

**DRAFT CUSTOMS CODE**

**REPUBLIC OF CAPE VERDE**



**Article 2**  
**Customs Territory**

1. The customs territory includes the territory of the Republic of Cape Verde, as well as its territorial waters and air space.
2. Franc zones may be constituted in the customs territory, by law, subtracted in whole and in part from the customs territory.

**Article 3**  
**Application of the Customs Laws and Regulations**

1. The same customs laws apply in the entire customs territory.
- 2.

4. The maximum duties apply to goods originating or nationalized in foreign countries that apply identical treatment to the goods of cape-verdian originating, indicated in a law from the National Assembly, under proposal from the Government.

5. The maximum duty rates is double the general duty rates, however, with a minimum ad-valorem of 10%.

## **Article 6**

### **Applicable taxes**

Aside from the duties and equivalent effect taxes, other taxes may be applicable to goods, regardless of origin or source.

## **Article 7**

### **Customs Nomenclature**

1. The goods are classified according to the rules for interpretation of Cape Verde Customs Tables Nomenclature.

2. The Nomenclature of Cape Verde's Customs Tables is based on the Nomenclature of the Harmonized System for Designation and Classification of Goods.

## **Article 8**

### **Goods With High Tributation**

The provisions of this code pertaining to goods with high tributation apply only to goods that are subject to a tributation (duties and other taxes that customs are responsible for collecting) equal to or greater than 40% ad-valorem.

## Chapter III

*ii* – or less than the cost of production of this product in the country of origin, increased by a reasonable amount for the sales charges and the profit.

5. In the determination of the normal value, the taxation differences and other differences that affect the comparability of the prices, must be taken into account

## **Article 11**

### **Compensatory Duties**

1. The Government may apply a compensatory duty to any good, taxed or not, that has the benefit of a premium or subvention in a foreign country, regardless of its nature, source or the way it is attributed, agreed to, directly or indirectly, in the fabrication, in the production or in the exportation of that good.

2. The compensatory duty cannot exceed the estimated amount of the premium or the subvention agreed to.

## **Article 12**

### **Application of the Anti-Dumping Duty and Compensatory Duty**

1. The determination of the anti-dumping duty and the compensatory duty is established by a special committee created by the Government to that end, based on an inquiry fundamented upon elements of positive proof.

2. The application of the anti-dumping duty and the compensatory duty shall be regulated by the Government, based on the principles consecrated in this code and on the General Agreement on Customs Tables and Trade, or, in abbreviated form, designated as GATT.

## **Section II**

### **General Customs Regulations**

## **Article 13**

### **Regulating the Code**

Save for provisions to the contrary, the conditions for the application of this code shall be fixed by Government Decree or by Ordinance of the Ministry responsible for Finance.

**Article 14**  
**Orders of Service**

1. The Customs General Director shall regulate the correct application of the customs laws and regulations by orders of service.

2. Save for provisions to the contrary from the General-Director of Customs, the Directors of the Customs Circumscriptions shall be entitled to the prerogative referred to in the preceding number in their respective areas of jurisdiction and in the ambit of their competences, informing the General Director of the fact.

**Chapter IV**  
**Conditions for the application of the Tributation Law**

**Section I**  
**Tributation**

**Article 15**  
**Applicable Tributation**

The imported products are subject to the duties and taxes inscribed in the Customs Tables as well as other impositions, in the condition they happen to be in at the moment the tributary law becomes applicable.

**Article 16**  
**Elements of the Tributation**

The customs duties are applied as a function of the origin, the customs value and the table's classification of the goods.

**Article 17**  
**Damaged Goods**

1. The customs services may authorize the separation of goods that, in the same shipment, may have suffered damage that would reduce the value they had when in good condition and that may have occurred after their voyage began up to the moment of the detailed declaration.

2. The damaged merchandise must be destroyed immediately under customs control, re-exported, or taxed according to the state they are in.

3. In the event of abandonment, and if dealing with drugs or medicinal substances, the same goods must be immediately destroyed, and a term of destruction is prepared with the witnesses and the formalities established for similar cases.

4. The damaged goods are granted abatement in the duties proportional to the difference between the value of the goods in the act of clearing the customs and their value in good condition, but to grant the



a) Substantial, meaning that the product that the transformation results in specific properties and composition, that it did not have before the transformation;

b) Economically justifiable, meaning, that the transformation takes place in a normal production process that leads the product from the raw material or intermediary product state to the finished product state;

c) It took place in an enterprise equipped to that effect.

## **Article 21**

### **Totally Produced Products**

1. The following are considered goods totally produced in a country:

a) The mineral products extracted in that country;

b) The agricultural products harvested there;

c) The animals born and raised there;

d) The products obtained through live animals raised there;

e) The hunting and fishing products practiced there;

f) The fishing products and other products extracted from the sea, outside the territorial waters of any country, by ships matriculated or registered in that country, as long as they fly its flag;

g) The goods obtained aboard factory ships from products referred to in subparagraph f) originating in that country, as long as these factory ships are matriculated or registered in that country and fly its flag;

h) The products extracted from the bottom and sub-bottom of the ocean located outside the territorial waters, as long as that country has exclusive rights over that bottom and sub-bottom, for the purpose of exploration;

i) The residues and waste products resulting from the fabrication operations and the Articles not in use, with the excuse that they were not in use and that they only serve for the recovery of raw materials;

j) Those that are obtained in it exclusively from the good referred to in subparagraphs a) to i) or from derivatives of the same products, regardless of the phase of their fabrication process.

2. For the purpose of application of No. 1, the notion of country also includes the territorial waters.

## **Article 22**

### **Operations that do not Confer the Character of Original Product**

The following operations do not give confer the character of original product:

- a) The manipulations destined to assure the conservation of the product;
- b) Extraction of the dust, selection, classification, washing and similar operations;
- c) The change of packaging, the simple conditioning in bags, set-boxes, boxes, crates and similar operations;
- d) Affixing on the products or in the respective packaging, the marks, labels and other similar distinctive signs.
- e) The mixture of products;
- f) Animal slaughter;
- g) The accumulation of various operations of this nature.

## **Article 23**

### **Preferential Regimes**

In preferential regimes the rules of origin foreseen in agreements and treaties ratified by the Republic of Cape Verde are applied.

## **Article 24**

### **Proof of origin**

If necessary, the origin of the goods must be proven through a certificate of origin or equivalent document, issued by a competent entity, under the terms of agreements and treaties binding on the Republic of Cape Verde.

**Section IV**  
**Customs Value of the Goods**

**Subsection I**  
**Customs Value in Importation – Transitory Provisions**

**Article 25**  
**Transitory Phase**

1. In importation, for a maximum period of five years, after this code goes into effect, the customs value to be declared is the normal price of the goods, meaning, that it is the price reputed to have been made for the goods, at the moment and in the place indicated below, at the moment of a sale made under conditions of plain competition between a buyer and a seller that are independent one from the other.

2. When the sale is made under these conditions, the price may be determined from the invoice.

3. The normal price of the imported goods is determined on the basis of the following elements:

a) The moment to be taken in consideration is that of the date of registration of the detailed declaration at the customs delegation;

b) The goods are delivered to the buyer at the place where they are introduced in the customs territory;

c) The seller includes in the price all the expenses related with the sale of the good and its delivery to the referred point of entry;

d) In-country, the buyer bears the financial obligations of the duties and of any other impositions demandable, as well as the expenses for transportation and others, incurred with the goods after their introduction in the national customs territory.

4. a)

5. Two persons are considered as associated in business if one of them owns any interest in the other's business or if both have any common interest or if a third person has an interest in the trade of each of the former, whether these interests are direct or indirect.

6. When the merchandise to be evaluated:

a) Are manufactured under a patent or are the object of a design or of a registered model, or

b) Bear a trademark or of foreign trade, or are imported to be sold under such mark,

The price is determined by considering that the normal price includes the amount of the right to use the patent, of the registered design or model or of the fabrication or trade mark, relative to the referred goods.

## **Article 26**

### **Documents Required**

1. Aside from the invoice, the customs services may demand presentation of agreements, contracts, correspondences, and other documents pertaining to the operation.

2. The invoices and the documents mentioned above are not binding on the customs services.

## **Article 27**

### **Monetary Exchange**

1. When the elements that serve to determine the customs value of a good are expressed in foreign currency, the conversion is fixed by the period running from a Thursday to the following Wednesday, based on the exchange rate in effect on the Thursday that precedes the week under consideration.

2. If during the weekly period for which the official weekly quotations are valid significant exchange fluctuations occur, the Customs General D Tc When the.,od tTD5t89.-{y19.,odu39,mvaluep5 -1.9 T p1(lj/Tt9 -1.m en uphe Cus7( to the

## **Article 28**

### **Declaration of the Buyer Seller Relation**

For the application of Article 25 of this Code, the declarer must indicate if the operation was carried out under conditions of plain competition between a buyer and a seller independent from each other and specify any relationship eventually existing between the buyer and the seller, in the sense of the numbers 4 and 5 of the referred Article, specifically if it is the case of an exclusive concessionaire, of a general agent, of an affiliate or a branch.

## **Article 29**

### **Price Adjustment**

1. When the price paid or to be paid is different from the normal price, the price paid or to be paid must be adjusted with a view to establish the normal price.

2. In calculating the rate of the adjustment amount, the declarer must take into account, namely, the discounts or other reductions in price permitted to the exclusive representatives or sole concessionaires, the abnormal discounts or any other reductions of the usual price of competition.

3. When the usual price cannot be determined by comparison with the price made by the buyer to independent sellers or when the application of the preceding is not enough to calculate the normal price, the rate or amount of the adjustment may be established by searching the services and expenses assumed by the buyers and pertaining to the importation, as well as in the resale of the goods, incorporating their values in the value to be declared, as long as these services and the expenses would have been assumed by the seller in the importation country if the sale were made to an independent seller.

4. These services and these expenses include, namely:

a) The study and the prospecting of the market in the importation country;

b) The publicity for the foreign mark under which the goods are sold;

c) Franchising;

d) Maintenance of the exposition spaces exceeding the needs of a normal resale organization;

e) The participation in the spaces, fairs and expositions;

f) The gratuitous services due as guarantee by the manufacturer. The customs administration applies adjustment rates. These rates continue to be applicable to subsequent operations, as

g) For the application of the preceding numbers, the adjustment rate may be determined utilizing the accounting data from the buyer's previous exercises when the factors retained had sufficient stability.

5. The rate or amount of the adjustment must be indicated in the declaration.

### **Article 30**

#### **Fabrication and Trade Marks**

The provisions of Article 25 of the Customs Code apply to goods imported to be sold under a fabrication or trade mark after complementary work.

### **Article 31**

#### **Forfeiture Value**

For certain goods authorized by regulations, the value to be declared may be a forfeiture value; this value, referred to as mercurial value, must figure in the customs declaration, concurrently with the real value established and justified under the conditions fixed by Articles 25 and 30 of this Code.

### **Article 32**

#### **Transportation Expenses**

To determine the amount of the transportation expenses to be incorporated in the values to be declared, the customs administration may demand that all useful justifications (sea and air transportation titles, commercial documents, etc.).

### **Subsection II**

#### **Customs Value in Importation – After the Transition Period**

### **Article 33**

#### **Transactional Value**

- 1.

a) There are no restrictions to conceding or utilizing the goods, beyond:

*i* - those imposed by law or by Cape Verde's public authorities,

*ii* – those that limit the geographical zone where the goods may be resold,

*iii* – those that do not substantially affect the value of the goods;

b) The sale or the price are not subordinated to conditions or installments whose amount cannot be determined, relatively to the goods to be evaluated;

c) No part of the resale proceeds, cession or subsequent utilization of the imported goods do not revert, directly or indirectly in favor of the seller, except if an adjustment can be made, under the terms of Article 34;

d) The seller and the buyer are not colligated between themselves, under the terms of the number that follows;

2. Two physical or moral persons are considered colligated between themselves when:

*i* – one is a part of the administration of executive board of the other, and reciprocally,

*ii* – they are partners, legally,

*iii* – one is the other's employer,

*iv* – one possesses, controls or detains, directly or indirectly, at least 5% of the shares of the other, both having the right to vote,

*v* - one controls the other, directly or indirectly,

*vi* - the two are, directly or indirectly, controlled by a third person,

*vii* – the two control a third person, directly or indirectly,

*viii* – they are members of the same family;

3. The following are reputed to be members of the same family:

a) spouses,

b) parents and their children,

c) brothers and sisters,

d) uncles and nephews,

e) parents in law,

f) grandparents and grandchildren,

g) brothers and sisters in law.

4. The agents, distributors or exclusive concessionaires are not reputed to be colligated between themselves, unless there are other links responding to the criteria enumerated above;

5. The simple fact that the situations described in No. 2 exist, does lead to a rejection *in limine* of the transactional value. It is necessary that

these situations have influenced the fixing of the price of the good to be evaluated.

6. In a sale between colligated persons, the transactional value shall be accepted and the goods are evaluated in conformity with No. 1, when the declarer demonstrates that the referred value is very close to one of the values indicated next, at the same moment or at a very approximated moment:

a) Transactional value in sales, between non-colligated buyers and sellers, of identical or similar goods for exportation destined for Cape Verde's customs territory;

b) Customs value of identical or similar goods, such as is determined in application of subparagraph c), No. 2 of Article 36;

c) Customs value of identical or similar goods, such as is determined in application of subparagraph d), No. 2 of Article 36.

7. In the application of the criteria indicated in No. 6, the differences demonstrated between the commercial levels, the quantities, the elements enumerated in Article 34 and the costs borne by the seller in the sales in which the latter and the buyer are not colligated, must always be taken into account.

8. The criteria enunciated in No. 6 shall be utilized by initiative of the declarer and only for the purpose of comparison



*ii* – cost of the recipients that, for customs purposes, are considered to be a whole with the merchandise;

*iii* – cost of the packaging, understood to be labor and the materials;

b) The value imputed in adequate fashion, of the products and services indicated next, when they are supplied, directly or indirectly, by the buyer, without expenses or at reduced cost, and utilized in the course of the production and the sale for exportation of the imported goods, to the extent that this value has not been included in the price paid or to be paid:

*i* – matters, components, parts and similar elements incorporated in the imported goods,

*ii* – tools, matrices, molds and similar objects utilized in the course of production of the imported goods,

*iii* – Matters consumed in the production of the imported goods,

*iv* - Works of engineering, of studies, of art and of design, plans, sketches, executed outside Cape Verde and necessary for the production of the imported goods;

c) The exploration rights and the license rights relative to the goods to be evaluated, that the buyer is obligated to pay, directly or indirectly, as a condition for the sale of the goods to be evaluated, to the extent that these exploration rights and license rights have not been included in the price effectively paid or to be paid;

d) The value of any part of the proceed from any resale, cession or subsequent utilization of the imported goods that reverts directly or indirectly to the seller;

e) The transportation and insurance e)e)

a) The transportation expenses for the goods after they arrive at the point of entry in Cape Verde's customs territory;

b) The expenses for works in construction, installation, assembly, maintenance, or technical assistance executed after the importation, relative to the imported goods, such as installations, machines or industrial equipment;

c) The amounts of interests based on a financing agreement concluded by the buyer and pertaining to the purchase of imported goods, independently of the financing being assured by the seller or by another person, as long as the financing agreement being considered is established in writing and the buyer may demonstrate, if so requested of him/her:

- That such goods are effectively sold at the declared prices effectively paid or to be paid, and

- That the interest rate demanded does not exceed the level normally practiced in such transactions, in the amount and in the country in which the financing is assured;

d) The expenses

- Of the cost or value of the matters and fabrication operations or others, utilized or carried out to produce the imported goods,

- Of an amount representative of the profits and general expenses equal to what is generally accounted for in the sales of goods of the same nature or the same kind as the goods to be evaluated, carried out by producers of the exporting country for exportation to Cape Verde,

- Of the cost or the value of the elements specified in subparagraph e) No. 1 of Article 33.

3. By the expression “identical goods”, it is understood goods that are equal in all aspects, including the physical characteristics, the quality and commercial prestige. The minor differences, such as the color, the dimension and the label, are tolerated.

4. By the expression “similar goods” it is meant the goods that, without looking alike in all aspects, present similar characteristics and are composed of similar matters, which allows them to fulfill the same functions and be interchangeable. The quality of the goods, their commercial prestige and the existence of a fabrication mark or a trade mark constitute one of the factors to be taken in consideration to determine if the goods are similar.

### **Article 37**

#### **Method of Last Resort**

1. If the value of the good cannot be determined by application of Articles 33 and 36, it shall be determined, based on available data in Cape Verde, by reasonable means, compatible with the principles and general provisions of the “Agreement pertaining to the application of Article VII of the General Agreement on Customs Tables and Trade of 1994” and the provisions of this subsection.

2. The customs value determined by application of No. 1 of this Article shall not be based on:

- a) The sale price, in Cape Verde, of goods produced in this country;
- b) In a system that foresees the acceptance, for customs purposes, of the highest of two possible values;
- c) On the goods price in the internal market of the exportation country;
- d) On the cost of production distinct from the calculated values that were determined for identical or similar goods in conformity with subparagraph d), No. 2 of Article 35;
- e) On the price of goods sold for exportation destined for a country other than Cape Verde;
- f) On minimum customs values; or
- g) On arbitrary or fictitious values.

## **Article 38**

### **Value – Complementary Justifications**

1. Whenever the customs administration has reasons to doubt the truth or the exactness of the information or of the documents supplied in support of a declaration of value, the customs administration may solicit the importer to provide complementary justifications, consisting in documents and other elements of proof, attesting that the declared value corresponds to the total amount effectively paid or to be paid for the imported goods, adjusted according to the provisions of Article 32 of this code.

2. If after having received the complementary justifications, or in the absence of a response, the customs administration still has reasonable doubts regarding the veracity or the exactness of the declared value, it may be considered, under the terms of this code, that the customs cannot be determined in accordance with the provisions of Article 33 of the same code.

3. Before a final decision is made, the customs administration shall communicate to the importer, in writing, the reasons that led it to doubt the veracity or the exactness of the information or the documents supplied, giving the importer a reasonable period to respond.

## **Article 39**

### **Value of Data Processing Implements**

The Minister responsible for the Finance sector may establish special  
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### **Subsection III**

separate goods, with the

j) The requisition or partition of products for which a general or local shortage is felt.

#### **Article 47**

#### **Trade in Species of Fauna and Flora Threatened With Extinction**

Trade in the wild species of fauna and flora threatened with extinction, their parts or products manufactured from them, is subordinated to the norms of the Washington Convention, of 3 March 1973, pertaining to this matter.

#### **Article 48**

#### **False Manufacturing and Trade Marks**

1. All foreign products, natural or manufactured, that have a false manufacturing or trade mark, or a sign or any indication superimposed upon them, whether on the product itself, or in the respective packaging or labels, so as to induce the consumer into error regarding the origin or quality of the

- c) Fix special conditioning rules for certain goods.

## **Article 51**

### **Obligations of the Importers**

Independently of the obligations foreseen in this Code, the importers and the exporters are subject to the regulation of the foreign trade and currency exchange regulations.

## **Title II**

### **Structure and Financing of the Customs Services**

#### **Chapter I**

#### **Customs Jurisdiction**

### **Article 52**

#### **Fiscal Zones**

1. The customs services shall exercise their jurisdiction over the entire customs territory, under the conditions fixed by this Code.

2. Special oversight zones, denominated fiscal zones, shall be organized along the land and sea borders.

3. The fiscal zones, where the oversight shall be exercised habitually or permanently, include:

- a) a)



### **Article 53**

#### **Oversight of the Contiguous Zone**

In the contiguous zone, contained within 12 nautical miles and 24 nautical miles counting from the sea base line of the territorial waters and under reservation of the delimiting agreements with the neighboring States, the customs services may exercise the necessary controls with a view to prevent and punish the infractions to the customs laws and regulations committed in its over land territory, interior waters, archipelagic waters and territorial waters.

### **Article 54**

#### **Constructions on the Seashore**

1. In the ports, bays and sea shore anchorages, within a 20 meter strip, when dealing with settlements, and 50 meters, in the other cases, counting from low-tide water-line or the quay, seawalls and bridges, no construction may be undertaken without prior authorization from the Minister responsible for Finance sector, having heard the General Directorate of Customs.

2. The constructions undertaken by the ports administration, which should nevertheless, give prior notice of the fact to the Customs, are exceptions from this provision.

## **Chapter II**

### **Customs Oversight**

### **Article 55**

#### **Guideline**

1. The customs oversight receives its guidelines from customs authorities, and execution of the oversight is under the responsibility of the Fiscal Guard or Coastal Guard.

2. Without prejudice to the oversight inherent in the customs technical personnel, it behooves the Fiscal Guard and the Coastal Guard to plan and direct the execution of the customs oversight always taking into account the instructions given by the competent customs authorities.

**Article 56**  
**Subdivision**

The customs oversight is subdivided into:

a) Land oversight, including the policing and the oversight conducted outside the customs buildings, warehouses and customs clearing buildings, the customs station and the franc zones, in the sea border zones and in the aerodromes and airports;

b) Sea oversight, including the policing and oversight conducted in the ports, bays and anchorages, in the territorial waters of respect, in the archipelagic waters and in the contiguous waters;

c) Air oversight, including the air policing and oversight conducted on aircrafts.

2. Without prejudice to the oversight inherent in the customs technical personnel, the oversight inside the customs posts and their dependencies shall be conducted by the Fiscal Guard.

**Article 57**  
**Assistance from Other Authorities**

The Customs General Director, the customs directors and the chiefs of the customs posts may solicit the administrative, sea, police or military authorities the help they need to execute any extraordinary diligences that must be carried out for effect within the area of their jurisdiction, whenever it is not possible to carry out such diligences with the elements they dispose of or it is not possible to obtain this assistance from the customs or fiscal authorities nearest to the respective place where those diligences should be carried out or yet when this assistance is insufficient.

**Article 58**  
**Oversight Aboard Ships**

All anchored ships that carry out operations of loading and unloading goods of foreign origin or source shall receive customs oversight on board to properly oversee those operations. In the cases in which no such operation is being carried out, the on board oversight shall be established when it is necessary.

**Article 59**

**Disasters**

Should any disaster occur on ships or goods subject to

## **Chapter IV**

### **Safeguard, Right to Intervene and Obligations of the Customs Agents**

#### **Article 63**

##### **Safeguard of the Law**

1. The customs agents and the customs oversight agents are under special safeguard of the law. It is interdicted to any person.:

a)

## **Article 65**

### **Prerogatives**

Because of the special nature of their functions, the agents mentioned in the preceding Articles, are considered to be on duty permanently, reason why they are entitled to the following prerogatives:

a) Free admission to the marine platforms, aerodromes and airports, ships, aircrafts and any other vehicles, as well as any enclosures subject to customs oversight;

b) They can arrest on the spot, both the individuals that humiliate them in the exercise of their functions or because of the exercise of the same, such as the delinquent that should legally be detained for facts punishable by the fiscal laws, and lead them immediately to the presence of the director or the higher authority of the customs post, who will turn them over to the judicial powers;

c) They have the right to stop the persons who, within the fiscal zone become suspect of any fiscal infraction and to subject these persons to search and the goods or means of transportation that accompany them.

## **Article 66**

### **Oversight and prevention measures**

1. The customs agents and the customs oversight agents, acting always from authorization from their higher-ups, save in the cases of proven urgency or flagrant crime, have competence to proceed, during the day, to apprehensions, searches, review of books, documents and goods, and shake-downs, on any means of transportation, establishment, store, warehouse or closed enclosure that is not a residential home.

2. The searches in residential homes require a judicial mandate and



## **Article 69**

### **Right of Communication**

1. In the ambit of their competences, the customs agents may request the presentation of papers and documents of any nature concerning operations that are of interest to the customs services.

2. The papers and documents referred to in the preceding number may be conserved by the interested parties for a period of five years, counting from the date of shipment of the orders, for the senders, or from the date they are received, for the receivers.

3. In the course of the customs controls and inquiries, the customs functionaries designated to that effect may proceed to the seizure of documents of any nature (accounting, invoices, copies of letters, check books, monetary exchange letters, bank accounts, etc.) proper to facilitate fulfillment of its mission.

4. The customs administration is authorized, under reservation of





2. The Government shall regulate the provisions of the preceding number.

### **Article 75**

#### **Evaluation and Reclassification of the Customs Agents**

The Government shall adopt a specific system for the annual evaluation of the customs and Fiscal Guard functionaries, establishing a minimum mark, below which the referred functionaries should be reclassified and reintegrated in other functions of Public Administration.

the customs territory must be object of a summary declaration, no matter what the means of transportation utilized.

2. The summary declaration must be done in a form according to the model established by the customs authorities or by international conventions. However, the customs authorities may accept as summary declaration any commercial or administrative document containing the list of information necessary to the identification of goods.

3. The summary declaration must be delivered within twenty-four hours, after the referred introduction, by those responsible for the transportation.

## **Article 79**

### **Subjection to Legal Requirements**

The provisions of this Title are applicable to the ships or vessels that transport goods subject to the payment of duty and other impositions, whose collection is the responsibility of the customs from one national port to another, by throwing overboard or by transfer of deposit.

## **Article 80**

### **Remuneration for Extraordinary Services**

The extraordinary services performed by request of the interested parties, before or after normal working hours, within the customs posts or outside of them at any time, shall be remunerated by those interested parties, according to a Table approved by the Minister responsible for the Finance sector.

## **Chapter II**

### **Introduction of the Good in the National Customs Territory**

#### **Section I**

#### **Transportation by Sea**

## **Article 81**

### **Transportation to and Presentation of the Goods to the Customs**

The goods introduced in the national customs territory must be transported to and presented in a customs post, in the shortest time possible,



must be informed about, and to address questions pertaining to the facts that must be known for them to accomplish their mission.

### **Article 85**

#### **Commanders' Fiscal Responsibility**

The ships' commanders answer to the customs for the fiscal infractions committed aboard by any individual, when and for as long as when and for as long as the identity of those individuals is not known or when the same are not caught in flagrant, committing the same infractions.

### **Article 86**

#### **Right to Food and Lodging**

1. It is mandatory for the ships' captains to provide appropriate lodging and food to the agents mentioned above, that the customs post or the Commander of the Fiscal Guard appoint for fiscal service on board, as long as the ship remains in port or in the territorial waters for a maximum of two days.

2. Non-compliance with this requirement shall be punished with a fine from ..... to .....

### **Article 87**

#### **Presentation of Documents**

1. Within twenty-four hours after the ship arrives in port, the captain must deliver to the customs post:

a) As a summary declaration:

- the manifest of cargo to the port and, if the customs services deem so necessary, its authenticated translation;

- the special manifests of provisions and spares and of the luggage goods belonging to the crew;

b) The manifests of in transit cargo, if demanded;

c) An additional declaration of any non manifested goods, justifying their non-registration in the principal manifest;

d)

- the names of the captain, of the proprietors or ship-owners and consigner or agent,
  - the ports of origin and of call in which it received cargo,
  - if it transports flammable or explosive goods, the respective quantity, whether or not it put into a port and, if affirmative, if it left the cargo in the port it put into, with the respective discrimination,
  - if it threw cargo overboard during the voyage,
    - What commercial transactions does it intend to conduct in the port.
2. All the documents referred to in No. 1 must be dated and signed by the captain.
3. Non-compliance with any of the provisions of this Article shall be punishable with a fine from ..... to .....

### **Article 88**

#### **Disagreements on Unloading**

The director or chiefs of customs posts may permit the ship captains to justify, by producing proof, the excess or absence of volumes in relation to what is in the manifest, when:

- a) The excess results from not having proceeded to the unloading of the volumes, for any reason, in a prior port of call, they were destined to, or
- b) They are destined for a subsequent port and they are in the manifest for cargo in transit, or
- c) The absence results from the fact that some volumes were unduly unloaded at a prior port.

### **Article 89**

#### **Unloading and Transshipment of Goods**

1. No ship may commence unloading before the respective captain checks in with the customs and files the documents and declarations required of him in this act save for special authorization by the customs.
2. The transshipment of goods can only take place by written authorization of the director or chief of the customs post.
3. The unloading of objects or goods that are part of the provisions or spares shall be permitted only by written authorization of the director or chief of the customs post, and by dispatch and payment of the duties and other impositions due.

4. The customs authorities may demand, at any moment, the

**Article 93**  
**Military Ships**

The captains of military ships transporting cargo or passengers are obligated to comply, on entry, with all the formalities that the merchant ships are subject to.

**Section II**  
**Air Transportation**

**Article 94**  
**Entry Into the National Air Space**

1. To enter the national air space, the aircrafts that fly internationally must follow the routes that were determined for them.
2. They can land only in airports with customs services.
3. The airports with customs services are designated by the Government, who establishes the measures necessary for the customs formalities to be complied with.

**Article 95**  
**Required Documentation**

The aircraft commanders should present to the customs, on arrival, the

## **Article 97**

### **Application of the Provisions of the Preceding Section**

The provisions of the preceding Section are applicable to the air transports, with the necessary adaptations.

## **Chapter III**

### **Transporting Goods to Foreign Countries**

## **Article 98**

### **Transporting Goods to a Customs Post**

The goods destined for exportation or re-exportation must be transported to a customs post with competence to accept exportation and re-exportation customs declarations.

## **Article 99**

### **Fiscal Clearance of Ships**

1. No merchant ship may leave the ports without the captain or his agent requesting and obtaining the respective customs clearance at least two hours beforehand, by presenting the following documents:

- a) Manifest of the exportation and re-exportation cargo received in the port;
- b) Lists of the provisions and spares received in the port.

2. After performing the respective customs clearance, the ship can receive no other goods without special authorization from the customs.

## **Chapter IV**

### **Temporary Deposit**

## **Article 100**

### **Warehouses and Customs Clearing Areas**

1. Save for special provision to the contrary, the goods transported and presented to the customs, under the conditions foreseen in Articles 77 to 98, may be placed in warehouses and in customs clearing areas, while the wait to be attributed a customs destination.



2. Customs clearing warehouses mean a covered building, with entrances and exits closed under lock and key, and customs clearing areas mean an open area place, delimited by a fence.

3. The goods shipped via postal means are deposited in the parcels

**Article 103**  
**Deposit of Abandoned, Apprehended,  
Stranded, Found and Salvaged Goods**

When the customs services do not dispose of appropriate installations to store the abandoned, apprehended, stranded, found and salvaged goods, the same shall remain in the warehouses and customs clearing areas, and the respective concessionaires constituted as keepers of depositories of the referred goods.

**Article 104**  
**Competence for the Creation**

The creation of the warehouses and the customs clearing areas is the competence of the Government member responsible for the area of Finance, who will approve its location and construction and shall define its operational condition.

**Article 105**  
**Fiscal Responsibility of the Concessionaire**

The warehouses and customs clearing areas concessionaires are responsible before the customs for the goods deposited therein, and should maintain an up to date book keeping of the existence and of all the movements of the goods deposited therein.

**Article 106**  
**Authorized Handling**

1. The goods deposited temporarily cannot be object of handling, except for those destined to guarantee their conservation in an unaltered condition, as long as they do not modify their technical characteristics.

2. In these deposits it is not permitted to substitute the packages or containers of goods, save for the following cases:

a) When it is necessary to extract part of the goods contained in a package, for re-exportation or transfer;

b) When there is the risk of damage and spilling, or it is indispensable to improve the conditioning of the goods that are destined for transit, transshipping, re-exportation and transfer.

## **Article 107**

### **Arrangement**

1. In the temporary deposits the goods must be arranged by marks and countermarks or by entry dispatch tickets or by titles of transit that pertain to them, in order to permit quick checking of the goods with the book entries.

2. Independently of the provisions of the preceding number, each of the volumes stored in the temporary deposits, or in each lot, the indication of countermark of the ship that transported them and the sequential number of the dispatch ticket or of the transit title through which they were admitted in the referred storage area.

3. When the size of the warehouses and the customs clearing areas so permit or when they consist in more than one building, shack or fenced in area, the same should be divided into sections and subsections, in harmony with the instructions given by the customs, and be numbered or designated by letters, and with mention being made of the section or subsection the goods are located in the respective accounting of the existences.

## **Article 108**

### **Opening Packages and Separation, Reconditioning and Change of Goods Marks**

1. It is expressly prohibited to ope

deterioration, without first communicating this circumstance to the customs and mentioning it in the respective book entry.

## **Article 110**

### **Goods in Deteriorating Condition**

1. When in the warehouses and customs clearing areas, there are goods in a state of deterioration, whose permanence may become prejudicial to public health or to other goods, customs should request that the health authorities examine those goods, and then proceed according to the terms established for such cases, in conformity with the recommendations of the health authorities. If the goods are rendered unusable, the applicable report shall be prepared.

2. It is always permitted to the owners and consignatories of the partially damaged goods to separate the part of the goods that are in good condition from the part that is damaged, under the terms established in Articles 17 and 18 of this code.

## **Title IV**

### **Customs Clearing Operations**

#### **Chapter I**

##### **Detailed Declaration**

## **Article 111**

### **Principle of the Detailed Declaration**

1. To be placed under the customs regime the goods must be the object of a detailed customs declaration.

2. The exemption from duties and other customs impositions do not exempt from the obligations foreseen in the previous number.

3. Detailed customs declaration is understood to be the juridical act by which the declarer:

- a) Designates the customs regime for which he solicits the subjection of specific goods;
- b) Obligates him/herself, in legal terms, to comply with the obligations inherent in the declared customs regime;
- c) Supplies all the information necessary to permit the identification of the goods in question and the application of the measures foreseen in the law, relatively to the declared regime.

4. The goods declared for a suspensive regime shall remain under customs control until they are attributed a final destination.

5.

### **Article 112**

#### **Delivery of the Declaration**

1. The detailed declaration must be deposited in a customs post with competence to authorize the pretended customs destination.

2. The customs director or the chief of the customs post can authorize the deposit of the detailed declarations before the goods arrive at the respective customs post or to the places designated by the customs services.

3. For the application of the rules foreseen in this code and namely, of the liquidation and collection of the duties and other impositions, of the prohibitions and other measures, the declarations delivered in advance can only have effect with all the consequences connected to their registration, on the date the goods are introduced in the national customs territory.

### **Article 113**

#### **Acceptance and Recording of the Declaration**

1. The detailed declarations accepte

## **Article 115**

### **Annulment of the Declaration**

1. At the request of the declarer, the customs authorities shall annul a declaration already accepted and recorded, when the declarer proves that the goods were erroneously declared for the customs regime corresponding to that declaration or when, following special circumstances, it is no longer justifiable to subject the goods to the customs regime for which it was declared.

2. Nevertheless, when the customs authorities have already informed the declarer of the intention to proceed to a verification of the goods, the request to annul the declaration can be accepted only after that verification.

3. The declaration cannot be annulled after the goods have been authorized to exit.

4. The annulment of the goods does not affect the application of repressive provisions.

## **Article 116**

### **Date to Be Taken in Consideration**

Save for specific dispositions to the contrary, the date that must be taken in consideration for the purpose of application of all the provisions that govern the customs regime for which the goods are declared is the date of record of declaration in the customs.

## **Chapter II**

### **Form and Contents of the Declaration**

## **Article 117**

### **Principle of Written Declaration**

1. The detailed declarations must be done in writing, in forms that conform to the official model.

2. Verbal declaration is admissible only under the following situations:

a) Objects separate from luggage and small parcels, not of a commercial character, that do not exceed the limit fixed by joint dispatch from the Ministers responsible for Finance and Trade;

b) The goods are declared at customs posts where there is no official dispatcher.

3. The detailed declarations should not contain, amendments, interline notations or erasures that are t

2. The simplified declarations should contain the indications considered indispensable by the customs and be accompanied by all the documents legally required for the operation under consideration.

3. Together with the simplified declaration, the complementary declarations constitute a sole and indivisible act that takes effect on the date of acceptance of the simplified declarations.

## **Article 121**

### **Inclusions Inadmissible in the Same Declaration**

The following can not be submitted for clearance in the same detailed declaration:

- a) Goods subject to different customs regimes;
- b) Goods coming from different warehouses or different customs station;
- c) Goods belonging to different consignatories or destinataries.

## **Article 122**

### **Articles of the Declaration**

1. When several Table articles are included in a declaration the elements pertaining to each article are considered as constituting an independent declaration.

2. It is not permitted to present as a single unit several volumes tied together, pallets or similar form.

## **Article 123**

### **Prior Examinations**

1. When the persons authorized to declare do not have all the elements necessary to prepare the detailed declaration, they can, upon request, be authorized to previously examine the goods and take out samples.

2. The prior examinations performed under the terms of the preceding number must be mandatorily assisted by customs agents or customs oversight agents who, jointly with the requestor, will sign a document that will describe the operation and its results.

3. The form of the prior examination request and the conditions under which the prior examinations can take place are fixed by Service Order from the Customs General Director.





## **Article 125**

### **Authorization and Identification**

1. The authorization and the identification document for official dispatchers shall be issued in individual names. If the bearer is a company the authorization and identification document must be obtained by the enterprise and by all the qualified persons that will represent the enterprise that meet the conditions established in Article 127 of this code.

2. In the case of collective persons that are not official dispatcher businesses, the authorization and the identification document can be emitted only to their cashiers dispatchers or to the singular persons, partners or not, with plain legal capacity and general administration powers or with delegated competence to represent them before the customs administration.

## **Article 125**



**Article 129**  
**Assistant Dispatchers**

1. The official dispatchers may have the number of assistants required by the needs of their service, to assist them, under their responsibility, in the exercise of their functions.

2. The assistant dispatchers should have high school education or equivalent as minimum qualification and must not be encumbered by the impediments referred to in No.1 of Article 125 of this code.

3. The official dispatcher must endorse his/her assistant, which shall consist in an affidavit prepared at the customs post where he/she exercises his/her functions, and which indicates:

a) That the endorsee meets the necessary conditions of honesty and aptitude;

b) That the endorser assumes total responsibility for the acts that his/her assistant commits at the customs posts, as long as he/she does not make a declaration to the contrary to the Customs General Director;

c) That the endorsee can only intervene in the dispatches promoted by the endorser or signed by him/her;

d) That the endorsee is not included in any of the impediments referred to in No. 1 of Article 125 of the present code.

4. An authorization and identification document shall be issued to the assistant dispatchers, under the terms of No. 4 and 5 of Article 123 of this code.

5. When the official dispatcher declares that he/she ceases to be

f) Maintain a sequential daily record under the conditions fixed by the General Director of Customs, of all the customs dispatches processed in his/her agency and an always up to date accounting of the accounts had with his/her clients;

g) Issue a receipt of the amounts given to him/her by the clients for payment of the expenses to be made with the customs declarations under his/her responsibility.

2. The official dispatcher is obligated to keep the record referred to in subparagraph f) of the preceding number, as well as correspondence and records pertaining to the customs operations, for five years, counting from the date of record for the declarations, with the corresponding details.

### **Article 131**

#### **Honoraries**

The official dispatcher's honorary rates are approved by Ordinance from the Minister responsible for the Finance sector.

### **Article 132**

#### **Disciplinary Penalties**

1. When they commit any disciplinary infraction, the following penalties shall be applied to the official dispatchers:

- 1 Admonishment;
- 2 Written admonishment;
- 3 Fine from ecv 100.000\$00 to 500.000\$00;
- 4 Suspension from 30 days to 1 year;
- 5 Dismissal.

2. The provisions of paragraph 1 No.1 of this Article may be applied by the directors or by the chiefs of the customs posts in the customs declarations themselves or in other documents presented by the dispatchers themselves and independently of the organization of the process.

3. The penalties in paragraphs 2 to 5 of No.1 of this Article shall be applied by organizing a disciplinary process.

4. The disciplinary processes referred to in the preceding number shall be organized and judged according to the precepts the Public Administration Agents Disciplinary Statute, on the parts applicable to them.

5. Offenses committed by the official dispatchers that imply any criminal responsibility. By their nature, shall be entered in the judicial courts.

6. The penalty of dismissal or inhibition from entering the customs posts shall be applied to the official dispatcher who has been suspended twice,

and commits another infraction punishable with a penalty different from that foreseen in paragraphs No. 1 a

## **Article 136**

### **Substitution for the Official Dispatcher**

1. When absent, the official dispatcher may choose among his/her assistants the one they consider more reliable to substitute him/her during the absence, under his/her entire responsibility, and give prior knowledge of the fact to the competent higher authorities.
2. An official dispatcher can never substitute for another.
3. The official dispatcher that does not have an assistant in his/her service cannot go on leave.

## **Article 137**

In all that is not foreseen in this Code, the exercise of the official dispatcher profession shall be governed by the provisions of the general legislation regarding mandate and service rendering in the exercise of liberal professions.

## **Chapter IV**

### **Verification of the Goods**

## **Article 138**

### **Control of the Customs Declarations**

1. After acceptance and registration of the declarations the acceptance and recording of the declarations, the intervening customs agents may proceed to:
  - a) A document control that includes the declaration and the documents that are annexed to it and demand any clarifications or the presentation of any other document, for the purpose of conferring the exactness of the elements of the declaration;
  - b) To the total or partial physical verification of the declared goods, accompanied by the eventual extraction of samples, to analyze them or to make a more thorough control.
3. In the event of a disagreement, the declarer has the right to refuse the result of the partial verification and demand an integral verification of the elements of the declaration object the disagreement.

## **Article 139**

### **Verification of the Goods**

1. The verification of the declared goods can only be made in the warehouses and customs clearing areas, customs stations or in the places indicated by the customs authorities.

2. The transportation of goods to the verification location, the packaging, repackaging, the extraction of samples, as well as any other necessary manipulations to permit this verification, are made at the cost of and under the responsibility of the declarer.

3. The extraordinary services performed at the request of the parts before or after normal working hours, within the customs posts, or outside of them, at any time, shall be remunerated by the interested parties, according to rates approved by the Minister responsible for the Finance sector.

## **Article 140**

### **Presence of the Declarer**

1. The declarer has the right to attend the verification of the goods or to indicate a qualified person to substitute for him/her.

2. The declarer or the person indicated by him/her to attend the



## **Article 141**

### **Extraction of Samples**

1. Whenever the customs authorities decide to extract samples, they inform the declarer or his/her representative of this fact.

2. The extractions are performed by the customs agents. However the latter can demand that the extractions be performed by the declarer or by a person designated by him/her, under the control of the customs agents.

3.

**Article 142**  
**Certificate of Visit**



**Article 147**  
**Credit of Duties**

1. At the request of the interested party, the Customs General Director may grant prorogation of the payment of duties and other impositions pertaining to declared goods for consumption, upon posting of a guarantee and subject to the payment of interest.

2. The credit of duties referred to in the preceding number is regulated by the Government and by the General Customs Director, in the ambit of their respective competences.

**Chapter VI**  
**Guarantee of Payment**

**Article 148**  
**Types of Guarantee**

1. The guarantee of payment may consist of:

- Either a cash deposit;
- Or by collateral from a financial institution.

2. When the consigner or the owner of goods is a public service, in the cases of international courtesy or in the cases expressly foreseen in the law, the types of guarantee referred to in the preceding number shall be replaced by a term of responsibility.

3. Whenever the customs authorities verify that the guarantee posted

- Or at any subsequent moment, in which the customs authorities verify that the payment, within the deadlines fixed. Is not securely guaranteed.

## **Chapter VII**

### **Extraction of the Goods**

#### **Article 150**

##### **Exit Authorization**

No one can dispose of goods taken to the customs posts or the locations designated by the customs services, without authorization from the customs services and without prior payment, consignment or guaranteeing of the duties and other impositions.

#### **Article 151**

##### **Deferred Payment**

1. In the customs declaration of goods that are awaiting the presentation of a document or of a decision for them to be attributed a specific customs regime or the concession of a fiscal benefit, the director or chief of the respective customs post may authorize the exit of the goods, by posting a cash guarantee from a financial institution, that would cover the great duties and other impositions that are demandable in the case of non presentation of such document or unfavorable decision regarding the request.

2. The maximum period for the payment of the customs duty pertaining to the goods referred to in No. 1 should not exceed fifteen days, prorogable by two additional periods of equal duration, by dispatch from the General Directorate of Customs.

3. For the goods destined for the State and in the cases of international courtesy and in other cases especially foreseen in the law, the guarantees foreseen in No. 1 of this Article may be substituted by a term of responsibility prepared in the office of the respective customs post, with maximum validity of one year, as long as such action is authorized by the customs General Director.

#### **Article 152**

##### **Extraction Credit**

1. The Customs General Director may authorize the extraction of goods, to the extent that the checking of the respective declaration and its verification have been performed, and before payment of the duties and other obligations demandable, by presentation of a cash guarantee or guarantee

provided by a financial institution, with the commitment of paying, together with the debtor, the guaranteed amount of the customs debt whose payment may become demandable within the deadline stipulated by the customs services.

2. The conditions for applying the provisions of No. 1 shall be established by the Government and by th



eventually fixed, shall take the necessary measures to correct the situation, taking into account the new elements at their disposal.

## **Title V**

### **Suspensive Economic Regimes, Transshipment, Franc Zones**

#### **Chapter I Generalities**

#### **Article 157**

##### **Definition of the Suspensive and Economic Regimes**

1. The following are considered customs economic regimes:
  - Customs station,
  - Active improvement,
  - Drawback,
  - Temporary importation (for reimportation under the same condition),
  - Passive improvement,
  - Temporary exportation (with reservation of importation in the same condition).
2. The following constitute suspensive customs regimes:
  - Transit,
  - Customs station,
  - Active improvement, under the form of suspensive regime,
  - Temporary importation (for re-exportation in the same condition).

#### **Article 158**

##### **Prior Authorization from the Customs Authorities**

The recourse to any customs economic or suspensive regime is subject to obtaining an authorization from the customs authorities.



## **Article 159**

### **Conditions for the Utilization of the Regime**

1. The conditions for the utilization of the regime under consideration are fixed in the authorization.

2. Without prejudice to the specific conditions of the regime under consideration, the authorization shall be granted only:

- to the persons who offer all the necessary guarantees to the good execution of the operations, and

- if the customs authorities can assure the oversight and the control of the regime without, to that end, having to create a disproportioned administrative disposition in relation to the economic needs under consideration

3. The owner of the authorization must inform the customs authorities of all the elements that surfaced after issuing the authorization, that are susceptible of impacting its maintenance or its contents.

## **Article 160**

### **Posting of Guarantee**

1. The goods subject to an economic or suspensive customs regime must be subject to the constitution of a guarantee, destined to assure the payment of the customs debt susceptible of being created relatively to these goods.

2. In the framework of the economic or suspensive customs regime special provisions may be foreseen relative to the constitution of the guarantee.

3. In the cases expressly foreseen in the law, the guarantee referred to in the preceding numbers may be substituted by a term of responsibility.

## **Article 161**

### **Selection of the Regime**

1. An economic or suspensive regime shall be selected when a new authorized customs destination is attributed to the goods subjected to it or, eventually, to the compensating or transformed goods obtained under this regime.

2. The customs authorities shall take all the measures necessary to normalize the situation of the goods whose regime is not selected under the foreseen conditions.

## **Article 162**

### **Transfer of the Duties and Obligations**

The duties and obligations of the receiver of an economic or suspensive regime may, under the conditions fixed by the customs authorities, be transferred to other persons that meet the conditions demanded to benefit from the regime under consideration.

## **Chapter II**

### **Customs Station**

#### **Section I**

#### **General Provisions**

### **Article 163**

#### **Nature of the Regime**

1. The customs station regime permits the deposit of goods in a specific location, under control of the Customs, with a suspension of the duties and other customs impositions, and without application of the commercial policy matters.

2. The goods subject to prohibitions ensuing from the need to protect order, the health of humans and animals, security and public morality, health and life of humans and animals, intellectual property as well as those imposed by reason of defense and preservation of the environment, the national patrimony with artistic, historic or archeological value, are excluded from the customs station regime.

3. The goods declared for another regime other than that of customs station cannot remain therein.

### **Article 164**

#### **Definitions**

For the purpose of this legislation it is understood as:

a) Customs station: Any location approved by the competent customs authority and subject to control, in which goods may be stored under the terms and conditions established in this legislation;

b) Depository: Any person authorized to explore or manage a customs station;

c) Depositor: The person committed by the declaration of subjection of the goods to the customs station regime or the person to whom the rights and duties of the former may have been transferred.

## **Article 165**

### **Type of Customs Station**

1. The customs stations may be:
  - a) For storage;
  - b) Industrial (Transformation under customs control).
2. The storage customs stations include the following categories:
  - a) Public station;
  - b) Private station.

## **Article 166**

### **Responsibility of Title holders of the Regime**

1. The Depository is responsible for:
  - a) Ensuring that the goods do not escape the customs oversight as long as they remain in the station;
  - b) Comply with the obligation resulting from the storage of the goods that remain under the customs station regime;
  - c) Observe the conditions fixed in the authorization.
2. The Depositor is always responsible for the compliance with the obligations resulting from subjecting the goods to the customs station regime.
3. The owners of the customs station regime are always responsible before the customs for the payment of the duties and other impositions due for the goods placed therein as well as for any fines that may be imposed, under the terms of the legislation in effect when it is verified that there is exit of goods from the station without processing the respective customs declaration and the payment of the customs debt or posting of the guarantee.
4. The owners of the customs stations are also responsible before the customs for the dues and impositions due for the goods stolen.
5. The missing goods verified in the customs stations constitute deviation of the duties, under the terms of Customs Litigation.

## **Article 167**

### **Accounting of the Existences**

1. The Depository must maintain under a form recognized by the customs authorities, an accounting of the existences of all the goods subject to the customs station regime.
2. The goods subjected to the customs station regime must be registered in the accounting of the existences foreseen in the preceding number, immediately after its entry into the referred station, based on the elements recognized or accepted by the controlling customs post.
3. The accounting of the existences must contain all the elements necessary to the correct application of the regime and the control of the same.
4. The accounting of the existences must, at any moment, present of the existences of goods still subject to the customs station regime. The depository must deliver to the controlling customs post, within the deadlines fixed by the customs authorities, a report on the situation of these existences.

## **Section II**

### **Customs Stations and Storage**

#### **Subsection I**

#### **General Provisions**

## **Article 168**

### **Interdicted Operations**

In the warehousing stations it is prohibited to:

- a) Replace packaging or containers of the goods, except:
  1. When there a need to extract, for re-exportation or transfer, part of the goods contained in a package;
  2. When there is a risk of damage or spillage or it is impossible to better condition the goods for transit or re-exportation;
  3. When permitted by law or regulation.
- b) Transform, by any means, the nature of the goods, except for:
  1. The samples that may be the object of measures that seek to limit their use in their own function, such as delving blows or apposition of hole-punchers, so as to preserve their appearance and, at the same time prevent its use for diverse purposes.

2. Of the packaging conditioning goods, that can be rendered useless by delivering blows to them;

3. Of the iron and steel drums, such as those taxed by the respective Table article, that can be rendered useless so as to serve only as junk. In the case of temporarily imported drums they should be rendered useless within the time period of their respective temporary importation.

### **Article 169**

#### **Permitted Operations**

Simple cleaning and dusting operations, usual handling for the good conservation or commercial presentation of the goods and repair of breakdowns caused in the course of their transportation, are permitted in the customs warehousing stations.

### **Article 170**

#### **Goods Excluded from the Regime**

1. Certain goods may be excluded from the warehousing stations for reasons connected with the characteristics of the installations, the nature or the

## **Article 172**

### **Users of the Regime**

1. Granting the authorization for the exploration of the public customs station is the competence of the Cust

General Director, having heard the directors of the customs post of the respective area of jurisdiction.

### **Article 175**

#### **Time of Permanence**

The time of permanence of the goods in the public customs stations is three years, prorogable for two more periods of six months each, by dispatch of the director of the circumscription, in duly justified cases.

### **Subsection III**

#### **Private Customs Station**

### **Article 176**

#### **Objective**

The private warehousing customs station is destined for the exclusive use of a depositor for the needs of its trade.

### **Article 177**

#### **Competence for Authorization and Guarantee**

Granting the authorization for the exploration of a public warehousing customs station is the competence of the directors of the circumscription and is subject to the constitution of a guarantee related to the responsibilities foreseen in Article 160 of this code.

### **Article 178**

#### **Installations**

The private warehousing customs stations are constituted in buildings or areas proposed by the chiefs of the customs delegations.

### **Article 179**

#### **Period of Permanence**

The period of permanence of goods in the private warehousing customs stations is of two years, but in duly justified cases the period can be

prorogued by two more periods of six months each, by dispatch of the director of the customs circumscription.

**Section III**  
**Industrial Customs Station**  
**(Transformation under customs control)**

**Article 180**

**Objective**

The industrial customs station is destined for the exclusive use of industrial enterprises to deposit the goods coming from outside the country, used in the incorporation, transformation and conditioning of products of the respective manufacture.

**Article 181**

**Authorization for Exploration**

- 1.



### **Article 183**

#### **Period of Permanence**

The maximum period of deposit of the goods in the industrial customs station is two years, prorogable for two additional periods of six months each, in duly justified cases.

### **Article 184**

#### **Customs Destination**

1. The finished products, processed under the industrial customs station regime, may be exported, introduced in consumption, deposited in warehousing customs station or abandoned in favor of the National Treasury.

2. In the event of induction of the finished product in consumption, the duties and other customs impositions are those pertaining to the imported goods utilized in the incorporation, transformation and conditioning of the product, according to the declaration made in the act of entry into the industrial customs station.

### **Article 185**

#### **Transfer to Warehousing Customs Post**

When the finished products, processed under the industrial customs station regime, are transferred to warehousing customs station, they must be deposited in separate compartments and have separate book keeping.

### **Article 186**

#### **Residues of the Manufacturing Process**

1. In the industrial customs stations, the residues of the manufacturing

## **Article 187**

### **Fractioned Fabrication**

1. The Customs General Director may authorize the fractioned fabrication between industrial establishments that benefit from the same regime.

2. The suspension of customs duties and other impositions relatively to the products remitted by the customs station to another establishment, of the same enterprise or belonging to a third party, for fabrication complementation, as long as they are returned to the customs station within the deadline established by the customs authorities.

## **Chapter III**

### **Active Improvement**

## **Article 188**

### **Definitions**

1. Active improvement is understood to be the regime that permits receiving in the national customs territory, under suspension of customs duties and other impositions on importation, goods destined to suffer an improvement operation, for the purpose of

7. By authorization it is understood the decision from the customs authorities to authorize recourse to the regime.

## **Article 189**

### **Authorization of the Regime**

Authorization for the active regime shall be granted only:

1. When it is possible to identify the importation goods in the compensating products. However, the possibility of identifying the presence of the importation goods in the compensating products is not imposed as indispensable condition for authorization of the active improvement regime when:

a) The identity of the compensating products can be established:

- based on information about the fabrication process and the materials that enter in the composition of the compensating products; or

- in the course of the improvement operations, for a customs control;

b) The selection of the regime is made by the exportation of the products obtained after the treatment of equivalent goods.

2. Should the regime be able to create more favorable conditions to exportation or re-exportation of the compensating products, as long as the essential rights of the national exporters are not harmed (economic conditions).

## **Article 190**

### **Compensation for the Equivalent**

1. The customs authorities may authorize compensation for the equivalent when the interested party so indicates in the authorization request, duly fundamented and indicating the elements necessary for an efficient customs control. The elements common to the equivalent goods and to the importation goods, as well as the means to control them should be specified in the authorization.

2. When the authorization does not foresee recourse to the compensation by the equivalent and the requestor proposes to benefit from this modality, the latter must present a request to alter the authorization initially granted.

3. Aside from the quality and characteristics referred to in No. 5 of Article 188, the equivalent goods must be classified under the same ten digits Tables code of the Customs Nomenclature in effect in the Republic of Cape Verde.

## **Article 191**

### **Rate of Revenue**

1. The Customs General Director, having heard the competent technical department of the respective sector of activity, shall fix the operation's rate of revenue or, if such should be the case, the mode of determination of this rate. The rate of revenue is determined as function of the real conditions in which the improvement operation is carried out or should be carried out.

2. When the circumstances so justify and namely, when dealing with improvement operations carried out traditionally under well defined technical conditions, that apply to goods of sensibly constant characteristics and that lead to obtaining compensating products of constant quality, forfeiture revenue rates may be fixed, based on previously determined real data.

## **Article 192**

### **Competence to Authorize the Regime**

1. Authorization of the active improvement regime is the joint competence of the Ministers responsible for the areas of Finance and of Industry.

2. All documents and elements of proof pertaining to the information to be provided in the request, and whose presentation is necessary to the respective analysis, must be added to the authorization request.

3. When the customs authorities deem that the information contained in the request are insufficient, they can demand that requestor provide complementary information.

## **Article 193**

### **Period of Utilization and Evaluation of the Regime**

1. The period of validity for the authorization to utilize the regime – period during which the goods may be subject to the regime – is fixed in the authorization itself.

2. The regime evaluation period – the period during which the compensating products must be exported or receive another authorized customs destination – is equally fixed in the authorization. The time necessary to perform the active improvement operation and for the exit of the compensating products must be taken into account in fixing the period referred above.

## Article 194

d) Not transfer the goods referred to in the preceding article from the approved installations, save for the cases foreseen in this Code;

e) Not sell the produced products in the internal market, save for the cases foreseen in this Code;

f) Submit the records of the yield of the imported raw materials imported under the active improvement regime to the approval of the Customs General Director;

g) Maintain in a form recognized by the customs authorities, an accounting of all the existences of the products subject to the regime;

h) Other obligations foreseen in this Code and other customs legislation.

2. The accounting of the existences must contain all the elements necessary to the correct application of the regime and to the customs control.

3. The accounting of the existences must, at any moment, present the situation of the existences of the goods still subject to the regime. The bearers of the authorization must deliver at the control customs post, a list showing the actual situation of the existences.

#### **Article 197**

##### **Verified Shortages**

1. The shortages verified at the improvement or at the warehousing locations of goods subject to the active improvement regime constitute a deviation of duties, under the terms of Customs Litigation.

2. The bearers of the active improvement regime authorization are also responsible before the customs for the duties and impositions due for the goods subject to the regime, that are object of theft.

#### **Article 198**

##### **Activities of the Franc Enterprises**

The active improvement regime shall apply to the activity of the franc enterprises, producers of goods, created by Law No. 99/IV/93, of 14 December.

## **Chapter IV**

### **Drawback**

#### **Article 199**

##### **(Definitions)**

1. By drawback regime it is understood the customs regime that permits to obtain, ay moment of exportation, the reimbursement of the duties and other obligations supported in the importation, for the products that were used in the composition of the exported product.

2.

## **Article 202**

The competence to grant the drawback regime belongs to the Customs General Director

## **Chapter V**

### **Temporary Importation**

## **Article 203**

### **Definition**

1. By temporary importation it is understood the customs regime that permits the utilization in the customs national territory of goods imported with total exemption from duties and other obligations, for a specific purpose, destined to be re-exported within a specific deadline without having suffered any alteration beyond the normal depreciation caused by its use.

2. The temporarily imported goods may be submitted to the operations necessary to ensure their conservation.

## **Article 204**

### **Authorization of the Regime**

1. The authorization of the temporary importation regime can be granted only when the customs can assure that it will be in the condition to identify the goods at the moment of evaluation of the regime.

2. When the elements contained in the commercial documents are not sufficient, the customs may take its own measures of identification.

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## **Article 206**

### **Attribution of the Regime**

1. If the good is not subject to any prohibition measure or restriction, the attribution of the temporary regime may be granted, upon payment of the duties and other impositions.

2. Liquidation, in the case referred to in the preceding number, shall be done according to taxes in use on the duties and other obligations are paid.

## **Article 207**

### **Damaged Goods**

For the goods gravely damaged by an incident that makes their recovery impossible, in duly proven and justified situations, the Customs General Director may authorize:

a) Its abandonment in favor of the National Treasury, if the same is interested in its acquisition;

b) Its destruction under customs control, at the cost of the interested party;

c) Introduction in the consumption of the waste and recoverable pieces, with the payment of duties and other impositions dues on importation, on the date of payment of the customs debt.

## **Chapter VI**

### **Passive Improvement**

## **Article 208**

### **Definitions**

1. By passive improvement it is understood the customs regime that permits temporary exportation of certain goods to the outside, there to be submitted to an improvement operation, with a view to its reimportation in the form of a compensating good.

2. By passive improvement operation it is understood the operations referred to in No. 2 of Article 188.

3. By temporary exportation goods it is understood the goods subject to the passive improvement regime.

4. By compensating products it is understood all the products resulting from the passive improvement operations.

5. By yield it is understood the quantity or percentage of compensating products obtained from a specific quantity of temporary exportation goods.

### **Article 209**

#### **Tributation on the Reimportation**

On reimportation, the compensating products are subject to the duties and other impositions, based on the added value they acquire outside the country.

### **Article 210**

#### **Authorization of the Regime**

1. The director or the chiefs of the customs posts, as the case may be, are competent to authorize the passive improvement regime.
2. Authorization of the passive improvement regime is issued at the request of the person who orders the improvement operations.
3. Authorization of the passive improvement regime is granted only:
  - If it is possible to prove that the compensating products shall result from the temporarily exported goods;
  - When they are not harmful to the essential interests of the national producers.

### **Article 211**

The Customs General Director, having heard the competent departments of the respective sector of activity, shall fix the yield or, if such is the case, the mode of determining this yield.

### **Article 212**

#### **Period**

The reimportation period for the compensating products is one year, prorogable for two more identical periods of three months each, fixed by dispatch of the directors of the customs delegations or by the chiefs of the customs posts, as the case may be.

**Chapter VII**  
**Temporary Exportation**  
**(with reservation as to importation in the same condition)**

**Article 213**  
**Authorization of the Regime**

The customs directors and the chiefs of the customs delegations may authorize temporary exportation of certain goods, with reservation as to their being re-exported in the same condition, as long as they can be identified at the time of reimportation as being the same good that had been temporarily exported to the outside.

**Article 214**  
**Measures of Identification**

At the time of the temporary exportation, the customs authorities must take the necessary measures for the identification of the temporarily exported goods.

**Chapter VIII**  
**Transit**

**Article 215**  
**Definitions**

1. By customs transit it is understood the regime by which all goods are placed, transported under customs control, with suspension of duties and other taxes and of trade policy measures, from a customs post to another customs post located in the national customs territory or in other customs territories.

2. By national transit it is understood the transit from one customs post to another customs post, located in the national customs territory.

3. By international transit it is understood the customs transit that implies the crossing of one or of several borders.

4. By community transit it is understood a modality of international transit that takes place among the Member States of the Economic Community of the West African States (ECOWAS).

5. By departing customs post it is understood the customs post where the transit operation begins.

6. By destination customs post it is understood the customs post where the transit operation ends and where the goods must be presented.

### **Article 216**

#### **Fiscal Responsibility**

The expediter and the transporter of in transit goods are responsible jointly, before the customs, by the receiving, transportation and delivery operations of the goods, in the same condition they were in when they received them and under the same conditions imposed by this Code and other customs legislation in effect and by the customs authorities.

### **Article 217**

#### **Declaration of Regime**

1. The goods under customs transit are declared in simplified forms, in the model approved by international conventions and agreements ratified by the State of Cape Verde, or, in the case of national transit, in the model approved by the Customs General Director.

2. The declaration referred to in the preceding number must indicate:

- a) The names of the owner and the destination of the goods as well as that of the transporter;
- b) The marks, numbers, qualities, quantity and weight of the goods;
- c) The date of emission, the date and time of the beginning of the transportation to the destination customs post;
- d) The itinerary established by the customs authority.

### **Article 218**

#### **Security Measures**

1.

- a) The containers with a capacity of one cubic meter or more, including the removable attachments;
- b) The road vehicles, including their trailers and semi-trailers;
- c) The railroad cars;
- d) The ships;
- e) The aircrafts.

### **Article 219**

#### **Transporter**

1. The depository the owner or consigner of the goods or any entity

5. The transporter's responsibility before the customs ends with the good delivery of the goods to the depository.

## **Chapter IX**

### **Transshipping**

#### **Article 221**

##### **Definition**

By transshipment it is understood the customs regime in application from which results, under customs control, the transfer of goods from the means of transportation utilized in the importation to be loaded onto another means of transportation utilized in the exportation, with this transfer carried out in the area of jurisdiction of a customs post that is, at the same time, an entry and a departure customs post.

#### **Article 222**

##### **Declaration of the Operation**

1. A simplified single declaration is required as document of support for the operation.
2. Any commercial or transport document, clearly giving all the

considered, for the purpose of application of the duties and any other impositions pertaining to importation, and of the trade policy measures, as not being in customs territory, as long as they are not introduced in consumption.

2. By person it is understood any singular or collective person.

3. By concessionaire it is understood to be any person, national or foreign authorized to administer and manage a franc zone.

4. By operator it is understood to be any person installed in the franc zone who performs an improvement operation, of purchase and sale of goods.

#### **Article 225**

##### **Period of Permanence**

The period of permanence of the goods in the franc zone is ilimited.

#### **Article 226**

##### **Exemption of Guarantee**

The customs do not require any modality of guarantee to admit goods

observance of the regulations pertaini



231 of this Code, or in the event of suspicion that the goods are the object of a fiscal infraction or of national or international criminality.

6. The Customs have the right to carry out, at any moment, the control of the goods detained in a franc zone.

7. Access to the franc zone may be forbidden to the persons that do not offer the necessary guarantees for compliance with the provisions of the customs legislation.

### **Article 231**

#### **Admission of Goods**

1. The goods destined for a franc zone are not subject to restrictions or prohibitions, except those based on considerations of morality or public order, public security, of hygiene and public health, or under considerations of zoosanitary or phytosanitary or yet for reasons of protection of the environment and the historic, artistic or cultural patrimony.

2. The goods that present danger, that are susceptible of altering other goods or that need special installations, for other reasons, must be placed in specially equipped locations, to receive them

3. It is permitted to enter machinery, equipment, tools and work utensils in the franc zone for temporary use by processing a special authorization, with mandatory verification and taking of marks for future comparison, on exit.

4. The customs post that operates in a franc zone must contain detailed lists of all the equipment existing in the referred franc zone, including the machinery, tools and their utensils, with an indication of whether they are national, nationalized or foreign, as the case may be.

### **Article 232**

#### **Control by Documents**

1. Save for the provisions of No. 2 of Article 228 of this Code, for the purpose of controlling goods on entry and exit, a copy of the document pertaining to transportation containing all the information necessary to identify the goods, must be handed over the customs authorities.

2. Without prejudice for the provisions of the preceding number, whenever the goods destined for or proceeding from the franc zone have to cross the customs territory, they must do so under the cover of a national transit declaration, registered in the respective customs post.

**Article 233**  
**Accounting**

1. Any operator installed in a franc zone must have a system for the



## **Article 240**

### **Condemnation and Responsibility for Duties**

1. The condemnation or compliance with the sanctions for customs fiscal infraction do not exempt the agent from payment of the duties and other impositions that are legally due for the goods object of the infraction, save if, being the owner of the goods, he/she abandons the goods or the same are declared lost in favor of the National Treasury.

2. The same regime foreseen in the preceding number shall be applied, with the necessary adaptations, in the case of absolution or the case is archived.

3. If they are not declared lost in favor of the National Treasury, the goods shall be placed under the care of the Customs, so that their customs situation may be normalized.

4. Goods that are apprehended or placed under the care of the Customs shall be presumed abandoned in favor of the National Treasury, if they are not cleared from customs within fifteen days after the date of the respective notification.

## **Article 241**

### **Amount of the Duties and Other Impositions**

The duties and other impositions to be paid by the infractors are those that would correspond to the goods objects of the infraction, if they were normally cleared from customs at the moment the infraction was committed.

## **Article 242**

### **Concept of Customs**

For the purpose of application of this Code customs are considered to be the customs posts, the fiscal posts, the routes that lead directly to the former or to the latter, the depositories under customs regime, and in general, the locals subject to customs oversight where passengers embark and disembark or the operations of loading and unloading goods that are captive to the duties or other impositions whose collection the customs are responsible for.

## **Article 243**

### **Subsidiary Law**

For anything that is not specifically regulated by this Code the provisions of the common penal law shall apply, if dealing with crimes, of the

contra ordination law if dealing with infractions of this nature, and those of the civil law, if dealing with customs fiscal responsibility of a civil nature.

## **Section II**

### **Presumption of Punishment and Forms in Which the Infraction May Appear**

#### **Article 244**

##### **Action and Omission**

1. When a legal type of customs fiscal infraction includes a certain result, the fact includes not only the action adequate to produce it, as well as



## **Article 250**

### **Infractions Committed by Official Dispatchers**

In the infractions committed by the official dispatchers or their assistants, the owners or consigners of the goods that may have been object of a fiscal infraction are always jointly responsible.

## **Article 251**

### **Subjective Imputation**

Only the fact committed fraudulently, or, in the cases expressly foreseen in the law, with negligence, can be punished.

## **Article 252**

### **Error Regarding the Circumstances of the Fact**

The errors regarding descriptive or normative elements of the type, or over the presumption of fact of a case of justification of the fact, excludes fraud.

## **Article 253**

### **Error Regarding Illicitness**

Whosoever acts without conscience of the illicitness of the fact acts without guilt, if the error is not censurable.

## **Article 254**

### **Preparatory Acts**

The preparatory acts are not punishable, Save for disposition to the contrary in the law.

## **Article 255**

### **Attempt**

1. There is an attempt when the agent commits, fraudulently, acts of execution of an infraction without the same being consummated.
2. The following are acts of execution:

- a) Those that correspond in one or in some elements, to the description of the type of crime or contra ordination;
- b) Those that are not credible to produce a typical result;
- c) Those that, according to common experience and save for unforeseeable circumstances are of a nature such that they lead to expecting that they will be followed by acts of the kinds indicated in the preceding subparagraphs.

### **Article 256**

#### **Punishability of the Attempt**

1. The attempt is punishable with the same penalties as the consummated infraction.
2. In the case of the attempt, the sanction shall be freely attenuated, but it cannot, however, be less than the minimum limit legally foreseen, save for another determination of the law.

### **Article 257**

#### **Credibility of the Means and Lack of Object**

The attempt is not credible when the means employed by the agent is not credible or the object essential to consummate the infraction does not exist.

### **Article 258**

#### **Desistence and Active Repentance**

1. The agent who voluntarily desists from pursuing in the execution of the infraction, or impeded its consummation, or yet when, in spite of the consummation, impedes rendering effective the result that the law wants to avoid, may be exempt from penalty.
2. The same regime of the preceding number shall be applied when the consummation or the verification of th



## **Article 259**

### **Illicitness in Co participation**

1. If the illicitness or degree of illicitness of the fact depend on certain qualities or special relationships of the

**Section III**  
**Of the Extinction of the Responsibility**

**Article 263**  
**Prescription of the Proceedings**

1. The proceedings for customs fiscal infraction elapses as soon as the following periods have end, after the infraction is committed:

- a) five years, if the cases of crimes corresponding to prison terms with a maximum limit equal to or greater than one year;
- b) two years in the remaining cases...

2. For the purpose of determining the maximum legal sanction the preceding number refers to, the aggravating or the attenuating facts that modify the limits, within the same type, do not count.

3. When the law establishes a prison term or a fine for any customs crime, as an alternative, only the first is considered for the purpose of this Article.

**Article 264**  
**Interruption of the Prescription**

1. In the cases of customs fiscal crime, prescription of the procedure is interrupted, and a new prescribed period shall commence:

- a) With a notification for the first depositions, for appearance or questioning of the agent as accused, in the preparatory documenting;
- b) With the notification of the pronouncement dispatch, or equivalent;
- c) With the marking of the trial date in absentee processes.

2. The criminal proceeding prescription shall always take place when, from the start and safeguarding the suspension period, the normal time plus half has elapsed.

3. The prescription of the contra-ordination proceeding is interrupted:

- a) With the communication to the accused of the dispatches, decisions or measures taken against him or with any notification;
- b) With the execution of any diligences of proof, specifically exams and searches, or with a request for assistance from the police or administrative

c) With any declarations that accused may have proffered in the exercise of the right to be heard.

4. In the case of conflicting infractions, the interruption of the criminal proceedings prescription determines that of the prescription of the contra-ordination proceedings.

## **Article 265**

### **Prescription of the Sanctions**

1. The sanctions for committing customs fiscal infractions cease to have effect within the following deadlines, counting from the date the respective decision or sentence becomes executable:

a) Ten years in the case of customs fiscal crime to which correspond a maximum limit penalty equal to or greater than two years in prison;

b) Five years in the case of customs fiscal crimes to which correspond a prison term of whose limit is equal to or greater than one year, but less than two years;

c) Four years, in the case of crimes not encompassed in the preceding sub-paragraphs and of contra-ordinations to which correspond a fine of ecv 100.000\$00.

d) Of three years, in the remaining cases.

2. The prescription of the sentences is interrupted with the execution of the same.

3. The prescription of the principal sanction involves that of the accessory sanctions that may not have been executed.

## **Article 266**

### **Prescription of Duties and Other Impositions**

The obligation to pay the duties and other impositions prescribes after twenty years have passed, counting from the date the condemning decision becomes an executable sentence.

**Chapter II**  
**Of the Customs Fiscal Infractions**

**Section I**  
**Customs Fiscal Crimes**

**Subsection I**  
**Types of Customs Fiscal Crimes**

**Article 267**  
**Contraband**

Whosoever, by any means, causes goods to enter or to leave the country without going through the customs shall be punished with imprisonment of 3 months to two years or a fine of ecv 50.000\$00 to 20.000.000\$00.

**Article 268**  
**Occultation Contraband**

1. Under the terms of the preceding Article, whosoever, in any means of transportation, has hidden undeclared or non manifested goods that co-substantiates the entire cargo or the part of the cargo with greater value, or yet, without constituting it, has a value greater than ecv 1.500.000\$00, shall be punished under the terms of the preceding Article.

**Article 269**  
**Qualified Contraband**

The crimes foreseen in Articles 267 and 268 shall be punished with prison terms of six months to three years or with a fine of ecv 100.000\$00 to 30.000.000\$00, whenever:

- a) They are committed at night or at a remote place, or with the use of weapons and violence, or yet, by two or more persons;
- b) They are committed with the corruption of any functionary or agent of the State;
- c) They are committed with the alteration or falsification of dispatch tickets or of any customs documents or documents presented to the customs;

d) The agent of the crime is a functionary or agent of the Customs, the Fiscal Guard or any other institution with competence in the matter of customs fiscal police, or official dispatcher or any person duly qualified to execute

b) after instituting a process against hi/her or against a co-participant, for crime or contra-ordination foreseen in this legislation, destroys, damages , alienates or onerates the goods considered arrested as guarantee for payment of the amount corresponding to pecuniary sanction or of the tributary installment, even if it is owed by another co-participant or responsible person; shall be punished with imprisonment of three to eighteen months or a fine of ecv 50.000\$00 to 8.000.000\$00.

## **Article 274**

### **Credits Frustration**

#### 1. Whosoever:

a) After the institution of a crime or contra-ordination process, foreseen under this title, foreseen under this title, and for purpose of frustrating in whole or in part, the coercive collection of any amounts due to the State for the practice of the infraction and for whose payment he/she comes to be declared responsible, for alienating or onerating its patrimony;

b) Having knowledge of the existence of the process for crime or contra-ordination, foreseen in this legislation, and with the intent mentioned in the preceding subparagraph, authorizes in acts and contracts that lead to the transfer or oneration of the patrimony,

Shall be punished with imprisonment for three to eighteen months or with a fine of ecv 50.000\$00 to 8.000.000\$00

2. There shall be no criminal proceeding or the agent shall be exempt from penalty, as the cases may be, if in the mean time, the amounts due are totally paid by the responsible entity.

## **Article 275**

### **Refusal to Present the Goods**

Whosoever, having been named depository of goods apprehended under the terms of this legislation, does not present them within the period that was designated to him/her, shall be punished with imprisonment from one to six months or a fine of ecv 25.000\$00 to 3.000.000\$00.

## **Article 276**

### **Breakage of Marks or Seals**

Whosoever opens, tears or renders useless, totally or partially, the marks, seals or other legally prescribed marks and other signs, affixed by a competent functionary to identify, insure or keep goods subject to oversight, or to certify that the same is not the object of seizure, apprehension or some

other cautionary providence, shall be punished with imprisonment of three to eighteen months or fine from ecv 50.000\$00 to 8.000.000\$00.

### **Article 277**

#### **Receiving**

1. Whosoever dissimulates, receives as pawn, acquires under any title, detains, conserves, transmits or contributes to the transmission or any form of securing, for self or for a third party, the possession of a s fscal infa pa5(uira5(pro)es u.7(8(psessim





served in the event of voluntary or coercive non-payment of the pecuniary sentence.

2. For the purpose of the preceding number the equivalence is fixed at ecv 150\$00 per day, and imprisonment cannot be fixed as alternative to the fine exceed the duration of three hundred days.

### **Article283**

#### **Interdiction from the Exercise or the Profession or Activity**

1. Without prejudice for what is legally established in matters of rehabilitation, whosoever is condemned for the practice of the crime of contraband may (?) interdicted from the exercise of the profession or activity whose exercise requires a public title or an authorization or homologation from the public authority.

2. The provisions of the preceding number apply, namely:

a) To the official dispatchers, their assistants and practitioners and to all those who are duly qualified to execute customs dispatches;

b) To aircraft commander or crews, captains, other officials, masters, arrays, bosses or crews of any vessels, and the agents representatives of the navigation agencies;

c) To baggage handlers that provide service in the maritime hangars and areas, to the employees and salaried personnel who provide service in the ports and airports and those called “ship board businessmen”.

### **Section II**

#### **Of the Customs Fiscal Contra-Ordinations**

#### **Subsection I**

#### **Types of Contra-Ordinations**

### **Article 284**

**Deviationen?’**

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2. The same shall be applied when, under the same conditions:

a) there is violation, that cannot be considered as a crime, of the legal discipline of the customs suspensive regimes or of any of the other special regimes that grant fiscal benefits, establish facilities, restrictions or prohibitions pertaining to the ownership, presentation, unloading and deposit, utilization or destination, transit or circulation of goods;

b) There has been a deviation from the purpose presupposed in the customs regime applied to the good;

c) Through diverse dispatch formularies, proceed to the importation of separate components or an artifact that, upon assembly in the country, form a new product, as long as it carried out for the purpose of eluding the perception of tributary installment due for the importation of the finished artifact or is destined to subtract the importer from the application goods contingency norms;

d) Special provisions that expressly qualify the fact as a deviation are violated.

### **Article 285**

#### **Irregular Circulation of Goods**

1. Whosoever, by any means, places or keeps foreign goods in circulation without processing or accompanying them with the competent authorization or other required documents, or without the application of stamps, marks or other legally prescribed signs, shall be punished for deviation of goods, under the terms of the preceding Article.

2. If the goods are not foreign, a fine of ecv 25.000\$00 to 1.000.000\$00 shall be applied to the infractions foreseen in the preceding number.

3. If the value of the goods is less than ecv 5.000\$00, the competent entity may attenuate the fine.

### **Article 286**

#### **Fraud in the Transportation of Goods Under the Suspensive Regime**

Whosoever, in the course of transportation of goods expedited under the customs suspensive regime, subtracts or substitutes them, or, for the same effects, renders the means of sealing, security or customs identification ineffective or useless, or yet, does not follow the itineraries fixed, for the purpose of escaping oversight, shall suffer the same penalty of Article 284, for deviation.

## **Article 287**

### **Qualification and Attribution of Privilege**

1. If the good object of deviation is for forbidden or conditioned importation or exportation, the fine shall be ecv 100.000\$00 to 15.000.000\$00.

**Subsection II**  
**Provisions applicable to Customs Fiscal Contra-Ordinations**

**Article 291**  
**Amount of the Fine**

1. The determination of the amount of the fine shall be made as a function of, among other things, the following circumstances:

- a) Gravity of the contra-ordination;
- b) Degree of illicitness of the agent's guilt;
- c) Economic situation of the infractor;
- d) Economic benefit obtained from the practice of the infraction;
- e) Practice of the infraction by singular or collective person.

2. The amount of the fine to be applied for the practice of customs fiscal contra-ordination shall never be less than one and a half times the value of the goods in internal market, at the moment the infraction was committed, without prejudice to the provisions in the final part of No.1 of Article 283 of this legislation.

3. The provision of No. 2 of Article 280 is equally applicable.

**Article 292**  
**Accessory Sanctions**

Aside from the fine, one or more of the accessory sanctions contained in the base-law of contra-ordinations may be applied to whoever practices the contra-ordinations foreseen in this legislation.

**Chapter III**  
**Of the Apprehension, of the Loss of Guarantees**

**Article 293**  
**Apprehension of goods**

1. The goods object of customs fiscal crime or deviation are apprehended.

2. In the remaining contra-ordinations, apprehension shall take place under the conditions foreseen in the base-law of contra-ordinations.

## **Article 294**

### **Loss of Goods**

1. The goods apprehended shall be declared lost in favor of the National Treasury; in the case of the customs fiscal crimes foreseen in the Articles 267, 268, 269 and 271, save if they belong to a duly identified person, to who no responsibility for the practice of the crime can be attributed.

2. If the provision of the final part of the preceding number is verified, or if the goods were not apprehended, the infractor shall respond for an amount equal to their value. If the value cannot be determined, he agent shall pay an amount to be fixed by the court, never greater than ecv 3.000.000\$00.

3. In the contra-ordinations, the goods are not lost to the National Treasure, but they be restituted only after the installments due have been paid and, if they belong to the infractor, after the amounts due in the process have been paid.

4. The loss shall never be decided without first hearing the interested parties.

## **Article 295**

### **Reversion**

Outside the cases in which it is forbidden, by force of the law, the interested parties may request a reversion of the goods subject to loss in favor of the National Treasury, as long as they pay an amount equal to their value, having paid the fine and other amount due in the process.

## **Article 296**

### **Apprehension and Loss of the Means of Transportation**

1. The means of transportation utilized in the practice of customs fiscal infractions shall be apprehended.

2. In the case of the customs fiscal crimes referred to in Articles 267, 268 and 269, the means of transportation shall be considered lost to the National Treasury, when the goods that were object of the infraction has a value greater than ecv 1.500.000\$00 and consists in the part of greater value of the respective cargo, save if the means were utilized knowledge or without negligence of their owner.

3. The provisions of the preceding number shall apply when dealing with the customs fiscal crimes foreseen in Article 271, as long as the maximum limit of the applicable penalty is equal to or greater than the

penalties foreseen for the infractions contained in Articles 267, 268 and 269 and in case of deviation.

4. If the circumstance referred to in the final part of number two is verified the provisions of number 2 of Article 294 shall be applied.

#### **Article 297**

##### **Apprehension and Loss of Weapons and Other Instruments**

1. The weapons and other instruments utilized in the practice of customs fiscal infractions shall be apprehended and declared lost to the National Treasury, save that, if not dealing with weapons, the circumstance in number 2 of the preceding Article is verified, the provisions of number 4 shall be applied.

2. If dealing with instruments that are not weapons, the provisions of Article 295, with the necessary adaptations, shall be applied.

#### **Article 298**

##### **Restitution**

1. If under the terms of the preceding Articles there have been no losses, and save for the cases in which the law prohibits reversion, the goods, the means of transportation and other instruments used in the infraction shall be restituted to their rightful owners:

a) As soon as a caution equal to their value is posted, the duties and other impositions and the expenses incurred in their conservation, safekeep and transportation are paid;

b) Or as soon as the dispatch becomes executable or there is no dispatch or equivalent, or a final decision to absolve, or as soon as the Public Ministry abstains from deducing accusation or the competent entity in the contra-ordination decided to archive the process and it is demonstrated that the payment of customs tribulation is not due.

2. The provisions of the preceding number do not apply to weapons utilized in the practice of the infraction.

#### **Article 299**

##### **Deposit and Immediate Sale of the Goods**

1. The goods, the means of transportation, the weapons and other instruments of the infraction shall be deposited at the customs posts, unless the posts cannot receive them for lack of material conditions or because they cannot transport them immediately to that post.

2. If the circumstances referred to in the final part of the preceding number are verified, the apprehended goods shall be recorded and described and entrusted to a credible depository, with the exception of the weapons and other instruments of the infraction, they shall be kept under guard by the agents of the authority, with a term of deposit prepared, signed by the apprehenders, witnesses, if there are any, and the depository who will keep a duplicate.

3. If there is no depository at the local of apprehension the goods shall remain under guard by the agents of the authority.

4. When the assets referred to in this Article can deteriorate or die, or the public interest so justifies, the customs authorities may proceed to the immediate sale, and the decision to so shall be preferred within two days.

**Chapter IV**  
**Of the Process**

**Section I**  
**General Provisions**

**Article 301**  
**Penal Action**

The penal actions pertaining to the customs fiscal infractions shall be exercised under the terms of the penal process legislation in effect, wit the specialties included in the provisions of this Code.

**Article 302**



presented, that may be of interest in getting at the truth shall be attached to the report.

3. The report, the apprehended goods and the means of transportation and the detained individuals shall be turned over to the competent fiscal authorities for the purpose of documenting the process, in the shortest time possible, depending on circumstances, and never in more than twenty-four hours. Saturdays, Sundays and holidays do not count.

### **Article 304**

#### **Flagrant Offence**

When the infraction is punished with imprisonment, the entities referred to in the preceding number shall proceed to the detention of the infractor in flagrant offence, and present the same to the competent judge in the deadlines and terms foreseen. Quando à infracção corresponder pena de prisão, as entidades referidas no Article anterior procederão à detenção do infractor em flagrante delito, apresentando-o ao juiz competente nos prazos e termos previstos na lei processual penal.

**Section II**  
**Provisions About the Criminal Process**

**Subsection I**  
**Of Acts in the Common Criminal Process**

**Article 306**  
**Direction and Assistance in Documenting the Process**

The customs entities and the customs oversight agents assist the judge and the Public Ministry in the direction and the execution of the acts of investigation pertaining to documenting the processes for customs fiscal infraction, remaining on this measure and for these precise effects, in the functional dependence of the latter.

**Article 307**  
**Requisition and Delegation of Processual Acts**

Outside the cases in which, by force of the law, they have to be executed or presided by the judge or by the Public Ministry, both may requisition or delegate to the competent customs authorities the practice of processual acts relative to customs fiscal crimes.

**Article 308**  
**Civil Responsibility**

With the accusation of the criminal acts foreseen in this legislation, or within the period in which the same should be formulated, the Public Ministry shall deduce the condemnation of the responsible civilians, if there are any, shall always indicate the value of the goods, means of transportation and other instruments of the infraction that may have been apprehended.

**Article 309**  
**Pronouncement Dispatch or Equivalent Sentence**

1. Aside from the requisites of the general penal processual law, the pronouncement dispatch or equivalent and the sentence shall always include the indication of the value of the goods, means of transportation and other apprehended instruments of the infraction.

2. The sentence shall also include, when such is the case, the declaration of loss of the goods and other assets or instruments utilized in the practice of the crime and the distribution of the fine and of the proceeds from the sale, under the terms of Articles 327 No. 1 and 328.

3. The courts shall forward to the Customs General Directorate, within 48 hours, copies of the pronouncement dispatch or equivalents and of the condemnation decisions proffered in processes for customs fiscal crimes.

## **Subsection II**

### **Transaction Process**

#### **Article 310**

##### **Assumptions**

1. In the case of a customs fiscal crime punishable with imprisonment whose maximum limit is not greater than one year, or only with a fine penalty, and if the proceedings do not depend on any one particular accusation, the Public Ministry, having heard the customs authorities, may request from the court that the application take place in a transaction process, when its determined that the fine penalty may be concretely to the case.

2. The transaction process shall not take place in the case of a repeat offense.

#### **Article 311**

##### **Requests of the Public Ministry**

1. The Public Ministry requests are in writing and they include the indications tending to identify the accused, the description of the facts that are imputed to the accused and the mention of the legal provisions that were violated, the existing proof and a summary exposé of the reasons why it is determined that the reasons why a prison sentence cannot be concretely applied to the case.

2. The request ends with a precise indication of the sanction whose application is proposed, and, if such be the case, of the request for civil indemnity.

#### **Article 312**

##### **Rejection Dispatch**

1. If there is motive to reject the Public Ministry request, the court proffers a dispatch to return the process for the applicable processual form.

2. If the process is returned for another processual form, the request loses applicability and the Public Ministry remains committed to whatever was proposed in the request.

### **Article 313**

#### **Hearing and Sentence**

1. If the court decides not to reject the Public Ministry request, it orders that the accused be notified to appear, accompanied by a defender, on the date, time and place it indicates.

2. On the date fixed, the court informs the accused of the contents of the Public Ministry's request, asks the accused if he/she accepts the proposed sanction, augmented by the civil indemnity payment, the justice costs and the expenses, and clarifies to the accuser that a negative response implies returning the process for another processual form.

3. If the accused declares that he/she accepts the proposal made, the judge orders such declaration recorded in writing, gives it to the accused to sign and proffers a dispatch of agreement with the Public Ministry's request, to which he/she adds a condemnation in justice tax and expenses reduced to half.

4. The provision of the preceding number does not exclude, when such is the case, the indication, under the terms of this legislation, of other requisites demanded by the sentence.

5. The dispatch referred to in number three of this Article has the same value as a guilty sentence and becomes immediately executable.

### **Article 314**

#### **Assistant and Civilian Parts**

1. In transaction processes, interventions by assistants and civilian parts are not permitted.

2. However, the Public Ministry has the duty to hear the Customs General Directorate and the persons who could be constituted as assistants or that may already be constituted as such, before formulating the request.

**Section III**  
**Of the Acts in the Contra-Ordination Processes**

**Article 315**  
**Means of Coercion and Prohibition of Proof**

1. Preventive arrests, intromission in the correspondence or in the telecommunication means, nor the use of proof that implies violation of professional secret are not permitted.

2. The proofs that collide with rese

**Article 318**  
**Rights and Duties**

The entities competent to process and apply the fines enjoy the same rights and are subject to the same duties as those competent for the criminal documentation of the process, whenever a different regime does not result from the provisions of this legislation or of the base-law of the contraindications.

**Article 319**  
**Investigation and Documentation of Processes**

1. The competent entities for the purposes established in Article 316 shall proceed to the investigation of the facts that constitute the infraction and the circumstances that preceded it, accompanied or followed its execution...

2. The process documentation, save in cases of proven and fundamented complexity, in which there will be prorogation for a like period, shall be concluded in a maximum of 45 (?) days counted from the date there is knowledge of the infraction.

3. The investigation and the process documentation may be delegated to the police authorities and to the oversight agents, which, having concluded the investigation shall remit them to the competent entity for a decision.

**Article 320**  
**Dispensing with the Process Documentation**

1. The process documentation may be dispensed with, in a fundamented dispatch, when, in the course of processes and customs dispatch formalities or in the face of the participation or news release, the elements necessary for a decision are deemed proven.

2. However, the decision shall never be proffered without hearing the accused, who can then add or request any means of proof, and, in the event of a complaint filed or news release, the agents and the responsible civilians shall be notified so that, if they want to, they can rebut within ten days.

3. Together with the rebuttal, the competent entity shall evaluate the proof produced and decide accordingly.

### **Article 321**

#### **Sending the Process to the Public Ministry**

1. If, during the investigations to determine the facts of the infraction and those responsible for it, the competent entity concludes that it is of a criminal nature, the process shall be remitted to the Public Ministry.

2. If the Public Ministry concludes that there is no room for criminal responsibility, it shall return the documented facts to the same entity that remitted them to the Public Ministry.

### **Article 322**

#### **Hearing the Accused**

It is mandatory to hear the accused during the process documenting, and the accused can present or request any means of proof.

### **Article 323**

#### **Defender**

The accused has the right to be represented and accompanied by an attorney during any phase of the process, or to request the appointment of a public defender.

### **Article 324**

#### **Appeal to the Customs Fiscal Court**

1. The decisions proffered in the contra-ordination processes can be

## **Article 325**

### **Appeal to the Supreme Court of Justice**

1. Appeal of the decisions or final sentences proffered by the customs fiscal court, to the Supreme Court of Justice, is admitted as long as the fine applied by the former or by the competent administrative entity is greater than ecv 1.000.000\$00.

2. In all that is not contrary to the provisions of this legislation, the appeal is circumscribed to the matter of law and follows the terms foreseen in the Penal Process Code for the summary process.

## **Article 326**

### **Review**

The recourse to review is admitted, under the terms and within the limits defined in the contra-ordination base-law.

## **Section IV**

### **Of the Distribution of the Penalty, Fine and Product of sales**

## **Article 327**

### **Distribution of the Penalty and Fines**

1. The amount of the penalty shall be divided and distributed as follows:

- a) 25% for the National Treasury;
- b) 25% for the Coffers of Justice;
- c) 25% for the process writers;
- d) 25% for the Coffers of the General Directorate of Customs.

2. The amount of the fine shall be divided and distributed as follows:

- a) 25% for the National Treasury;
- b) 50 % for the process writers or participants;
- c) 25% for the Coffers of the General Directorate of Customs.

3. The customs-technical functionaries and the external oversight agents that, in the performance of any inquiries, inspections, syndication or other analogous commissions not incorporated in their own attributions, report any infraction, are entitled to half of the percentage referred in sub-paragraph b) of the preceding number.



4. In the case of a denunciation, 50%

responsible entity may be allowed to pay an amount corresponding to one fifth of the maximum of the penalty comminated to the legal type, aside from the expenses due for the process.

2. The request for voluntary payment must be presented up to the beginning of the trial hearing, and with it, the interested party must deposit the corresponding amount as well as the amount of the duties and other impositions due.

3. Exceptionally, the amount of voluntary payment may be reduced, by dispatch from the judge, but that amount cannot, however, be less than one eighth of the maximum applicable penalty.

4. The decision on the voluntary payment request is of the exclusive competence of the judge, having previously heard the Public Ministry.

5. If, attending to the gravity of the fact, the degree of guilt, the economic situation and the personality of the agent, the judge determines against accepting the voluntary payment, the judge will so declare in fundamented dispatch, with no chance of appeal, and shall order that the process proceed.

6. The decision that accepts the voluntary payment extinguishes the responsibility of the accused and cannot be appealed.

### **Article 332**

#### **Plurality of Accused**

If the accused are several and only some of them make the voluntary payment, they will be dealt with under the terms indicated in the preceding Article, and the process will continue with regard to the rest, without prejudice to the joint responsibility that may be called for.

### **Article 333**

#### **Voluntary Payment of the Fine**

1. Voluntary payment of the fines corresponding to the contra-ordinations foreseen in this legislation is acceptable.

2. The request is addressed to the competent authority for the application of the fine, up to ten days after notification to provide declarations or to contest. Or to the judge, in the case of judicial impugnation of the decision that may have been applied, in this case before the appeal is definitively decided.

3. With the request the interested party should deposit an amount corresponding to one tenth of the maximum limit of the fine foreseen in the respective legal type, increased by the amounts of duties and other impositions due by the practice of contra-ordination.

4. The amount of payment may exceptionally be reduced by fundamental dispatch of the competent entity, but it cannot, however, be less than one twentieth of the maximum limit of the applicable fine.

5. With the voluntary payment made under the conditions foreseen in this Article, there will be room only for accessory sanctions in case of deviation, and it should be up to the applicable competent entity to decide or not for the loss of the means of transportation.

6. The decision that accepts voluntary payment of the fine extinguishes the contra-ordination responsibility and is not subject to appeal.

7. With the due adaptations, the provisions of the preceding Article and No. 5 of Article 331 are applicable.

### **Article 334**

#### **Request for Liquidation**

1. In the contra-ordinations, during any state of the process, the accused may request the liquidation of his/her responsibility and, after auditioning the accused, the competent entity may proffer the decision immediately, to condemn or to absolve.

2. Under the terms of this legislation, the decision referred to in the preceding number may be appealed.

### **Article 335**

#### **Expenses**

1. Having the condemning sentence become executable, the process shall be counted within ten days and the accused are notified to pay the amount due within fifteen days.

2. If the payment is not made within the period referred to in the preceding number, the entity with civil responsibilities will be notified to deposit the amount that has been fixed as his responsibility, within fifteen days.

3. In the processes for customs fiscal crimes the expenses shall have the destination and the regime fixed in the general law in all that is not contrary to this legislation.

4. In the processes for contra-ordination the processes shall revert to the coffers of the Customs General Directorate.

5. The decision of the competent administrative entities proffered under protest in matters of expenses due in contra-ordination processes, can be appealed to the Customs Fiscal Court.



considered in debt to the National Treasury, the excedent shall be returned to the responsible entities that were executed for the payment of that debt.

### **Article 338**

#### **Insufficiency of the Proceeds from the Sale of the Deposited Assets**

The form prescribed in the preceding Article shall be applied, before going ahead with the execution of the provisions of the preceding Article, whenever it is evident that proceeds from the sale of the deposited assets is less than the amount due, with the amounts obtained in the auction sales replaced by the probable proceeds from the sale and of the deposited amounts and assets.

### **Article 339**

#### **Deposit of the Proceeds from the Execution**

The amounts obtained as a result of the execution shall be deposited to the order of the authority that documented the process, and the court should participate in this the result of the execution.

### **Article 340**

#### **Execution against the Entity With Civil Responsibility**

If the entity with civil responsibility does not make the deposit referred to in No. 2 of Article 335, the decision becomes executable immediately, acting against him/her according to the provisions of the preceding Articles, in the applicable part, and the same shall be, relatively to the amount paid, subrogued in the rights of th

## **Article 342**

### **Charges with the Infraction Instruments**

The expenses with transportation, guard service and the conservation of the goods, means of transportation, weapons or other instruments apprehended shall be paid to whoever performs the services.

## **Title VII**

### **Customs Technical Conflicts**

## **Article 343**

### **Customs Technical Council**

The technical conflicts, raised in the act of verification or reverification of the goods or subsequent to their clearance from customs, pertaining to the Tables classification, origin and value of the goods are deliberated by the Customs Technical Council.

## **Article 344**

### **Duty to Collaborate**

Aside from the incumbencies that are proper to them as recorders of technical processes, the customs controllers must collaborate with the Customs General Director on the matters that the latter decides to submit to them.

## **Article 345**

### **Deliberations**

1. The Customs Technical Council shall meet in the sessions that are convoked by its president.

2. The deliberations of the Council, met with a minimum of six members, including the president, are approved with the majority vote of the members present, and the president shall have the tie-breaking vote.

**Article 346**  
**Homologation**

The deliberations of the Council shall be homologated by dispatch of the member of the Government responsible for the area of Finance, and the deliberations may be published in the Official Bulletin.

**Article 347**  
**Moment in Which Controversy is Raised**

1. When, at the moment of verification or reverification of goods the customs services disagree with the elements in the declaration pertaining to tables classification, origin and value and in general about any rates or taxes, whose collection the customs are responsible for, and the declarer does not conform with such attitude, a technical controversy process shall be organized by dispatch of the chief of the customs station.

2. The controversy may also be raised after the goods have cleared customs, following up on the control or oversight performed under the terms of the applicable legislation.

**Article 348**  
**Initial Report**

1. Within twenty-four hours counting from the date of the dispatch

**Article 349**  
**Justification Note**

Within ten working days, counting from the day the initial report is prepared, the customs functionary should present a note justifying his/her disagreement regarding the elements of the declaration.

**Article 350**  
**Response from the Declarer**

In the ten working days that follow the end of the deadline established in the preceding Article, the declarer should present either a declaration of concurrence with the position taken by the customs administration or fundamented document contesting that position.

**Article 351**  
**Complementary Elements**

Both the justification note and the contestation may be accompanied by copies of the invoices, certificates of origin, of analyses reports or of any other elements pertaining to the goods.

**Article 352**  
**Effects of the Declaration or of Non-Contestation**

The process shall be considered ended, and the dispatch shall be concluded, when the declarer adds to the reports the declaration of concurrence referred to in Article 14 or when the declarer does not contest.

**Article 353**  
**Samples**

1. For each contestation process, whenever possible, three samples shall be taken of the goods object of the controversy, which are sealed and signed by the declarer and by the intervening functionary.
2. The customs station where the contestation was raised shall keep a sample and send the remaining samples to the General Directorate of Customs, accompanied by the respective process.



3. The excessively heavy or uncomfortable samples remain in the customs station where the controversy was originated, to the order of the Customs General Directorate.

4. When it is not possible to take samples, the customs services may accept plans, drawings, models, photographs, descriptive memories or any other documents that permit the identification of the goods object of the controversy, which must be sealed and signed by both parts.

#### **Article 354**

##### **Remittance of the Process**

As soon as the contestation is received, the process shall be recorded and remitted to the General Directorate of Customs.

#### **Article 355**

##### **Summary Review of the Process**

After a summary review of the reports, the General Directorate of Customs may order to proceed with the process or that it be archived, in the latter case, it considers the Council incompetent if the matter or the reasons adduced in the justification note are unfounded.

#### **Article 356**

##### **Decision of the General Director and its Effect**

1. If it is ordered to proceed with the process, the same shall be remitted to the Council;

2. The decision of the Customs General Director foreseen in the final part of the preceding Article should be fundamented and the declarer notified of it, and the process returned to the customs station of origin to be concluded and for a dispatch.

#### **Article 357**

##### **Process Procedures**

1. When the Council receives the processes, the same shall be recorded and distributed sequentially by the customs recorders in order to prepare the preliminary reports.

2. The recording reporter and the Council may solicit additional elements, including analyses that prove to be necessary to a complete documentation of the process.



- c) Annulled by decision proffered in litigious appeal, with executable sentence;
- d) Modified by subsequent legal disposition;

**Article 361**

**Article 364**  
**Presence Tickets**

The members of the Council are entitled to present tickets for each meeting in which they participate, in amounts to be fixed by dispatch from the member of the Government responsible for Finance.

**Article 365**  
**Expenses**

The expenses with the transportation of samples or models, independently of the means of transportation utilized, as well as those pertaining to the analyses that have to be made for the trial of the contestation process, shall be paid by the parts, in whole or in part, only when they befall the respective process.

**Article 366**  
**Divergence**

1. The divergences that may surface among the customs functionaries under circumstances identical to those referred to in Article 347, shall be resolved administrative by the Customs General Director, in documented processes with the necessary adaptations, in the molds foreseen in this legislation.

2. Once the matter pertaining to fact is fixed, no further divergences shall be admitted.

**Article 367**  
**Prior Consultations**

1. When doubts are raised by the interested parts on the tables classification to be attributed to any good that to be imported or exported and not yet submitted to dispatch, a request should be presented at the Customs main offices in which the motives for the doubts are fundamented, and the request shall be accompanied by three samples, drawings, photographs and, if necessary, of detailed descriptions of the same goods, duly conditioned and with labels signed by the requesters one of which destined for the receiving Customs.

2. The commercial or industrial denomination of the good, the raw materials that enter in its composition, its application, value, procedence, and place of fabrication or origin, should be designated in the request.



- a) The goods subject to fiscal action that are delayed beyond the legal deadlines;
  - b) The goods subject to fiscal action when they have been the object of abandonment in favor of the National Treasury;
  - c) The goods found at sea and those dropped from the air or drawn in by the sea;
  - d) The goods saved from shipwreck, if the ship has been abandoned, or when the captain has requested they be sold;
  - e) The booties;
  - f) The coercive collection of any amounts that should have been collected by the customs;
  - g) Any other cases indicated by law.
2. An administrative process shall always be organized for the goods



### **Section III**

#### **Sale of Goods at Auction**

##### **Article 374**

##### **Goods Subject to Auction Sale**

1. The goods mentioned in No. 1 of Article 370 and those apprehended or arrested in existence in any fiscal oversight deposit under the free regime, shall be sold at auction at the customs posts, after the legal formalities have been complied with.

2. However, the values in kind, precious stones, jewels and credit papers found in the booty shall not be sold at auction; they sh





2. The loose prints, engravings, stamps, lithographs, boarding and also, propagandas and wrappers with sayings indicative of marks of products or similar others.

**Article 377**  
**Auction of Apprehended Goods**

1. The apprehended goods shall be placed in the first auction for the price fixed in the process by the competent authority that documents the process or by the experts appointed by said authority.

2. If the goods foreseen in the preceding number do not obtain during the 1st auction a bid that covers the respective value, they will be offered at a 2nd auction for half their value.

3. In on the 2nd auction the goods still do not obtain a bid that covers the value referred in the preceding number, or if the auction place is left deserted, they will be offered at a third auction for any value, if so authorized by the Minister of Finance.

4. The goods that have not obtained any bid on the 2nd or 3rd auction, they shall be destroyed or turned over gratuitously to services from the State, municipalities or non-profit public or private institutions engaged in social, humanitarian, educational or cultural activities, by authorization of the authority that documented the process.

**Article 378**  
**Auction of Arrested Goods**

The arrested goods shall be sold at auction in accordance with the competent decision from the competent authority under the terms of Article 377 of this legislation...

**Article 379**  
**Place of sale of Stranded, Found or Salvaged Goods**

1. The goods found at sea, or stranded by it, those that constitute stranded air drops and those saved from ship-wrecks may be sold on the very place where in which they are located when, because of difficulties or excessive transportation costs the Customs General Director so deems convenient.

**Article 380**  
**Presidency of the Auction Sales**

2. The auction sales conducted at the dependent customs stations, when they are not presided by the Director of the customs offices, shall be presided by the chief of the respective station or by the agent designated by the chief.

3. However, the judicial authorities can preside over the sale of seized goods, at their request, at the locations in which the goods are kept under customs jurisdiction, by observing the provisions foreseen in this legislation pertaining to the sale of goods at auction, as well as the legislation in force for goods subject to customs fiscal action to be cleared from customs.

4. The sales presided under the terms of the preceding numbers, shall have the administrative support of the recorder, or functionary that performs that function, with credible persons to that end, designated by the President, serving as auctioneers.

### **Article 381**

#### **Interdiction of Fiscal Infractions from the Auction Locations**

customs expert, 20% to the recorder and 20% to the participant, with the remaining 5% constituting revenue to the National Treasury.

4. The payment authorizations should contain, among others, indication of the commercial designations or currents of the goods bought at auction, quantity of each type, mark, number, colors and other signs that may serve to differentiate between the goods bought at auction and others, number of the respective administrative process and corresponding lot.

5. In the hypothesis that the winning bidder does not make the payment within five days, the concluded process shall be sent to the director or the chief of the customs station who, within five days, shall submit the goods to an another auction identical to the one in which the winning bidder did not pay.

6. The percentage referred to in No. 1 of this Article is considered lost to the National Treasury, when the winning bidder does not make the total payment of the winning bid amount within the time period referred to in the preceding number, with eventual prorogation, if requested, that may be granted by the director or chief of the fiscal house.

#### **Article 385** **Delivery of the Goods Bought at Auction**

With the price of the total price of the winning bid and of the legal percentage, the warehouse keeper shall promote the delivery of the goods, and add to the dossier the payment authorization and other required documents.

#### **Article 386** **Record of the Destination Given the Goods**

1. The warehouse keeper shall record and annotate in the competent document the destination given to the goods, and if the goods were sold, indicate also the amount of the winning bid and the number of the revenue or the deposit.

2. When the annotations prescribed in the preceding number have been made, the dossier shall be returned to the recorder, or to whoever performs such functions, and forwarded immediately to the customs director, who shall order its liquidation.

3. Upon compliance with the provisions of the preceding number, the dossier shall again be forwarded to the customs director, who shall order it archived.

**Section IV**  
**Maritime and Air Accidents, Found and Stranded Goods**

**Article 387**  
**Accident Occurrences**

1. When any maritime accidents occur along the coast, in the ports or bays, it behooves the nearest customs authority of Fiscal Guard to avail itself immediately to all it can, to save the persons, vessels and/or assets and carefully inventory the latter.
2. The Fiscal Guard authority referred to in the preceding number should immediately inform the occurrence to the competent customs station, using the quickest means to that end.
3. All the customs stations that have knowledge of any accident, under the terms of the preceding numbers, should communicate them to higher authorities, also using the quickest means available.
4. Any of the authorities referred to in this Article shall return all the saved goods and the respective inventory to the functionary who presides the rescue, under the terms of the Article that follows.
5. The provisions of the preceding number are extensive to aircraft accidents.

**Article 388**  
**Recording and Reporting of the Participation**  
**and Presence in the Accident Location**

The customs director or chief of the customs station should order the recording and reporting of the participation and, if they cannot be at the location of the accident, because it too place in a distant location or for any other circumstance, they should appoint a functionary to represent them and who will establish due oversight to safeguard the State's and private interests.

**Article 389**  
**Measures Required for the Oversight, Assistance and Rescue**

1. The customs directors and the chiefs of the customs stations or the functionaries that preside over the rescue, as the case may be, shall requisition the Fiscal Guard agents deemed necessary, they shall take the measures necessary for the rescue and assistance, inventory the saved goods and organize the daily list of the salaries due.
2. The inventory shall include the quantity and quality, marks, numbers and any other signs of the saved goods and the designation of its nature if visible:





according to the degree of difficulty of the search, between a minimum of one third to a maximum of fifty percent. In duly justified exceptional cases, the Minister from which the referred authorities depend may fix a higher percentage.

**Article 396**  
**Objects not Considered Finds or**  
**Stranded Goods for Customs Purposes**

1. For customs purposes, the national vessels with a known owner and their accessories, that are found floating in the waters or reach the coast, as well as the anchors, bowies, “pouta”, one-armed anchor or grapnel and all the material that is considered of a military nature by the competent marine authority, are not considered finds or stranded goods.

2. However, in the locations where there no marine authorities, the customs authorities or Fiscal Guard posts must inform those authorities of the existence of the vessels and objects referred in the preceding number.

**Article 397**  
**Application of the Commercial Code**  
**and The International Conventions**



2. When the owner or consigner of the goods makes only a verbal declaration of abandonment, or cannot write, a term of abandonment shall be entered in a book especially destined to that end, which shall be signed by those authorities, by the Customs Notary's office recorder and by the interested party, when the same can write, and by two credible witnesses.

3. The declarations referred to in No. 1 of this Article shall be recorded in chronological order, in the book referred to in the preceding number.

**Article 400**  
**In Whose Favor Is the Abandonment Made**

The express abandonment may be done in favor of third parties or of the National Treasury.

**Section VI**  
**Coercive Collection of the Amounts that**  
**Must be Collected by the Customs**

**Article 401**  
**Seizure of Goods**

1. When the control services communicate "a posteriori" the amounts of the shortfalls found in conferring the dispatch tickets or when the guaranteed obligations become demandable and those responsible do not voluntarily pay the amount due, within the deadline fixed by law, the respective collection shall be made coercively, under the terms of the Articles that follow.

2. The person responsible for the respective service shall remit a complaint together with the organized dossier, to the Customs Director or to the Chief of the Customs Delegation, who will have a report prepared and will institute an administrative process under the terms of subparagraph f) of Article 370.

3. With the process concluded, the Customs Director or Chief of the Customs Delegation shall determine that a notice be sent to all the stations in the respective customs circumscription and to all the customs directorates to proceed to the seizure of the goods, baggage or any other valuables that those responsible for the payment may have in the customs stations, deposited under customs regime or under free regime or in any other locations under customs fiscal action, that are of the property of said persons.

4. If the goods, baggage or valuables referred to in the preceding number are in warehouses and customs clearing areas, or in public stations, the seizure shall be made by the respective administrations, who will be so notified in writing to that end, by the customs station that operate together with them.



**Section VII**  
**Distributing Sale Proceeds**

**Article 405**  
**Delayed, Abandoned and Seized Goods**

1. Independently of the provisions of No. 3 of Article 384 and of the provisions of No. 2 of this Article, the following should be deducted, in turn, from the proceeds of the sale of delayed, abandoned and seized goods:

- a) The cost of transportation and salaries for State employees;
- b) The duties and other impositions;
- c) Additional expenses for transportation and storage as well as the notices;
- d) The travel expenses and per diem, in the cases of auctions performed outside the customs stations' locations;
- e) The expenses of the process.

2. The net amount shall be deposited to the order of the State, to be returned to the owner of the referred goods, and should be transformed into revenue when it is not claimed within six months.

3. When dealing with goods deposited in warehouses or customs clearing areas, the expenses of the parts involved shall be divided proportionately after the customs charges are deducted from the proceeds of the auction sale.

4. The distribution foreseen in the preceding number do prevent that, once the transportation charges ordered by the Government, and the duties and other customs impositions are satisfied, a percentage to be negotiated with the respective concessionaires be established, as global compensation for the charges due to them, as enunciated in subparagraphs c) and d) of No.1 of this Article.

4. The net amount, in the case of goods expressly abandoned in favor of the National Treasury, shall turn into State revenue.

5. The Minister that superintends the Finances may authorize that the amount referred to in the preceding number, when it is not claimed within the deadline stipulated in No. 2 of this Article, be utilized in the acquisition of equipment necessary to equip the customs stations or to be used to the benefit of the maintenance of the State's buildings, where the same customs stations operate.

**Article 406**  
**Finds, Stranded Goods from the Sea or Air, and Saved Goods**

1. Independently of the provisions of No. 3 of Article 384 and of the provisions of No.2 of Article 40, of the proceeds from goods found at sea or stranded by it or dropped from aircraft or saved from ship-wrecks, there should be deduced, in turn:

a) The expenses for transportation, guard service, benefits and notices;

b) The part for the finder, which shall be one third of the value of the goods, in the case of goods found or stranded or dropped, save when another percentage has been fixed under the terms of number 3 of Article 27, or the expenses for the assistance and rescue salaries in the case of goods saved from ship-wrecks;

c) The duties and other impositions due.

2. The net amount shall be deposited to the order of the State, to be turned over to the owner of the goods, and should be transformed into revenue if not claimed within six months.

**Article 409**  
**Notifications**

1. The notifications that have to be made shall be made in person or by mail with return receipt requested.

2. If the person to be notified is not found in his/her residence and has constituted an attorney or attorney in fact, the notification shall be done by notice affixed to the door of the residence and by another affixed at the location where the process was run, with a certificate of the affixation emitted to be added to the reports and published in one of the national newspapers with largest distribution.