OR AMENDED**

### **Article 9**

A decision adopted by the customs authorities which is entirely or partly favourable to the person concerned may be annulled within a period of 3 years, by virtue of their office, where it was issued on the basis of incorrect or incomplete information and:

- a) the applicant knew or should reasonably have known that the information was incorrect or incomplete, and
- b) such decision could not have been taken on the basis of correct or complete information.

The decision on annulment shall be notified without delay to the person concerned.

### **Article 10**

A decision adopted by the customs authorities which is entirely or partly favourable to the person concerned may be revoked or amended within a period of 3 years, by virtue of their office or at the request of the person concerned, where conditions laid down for its issue were not fulfilled or where that person no longer fulfils conditions laid down for its issue, in cases other than those referred to in Article 9 of this Law.

A decision favourable to the person concerned may be revoked where the person fails to fulfil an obligation imposed on him under that decision.

The revocation or amendment of the decision shall be notified without delay to the person concerned.

The revocation or amendment of the decision shall take effect from the date on which the person concerned receives such revocation or amendment.

In exceptional cases where justified interests of the person concerned require so, the customs authorities may postpone the legal effect of the revocation or amendment of the decision for not longer than 30 days.

## **INFORMATION ON THE APPLICATION OF CUSTOMS RULES**

### **Article 11**

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

However, where special costs are incurred as a result of analyses or expert reports on goods in question, or return of the goods to the applicant, he may be charged the relevant amount.

### **Article 12**

The customs authorities shall issue the following information at the applicant's written request:

- a) binding information in respect of the classification of goods under the Customs Tariff,
- b) binding information in respect of origin.

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

Binding information on the classification of goods under the Customs Tariff or origin of goods shall be binding on the customs authorities as against the holder of the information only in respect of the classification of goods under the Customs Tariff for which customs formalities are completed after the date on which the information was supplied by them, or only in respect of the origin of goods for which customs formalities are completed after the date on which the information was supplied by them, in accordance with this Law.

The person using such information must be able to prove:

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



Pursuant to the Article 9 the binding information shall be annulled where it is based on inaccurate or incomplete information from the applicant.

Binding information on the classification of goods under the Customs Tariff shall become invalid:

where a regulation is amended,

2. where the binding information no longer conforms to the instructions by the competent authority concerning the classification of goods under the Customs Tariff passed pursuant to the Law on Custom Tariff, and

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

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

Binding information regarding the origin of goods shall become invalid:

1. where a regulation is amended or an international agreement is concluded and the binding information no longer conforms to the regulations thereby laid down,

2. where the binding information no longer conforms to interpretations of the body authorised to issue interpretations of rules concerning the origin of goods,

3. where the binding information is revoked or amended because the conditions laid down in the Article 10, and the holder of the information shall be notified of the revocation or amendment decision.

Where a regulation is amended or an international agreement is concluded or where it no longer conforms to the interpretation issued by the competent body, binding information shall cease to be valid on the date when it takes effect, or on the date when the adopted regulation, international agreement or interpretation becomes effective.

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

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

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

### **Article 13**

The Government of the Republic of Montenegro (hereinafter referred to as: the Government) shall lay down specific conditions for the issue of information in accordance with this Law.

## **OTHER PROVISIONS**

### **Article 14**

The customs authorities may, in accordance with the conditions laid down by the provisions in force, take and carry out any measure of customs supervision and control they deem necessary to ensure that customs rules and other regulations are applied throughout the Customs territory.

### **Article 15**

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

### **Article 16**

All information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy and it shall not be disclosed by the customs authorities without the express consent of the person or authorities providing it.

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

### **Article 17**

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

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

Where a check carried out by the customs authorities in respect of a customs debt shows that the relevant entry in the accounts has to be corrected, the documents and information shall be

kept beyond the time limit provided for in paragraph 1 of this Article regardless of Article 222 paragraph 4 of this Law for a period sufficient to permit the correction to be made and checked.

#### **Article 18**

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

#### **Article 19**

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

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

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

### **TITLE II**

## **FACTORS ON THE BASIS OF WHICH IMPORT DUTIES OR EXPORT DUTIES AND OTHER MEASURES PRESCRIBED IN RESPECT OF TRADE IN GOODS ARE APPLIED**

### **CHAPTER 1**

## **CUSTOMS TARIFF AND TARIFF CLASSIFICATION**

#### **Article 20**

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

In exceptional cases, a uniform rate in the amount of 5% of the customs value of goods may be applied to goods of a non-commercial nature that are carried by a traveller, or for goods received by a natural person in the post from another natural person.

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

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

#### **Article 21**

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

Request for the application of the provision of paragraph 1 of this Article the declarant may submit subsequently, if the conditions stipulated by the agreement have been fulfilled.

#### **Article 22**

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

In terms of paragraph 1 of this Article "favourable tariff treatment" means a reduction in or suspension of an import duty and other charges payable on importation of goods referred to in paragraph 1 and within the restrictions with regard to the quantity.

### **CHAPTER 2**

#### **ORIGIN OF GOODS**

##### **NON-PREFERENTIAL ORIGIN**

#### **Article 23**

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

- a) applying the Customs Tariff, with the exception of cases set forth in the Article 21 of this Law,
- b) applying measures other than tariff measures established by provisions governing specific fields relating to trade in goods, and
- c) the issue of certificates of origin.

#### **Article 24**

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

The expression "goods originating in a country" means:

mineral products extracted within that country;  
vegetable products harvested therein;  
live animals born and raised therein;  
products derived from live animals raised therein;  
products of hunting or fishing carried out therein;  
products of sea-fishing and other products taken from the sea outside a country's territorial waters by vessels registered or recorded in the country concerned and flying the flag of that country;

goods obtained or produced on board factory-ships exclusively from the products taken from the sea outside the territorial waters, provided that such factory-ships are registered or recorded in that country and fly its flag;  
products taken from the seabed or subsoil beneath the seabed outside the territorial waters, provided that the country has exclusive rights to exploit that subsoil;  
waste and scrap products derived from manufacturing operations or used articles, if they were collected therein and are fit only for the recovery of raw materials, and  
goods which are produced therein exclusively from the above-mentioned products or from their derivatives, at any stage of processing.

#### **Article 25**

Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justifiable processing or working and resulting in the manufacture of a new product or representing an important stage of manufacture.

The following shall not be deemed as the last, substantial, economically justifiable processing or working which results in the manufacture of a new product:

packing and repacking of goods, irrespective of where the packing material was manufactured,  
dividing large quantities of goods into smaller quantities or putting small quantities together to make large quantities;  
separating, sorting out, sifting, rinsing or cutting of products into pieces;  
labelling and marking of goods;  
treatment necessary to preserve the characteristics of products during transport and storage, and  
simple assembly of parts into the whole product.

#### **Article 26**

Any processing or working in respect of which it is established, or which is related to an established fact that its sole object was to circumvent the provisions applicable in the Republic to goods from certain countries shall not be deemed authentic or to confer on the goods thus produced the origin of the country where it is carried out.

#### **Article 27**

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

## **PREFERENTIAL ORIGIN OF GOODS**

### **Article 28**

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

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

## **CHAPTER 3**

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

### **Article 29**

The provisions of this Chapter shall determine the customs value for the purposes of applying the Customs Tariff and non-tariff measures laid down by the Republic provisions governing specific fields relating to the trade in goods.

### **Article 30**

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

a) that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:

1) are imposed by provisions in force in the Republic, or by-laws adopted on the basis of those provisions,

2) limit the geographical area in which the goods may be resold, or

3) do not substantially affect the value of the goods.

b) that the sale or price is not subject to some conditions or restrictions for which a value cannot be determined with respect to the goods being valued,

c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of the Article 37 of this Law,

d) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes.

Two persons shall be considered related in the cases where:

- a) one person is a manager or director of a company owned by the other person and vice versa,
- b) they are legally recognised as business partners,
- c) they are in an employer-employee relationship,
- d) one of them is a direct or indirect owner, or controls or owns 5% of voting shares in both companies or more,
- e) one person directly or indirectly supervises the other person,
- f) both of them are under direct or indirect supervision of a third party,
- g) they jointly supervise a third party directly or indirectly, or
- h) they are members of the same family.

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

In determining whether the transaction value is acceptable as set forth in paragraph 1 of this Article, circumstances in which the buyer and seller are related persons referred to in paragraph 2 of this Article shall not influence its acceptance by the customs authorities.

In the case set forth in paragraph 4 of this Article the customs authorities shall determine the sale circumstances and accept the transaction value, provided that the relationship did not influence the price.

If, in the light of the information provided by the declarant or otherwise, the customs authorities have grounds for considering that the relationship influenced the price, they shall communicate their grounds to the declarant and he shall be given reasonable opportunity to respond as to the nature of his business relationship. If the declarant so requests, the customs authorities shall in writing communicate him the grounds due to which the transaction value was not accepted.

In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with paragraph 1 of this Article wherever the declarant can prove that such value closely approximates to one of the following, occurring at or about the same time:

- the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to the Republic.
- the customs value of identical or similar goods as determined under Article 35 of this Law,
- the customs value of identical or similar goods as determined under Article 36 of this Law.

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

The tests are to be used at the initiative of the declarant and only for comparison purposes in determining the transaction value and such value cannot be a transaction value.

### **Article 31**

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

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

The payment may be made directly or indirectly.

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

### **Article 32**

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

Where it is impossible to find an adequate example of sales, for the purpose of paragraph 1 of this Article, the transaction value of identical goods sold on different commercial grounds or in different quantities shall apply after the differences which derive from commercial grounds or difference in quantities have been adjusted, provided that such adjustment can be made on the basis of the evidence produced which clearly demonstrate that the adjustment was appropriately and accurately made, irrespective of whether the adjustment increases or reduces the value.

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

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



### **Article 33**

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

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

Where it is impossible to find an adequate example of sales referred to in paragraph 2 of this Article, the transaction value of similar goods sold on different commercial grounds or in different quantities shall apply after the differences which derive from commercial grounds difference in quantities have been adjusted, provided that such adjustment can be made on the basis of the evidence produced which clearly demonstrate that the adjustment was appropriately and accurately made, irrespective of whether the adjustment increases or reduces the value.

Where the transaction value includes costs and charges referred to in the Article 37, paragraph 1 item a), indents 4,5, and 6, the adjustment shall take into account the difference in costs and prices between the imported goods and the similar goods which may derive from differences in distance and means of transport.

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

### **Article 34**

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

Where the customs value cannot be determined under Article 35 either, the provisions of the Article 36 of this Law shall apply, and if requested by the declarant the order of application of Articles 35 and 36 of this Law can be reversed.

### **Article 35**

Where imported goods or identical or similar imported goods are sold within the Republic in the same state as that of the imported goods, the customs value of the imported goods should be based on the unit price of imported goods or identical or similar imported goods which are sold in the greatest aggregate quantity and at or about the same time as the goods being valued to persons who are not related to the sellers provided that the price is reduced by:

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

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

3) import duties, taxes and other charges payable in the Republic by reason of importation or sale of the goods.

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

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

### **Article 36**

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

a) the cost of value of materials and fabrication or other processing employed in producing the imported goods,

b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Republic, and

c) all costs and charges set forth in Article 38, paragraph 1, item a), indents 4, 5 and 6 of this Law.

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

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

### **Article 37**

Where the customs value of imported goods cannot be determined under the provisions of the Articles 30 to 36 of this Law, it shall be determined on the basis of the data available in the Republic of Montenegro, using reasonable means consistent with the principles and general provisions of

the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade, 1994,  
Article VII of the General Agreement on Tariffs and Trade, 1994,  
Provisions of this chapter.

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

the selling price in the Republic of goods produced in the Republic,

b) a system which provides for the acceptance for customs purposes of the higher of two alternative values,

c) the price of goods on the domestic market of the country of exportation,

d) the cost of production, other than the values which have been determined for identical or similar goods in accordance with the provisions of the Article 36 of this Law,

e) price of goods intended for export to another country, rather than for the market of the Republic,

f) officially determined minimum customs value, and

g) arbitrary or fictitious values.

At the declarant's initiative, the customs authorities shall notify the declarant of the customs value determined pursuant to the provisions of this Article and of the method used to determine the value.

### **Article 38**

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

a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

commissions and brokerage, except buying commission,

the cost of containers which are treated as being one, for customs purposes, with the goods in question,

the cost of packing, whether for labour or materials,

the cost of transport of imported goods to the port or the place of introduction into the territory of the Republic,

the cost of loading, unloading and handling pertaining to the transport of the imported goods to the port or the place of introduction into the territory of the Republic, and

the cost of insurance before the introduction of imported goods into the territory of the Republic,

b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with

the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

materials, components and similar items used in the production of the imported goods, tools, dies, moulds, casts and similar items used in the production of the imported goods, other materials consumed in the production of imported goods, and engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Republic and necessary for the production of imported goods,

c) royalties (the industrial property rights) and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and license fees are not included in the price actually paid or payable,

d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller,

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

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

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

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

### **Article 39**

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

- a) charges for the transport of goods after their introduction into the customs territory of the Republic,
- b) charges for construction, upgrading, erection, maintenance or technical assistance, which have been undertaken or are to be undertaken after the importation of industrial plants, machinery or equipment,
- c) charges for interest under a financial arrangement entered into by the buyer and relating to the purchase of imported goods, irrespective of whether the finance is provided by the seller or another person, provided that the financial arrangement has been made in writing and where required, the buyer can demonstrate that:

- 1) such goods have been sold at the price actually paid or payable,
- 2) the rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided,

- d) charges for the right to reproduce imported goods,
- e) buying commissions, and
- f) import duties or other charges payable in the Republic by reason of the importation or sale of the goods.

#### **Article 40**

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

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

#### **Article 41**

The customs value of the goods which are not imported for sale and the customs value of temporarily imported goods shall be determined under Articles 32 to 37 of this Law.

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

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

#### **Article 42**

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

#### **Article 43**

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

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

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

#### **Article 44**

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

No provision of this chapter shall be interpreted as a restriction and shall not jeopardize the right of the customs authorities to establish whether any statement, document or declaration submitted for the determination of the customs value is accurate and correct.

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

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

#### **Article 45**

Where factors used to determine the customs value of goods are expressed in a currency other than that of the Republic, the rate of exchange to be used shall be that duly valid on the day the customs debt is chargeable.

### **TITLE III**

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

### **CHAPTER 1**

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

### **CUSTOMS SUPERVISION**

#### **Article 46**

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

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

Both the passengers and the crew, i.e. persons driving the means of transport, shall be subject to customs supervision.

The following shall not be subject to customs supervision:

domestic and foreign military ships;  
ships sailing through those parts of the frontier rivers in which customs supervision may not be conducted according to international agreements;  
ships of the Ministry of Interior;  
domestic and foreign military aircraft.

Exceptionally to the provision of paragraph 4 of this Article, the following shall be subject to customs supervision:

goods unloaded from and passengers and members of the crew leaving the ships referred to in items 1 and 3 of paragraph 4 of this Article and goods loaded on and passengers and members of crew boarding those ships, as well as the traffic carried out between the ships and the coast;  
goods unloaded from and passengers and members of crew leaving the aircraft referred to in item 4 of paragraph 4 of this Article and goods loaded on and passengers and members of crew boarding them.

The persons referred to in paragraph 5 of this Article shall be obliged to declare customs goods on their entering the customs territory for the purpose of customs supervision.

## **DECLARING OF GOODS**

### **Article 47**

All goods that are brought into or taken out from the customs territory must be declared to the customs office at the border, or to the other competent customs office.

The master, or any person assuming similar responsibilities, of any vessel or the captain of any aircraft arriving in the Republic of Montenegro or a person authorised by him, shall, immediately upon arrival and prior to the discharge of any goods, present to the Customs Office a manifest of all goods carried as cargo on that vessel or aircraft.

The master, or any person assuming similar responsibilities, of any vessel or the captain of any aircraft departing from the Republic of Montenegro or a person authorised by him shall, prior to departure, present to the Customs Office a manifest of all goods carried as cargo on that vessel or aircraft.

The manifest shall in the case of ships comply with the format and standards set by the International Maritime Organisation of the United Nations and in the case of aircraft the manifest shall comply with the format and standards determined by the International Air Transport Association (IATA).

The manifest shall be attested by the master of the vessel or captain of the aircraft and his representative in Montenegro that it is a complete, true and accurate record of all goods carried on the vessel or aircraft.

Person bringing the goods into the customs territory of the Republic shall be obliged to convey them without delay, by the route specified by the customs office and in accordance

with their instructions to the customs office or any other place designated and approved by the customs office, or to a free zone.

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

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

The provision of paragraph 6 of this Article shall not preclude implementation of any provision in force with respect to tourist traffic, frontier traffic, or postal traffic on condition that customs supervision and customs control possibilities are not thereby jeopardized.

Paragraphs 1 to 9 of this Article and Articles 48 to 63 shall not apply to goods that have temporarily left the Customs territory of the Republic while moving between two points in that territory by water or air, provided that carriage has been effected by a direct route and by regular air service or shipping line without a stop outside the Customs territory of the Republic. This provision shall not apply to goods loaded in foreign ports or airports or at a free port.

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

#### **Article 48**

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

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

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

#### **Article 49**

Where, by reason of unforeseeable circumstances or force majeure, a vessel or aircraft, referred to in the Article 47 paragraph 10 of this Law, is forced to stop or temporarily be kept in the customs territory of the Republic whereby the obligations laid down in the Article 47 paragraphs 2 and 3 of this Law, the person in charge of the vessel or aircraft or any person acting on his behalf shall inform the Customs Office of the situation without delay.



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

## **CHAPTER 2**

### **PRESENTATION OF GOODS TO CUSTOMS**

#### **Article 50**

As laid down in the Article 47 of this Law, the goods which have been conveyed to the customs office or other place designated or approved by the Customs Office shall present the goods to customs by the person who brought the goods into the customs territory of the Republic of Montenegro or, if appropriate, by a person who assumes responsibility for carriage of the goods following such entry.

#### **Article 51**

Provision of the Article 50 of this Law shall not preclude the implementation of regulations relating to goods:

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

#### **Article 52**

Once the goods have been presented to customs and with the permission of the Customs Office, they may be examined or samples may be taken in order that they may be assigned a customs-approved treatment or use.

The permission for further customs treatment or use shall be granted at request of the person authorised to assign the goods such treatment or use.

## **CHAPTER 3**

### **SUMMARY DECLARATION AND UNLOADING OF GOODS PRESENTED TO CUSTOMS**

#### **Article 53**

All goods declared to customs as set forth in the Article 47, paragraph 1 of this Law and goods presented to customs as set forth in Article 50 of this Article shall be covered by a summary declaration for presentation of goods (hereinafter: summary declaration).

Summary declaration shall be lodged once the goods have been brought into the customs territory.

Customs Office may allow a period for lodging the summary declaration, which shall not extend beyond the first working day following the day on which the goods are presented to customs.

#### **Article 54**

Summary declaration shall be made on the form specified in Article 69, paragraph 2 of this Law.

Summary declaration shall be lodged by:

- a) the person who brought the goods into the customs territory, or if applicable, by any person who assumes responsibility for carriage of goods following such entry; or
- b) the person in whose name the persons referred to in item a) of this paragraph acted.

#### **Article 55**

Without prejudice to provisions governing goods imported by travellers or postal traffic, the Customs Office shall not request lodging of summary declaration on condition that this does not jeopardize the implementation of the customs supervision measures and that formalities necessary for the goods to be assigned a customs-approved treatment or use are carried out.

#### **Article 56**

Goods may be unloaded or transhipped from the means of transport solely with the permission of the Customs Office in places designated and approved for such purpose.

In the event of the imminent danger necessitating the immediate unloading of all or part of the goods, such permission shall not be required, however the Customs Office shall be informed about such event forthwith.

For the purposes of inspecting goods and the means of transport carrying them, the Customs authorities may at any time require goods to be unloaded and unpacked.

#### **Article 57**

Goods shall not be removed from the original position without the permission of the Customs Office.

### **CHAPTER 4**

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

#### **Article 58**

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

#### **Article 59**

Where the goods are covered by a summary declaration, the operations necessary for them to be assigned customs-approved treatment or use must be carried out within:

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

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

### **CHAPTER 5**

#### **TEMPORARY STORAGE OF GOODS**

#### **Article 60**

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

#### **Article 61**

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

The Customs Office may require the person holding the goods to provide advance for payment of customs debt that may arise in accordance with Articles 203 or 204 of this Law.

#### **Article 62**

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

#### **Article 63**

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

The customs office may, at the risk and expense of the person holding the goods, have the goods transferred to some other place, which is under their supervision until the situation of the goods is regularised.

## **CHAPTER 6**

### **PROVISIONS APPLICABLE TO GOODS UNDER A TRANSIT PROCEDURE**

#### **Article 64**

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

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

## **CHAPTER 7**

### **OTHER PROVISIONS**

#### **Article 65**

Where circumstances so require, the Customs Office may have the goods presented to customs destroyed and it shall inform the holder of the goods accordingly.

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

#### **Article 66**

Where the Customs Office find that the goods have been brought unauthorised into the customs territory of the Republic or have been withheld from customs supervision, they may take any measures necessary, including sale of goods in order to regularise their situation.

## **TITLE IV**

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

#### **CHAPTER 1**

##### **GENERAL PROVISIONS**

#### **Article 67**

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

Paragraph 1 of this Article shall not be applied, if such application is in contradiction with the measures for public morality and safety protection, protection of health and life of humans,

animals or plants, protection of national treasures possessing historical, artistic or archaeological value, or protection of intellectual property and other.

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

## **CHAPTER 2**

### **CUSTOMS PROCEDURES**

#### **SECTION 1**

##### **PLACING OF GOODS UNDER A CUSTOMS PROCEDURE**

###### **Article 68**

All goods to be placed under a customs procedure shall be covered by a customs declaration according to the customs procedure in question.

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

The Director shall authorise specific Customs Offices for payment of duties on specific goods or for performing specific procedures.

###### **Article 69**

The customs declaration shall be made:

- a) in writing, or
- b) using electronic data transfer, where technical possibilities are provided for and where usage of such means is authorised by the customs authorities, or
- c) verbally or by means of any other act whereby the holder of the goods requests their placing under a customs procedure, where such possibility is provided for by the regulations.

The Director shall set out the form and substance of customs declaration and other forms used in a customs procedure, as well as the mode in which they are presented.

## **CUSTOMS DECLARATION IN WRITING**

### **NORMAL PROCEDURE**

#### **Article 70**

Customs declaration in writing shall be made on a prescribed form. It shall be signed and contain all the particulars necessary for implementation of the provisions governing the Customs procedure for which the goods are declared.

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

#### **Article 71**

The Customs Office shall accept within 5 working hours the customs declaration that has been lodged in accordance with the conditions referred to in Article 70, provided that the goods to which it refers have been presented to customs.

#### **Article 72**

A customs declaration, together with all the documents necessary for implementation of the provisions governing the customs procedure in respect of which the goods were declared, may be lodged by the persons referred to in Article 5 of this Law.

The condition laid down in Article 5, paragraph 3 shall not apply to persons who:

- make a customs declaration for transit or temporary importation procedure, or
- declare goods on an occasional basis, where the Customs Office consider this to be justified.

#### **Article 73**

The customs authorities may permit the declarant, at his request, to amend one or more of the particulars of the customs declaration, which has already been accepted, whereas the amendment shall not have the effect of rendering the declaration applicable to goods other than those originally declared.

Amendments shall not be permitted where authorisation is requested after the Customs Office:

- a) have informed the declarant that they intend to examine the goods, or
- b) have established that the particulars in question are incorrect, or
- c) have released the goods.

#### **Article 74**

The Customs Office shall, at the request of the declarant, invalidate a declaration already accepted where the declarant furnishes the proof that goods were declared in error for the customs procedure covered by that declaration, or that, as a result of special circumstances, the placing of the goods under the Customs procedure for which they were declared is no longer justified.

Where the Customs Office have informed the declarant of their intention to examine the goods, a request for invalidation of the declaration shall not be accepted until after the examination has taken place.

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

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

#### **Article 75**

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

#### **Article 76**

For the verification of the customs declaration it has accepted, the Customs Office may:

- a) examine the documents covered by the customs declaration and the documents accompanying it;
- require the declarant to present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration;
- examine the goods and take samples for analysis or for detailed examination.

#### **Article 77**

Transport of the goods to the place where they are to be examined and samples are to be taken, and all the handling necessitated by such examination or taking of samples, shall be carried out by or under the responsibility of the declarant. The costs incurred shall be borne by the declarant.

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

Where the Customs Office deems it appropriate, it shall require the declarant to be present or represented when the goods are examined or samples are taken in order to provide them with the assistance necessary to facilitate such examination or taking of samples.

Provided the samples are taken in accordance with the provisions in force, the Customs Office shall not be liable for payment of any compensation in respect thereof but shall bear the costs of their analyses or examination.

#### **Article 78**

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

The declarant may request a further examination of the goods if he considers that the results of the partial examination are not valid as regards the remainder of the goods declared.

For the purposes of paragraph 1 of this Article, where a customs declaration form covers two or more items, the particulars relating to each item shall be deemed to constitute a separate customs declaration.

#### **Article 79**

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

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

#### **Article 80**

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

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

Type and mode of application of the customs means of identification shall be prescribed by the Director.

#### **Article 81**

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

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

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



Where a customs declaration covers two or more items for the purpose of paragraph 2 of this Article, the particulars relating to each item shall be deemed to constitute a separate declaration.

#### **Article 82**

Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration shall not be released unless the debt has been paid or secured.

Where, pursuant to the provisions governing the customs procedure for which the goods are declared, the Customs Office require the provision of a security, the said goods shall not be released for the customs procedure in question until such security is provided.

Provision of paragraph 2 of this Article shall not apply to the temporary importation procedure with partial relief from import duties.

#### **Article 83**

The customs authorities may take all the necessary measures, including confiscation and sale, where:

a) the goods cannot be released because:

- it has not been possible to undertake or continue examination of the goods within the period specified by the Customs Office for reasons attributable to the declarant,
- all the documents necessary for placing the goods under the requested customs procedure have not been produced,
- customs debt has not been paid, or security for its payment has not been provided within the prescribed period,
- the goods are subject to prohibitions or restrictions,

b) the goods have not been removed within the prescribed period after their release by the Customs Office.

### **SIMPLIFIED PROCEDURES**

#### **Article 84**

In order to simplify the formalities of the procedures, the Customs Office shall, in cases and in the manner prescribed by the Minister of Finance, grant permission for:

- a) the customs declaration to omit certain particulars and for some documents, which are specified in the Article 70 of this Law, not to be attached thereto,
- b) a commercial or administrative document accompanying the request for the goods to be placed under the customs procedure to be lodged in place of the customs declaration,

c) the goods to be placed under the requested customs procedure on the basis of an entry in the records, in which case the customs authorities may relieve the declarant of his obligation to present the goods to customs.

The simplified customs declaration, commercial or administrative document, and entry in the records must contain the particulars necessary for identification of the goods. Where the goods are entered in the records, the date of such entry must be included.

Declarant shall furnish a supplementary declaration that may be of general, periodic or recapitulative nature within the prescribed period.

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

Supplementary customs declaration and simplified customs declaration shall constitute an indivisible legal instrument to which the regulations in force on the day of acceptance of simplified declarations are applied; entry in the records shall have the same legal force as acceptance of customs declaration set forth in the Article 70 of this Law.

The Government may prescribe special simplified procedures for internal transit.

## **OTHER CUSTOMS DECLARATIONS**

### **Article 85**

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

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

## **POST-CLEARANCE EXAMINATION OF DECLARATION**

### **Article 86**

The Customs Office may, by virtue of their office or at the request of the declarant, review the accuracy of the customs declaration after release of the goods.

The Customs authorities may, after release of the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the customs declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or subsequent commercial operations involving those goods.

Such inspections maybe carried out at the premises of the declarant, or of any person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document or data for business purposes.

The Customs authorities may also examine the goods where it is still possible for them to be produced.

Where post-clearance examination of the customs declaration indicates that the provisions governing implementation of the customs procedure have been applied on the basis of incorrect or incomplete information, the Customs Office shall, in accordance with the provisions in force, take the measures necessary for correct implementation of the procedure in question, in compliance with the new circumstances.

## **SECTION 2**

### **RELEASE OF GOODS FOR FREE CIRCULATION**

#### **Article 87**

Release for free circulation shall confer on foreign goods the status of domestic goods, which shall entail application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties, taxes and other charges legally due.

#### **Article 88**

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

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

#### **Article 89**

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

#### **Article 90**

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

Customs supervision shall end when the conditions on account of which the more favourable rate was granted cease to apply, when the goods are exported or destroyed, or where the use

of goods for the purposes other than those laid down for application of the more favourable rate of customs duty is permitted subject to payment of import duty.

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

#### **Article 91**

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

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

### **SECTION 3**

#### **SUSPENSIVE ARRANGEMENTS AND CUSTOMS PROCEDURES WITH ECONOMIC IMPACT**

##### **GENERAL PROVISIONS FOR SEVERAL PROCEDURES**

#### **Article 92**

In Articles 93 to 97 of this Law:

- a) where the term procedure is used, it is understood as applying, in the case of foreign goods, to the following arrangements:
  - external transit,
  - customs warehousing,
  - inward processing in the form of a system of suspension,
  - processing under customs supervision, and
  - temporary importation.

b) where the term "customs procedure with economic impact" is used, it is understood as applying to the following arrangements:

- customs warehousing,
- inward processing,
- processing under customs supervision,
- temporary importation,
- outward processing,
- internal transit.

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

"Goods in the unaltered state" means the import goods, which under the inward processing procedure or processing under customs supervision procedure, have undergone no form of processing.

#### **Article 93**

The use of any customs procedure with economic impact shall be conditional upon authorisation being issued by the Customs Office.

#### **Article 94**

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

- persons who offer every guarantee necessary for the proper conduct of the approved procedure,
- where the Customs Offices can supervise the authorised procedure and control it.

#### **Article 95**

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

The holder of the authorisation shall immediately notify the Customs Office of all facts arising after the authorisation was granted which may influence its continuation or content.

#### **Article 96**

The Customs Office may require the holder of the authorisation to provide a security for the payment of any customs debt that may arise in relation to the goods placed under a suspensive arrangement.

Special provisions concerning the provision of a security may be laid down in the context of a specific suspensive arrangement.

#### **Article 97**

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

The Customs Office shall take all the measures necessary to regularise the position of goods in respect of which a procedure has not been discharged under the conditions prescribed.

#### **Article 98**

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

### **EXTERNAL TRANSIT PROCEDURE**

#### **GENERAL PROVISIONS**

#### **Article 99**

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

- a) foreign goods, without such goods being subject to payment of import duties and other charges or to commercial policy measures,
- b) domestic goods, which have undergone the export formalities.

Movement of goods from paragraph 1 of this Article shall take place:

- a) under the external transit procedure set out by this Law;
- b) under cover of TIR carnet as laid down in the TIR Convention provided that such movement:

began or is to end outside the Republic; or  
relates to consignments of goods which must be unloaded in the customs territory of the Republic and which are conveyed with goods to be unloaded in a third country; or  
is effected between two points in the Republic through the territory of a third country;

- c) under cover of ATA carnet as laid down in the ATA Convention, used only as a transit document, or
- d) by post (including parcel post).

#### **Article 100**

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

#### **Article 101**

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

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

#### **Article 102**

The person involved in the transit procedure shall be the principal and he shall be responsible for:

- a) the presentation of the goods intact at the customs office of destination in an unaltered state and within the specified period, and with any measures which have been taken for the purpose of ensuring identification of the goods duly observed, and
- b) observance of the provisions governing the transit procedure.

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

### **SPECIFIC PROVISIONS RELATING TO EXTERNAL TRANSIT PROCEDURE**

#### **Article 103**

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

The security shall be either:

- (a) an individual security covering a single transit operation; or

(b) a general security covering a number of transit operations where the principal has been authorised to use such a security by the Customs Service.

The authorisation referred to in paragraph 2(b) of this Article shall be granted only to persons who:

- (a) are established or have permanent residence in the Republic;
- (b) are regular users of the transit procedures in the Republic or who are known to the Customs authorities of the Republic to have the capacity to fulfil their obligations in relation to these procedures, and
- (c) have not committed serious offences against Customs or tax laws.

The Minister of Finance may prescribe that no security need be provided in case of:

- a) carriage by sea, river or air,
- carriage by railway,
- movement by pipeline.

#### Article 104

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

### **CUSTOMS WAREHOUSING PROCEDURE**

#### **Article 105**

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

- a) foreign goods, which at the time are not subject to import duties or commercial policy measures,
- b) domestic goods intended for export, which by being placed in the customs warehouse shall attract the application of the measures which, in compliance with the specific provisions attach to the export of such goods, and
- c) domestic goods intended for export.

Customs warehouse means any place approved by and under the supervision of the Customs Office where the goods may be stored under the conditions laid down.

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



#### **Article 106**

Customs warehouse may be public warehouse or private warehouse.

Public warehouse means customs warehouse where any person may store his goods.

Private warehouse means customs warehouse intended for warehousing of goods belonging to the owner of the warehouse.

The owner of the warehouse is the person authorised by the Customs Office to operate the customs warehouse.

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

#### **Article 107**

The authorisation for operation of customs warehouse shall be granted by the Customs office unless the Customs office operates the customs warehouse.

Any person wishing to operate a customs warehouse must submit a written application containing the information required for granting the authorisation, in particular demonstrating that an economic need for warehousing exists. The authorization shall lay down the conditions for operating the customs warehouse.

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

The authorisation shall specify the type of warehouse and conditions of its operation by the owner, kinds of goods which may be stored, and other obligations of the owner towards the Customs office.

The applicant must produce evidence that he fulfils the conditions laid down by special regulations pertaining to storage of certain kinds of goods, operation of certain businesses or handling of goods which are stored in such warehouse.

#### **Article 108**

The owner of the warehouse shall be responsible for:

- a) ensuring that the goods stored in the customs warehouse are not removed from customs supervision,
- b) fulfilling all obligations arising from customs warehousing procedure,
- c) complying with special conditions contained in the authorisation for opening of customs warehouse.

#### **Article 109**

Without prejudice to the provision laid down in the Article 108, the authorisation for public warehouse may determine that the responsibility referred to in the Article 108 a) and b) be transferred to the depositor.

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

#### **Article 110**

The rights and obligations of the owner of the warehouse may, with the agreement of the Customs Office, be transferred to another person.

#### **Article 111**

Without prejudice to the provision laid down in Article 96, the Customs Office may demand that the owner of the warehouse provide the security that the obligations set forth in Article 108 shall be fulfilled.

#### **Article 112**

The owner of the customs warehouse shall keep stock records of the goods placed under the customs warehousing procedure in the manner prescribed by the Customs office.

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

Stock records are not necessary where the warehouse is operated by the Customs Office.

As set forth in the Article 94 of this Law, the Customs Office may dispense with stock records kept by the owner of the warehouse, where the responsibility for fulfilling the obligations referred to in the Article 108, a) and b) of this Law, arising from the customs procedure lie solely with the depositor, and the goods are stored in the customs warehouse on the basis of a written declaration as a part of a normal procedure, or documents laid down in Article 84 paragraph 1 of this Law.

#### **Article 113**

Where there are justified economic reasons, which do not jeopardize customs supervision, the Customs Office shall allow:

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

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

The Customs Office may require the goods referred to in paragraph 1 of this Article to be entered into the stock records as if they were the goods placed under the customs warehousing procedure as laid down in the Article 112 of this Law.

#### **Article 114**

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

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

The Minister of Finance may, on the recommendation of the Minister of Agriculture and Forestry, prescribe specific time limits for certain goods referred to in Article 105 paragraph 1 (b) of this Law to which agricultural protection measures may be applied.

#### **Article 115**

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

The forms of handling referred to in paragraph 1 of this Article must be authorised in advance by the Customs Office.

The Minister of Finance may, on the recommendation of the Minister of Agriculture and Forestry, prescribe the cases where such handling is prohibited for reasons of agricultural protection measures.

#### **Article 116**

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

The Customs Office must authorise removal of goods in advance and set the conditions on which such removal may take place.

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

#### **Article 117**

The Customs Office shall authorise the removal of goods placed under customs warehousing procedure from one customs warehouse to another.

#### **Article 118**

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

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

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

Paragraph 3 of this Article shall be applied without prejudice to the controls specified in Article 86 of this Law.

### **INWARD PROCESSING**

#### **GENERAL PROVISIONS**

#### **Article 119**

Without prejudice to Article 120 of this Law, the inward processing procedure shall allow the following goods to be used in the customs territory in one or more processing operations:

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

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

- (a) suspension system: processing relief arrangements as provided for in paragraph 1 (a) of this Article;
- (b) drawback system: the inward processing relief arrangements as provided for in paragraph 1 (b) of this Article;
- (c) processing operations:
  - the working of goods, including erecting or assembling them or fitting them to other goods;

- the processing of goods;
- the repair of goods, including restoring them and putting them in order; and
- the use of certain goods which are not to be found in the compensating products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process.

(d) compensating products: all products resulting from processing operations;

(e) equivalent goods: domestic goods which are used instead of the import goods in the processing procedure;

(f) rate of yield: the quantity or percentage of compensating products obtained from the processing of a given quantity of import goods.

### **Article 120**

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

processing by using equivalent goods;

compensating products obtained from equivalent goods to be exported from Montenegro before importation of the import goods.

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

However, the finance minister may, in agreement with the minister of economy, prescribe the cases in which equivalent goods shall not be used, and cases in which equivalent goods do not have to be of the same quality, have the same characteristics as import goods.

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

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

## **GRANT OF AUTHORISATION**

### **Article 121**

The Customs Office shall grant the authorisation at the written request of the person who carries out inward processing operations or who arranges for them to be carried out.

The authorisation shall be granted only:

- a) to persons established in the Republic, and in case of non-commercial importation the authorisation may also be granted to persons who are not established in the Republic,

b) where import goods can be identified in a compensating product, save in the case of usage referred to in the Article 119, paragraph 2, item c), indent 4 of this Law, and in the case of usage of equivalent goods in compliance with the provisions of the Article 120 of this Law,

c) where inward processing procedure creates more favourable conditions for export or re-export of compensating products, provided that the essential interests of domestic manufacturers of similar or the same products are not adversely affected (economic conditions).

The Minister of Finance shall prescribe the manner of determining that such economic conditions are fulfilled.

## **OPERATION OF THE PROCEDURE**

### **Article 122**

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

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

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

The Customs Office may grant extension of the period on submission of duly substantiated request by the holder of the authorisation.

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

The Minister of Finance may prescribe specific time limits for certain processing operations or for certain import goods.

### **Article 123**

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

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

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

#### **Article 124**

Compensating products and goods in the unaltered state must be re-exported, and the Customs Office may in special justified cases authorise release of goods for free circulation, placing of goods under the procedure of processing under customs supervision, destruction of goods or their abandonment to the government.

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

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

Last paragraph deleted.

#### **Article 125**

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

Where, at the time of acceptance of the customs declaration, the import goods complied with the conditions for application of preferential tariff treatment on the basis of free trade agreement, the request of the declarant that these customs duties be applied shall be accepted, where they were applicable to the identical goods at the time when the declaration for release for free circulation was accepted.

#### **Article 126**

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

shall be subject to the import duties: where they are released for free circulation in accordance with the detailed conditions prescribed by the Government.

Holder of the authorisation may ask for the duty on those products to be calculated in the manner referred to in Article 125 of this Law.

shall be subject to import duties calculated in accordance with the rules applicable to the customs procedure in question or to free zones or free warehouses where they have been placed under a suspensive arrangement or in a free zone or free warehouse;

Holder of the authorisation may ask for the duty on those products to be calculated in the manner referred to in Article 125 of this Law.

Where the amount of import customs duty is calculated in accordance with this Article, the calculated amount shall be at least equal to the amount that would be calculated in accordance with the Article 125 of this Law.

(c) compensating goods which are subject to the rules governing assessment of duty laid down under the procedure for processing under customs supervision;

(d) compensating goods shall enjoy favourable tariff treatment owing to the special use for which they are intended, where provision is made for such treatment in the case of identical imported goods;

(e) compensating goods shall be admitted free of import duty where such duty-free provision is made in the case of identical goods imported in accordance with Article 184.

## **OUTWARD PROCESSING OPERATIONS ON THE COMPENSATING PRODUCTS AND GOODS IN THE UNALTERED STATE**

### **Article 127**

Some or all of the compensating products or goods in the unaltered state may be temporarily exported for the purpose of further outward processing if the Customs Office authorise so, and in accordance with the rules laid down for the outward processing.

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

a) import duties on the compensating products or goods in the unaltered state, referred to in the paragraph 1 of this Article, calculated in accordance with Articles 125 and 126 of this Law, and

b) import duties on products reimported after outward processing, the amount of which shall be calculated in accordance with the provisions relating to the outward processing operations, on the same conditions as those which would have been applied had the products exported under that procedure been released for free circulation before such export took place.

## **SPECIAL PROVISIONS RELATING TO THE DRAWBACK SYSTEM**

### **Article 128**

The drawback system may apply to all goods.

The drawback system shall not apply to compensating goods that, at the time the declaration for release for free circulation is accepted:



- a) are subject to quantitative import restrictions,
- b) may, within quotas, qualify for a preferential tariff measure or an autonomous suspensive measure within the meaning of Article 21 of this Law,
- c) for compensating products, the export of which drawback or a tax is envisaged.

#### **Article 129**

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

The Customs Office may request that the said authorisation be attached to the declaration for release for free circulation.

#### **Article 130**

Within the drawback system, paragraph 1, item b), paragraphs 3 and 5 of the Article 120, paragraph 3 of the Article 122, Articles 124 and 125, paragraph 1, item c) of the Article 126 of this Law shall not be applied.

#### **Article 131**

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

#### **Article 132**

The holder of the authorisation may request customs duty to be repaid or remitted where he can prove to the satisfaction of the Customs Office that the import goods released for free circulation under the drawback system in the form of compensating products or goods in the unaltered state have been:

exported or

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

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

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

Without prejudice to provision from paragraph 1 item b) of this Article, compensating products or goods in the unaltered state placed under the customs procedure or in a free zone

or free warehouse are released for free circulation, the amount of import duties repaid or remitted shall be considered to constitute the amount of customs debt.

## **PROCESSING UNDER CUSTOMS SUPERVISION**

### **Article 133**

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

Such products shall be termed processed products.

### **Article 134**

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

### **Article 135**

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

### **Article 136**

The authorisation for processing under customs supervision shall be granted:

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

### **Article 137**

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

**Article 138**

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

**Article 139**

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

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

**TEMPORARY IMPORTATION**

**Article 140**

The temporary importation procedure shall allow the use in the customs territory of the Republic, with total or partial relief of import duties and without their being subject to commercial policy measures, of foreign goods intended for re-export without having undergone any change except normal depreciation due to the use made of them.

**Article 141**

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

**Article 142**

The Customs Office shall refuse to authorise the use of temporary importation procedure where it is impossible to ensure that the import goods can be identified.

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

**Article 143**

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

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

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

**Article 144**

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

**Article 145**

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

The Minister of Finance shall list the goods in respect of which the temporary importation procedure with partial relief from import duties shall not be used, as well as the conditions under which this procedure shall be conducted.

**Article 146**

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

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

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

Where transfer of the rights and obligations referred to in paragraph 3 of this Article is made with partial relief for both persons authorised to use the procedure during the same month, the

holder of the initial authorisation shall be liable to pay the amount of the import duties for the whole that month.

#### **Article 147**

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

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

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

### **OUTWARD PROCESSING**

#### **GENERAL PROVISIONS**

#### **Article 148**

Without prejudice to the provisions of Articles 157 to 162 and Article 127 of this Law, outward processing procedure shall allow domestic goods to be temporarily exported from the customs territory in order to undergo certain processing operations.

The products resulting from the outward processing procedure may be released for free circulation with total or partial relief from import duties.

Temporary exportation of domestic goods shall entail application of export duties, commercial policy measures, and other formalities laid down for the export of the domestic goods from the customs territory.

The following definitions shall apply:

- (a) 'temporary export goods' means goods placed under the outward processing procedure;
- (b) 'processing operations' means the operations referred to in Article 119 (2) (c), first, second and third indents;
- (c) 'compensating products' means all products resulting from processing operations;
- (d) 'rate of yield' means the quantity or percentage of compensating products obtained from the processing of a given quantity of temporary export goods.

#### **Article 149**

Outward processing procedure shall not be allowed for domestic goods:

- a) whose export gives rise to repayment or remission of import duties,
- b) which, prior to export, were released for free circulation without being subject to customs duties on account of their end-use, and
- c) whose export gives rise to the granting of export refunds.

Exemptions from the restriction referred to in paragraph 1 (b) of this Article shall be laid down by the Government.

### **GRANT OF THE AUTHORISATION**

#### **Article 150**

Authorisation for outward processing procedure shall be granted by the Customs Office at the request of the person who arranges for the processing operations to be carried out.

By way of derogation of paragraph 1 of this Article, authorisation for outward processing procedure may be granted to the person who does not arrange for the processing operations to be carried out in respect of goods of domestic origin and where the processing operation consists of incorporation these goods into the foreign goods which are to be imported into the Republic as compensating products, provided that use of such procedure helps to promote the sale of exported domestic goods and that importation of compensating goods does not adversely affect the essential interests of domestic manufacturers of products identical or similar to imported compensating products.

#### **Article 151**

Authorisation shall be granted only:

- a) to persons established in the Republic,
- b) where it is considered that it will be possible to establish that compensating products have resulted from the processing of the temporary export goods, and
- c) where authorisation does not adversely affect essential interests of domestic manufacturers (economic condition).

The Minister of Finance may lay down the cases in which paragraph 1 (b) of this Article may be derogated.

## **OPERATION OF THE PROCEDURE**

### **Article 152**

The Customs Office shall specify the period within which the compensating products must be reimported into the customs territory.

The Customs Office may extend the period of reimportation of compensating products on submission of a duly substantiated request of the holder of the authorisation.

The Customs Office shall set either the rate of yield of the operation or, where necessary, the method of determining that rate.

### **Article 153**

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

- a) the holder of the authorisation, or
- b) any other person established in the Republic provided that that person has obtained the consent of the holder of the authorisation and the conditions of the authorisation have been fulfilled.

The total or partial relief from import duties provided for in Article 154 of this Law shall not be granted where one of the conditions or obligations relating to outward processing procedure is not fulfilled, unless it is established that the failures do not have significant affect on correct operation of the procedure.

### **Article 154**

As set forth in the Article 148 the total or partial relief from import duties shall be established by deducting from the amount of import duties applicable to the compensating products released for free circulation the amount of import duties that would be applicable on the same day to temporary export goods if they were imported into the Republic from the country in which they underwent the processing operations or the last processing operation.

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

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

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

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

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

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

#### **Article 155**

Where the purpose of outward processing procedure is the repair of temporary export goods, the goods may be released for free circulation with total relief from import duties where it is established to the satisfaction of the Customs Office that the goods were repaired free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect.

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

#### **Article 156**

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

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



## **OUTWARD PROCESSING WITH USE OF THE STANDARD EXCHANGE SYSTEM**

### **Article 157**

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

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

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

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

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

### **Article 158**

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

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

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

### **Article 159**

Standard exchange system shall be authorised only where it is possible to verify that the replacement product fulfils the conditions laid down in Article 158 of this Law.

### **Article 160**

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

Where exceptional circumstances so warrant, the Customs Office may at the timely request of the holder of the authorisation within reasonable limits extend the period in question.

#### **Article 161**

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

### **OTHER PROVISIONS**

#### **Article 162**

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

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

### **EXPORT**

#### **Article 163**

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

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

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

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

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

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

#### **Article 164**

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

## **INTERNAL TRANSIT**

### **Article 165**

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

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

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

In the case referred to in paragraph 2 (a), Articles 101 to 104 shall apply mutatis mutandis.

### **Article 166**

The detailed conditions under which Montenegrin goods may move, without being subject to a customs procedure, from one point to another within the customs territory of Montenegro and temporarily out of that territory without alteration of their customs status shall be determined by the Government.

## **CHAPTER 3**

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

#### **SECTION 1**

#### **FREE ZONES AND FREE WAREHOUSES**

##### **GENERAL PROVISIONS**

### **Article 167**

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

#### **Article 168**

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

- a) foreign goods are considered as not being in the customs territory, for the purpose of import duties and commercial policy import measures, provided that the goods have not been released for free circulation or placed under another customs procedure or use, or consumed or used under conditions other than those provided for in customs regulations, and
- b) domestic goods intended for export, for which specific provisions are made, qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attaching to the export of such goods.

#### **Article 169**

The perimeter, the exit and entry points and the area covered by free zones and free warehouses shall be under the supervision of the customs authorities.

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

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

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

For the purpose of enabling the checking of goods, a copy of the transport document, which shall accompany goods entering or leaving, shall be handed to or kept at the disposal of the Customs Office by any person designated for this purpose by such authorities.

Where such checks are required, the goods shall be made available to the Customs Office.

### **PLACING OF GOODS IN A FREE ZONE OR FREE WAREHOUSE**

#### **Article 170**

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

Domestic goods that are not intended for export or processing in the zone may, where specially authorised by the Customs Office, be stored in a free zone or free warehouse separately from other goods.

The Customs office shall not authorise storage of such goods, where it would make supervision over operations in a zone or warehouse more difficult.

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

Goods that have directly entered a free zone or free warehouse by sea, air or land, in accordance with Article 47, paragraph 6 of this Law, shall be presented to the Customs office on the basis of the transport documentation.

Domestic goods shall be placed in a free zone or free warehouse on the basis of the invoice or other document indicating all particulars necessary to enter the goods into the stock records of a free zone or free warehouse.

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

#### **Article 171**

Without prejudice to Article 169 (4), (5) and (6) goods entering a free zone or free warehouse need not be presented to the Customs Office, nor need a customs declaration be lodged.

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

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

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

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

The authorised Customs Office may request separate stock records to be kept for goods subject to export duties or other commercial policy measures.

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

### **OPERATION OF GOODS IN FREE ZONES OR FREE WAREHOUSES**

#### **Article 172**

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

Any industrial, commercial or service activity shall, under the conditions laid down in this Law, be authorised in a free zone or free warehouse. The carrying on of such activities shall be notified in advance to the Customs Office.

The Customs Office may impose certain prohibitions or restrictions on the activities referred to in paragraph 1, having regard to the nature of the goods concerned or the requirements of the customs supervision.

The Customs Office may prohibit persons who do not provide the necessary guarantees of compliance with the provisions laid down in this Law from carrying on an activity in a free zone or free warehouse.

For certain domestic goods as referred to in Article 168 b) of this Law, specific time limits may be prescribed by the Minister of Finance.

#### **Article 173**

Foreign goods placed in a free zone or free warehouse may, while they remain in a free zone or free warehouse:

- a) be released for free circulation under the conditions prescribed for such procedure and by Article 178 of this Law,
- b) as set forth in the Article 114, paragraph 1 of this Law, undergo the usual forms of handling, without special authorisation by the competent Customs Office,
- c) be placed under inward processing procedure under the conditions laid down for that procedure,
- d) be placed under the procedure for processing under customs supervision under the conditions laid down for that procedure,
- e) be temporarily imported under the conditions laid down for that procedure,
- f) be abandoned to the government in accordance with Article 182 of this Law, and
- g) be destroyed or otherwise rendered unsuitable for any use, provided that the Customs Office is furnished with all the information it judges necessary.

Where goods are placed under one of the procedures referred to in paragraph 1 (c), (d) or (e), the Customs Office may, in so far as is necessary to take account of the operating and customs supervision conditions of the free zones or free warehouses, adapt the control arrangements laid down.

#### **Article 174**

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

#### **Article 175**

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

#### **Article 176**

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

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

The stock records must enable the Customs Office to identify the goods and monitor their movements.

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

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

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

### **REMOVAL OF GOODS FROM FREE ZONES OR FREE WAREHOUSES**

#### **Article 177**

Goods leaving a free zone or free warehouse may be:

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

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

#### **Article 178**

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

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

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

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

#### **Article 179**

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

Where domestic goods referred to in Article 168, item b) of this Article are not exported within the period referred to in Article 172 of this Law or are returned to another part of the customs territory, the customs authorities shall take the measures prescribed for the cases where the goods fail to comply with the specific conditions.

#### **Article 180**

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

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

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

#### **Article 181**

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



## **SECTION 2**

### **RE-EXPORT, DESTRUCTION AND ABANDONMENT TO THE GOVERNMENT**

#### **Article 182**

Foreign goods may be:

- re-exported from the customs territory of the Republic,
- destroyed, or
- abandoned to the State.

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

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

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

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

The Minister of Finance shall prescribe the cases and the manner in which the goods may be abandoned to the State.

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

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

Waste or scraps shall remain under customs supervision in compliance with Article 50, paragraph 2 of this Law.

## **TITLE V**

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

#### **Article 183**

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

Goods shall leave the customs territory by the routes, in the manner and within the period set out by the Customs Office.

## **TITLE VI**

### **PRIVILEGED OPERATIONS**

#### **CHAPTER 1**

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

##### **Article 184**

Relief from customs duty shall be granted:

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

- e) designs, technical drawings, models, descriptions and other similar documents which are imported for the purpose of complying with the conditions set for participation at international contests organised in the country,
- f) printed forms which, in accordance with international agreements, are used as administrative documents in the international trade, and
- g) letter mail,
- 9) for products of crop cultivation, livestock breeding, forestry, fish breeding, and apiculture obtained from private holdings situated in the frontier strip of the neighbouring country which are the property of the citizens living in the frontier strip of the Republic, as well as for offspring and other produce obtained from livestock bred at these holdings for the reason of field works, grazing or wintering,
- 10) for fire-prevention and fire-fighting equipment,
- 11) for objects which domestic or foreign citizens with permanent residence in the Republic have inherited in a foreign country,
- 12) for goods used for reconstruction, maintenance and restoration of the registered cultural landmarks, subject to opinion of the competent authorities,
- 13) for goods directly used for museum, archival, restoration, literary, art, musical and stage, and film activities, which are not manufactured in Montenegro, subject to opinion of the competent ministry,
- 14) for goods which have been donated to cultural institutions and other non-profitable legal persons in the field of culture, freelance artists or artists for performance of their activities, subject to opinion of the competent ministry,
- 15) for goods which are brought in from a foreign country by scientists, authors and artists as their own works,
- 16) for goods which are brought in as an investment by a foreign party in accordance with a special law,
- 17) for equipment imported by the public authorities for the purpose of performing their activities.

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

Goods released for free circulation which have been granted a relief pursuant to items 1, 10, 13, 14, 16 and 17 of this Article shall not be sold, lent, given for use to other persons, pledged, rented, or provided as a security for other obligations without prior notification to the

Customs Office and payment of customs duty, before the expiry of a 36-month period from the day when they were released for free circulation.

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

The Government shall prescribe the conditions for relief from customs duty to be granted and necessary formalities pertaining to it.

Last two paragraphs deleted.

## **CHAPTER 2**

### **RETURNED GOODS**

#### **Article 185**

Domestic goods, which having been exported from the customs territory, are returned to that territory within a period of 2 years and released for free circulation shall be granted relief from customs duties at the request of the declarant.

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

Where, prior to their exportation from the customs territory of the Republic, the returned goods had been released for free circulation at a reduced or zero customs duty because of their use for a particular purpose exemption from duty, as specified in paragraph 1 of this Article, shall be granted only where they are re-imported for the same purpose.

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

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

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

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

#### **Article 186**

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

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

#### **Article 187**

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

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

### **CHAPTER 3**

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

#### **Article 188**

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

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

### **TITLE VII**

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

##### **CHAPTER 1**

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

#### **Article 189**

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

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

The Customs Office may authorise the security to be provided by a person other than the person from whom it is required.

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

Where the customs debt does not exceed 500 Euro's, the Customs Office shall not require provision of security.

#### **Article 190**

Where the provision of security is optional under the customs rules, such security shall be required at the discretion of the Customs Office in so far as it considers that a customs debt that has been or may be incurred is not certain to be paid within the prescribed period.

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

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

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

#### **Article 191**

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

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

The Minister of Finance shall lay down detailed conditions and formalities pertaining to security in accordance with paragraphs 1 and 2 of this Article.

#### **Article 192**

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

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

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

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

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

### **Article 193**

Security may be provided by:

- a cash deposit, or
- a guarantor.

### **Article 194**

A deposit of other instruments recognised by the Customs Office as a means of payment, considering their drawer, conditions and method of collection, shall also be deemed as a cash deposit.

The finance minister shall lay down detailed conditions and the method of cash deposits and deposits of other instruments of payment.

### **Article 195**

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

The guarantor must be a person established in the Republic, whose security is estimated as acceptable by the Customs Office.

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

### **Article 196**

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

The customs office may refuse to accept the type of security proposed where it is incompatible with the proper functioning of the customs procedure concerned.

**Article 197**

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

**Article 198**

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

**Article 199**

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

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

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

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

**Article 200**

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

**INCURRENCE OF A CUSTOMS DEBT**

**Article 201**

A customs debt on importation shall be incurred through:

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

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

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



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

#### **Article 202**

A customs debt on importation shall be incurred also through:

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

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

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

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

The debtors shall be:

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

#### **Article 203**

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

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

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

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

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

#### **Article 204**

A customs debt on importation may be incurred through:

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

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

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

#### **Article 205**

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

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

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

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

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

#### **Article 206**

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

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

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

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

#### **Article 207**

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

#### **Article 208**

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

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

#### **Article 209**

A customs debt on importation shall be incurred through the exportation of goods liable to export duties from the customs territory after the customs declaration has been lodged.

A customs debt on exportation shall be incurred at the time when the customs declaration is accepted.

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

#### **Article 210**

A customs debt on exportation shall be incurred through the removal of goods liable to export duties from the customs territory although the customs declaration for the goods has not been lodged.

A customs debt on importation is incurred at the time when the goods actually leave the customs territory.

The debtor shall be:

- a) the person who removed the goods from the customs territory, and
- b) the person who participated in the removal of goods, although he was aware of should reasonably have been aware that a prescribed customs declaration has not been lodged.

#### **Article 211**

A customs debt on exportation shall be incurred through the exportation of goods for which the conditions, under which the goods were allowed to leave the customs territory with total or partial relief from export duties, have not been fulfilled.

A customs debt on exportation shall be incurred through a failure to comply with the conditions under which the goods were exported or were allowed to be exported from the customs territory with total or partial relief from export duties, or where the authorized Customs Office is unable to determine such failure, upon the expiry of the time limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled.

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

#### **Article 212**

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

Exceptionally, the customs debt shall not be incurred on the unlawful introduction into the customs territory of counterfeit currency and, contrary to specific regulations, of psychotropic drugs or narcotic substances which do not enter into the economic circuit, or which, with a

view to their medical or scientific purposes, are subject to strict supervision by competent bodies.

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

#### **Article 213**

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

#### **Article 214**

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

#### **Article 215**

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

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

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

#### **Article 216**

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

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

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

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

Where the information available to the Customs Office enable it to conclude that the customs debt was already incurred when the goods were in another place, the customs debt shall be deemed to have been incurred at the place in which the goods were located at the earliest time when existence of the customs debt may be established.

#### **Article 217**

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

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

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

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

### **CHAPTER 3**

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

##### **ENTRY IN THE ACCOUNTS**

#### **Article 218**

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

Paragraph 1 of this Article shall not apply:

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

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

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

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

#### **Article 219**

Where a customs debt is incurred as a result of the acceptance of the declaration for goods placed under a customs procedure other than temporary importation with partial relief from import duties, or any other act having the same effect as such acceptance, the debt shall be entered in the accounts on the same day, and, at the latest, on the day following that on which the goods were released.

Provided that payment has been secured, the total amount of duty relating to all the goods released to one and the same person during a period fixed by the Customs Office, which may not exceed 30 days, may be covered by a single entry in the accounts at the end of that period.

The entry in the accounts referred to in paragraph 2 of this Article, shall take place not later than 2 days after the expiry of the period in question.

Where it is provided that goods may be released subject to meeting certain provisions that govern either determination of the amount of the debt or its recovery, entry in the accounts shall take place no later than 2 days following the day on which the amount of the debt or the obligation to pay the duties is determined.

Where the customs debt relates to a provisional anti-dumping or countervailing duty, that duty shall be entered in the accounts no later than 2 months following publication of the regulation introducing an anti-dumping or countervailing duty.

Where a customs debt is incurred under conditions other than those referred to in paragraph 1 of this Article, the amount of duty shall be entered in the accounts within 2 days from the date on which the Customs Office is in a position to:

- a) calculate the amount of customs debt, and
- b) determine the debtor.

#### **Article 220**

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

#### **Article 221**

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

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

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

#### **Article 222**

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

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

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

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

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

### **TIME LIMITS AND PROCEDURES FOR PAYMENT OF THE AMOUNT OF CUSTOMS DEBT**

#### **Article 223**

The amount of duty communicated to the debtor in accordance with Article 222 of this Law shall be paid within the period of 8 days from the date of communication to the debtor in case the debt was covered by a single entry in the accounts within 10 days from the date of expiry of the time limit allowed.

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



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

#### **Article 224**

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

#### **Article 225**

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

#### **Article 226**

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

the Customs Office shall avail itself of all options open to it under the legislation in force, including debt enforcement.

interest on arrears shall be charged over the amount of duty in accordance with a special regulation.

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

(a) where, because of the situation of the debtor, it would be likely to create serious economic or social difficulties;

(b) if the duty is paid within five days of the expiry of the period prescribed for payment.

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

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

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

## **EXTINCTION OF CUSTOMS DEBT**

### **Article 227**

A customs debt shall be extinguished:

- a) by payment of the amount of duty,
- b) by remission of the amount of duty,
- c) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties:
  - the customs declaration is invalidated,
  - the goods, before their release or seizure, were simultaneously or subsequently confiscated, destroyed on the instructions of the Customs Office, destroyed or abandoned to the government in accordance with Article 182 of this Law, or destroyed or irretrievably lost as a result of their nature or of unforeseeable circumstances of force majeure;
- d) where the goods, in respect of which a customs debt is incurred in accordance with Article 202 of this Law, are seized due to their unlawful introduction and are simultaneously or subsequently confiscated.

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

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

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

## **CHAPTER 5**

### **REPAYMENT AND REMISSION OF CUSTOMS DEBT**

#### **Article 228**

Import duties or export duties shall be repaid up to the amount of duties for which it is established that it was not due at the time when it was actually paid or that the amount has been entered in the accounts contrary to Article 221 paragraph 2 of this Law.

Import duties and export duties shall be remitted in so far as it is established that when they have been unlawfully entered in the accounts or that they have been entered in the accounts contrary to Article 221 paragraph 2 of this Law.

No repayment or remission shall be granted when the facts that led to the payment or entry in the accounts of an amount that was not legally owed are the result of deliberate action by the person concerned.

Import duties or export duties shall be repaid or remitted upon submission of an application to the Customs Office within a period of three years from the date on which the amount of those duties was communicated to the debtor.

The period referred to in paragraph 4 of this Article shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances of force majeure.

The Customs Office shall repay or remit the customs debt by virtue of its office, if it discovers within the period of three years from the date on which the amount of duties was communicated to the debtor, that the situations described in paragraph 1 of this Article exist.

#### **Article 229**

The amount of import duties or export duties shall be repaid where a customs declaration is invalidated and the duties have been paid. Repayment shall be granted upon submission of an application by the person concerned within the period laid down for submission of the application for invalidation of the customs declaration in accordance with Article 74 of this Law

#### **Article 230**

Import duties shall be repaid or remitted in the amount which was entered in the accounts relating to goods placed under the customs procedure in question, where the importer proves that he has returned the goods because they were defective or did not comply with terms of the contract on the basis of which they were imported at the time the customs declaration was accepted.

Repayment or remission of import duties shall be granted on condition that:

- a) the goods have not been used, except for such use as may have been necessary to establish that they were defective and did not comply with the terms of the contract, and
- b) the goods are exported from the customs territory.

At the request of the person concerned, the Customs Office shall permit the goods to be destroyed or to be placed, with a view to re-export, under the transit procedure or the customs warehousing procedure, in a free zone or free warehouse, instead of being exported.

For the purposes of being assigned one of the customs-approved treatments or uses, the goods shall be deemed to be foreign goods.

Import debt shall not be repaid or remitted in respect of goods which, before being released for free circulation, were imported temporarily for testing, unless it is established that the fact that the goods were defective or did not comply with the terms of the contract could not normally have been detected in the course of such tests.

Import debt shall be repaid or remitted for the reasons set out in paragraph 1 of this Article where the person concerned submits an application to the Customs Office within 12 months from the date on which the amount of those duties was communicated to the debtor.

The Customs office may exceptionally extend this period in duly justified cases.

#### **Article 231**

The Government may also determine cases of repayment or remission of import duties or export duties other than those referred to in Articles 228, 229 and 230 of this Law, resulting from circumstances in which no deception or gross negligence may be attributed to the debtor or other participants in the relevant customs procedure, and lay down detailed conditions and procedure enabling the repayment or remission of duties to be granted.

Duties shall be repaid or remitted for the reasons set out in paragraph 1 of this Article where the declarant submits an application to the Customs Office within 12 months from the date on which the amount of those duties was communicated to the debtor.

#### **Article 232**

The Government shall determine the amount of customs debt for which repayment or remission shall not be granted.

#### **Article 233**

Repayment by the customs authorities of amounts of import duties or export duties inclusive of credit interest or interest on arrears collected on payment of such duties shall not give rise to the payment of interest by the customs authorities.

Exceptionally to the provision of paragraph 1 of this Article, interest shall be paid;  
-where a decision to grant a request for repayment is not implemented within three months of the adoption of that decision,

- where national provisions so stipulate.

The amount of such interest shall be calculated in a way that is equivalent to the amount that would be charged for this purpose on the national money or financial market.

#### **Article 234**

Where a customs debt has been remitted or repaid unlawfully or in error, the original debt shall again become payable.

In case referred to in paragraph 1 of this Article the debtor is to repay any interest paid under Article 233 of this Law.

Interest on arrears shall be calculated and charged on the amount of debt referred to in paragraph 1 of this Article in accordance with the rules governing interest on arrears.

## **TITLE VIII**

### **PENAL PROVISIONS**

#### **CHAPTER 1**

##### **CRIMINAL OFFENCES**

###### **Article 235**

Any person engaged in transfer of goods across the customs line avoiding the measures of customs supervision and any person who, avoiding the measures of customs supervision, transfers goods across the customs line carrying arms or acting in an organized group, shall be sentenced to prison from one to five years and fined in the threefold amount of the value of the goods concerned.

Any person who used force in committing the acts referred to in paragraph 1 of this Article shall be sentenced to prison from two to eight years and fined in the fivefold amount of the value of the goods concerned.

Any person who organized a group or a network for the purpose of committing the offences referred to in paragraph 1 of this Article shall be sentenced to prison from two to eight years and fined in the fivefold amount of the value of the goods concerned.

Member of the group referred to in paragraph 3 of this Article shall be sentenced to prison from one to five years and fined in the amount of 2,500 Euros.

Goods that are the subject of the acts referred to in paragraph 1 of this Article shall be confiscated.

Where the goods that are the subject of the criminal offences referred to in this Article are drugs, arms, nuclear material and hazardous toxic substances, persons who have committed the criminal offence shall be sentenced to prison from two to ten years and fined in the fivefold amount of the value of the goods concerned.

###### **Article 236**

Any person who has organized a network of middlemen or dealers for distribution of goods that have not been subject to customs clearance, i.e. goods that have not been assigned a customs-approved treatment or use, shall be sentenced to prison from two to eight years and fined in the amount from 2,500 to 10,000 Euros.

###### **Article 237**

The goods that are the subject of the criminal offences referred to in Article 235 of this Law, as well as the means of transport and other objects used to transfer such goods shall be confiscated.

Where the goods and means of transport or other objects used to transfer such goods are not found, or they may not be confiscated for any other reasons, the amount equivalent to their value shall be collected.

#### **CHAPTER 2**

##### **CUSTOMS VIOLATIONS**

##### **GENERAL PROVISIONS**

#### **Article 238**

Any act or omission that does not comply with the provisions of this Code and its Implementing Provisions is considered a Customs violation as provided in this Code and is punished as such, save in cases of force majeure.

The payment of penalties applied for Customs violations will in no case exempt the violator from the payment of duties and taxes legally due for the goods the subject of the violation.

#### **Article 239**

Procedure started in accordance with the provisions of this Law for the purpose of verification of a committed customs violation shall not preclude the procedure for verification of a committed customs criminal offence.

When the same violator has committed more than one customs violations at the same time, a separate fine shall be applied for each violation.

Accomplices are considered as those who carry out the violation. Where the person who has carried out the violation or an accomplice in the act is an official, the sanction applicable shall be twice that provided for under the relevant article of this Code.

Accomplices are also deemed to be persons who have received objects of the violations that they knew or may have known to be objects of violations.

Each violator is personally liable to the fine determined according to the degree of his participation.

Attempted violation shall be punished as if the act was consummated according to the provisions of this Law.

Fines prescribed by this Law shall apply both to legal and natural persons.

### **PENAL PROVISIONS**

#### **Article 240**

A fine of one time to four times the amount of the value of the goods concerned shall apply to a person who:

fails to declare the goods that he is introducing into the Republic;

transports or attempts to transport goods across the customs line at a place other than a border crossing;

transports concealed goods through a border crossing;

presents false statement at the customs office on introducing the goods that he has temporarily taken out as a passenger,

declares at the customs office of exit to temporarily take out the goods that he is not carrying with him.

#### **Article 241**

A fine of 75 Euros for each package, or a fine of 200 Euros for each ton, when the cargo is in bulk, that have not been indicated in the cargo manifest shall be applied to the captain of the vessel or aircraft if he indicates in the cargo manifest of a vessel or an aircraft a quantity, value, type, origin or quality of goods different from those verified by the customs office.

#### **Article 242**

A fine of 10,000 Euros shall be applied to the captain of the vessel or aircraft if he declines to present the manifest.

A fine of 300 Euros shall be applied to the captain of the vessel or aircraft who delays to present the manifest. The fine shall be applied for each five hours of delay.

#### **Article 243**

A fine of 10,000 Euros shall be applied to the captain of the vessel or aircraft who:

- a) refuses to receive a customs officer on board;
- b) departs without the permission of customs office.

#### **Article 244**

A fine of 750 Euros shall be applied to any person who transports goods by land deviating from the itinerary determined by the customs office;

A fine of 200 Euros shall be applied to any person delaying the presentation of the goods at the competent customs office for each five hours of delay;

A fine of 3,000 Euros shall be applied to any person departing with goods without the permission of the competent customs office;

A fine of 75 Euros for each package, or a fine of 200 Euros for each ton, when the cargo is in bulk, that have not been indicated in the relevant documents presented to the customs office shall be applied to any person who, upon his arrival to the Republic, entered in the documents that accompany the goods the data that do not correspond with those verified by the competent customs office.

A fine of 1,000 Euros shall be applied to any person violating the provisions in force of the TIR carnet (TIR Convention) and its Annexes.

#### **Article 245**

A fine of one time to three times the amount of the value of the goods concerned shall be applied to any person who:

fails to present the goods at the competent customs office;

on declaring the goods presented at the customs office, indicates the data on quantity, value, type, quality and origin different from those verified by the customs office.

A fine of 200 Euros shall be applied to any person who fails to lodge a declaration on presenting the goods at the customs office.

#### **Article 246**

A fine of 500 Euros shall be applied to any person who:

enters incorrect data in the documents he is to submit on declaring the goods, that do not affect the computation of customs duties and other charges;

causes any such documentation to be submitted to the customs office;

makes any statement in answer to any question put to him by a customs officer which he is required by or under the provisions of this Law to answer, that is untrue in a material particular.

#### **Article 247**

A fine of 5,000 Euros shall be applied to any person who:

1) submits a counterfeited or falsified document which is required by any law relating to a Customs matter or which is used in the transaction of any business relating to a Customs matter; or

(b) knowingly accepts, receives or uses any such document so counterfeited or falsified; or

(c) alters any document after it has been officially issued; or

(d) submits a document that contains a counterfeited seal, signature, initials or other mark of, or used by, any officer for the verification of such a document or for any other purpose relating to a Customs matter.

**Article 248**

A fine of one time to two times the amount of the value of the goods shall be applied to any person who does not present the goods in the unaltered state at the custom office of destination under the transit procedure.

A fine of 200 to 1000 Euros shall be applied to any person who does not present the goods under the transit procedure at the customs office of destination within a specified period or acts contrary to the procedure assigned to him by the customs office of entry.

**Article 249**

A fine of 1,000 Euros shall be applied to any person who indicates in the transit documents data on the type or quality of goods different to those verified by the customs office.

A fine of up to one time the amount of the value of the goods shall be applied to any person who indicates in the transit documents data on the quantity of goods different to those verified by the customs office.

A fine of up to one time the amount of the value of the goods shall be applied to any person who indicates in the transit documents data on the value of goods different to those verified by the customs office.

**Article 250**

A fine of 200 to 500 Euros shall be applied to any person who does not act in compliance with the provisions of Articles 48 and 49 of this Law.

**Article 251**

A fine of 500 Euros shall be applied to any person who fails to undertake the actions required for assigning the approved treatment of the goods within the time limits specified in Article 59 of this Law.

**Article 252**

A fine of up to one time the amount of the value of the goods shall be applied to any person who places or attempts to place goods in temporary storage, on the approval of the customs office, the quantity, type or quality of which is different than that verified by the Customs office.

**Article 253**

A fine of one time to three times the amount of the value of the goods shall be applied to a person who in the customs declaration of import, or in the documents accompanying the customs declaration, indicates the type, quantity, value, quality or origin of goods other than that verified by the customs office, with the intention of evading the payment of customs duties and other charges legally due.

**Article 254**

A fine of 300 to 2000 Euros shall be applied to a person who in the customs declaration of export, or in the documents accompanying the customs declaration, indicates the type, quantity, value, quality or origin of goods other than that verified by the customs office, with the intention of evading the payment of customs duties and other charges legally due.



**Article 255**

A fine of one time to three times the amount of the value of the goods shall be applied to a person who in the customs declaration of: temporary importation; inward or outward processing; processing of goods under customs supervision or processing of goods using standard exchange system indicates the type, quantity, value, quality or origin of goods other than that verified by the customs office, with the intention of evading the payment of customs duties and other charges legally due.

**Article 256**

A fine of 300 to 2,000 Euros shall be applied to a person who in the import customs declaration of: temporary importation; inward or outward processing; processing of goods under customs supervision; processing of goods using standard exchange system, or in the documents accompanying the declaration, that are not used for computation and calculation of the amount of customs duties, indicates the type, quantity, value, quality or origin of goods other than that verified by the customs office.

**Article 257**

A fine of 300 to 2,000 Euros shall be applied to a person who hinders the examination of goods from beginning within the period determined by the Customs Office for reasons attributable to the declarant alone.

**Article 258**

A fine of 200 to 500 Euros shall be applied to a person who fails to submit customs declaration within the period set forth in this Law.

**Article 259**

A fine of 1,000 to 5,000 Euros shall be applied to a person who hinders the customs office from carrying out the post-clearance inspection of commercial documents relating to the import or export of goods, or relating to subsequent commercial operations involving those goods.

**Article 260**

A fine of three times to five times the amount of the unpaid duties and taxes shall be applied to a person who uses the goods that have been released for free circulation at the more favourable rate of customs duty for the purposes other than those laid down for application of the more favourable rate of customs duty.

**Article 261**

A fine up to one time the amount of the value of the goods shall be applied to a person who declares or keeps records of the type, value, quality or quantity of goods placed in a customs warehouse different from that verified by the customs office.

A fine of one time to three times the amount of value of goods shall be applied to a person who releases for free circulation goods placed in a customs warehouse that have not been approved a procedure of placing goods under free circulation.

A fine of 100 to 1,000 Euros shall be applied to the holder of the warehouse who removes goods without the authorization issued by the Customs Office, who does not keep stock records of the goods, who fails to comply with the prescribed time limits and who does not act in accordance with the orders given by the customs office relating to the regulations governing the warehousing of goods.

#### **Article 262**

A fine of 500 to 2,000 Euros shall be applied to a person who does not export or re-export the goods placed under the inward processing procedure within the period determined by the customs office.

A fine of 200 to 1,000 Euros shall be applied to a person who fails to comply with the period determined by the customs office for a procedure with economic impact.

A fine of 200 to 1,000 Euros shall be applied to a person who does not bring back from a foreign country within the specified period the goods that have been assigned the outward processing procedure.

A fine of 1,000 to 5,000 Euros shall be applied to a person who does not temporarily re-export goods using the standard exchange system within the prescribed period.

#### **Article 263**

A fine of 200 to 500 Euros shall be applied to a person who does not declare foreign goods that have been assigned the procedure of processing by using compensating products within the period determined by the customs office.

#### **Article 264**

A fine of one time to three times the amount of value of goods shall be applied to a person who uses the goods that have been assigned a procedure with the economic impact for the purposes other than those taken into account when the procedure has been approved.

#### **Article 265**

A fine of 200 to 1,000 Euros shall be applied to a person who does not present at the customs office of exit the goods cleared for export, or present them in the altered state.

#### **Article 266**

A fine of one time to three times the amount of value of the goods shall be applied to a person who:

by presenting false facts, effectuates or attempts to effectuate relief from paying the duties and charges on the import of goods;

alienates goods imported under the preferential tariff treatment before the time prescribed or gives them to somebody else to use them, or uses them for the purposes other than those for which the goods have been relieved from import duties and other charges.

#### **Article 267**

A fine of one time to five times the amount of value of goods shall be applied to a person who, on the movement of goods through the borders:

introduces goods through the borders in violation of the provisions of this Code and its Implementing Provisions;  
unloads or deposits goods in the intermediary space between the border and the closest Customs office;  
is found with goods hidden on his body or his luggage, packages, in articles carrying, or goods of other kind or any means of transport intending to evade the Customs supervision;  
takes away from the customs territory, in any of the conditions above, goods that are subject to export duties and taxes;  
keeps goods in proximity of the Customs line, for which he can produce no evidence of the legitimate origin and status.

#### **Article 268**

A fine of 200 to 1,000 Euros shall be applied to a person who loads, unloads, or tranships goods, passengers or their luggage, without a permission from the customs office.

#### **Article 269**

A fine of one time to five times the amount of value of the goods shall be applied to a person moving goods across Lake Skadar and the river of Bojana and introducing those goods into the customs territory without reporting and presenting them to the responsible Customs Office.

#### **Article 270**

A fine of one time to five times the amount of the value of the goods transported by sea shall be applied to the captain, or person assuming similar responsibility, of the ship who:  
transports goods through the sea border, in contradiction with this Code and its Implementing Provisions;  
approaches, without the permission of the Customs office, while transporting goods in the ship, the port or lowers the anchor, or stays in proximity of the harbour;  
transports goods, lands in places where there are no Customs offices, unloads or tranships those goods in contradiction with this Code or its Implementing Provisions;  
transports the goods without the relevant manifest;  
at the time of departure does not have on board the goods, although they were supposed to be loaded according to the manifest or other Customs documents;  
transports goods from one Customs office to another without the relevant transit documents

#### **Article 271**

A fine of one time to five times the amount of value of the goods transported by air shall be applied to the captain, or person assuming similar responsibility, of the aircraft who:  
introduces goods in the Customs territory by air in contradiction with this Code and its Implementing Provisions;  
transports goods without the relevant manifest;  
at the time of departure does not have on board the goods, although they were supposed to be loaded according to the manifest or other Customs documents;  
transports goods from the place of landing of the aircraft without performing the respective Customs formalities;

lands at a place other than a Customs (international) airport, and does not immediately notify its landing to the customs office or a body of the Ministry of Interior. In such cases it is considered that the captain of the aircraft, the cargo and the aircraft are all the subject of a customs offence.

loads, unloads, or tranships goods, people or their luggage without permission from the customs office.

#### **Article 272**

A fine of one time to five times the amount of the value of the goods shall be applied to a person who:

exports or imports prohibited goods or restricted goods, save in the cases of restricted goods where a written authorisation has been issued by the competent authorities;

possesses goods imported or exported against the restrictions and prohibitions referred to in Article 67, paragraph 2 of this Code, where the evidence may be produced that the person who possesses the goods knew or, in the light of the relevant circumstances, may have known that the goods concerned are imported or exported against the restrictions or prohibitions;

removes or falsifies in any way the identification number of the means of transport. The owner or any other person who benefits from this falsification or transferring are also considered as those who carry out the violation;

disposes of goods under a transit procedure that are not declared at the customs office of destination;

introduces or takes out goods with national cultural value, against the legal provisions in force;

breaks, substitutes or changes the customs seal, or other customs mark placed on the means of transport or on the goods;

introduces or sends out prohibited or restricted goods by post, save in the cases of restricted goods for which a written authorisation has been issued by the competent authorities.

#### **Article 273**

For the purpose of this Code, "object of customs violation" means the goods that are the subject of the violation as well as the means of transport and other objects used to transfer or to conceal them.

Where the value of the goods concerned, or the amount of the duties and taxes legally due on those goods, is the basis for determining the amount of the fine, the value shall be determined in accordance with the provisions of this Code.

Only the goods that are the object of customs violation shall be considered as the goods referred to in paragraph 1 of this Code.

### **PROTECTIVE MEASURES**

#### **Article 274**

The goods that are the object of customs violation referred to in Article 240, paragraph 1, items 1, 2 and 3; Article 241; Article 243, paragraph 1, items 3 and 4; Article 244; Article 245; Article 247; Article 253; Article 255; Article 261, paragraph 2; Article 267; Article 269; Article 270, paragraph 1, items 1 and 3; Article 271, paragraph 1, items 1, 4 and 5, and Article 272, paragraph 1, items 1, 2, 3, 4, 5 and 7 shall be confiscated.

The means of transport and other objects used to transfer or to conceal goods that have been the object of a customs violation referred to in Article 240, paragraph 1, item 1, 2 and 3; Article 267, paragraph 1, items 1 and 2; Article 269; Article 270, paragraph 1, items 1 and 3; Article 271, paragraph 1, items 1, 4 and 5, and Article 272, paragraph 1, item 1 shall be confiscated where the value of the goods transferred or concealed exceeds half of the value of the means of transport or the other object determined in accordance with the provisions of this Code.

Where the objects of a customs violation are not found, or for any other reason may not be confiscated from the person holding them, the amount equivalent to their value, which have been determined in accordance with the provisions of this Code, shall be collected, as well as customs duties and other charges.

The goods the object of a customs violation that are not the property of the violator may be confiscated. Where the goods may not be reached, the amount equivalent to their value shall be collected.

The object of a customs violation shall also be confiscated in the events of the stay of the offence proceedings, then where the violator was under age at the time when the violation was committed, where the violator is unknown or may not be reached by the customs authorities, due to other legal obstacles, save in the cases of barring by limitation.

#### **Article 275**

The object of a customs violation for which the sanction prescribed is confiscation of goods shall be seized and placed under customs supervision until the termination of the offence proceedings.

The objects of customs violations that are not subject to confiscation and that have been cleared shall not be seized.

The objects of customs violations that are not subject to confiscation, but the customs procedure they are under have not yet been completed, shall be seized and kept until the customs procedure has been completed.

The customs office may immediately sell perishable goods temporarily seized where there is no possibility that the decision on the violation may be passed within 24 hours.

#### **Article 276**

The owner of the goods placed under customs supervision in terms of Article 275 of this Code shall have the right of compensation against the Government of the Republic, where it is established on the basis of the offence proceedings that has been carried out that no customs violation has been committed.

#### **Article 277**

Where, by the decision on the violation, the object of a customs violation is not to be confiscated, the responsible customs office shall start the procedure of clearance ex officio.

#### **Article 278**

The person who committed a violation for which the sanction prescribed is confiscation of the object of the violation, may be, in justified cases, at his request, given back the object of the violation by the customs office, provided that he pays the amount of the value of the object of the violation, as well as customs duties and other charges.

#### **Article 279**

The customs office that has conducted the first-instance offence proceedings may give permission that the amount of fine and the value of the goods concerned are to be paid by instalments in the period not exceeding 12 months.

### **OFFENCE PROCEEDINGS**

#### **Article 280**

The first-instance offence proceedings shall be conducted and the decision passed by the Customs Office Offences Commission (hereinafter referred to as: the Commission) composed of three members, one of which is the Chairman. The Chairman and the members of the Commission may have deputies.

The Commission may authorise one of its members to take certain procedural measures in the offence proceedings.

The Chairman and the members of the Commission, as well as their deputies, shall be appointed among the customs officials by the Director.

#### **Article 281**

Where the offence proceedings have been started against a person temporarily residing out of the seat of the customs office, and all the conditions for the conduct of the proceedings and passing of the decision have been fulfilled, the offence procedure shall be deemed as urgent and the decision must be passed within 48 hours of the moment of starting the proceedings.

#### **Article 282**

The request for starting the offence proceedings shall be filed by a customs place or another organizational unit of the customs office or of the Montenegro Customs Service as well as other Government authorities.

The request for starting the offence proceedings shall be lodged immediately after obtaining the information that a violation has been committed, within 15 days at the latest.

The violations of the provision of this Code and its Implementing Provisions are certified with a written report.

The written report must be lodged and registered in the records of the competent Customs Office and must be signed by a customs officer.

The provisions of this Article apply where other laws are violated where such a written report is required by the Customs Office.

The Customs authorities, with a view to preventing, verifying and repressing violations against the Customs regulations, may carry out all necessary controls at the economic operators, their warehouses and other places of operations and all premises where their accounts and records may be kept.

#### **Article 283**

The report referred to in Article 283, paragraph 3 of this Code shall contain:

the place, date and time where the violation is verified;

the names of the persons who sign the report and the authority that they represent;

identifying information related to the person or persons who have committed the Customs violation;  
the violation committed;  
the way that the violation was committed ;  
the identification of the means of transport;  
the quantity, quality, value, origin and type of the goods concerned;  
the description and identifying marks of the goods to be seized;  
the signatures of the Customs employees and, when applicable, that of the offender.

The Customs authorities must notify immediately the person or persons responsible for the violation about starting the offence proceedings.

Wherever possible, the questioning of the violators and witnesses should be done immediately. Otherwise the Customs authorities shall instruct the violator and witnesses to present themselves for questioning, or lodge a statement, at the responsible Customs office at a specified date and time. This must be within 10 days of the date of notification. Witnesses are considered as all those who have any knowledge of the violation, as well as the Customs officers who have verified the Customs violation and signed the relevant report.

Where the violator or the witnesses are questioned personally, the interview shall be conducted and recorded by the authorised Customs officer.

The record of interview and any testimony or statement given has to be signed by the violators, the witnesses when they are present, and by the Customs officers who conduct the interview.

When any of the violators is a foreign national, the interview will be carried out with the assistance of an interpreter.

#### **Article 284**

The Commission, after carrying out the proceedings and administering the relevant file, issues the respective decision that may be rendered in oral or written form (ruling).

The relevant file contains:

the registered report of verification of the violation, as laid down in Article 283 of this Code;  
the relevant documents;  
the statements and testimonies of violators and witnesses;  
the record of the interview;  
the record of reaching the decision.

#### **Article 285**

The decision on the offence shall be issued within 5 days from the day when all the conditions for reaching the decision have been fulfilled.

#### **Article 286**

The person concerned may lodge an appeal against the decision of the Commission within 15 days from the date of the notification.

Montenegro Customs Service shall take a decision on the appeal.

In order to lodge the appeal, the appellant has to pay the total amount of the Customs duties and taxes legally due (unless the goods have been confiscated on basis of the decision), and to deposit, in advance, in a bank account with the Montenegro Customs Service an amount equal to 40% of the total amount of the pronounced fine.



Where the person concerned is freed from paying the fine by the decision of the Montenegro Customs Service, i.e. where the pronounced fine is lower than the amount deposited in accordance with the paragraph above, the deposited amount or the difference between the fine and the amount shall be paid back to the appellant.

Montenegro Customs Service shall be obliged to take decision on the appeal within 30 days from the day when all the conditions for reaching the decision have been fulfilled.

#### **Article 287**

The procedure on the lodged appeal carried out by the Montenegro Customs Service shall be conducted in accordance with the relevant provisions of the Law on Offences.

#### **Article 288**

The offence proceedings for a customs violation may not be started where three years have passed from the day when the violation was committed.

Time limitation in the offence proceedings shall not apply to the time in which the proceedings may not be conducted in accordance with the provisions in force.

Time limitation shall be interrupted by each procedure carried out by the competent authorities.

By each interruption, time limitation shall start running again.

Time limitation of the customs violation shall be effective within the period of six years from the day when the violation was committed, at all events.

#### **Article 289**

The Customs Office Commission shall take a decision on the suspension of the proceedings where:

the place of temporary residence of the person concerned is unknown, the person concerned is in flight or abroad for an indefinite period, or the person concerned may not be reached by the Government authorities due to any other circumstance;

the person concerned is temporarily affected by mental disorder or mental disturbance.

The suspended proceedings shall continue when the obstacles that have caused it disappear.

The ruling on the suspension of the proceedings shall provide for the object of the violation.

#### **Article 290**

The provisions of the Law on Offences shall be applied to the offence proceedings, save as otherwise provided in this Code.

### **TITLE IX**

### **CHARGES FOR CUSTOMS SERVICES**

#### **Article 291**

Montenegro Customs Service shall charge the services it provides in the customs procedure according to the service rendered.

The charge referred to in paragraph 1 of this Article shall not be collected on the importation procedure.



The charge referred to in paragraph 1 of this Article shall be indicated by rates in relation to the value of the goods ("ad valorem") and as a total amount.

The amount and the procedure of collecting the charge referred to in paragraph 1 of this Article shall be prescribed by the Government at the rate of 0% to 1% of the value of the goods determined in accordance with the provisions of this Code, whereby the charge is determined on "ad valorem" basis.

## **TITLE X**

### **SALE OF GOODS AND DIVISION OF REVENUES**

#### **Article 292**

The goods confiscated in accordance with the provisions of this Code, as well as goods that are to be presented for sale pursuant to the provisions of this Code, shall be sold.

Customs offices may immediately sell perishable goods and animals seized in accordance with Article 275 of this Code.

#### **Article 293**

Customs Office shall sell the confiscated goods by presenting them for public sale and this shall be done in accordance with regulations.

The Government shall have the right to transfer the ownership, free of any duties, taxes or charges, of any confiscated goods that have historic, archaeological, ethnographic, cultural, artistic and scientific value, as well as those intended for humanitarian purposes, to the State organs, cultural institutions responsible for the protection of such goods in the Republic, humanitarian organizations and other beneficiaries of humanitarian aid.

If the goods concerned cannot be sold, or used for the reasons of health, veterinary, sanitary, safety or any other reason prescribed by this Code, the goods shall be destroyed under Customs control and supervision in accordance with the relevant regulations.

The costs of the destruction shall be at the expense of the owner or importer of the goods at the time of confiscation, if they are not known or may not be reached then the destruction shall be at the expense of the Customs office.

#### **Article 294**

The revenue deriving from the application of sanctions and sale of goods shall be deposited in the main account of the Treasury of the Republic and shall be divided as follows:

covering the expenses incurred by the sale of goods as follows: expenses of transport, preservation of the goods, expenses of the sale procedure, warehouse charges and other expenses;

50% to the Budget of the Republic;

50% to the Montenegro Customs Service.

The revenues allocated to the Montenegro Customs Service may be used on basis of the decision of the Director for Development and Promotion of the Work of the Service.

## **TITLE XI**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 295**

The Government shall have the authority to issue sub-normative acts containing provisions for the implementation and enforcement of this Law.

The Ministry of Finance and the Customs Service shall have the responsibility and the authority for drafting and providing to the Government all such sub-normative acts.

The Ministry of Finance and the Customs Service shall ensure that all such sub-normative acts provided to the Government are consistent with this Law and the requirements of the World Trade Organisation and the World Customs Organization.

#### **Article 296**

Rights to reliefs from customs duty or to other customs preferential treatments deriving from the decisions passed by the competent authorities, that have not been wholly exercised, or have been partially exercised by the day this Law starts being applied, may be exercised within the time limits specified in the above mentioned documents.

Where, according to the regulations that cease to be in effect on the day this Law starts being applied, the goods imported with relief from custom duty were not to be divested, given to somebody else for use or used for the purposes other than those for which the relief has been granted, within the period specified in those regulations, the relevant provisions of those regulations relating to the period of prohibition on disposal of goods shall be applied after this Law starts being applied up to the expiration of the period of prohibition on divesting, giving for use or using goods for other purposes that was specified in those regulations.

#### **Article 297**

Customs procedures started prior to the date of application of this Law shall be concluded according the regulations in force by the date of application of this Law.

#### **Article 298**

All offence proceedings started prior to the date of application of this Law shall be concluded according to the provisions of this Law where it is more favourable to the person who committed the offence.

All offence proceedings for the acts that are not provided for in this Law as offences, started prior to the date of application of this Law, shall be suspended.

#### **Article 299**

For the goods placed under temporary importation procedure prior to the date of the application of this Law that are subject to payment of duties in accordance with the

regulations in force by the date of application of this Law, customs duties shall be computed and paid according to those regulations.

#### **Article 300**

Railway station customs warehouses, customs warehouses and customs temporary storage facilities established in accordance with regulations that cease to be in force on the date of application of this Law, may continue to operate as customs warehouses in accordance with the provisions of this Law provided that the owner of the warehouse obtains within three months from the date of application of this Law the decision on establishing and operating the customs warehouse in accordance with this Law and carries on his operations in compliance with the provisions of this Law.

The request for opening of customs warehouse in accordance with this Law may be submitted even prior to the date of application of this Law whereas the decision on it shall come into force on the date of application of this Law.

Where the owners of the premises referred to in paragraph 1 of this Article do not submit a request for opening of customs warehouse in accordance with this Law, or the customs office finds out that the owner does not fulfill the conditions for establishing and operating of customs warehouse laid down in this Law, the customs office shall issue a decision on closing the customs warehouse.

#### **Article 301**

Free warehouses, central warehouses and special warehouses of foreign goods and of domestic goods that have been established in accordance with the provisions of earlier regulations shall be closed on the date of application of this Law.

The goods stored on the premises on that day shall be handled in accordance with the provisions of this Law.

#### **Article 302**

Implementing Provisions to this Law shall be passed by December 31, 2001.

#### **Article 303**

On the date of this Law coming into effect, the following sub-normative acts are declared to have no further force: Decree on Customs Operations ("Official Gazette of the Republic of Montenegro", no.33/2000 and no.50/2001) and Decree on the Procedure of Exercising the Right to Relief from Customs Duty for Special Cases of Granting Relief ("Official Gazette of the Republic of Montenegro", no.51/2001).

#### **Article 304**

This Law shall enter into force on the eighth day after its publication in the "Official Gazette of the Republic of Montenegro" and shall be applied on July 1, 2002.

## **RATIONALE**

### **I. Constitutional Basis for Passing the Law**

on adequate application of the FRY Customs Law and corresponding sub-normative acts Constitutional basis for passing the Law is set forth in Article 12, items 2 and 4 of the Constitution of the Republic of Montenegro, whereby it has been established that the law shall regulate, in accordance with the Constitution, the manner of establishing, organization and powers of the state authorities as well as the procedure conducted before those authorities where it is necessary for their functioning and for the matters of interest for the Republic that include regulating customs system and operations of the Customs Service.

### **II. Reasons for Passing the Law**

Customs system in the Republic has been temporarily regulated by the Decree on Customs Operations issued by the Government of the Republic of Montenegro, which is based. A part of customs operations has been regulated by the Decree on Trade of Goods with AP (Autonomous Province) Kosovo and Metohija. Recognizing the need for protection of economic interests of the Republic and its economy, for the purpose of establishing reliable sources of the State Budget, through collection of customs duties and other taxes, with a view to increasing security and protection provided by the Customs Service in the trade of goods and services with foreign countries, the Government has decided to regulate the customs system in the Republic by this Law. Model for drafting the Customs Law is the EU Customs Code, which means that the new Customs Law of the Republic of Montenegro comprises modern legal concepts regulating customs as well as customs procedures that comply with standards of World Customs Organization and World Trade organization (WCO and WTO). The Customs Law shall regulate the customs territory of the Republic of Montenegro, customs crossings, powers of customs officers in customs procedures and other legal concepts of importance for conduct of clearance procedure, customs supervision and sanctioning customs criminal offences and violations. The said Law complies with international standards whereby it qualifies as a general legal document governing this field, which implies regulating the relevant subject matter in more details through sub-normative acts. Customs Law has been drafted by the Working Group, which was composed by the Government of the Republic of Montenegro, that has been supported by the USAID customs experts, except for penal provisions, that have been drafted by the representatives of the Montenegro Customs Service on basis of consultations with foreign experts. Customs Law regulates the customs territory of the Republic, which is autonomous in relation to the customs territory of the Federal Republic of Yugoslavia, and confers the authority on Customs Service to carry out control over customs goods and over persons subject to customs duties on the whole customs territory. Provisions on the powers of the Service, on the treatment of the value of goods, origin of goods, customs procedures and other legal concepts governing customs, wholly comply with WCO and WTO standards and considerably liberalizing and simplifying procedures in trade of goods with foreign countries and in transit of goods across the territory of the Republic. The policy of sanctioning has been rendered much more severe, by increasing the amounts of fines and determining penalties for violators depending on the amount of customs duties legally due or value of the goods. When the penal provisions were to be drafted, the objective that foreign experts insisted on was to provide as simplified and unhindered trade of goods with foreign countries as possible, rigorously punishing persons who commit customs violations. It is prescribed by this Law that customs offices shall start first instance and that Montenegro Customs Service shall instigate second instance offence proceedings, which is based on the experience of both foreign experts and Montenegro

Customs Service, arising from the particularities of customs matters. Special account has been taken of the offence proceedings in order to make them formally as simple, prompt and efficient as possible, including the right of the violator to appeal. A decision on an offence shall be issued by a commission, not an individual, for the reason that the subject of an offence to be decided upon in an offence proceedings may be highly valuable; in this manner, the opportunities for discretion of an individual are decreased and, on the other hand, the individual is protected from the pressure that the violator may put on him. The Customs Law is in full compliance with the Law on Value Added Tax (VAT) and the Excise Law.

### **III. Explanations of Basic Legal Concepts**

The Law comprises 11 Titles:

Title I regulates the customs territory of the Republic, customs crossings, customs goods, basic definitions of terms applied for the purposes of this Law and the application of rules governing the general administrative procedure.

Title II regulates the factors on the basis of which import duties are applied: customs tariff and tariff classification, origin of goods (non-preferential and preferential) and value of goods for customs purposes.

Title III regulates the procedure applicable to goods brought into the customs territory of the Republic, custom supervision carried out over them, declaring and presentation of goods, goods in temporary storage and the documents required for declaring the goods in question.

Title IV regulates customs procedures, customs declarations and release of goods for free circulation (clearance), then suspensive arrangements and customs procedures with economic impact: external transit procedure, customs warehousing, inward processing, processing under customs supervision, temporary importation, outward processing, export and internal transit procedure, free zones and free warehouses, re-export, destruction and abandonment to the Government.

Title V regulates the procedure applicable to goods leaving the customs territory.

Title VI regulates privileged operations – reliefs from customs duty and returned goods. In comparison to the previous rules, this Law decreases the number of beneficiaries of reliefs, having in mind the Decree on Customs Tariff and regulations governing taxes in terms of reducing customs duties.

Government authorities have been included in the circle of beneficiaries of reliefs for the equipment they import where it is not produced in the Republic.

Title VII covers customs debt and computation of customs duties, security to cover customs debt, recovery of customs debt, extinction of customs debt and repayment and remission of customs debt.

Title VIII comprises penal provisions sanctioning criminal offences and customs violations.

Title IX regulates charges for services provided by the Customs Service in customs procedures, the amount of which depends on the service rendered and it is prescribed by the Government. Till present time, these charges have been collected through the duty for entering the customs records in the amount of 1% of the customs base.

Title X regulates sale of goods and division of revenues, according to which the Montenegro Customs Service shall be allocated 50% of the revenues deriving from pronounced fines and sale of goods confiscated in an offence proceedings. This portion of the revenues should cover the following: incentives for the customs personnel that has participated, directly or indirectly, in the discovery of customs violations, incentives for the informers who have enabled the discovery of customs violations, and supply and maintenance of the equipment used for the improvement of the working conditions for customs personnel.

Title XI comprises transitional and final provisions.

Assessment of the funds for enforcement of the Law

Having in mind that the Montenegro Customs Service drafted the Customs Code, in accordance with the Programme of the Government of the Republic of Montenegro for the fourth quarter of 2001, funds for those purposes have been planned.

Thus, at the beginning of October 2001, the financial plan for the year of 2002 was submitted, amounting to 9.711.419,35 DEM total, covering both the current operations and the implementation of the Customs Code.

According to the Draft Law on Budget for 2002, funds planned to cover the current operations of Montenegro Customs Service amount to 4.491.877,86 DEM.

Considering the fact that the Customs Code shall certainly be enacted, it is necessary that the resources for funding the implementation of the Law are provided in order to cover:

gross salaries; other earnings and wages of employees; expenses for material and services; rent; capital outlays.