

**DRAFT CUSTOMS CODE**

**REPUBLIC OF CAPE VERDE**

# **CUSTOMS CODE**

## **Title I**

### **General Principles**

#### **Chapter I**

##### **General Provisions**

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

###### **Definitions**

In the preparation of this code, the following definitions apply:

a) **Customs Authority:** the authorities competent to apply the customs legislation, in the ambit of their attributions and in their respective areas of jurisdiction.

b) **Customs Delegation:** any service that assures compliance with all or part of the formalities foreseen in the customs legislation.

c) **Importation:** act of introducing goods in the customs territory.

d) **Importation for consumption:** customs regime that permits the imported goods to continue to circulate definitively in the customs territory, in free circulation. This regime implies the payment of the duties and other impositions, that can eventually be demanded, and compliance with all the necessary customs formalities.

e) **Goods in free circulation or in free practice:** goods that can be made available without restrictions from the customs point of view.

f) **Destination of a good:**

- The subjection of a good to a customs regime;
- Placement of a good in a franc zone;
- Abandonment of a good to the public treasury.

g) **Customs regime:** Treatment applicable by the customs to the goods subject to customs control.

h) **Customs control:** set of measures taken with a view to assure the application of the laws and regulations that the customs are bound to apply.

i) **Customs formalities:** set of operations that must be carried out by the users and by the customs, to satisfy the legal or regulatory requirements that the customs are bound to apply, with regard to the control of individuals at the customs borders and customs clearance for baggage, goods, and the means of transportation.

**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. The customs laws and regulations must be applied without discrimination of the quality of the persons.

**Chapter II**  
**Customs Tables**

**Article 4**  
**Generality of Customs Tributation**

1. The goods that enter and leave the customs territory are subject to the payment, as the case may be, of the importation duties or the exportation duties, inscribed in the customs tables.
2. The goods imported or exported by or on behalf of the State are not object of any immunity or derogation, save for the cases of fiscal benefits assured by law.

**Article 5**  
**Customs Table Regimes**

1. In importation, the goods are subject to the general duties regime, the maximum duty regime or the preferential duties.
2. The general duties apply to the goods that are not subject to maximum duties or to preferential duties.
3. The preferential duties are the result of agreements established by the Republic of Cape Verde.

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**  
**Powers to Legislate and to Regulate**

**Section I**  
**Duties and Other Taxes**  
**Anti-Dumping Duties and Compensatory Duties**

**Article 9**  
**Legislative Competence on the Matter of Tributation**

Save for dispositions to the contrary, resulting from international Treaties or Conventions, ratified by the Republic of Cape Verde, the legislative power in the matter of importation and exportation duties belong to the National Assembly.

**Article 10**  
**Anti-Dumping Duty**

1. The Government may establish an anti-dumping duty on any product object of dumping.

2. Any practice of unfair competition in international trade, that permits introducing goods from a foreign country, taxed or not, in the national market, at a price lower than its normal amount, threatening or threatening to cause important damages to a production established in the national territory or sensibly retarding the creation of a national production, is considered dumping.

3. The anti-dumping duty cannot be greater than the margin of dumping pertaining to that product, in other words, to the difference between its normal value and the comparable exportation price of that product.

4. For the purpose of application of this article, the price of a product is considered less than its normal value if the price of this product is:

- a) Less than the comparable price applied in normal commercial operations for a similar product, destined for internal consumption in the exporting country; or
- b) In the absence of such price in the internal market of the exporting country, if the price of the exported product is:
  - i* – Less than the highest comparable price for the exportation of a similar product to a third country, in the course of normal commercial operations;

*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 comparableness 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 abatement it is indispensable that the value of the damage exceed 25%.

## **Article 18**

### **Determination of the Damage**

1. The percentage of the damage is recognized by two arbiters, one of which is a customs official, appointed by the chief of the customs delegation, and the other by the importer.

2. When the two arbiters do not agree on the judgment they choose a third arbiter to break the tie, and the latter must pronounce for one of the solutions presented to him/her.

3. When the first two arbiters do not agree on the choice of the third arbiter, the third arbiter is appointed by the chief of the customs delegation.

## **Section II**

### **Kinds of Goods**

## **Article 19**

### **Table Kinds**

The kind of goods is a denomination attributed to the goods by the Customs Tables based on the Harmonized System Nomenclature of Designation and Classification of Goods.

## **Section III**

### **Origin of the Goods**

## **Article 20**

### **Origin on Common Duty**

A product is considered as originating from the country where it was totally produced or where it suffered the last transformation, as long as cumulatively it fulfills the following conditions:



- 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. The sale made under conditions of plain competition between a buyer and a seller is a sale in which:

a) Payment of the goods price is the only effective contribution by the buyer;

b) The agreed upon price is not influence by the commercial, financial or other relations, contractual or not, that could exist, aside from those created by the sale itself, between, on the one hand, the seller and, on the other hand, the buyer or a physical or moral person associated in business to the seller and a physical or moral person associated in business to the buyer;

c) No part of the product coming from the cession or the utilization of the good shall revert, directly or indirectly, to the seller or to any other physical or moral person associated to the seller.

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 Director may authorize the utilization of a more up to date quotation of the currency or currencies affected.

3. In the event of a holiday or equivalent in the location of the Bank of Cape Verde's main office, the official quotations pertaining to the Wednesday immediately before shall be taken into consideration.

## **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 long as the factors, contractual or not, that were taken in consideration to establish it, remain unalterable.

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. After the transition period foreseen in Article 25, the customs value of imported goods is the transactional value, meaning, the price effectively paid or to be paid for the goods when they are sold for exportation with destination to Cape Verde's customs territory and, if necessary, after adjustment in conformity with Article 34, as long as:

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. Substitution values cannot be established by force of the provisions in the referred number.

9. The price effectively paid or to be paid, directly or indirectly, for the imported goods, before or after the goods clear the customs. The payment may be in cash, by letters of credit, shares, obligations or any other negotiable instrument.

10. The activities, including those related to the commercialization, undertaken by the buyer on his own account, distinct from those for which an adjustment is foreseen in the Article that follows, are not considered as indirect payment to the seller, even if it can be considered that the seller benefits from them or that they were undertaken with his/her agreement, and its cost is not added to the price effectively paid or to be paid for the determination of the customs value of the imported goods.

## **Article 34**

### **Price Adjustment**

1. For the determination of the customs value by the application of Article 33, the following is added to the price effectively paid or to be paid by the goods:

a) The elements that follow, to the extent that they are supported by the buyer, but were not included in the price effectively paid or to be paid by the goods:

*i* – commissions and brokerage expenses, with the exception of the purchasing commissions;



*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 expenses for the imported goods and the loading and maintenance expenses connected with the transportation of the same goods, up to the point of entry in Cape Verde's customs territory.

2. Any element that is added to the price effectively paid or to be paid as a result of the application of this Article shall be based exclusively on objective and quantifiable data.

3. For the determination of the customs value, no element shall be added to the price paid or to be paid, with the exception of those foreseen in this Article.

4. In this Chapter, "buying commission" is understood to be the amounts paid by an importer to his/her agent for the service it renders by representing him/her in the purchase of the goods to be evaluated.

## **Article 35**

### **Deductions**

The customs value does not include the elements indicated next, as long as they are distinct from the price effectively paid or to be paid by the imported goods:

- 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 relative to the right to reproduce the imported goods, in Cape Verde;
- e) The buying commissions;
- f) The importation duties and other charges to be paid in Cape Verde as a result of the importation or the sale of goods.

## **Article 36**

### **Substitution Methods**

1. When the customs value cannot be determined by applying Article 35, subparagraphs a), b), c) and d) of No. 2 are applied successively until the first subparagraph that permits the determination of the value, save if the order of the subparagraphs c) and d) are altered by request of the declarer. Only when the customs value cannot be determined by application of a specific subparagraph, will it be permitted to apply the immediately following subparagraph, in the order established above.
2. The customs values determined by application of this Article are as follows:
  - a) Transactional value of identical goods, sold for exportation to Cape Verde and exported on the same moment as the goods to be evaluated or at a moment very close to it;
  - b) Transactional value of similar goods, sold for exportation to Cape Verde and exported on the same moment as the goods to be evaluated or at a moment very close to it;
  - c) Value based on the unit price corresponding to the sales in Cape Verde of the imported goods or imported identical or similar goods, totaling the highest quantity, done by persons that are not colligated with the sellers;
  - d) The calculated value equal to the sum:

- 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 rules for the determination of the customs value of data processing implements destined for data processing equipment that contain data or instructions.

## **Article 40**

### **Monetary Conversion**

When the elements to determine the customs value of a good are expressed in foreign currency, the conversion shall be made under the terms of Article 27 of this code.

**Subsection III**  
**Customs Value in Exportation**

**Article 41**

In exportation, the customs value to declare is that of the good at the point of exit from the national customs territory, on the date of registration of the declaration at the exit customs post, with the transportation expenses up to the border, if such is the case, consisting in the amount of:

- a) The exit duties;
- b) The internal taxes they are exempt from in exportation.

**Section V**  
**Weight of the Goods**

**Article 42**

**Types of Weights**

- 1. The specific duties that incide over the weight of the goods are calculated by gross weight, by net weight or by real weight.
- 2. Save for exception expressed in the tables' text, if the goods levy is by weight, the weight shall be net.

**Article 43**

**Definitions**

- 1. Gross weight is the weight of good and of all its packaging.
- 2. Half gross weight is the weight of the good without the first exterior packaging.
- 3. Net weight is the weight of the good without all its packaging, except for that indispensable for the conservation of the good.
- 4. Real weight is the weight of the good without all its packaging.

**Article 44**

**Packaging**

Packaging consists of all the articles that serve or are destined to serve, in the state in which they are imported, to contain, protect, arrange or

separate goods, with the exclusions of the materials (straw, fiber class, shreads, etc.) imported in bulk, of containers and pallets.

## **Chapter V**

### **Prohibitions and Control of the Foreign Trade and Currency Exchanges**

#### **Article 45**

##### **Prohibitions**

1. For application in this Code, all goods whose importation and exportation is interdicted under any title that is either subject to the restrictions of the rules of quality, conditioning or special formalities, are considered prohibited.

2. When importation or exportation is permitted only by presenting an authorization, a license, a certificate or some other analogous title, the good is forbidden if it is not accompanied by a regular title or if it is not presented under the cover of a non-applicable title.

#### **Article 46**

##### **Specific Prohibitions**

Under reservation of application of the international agreements, the Government may, specifically, introduce, maintain or apply restrictions or prohibitions pertaining to:

- a) The protection of public morality;
- b) The protection of the health and life of humans and animals or the preservation of plants;
- c) The application of security laws and regulations;
- d) The control of weapons, munitions and other military equipment and war materials;
- e) The protection of the historic, artistic and cultural patrimony;
- f) The transfer of gold, silver and precious and semiprecious stones;
- g) The control oh hallucinogens, toxic and harmful residues, nuclear materials, radioactive products or any materials utilized in the development or exportation of nuclear energy;
- h) The conservation of exhaustible natural resources;
- i) The exportation of basic raw materials produced in the interior of the country, absolutely necessary to assure a national industry of transformation, during the periods in which the national price is kept below the world price;

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 same, are prohibited upon entry, excluded from the station, the transit and circulation.

2. All foreign products that do not satisfy the obligations imposed by law on the matter of indication of origin, are prohibited on entry and excluded from the customs station.

#### **Article 49**

##### **Norms for Trade and Sale**

Under reservation of application of the international agreements, the importation of food products and products of any nature and origin, that does not satisfy the legislative or regulatory obligations imposed on food products or on similar national products, in matters of commercialization or of sale, shall be interdicted.

#### **Article 50**

##### **Specific Restrictions**

The Minister responsible for the Finance sector may, by Ordinance:

a) Limit the competence of certain customs posts and designate those that should execute certain types of customs operations;

b) Decide that certain goods can only be imported or exported in ships of a specific tonnage and fix that tonnage;

- 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) The ports, bays and anchorages;
- b) The territorial waters, considered to be 12 nautical miles, counting from the low tide line;
- c) A land zone of 10 Km, counting from the sea-border;
- d) In the aerodromes and airports and within a 2 KM strip around it;
- e) In the localities where customs posts are implanted and within a 2 KM strip around it;
- f) In the frank depositories and frank zones and within a 2 KM strip around them;

4. The distances are calculated in a straight line, without taking into account the turns on the road.



## **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 fiscal action, the customs oversight personnel should apply their efforts to save themselves, and inform their superiors of the occurrence.

## **Chapter III**

### **Organization of the Customs Posts**

## **Article 60**

### **Customs Formalities**

1. Customs formalities can be complied only in the customs posts.
2. Derogations to this rule may be agreed to by the Customs General Director.

## **Article 61**

### **Creation and Extinction of Customs Posts**

1. The customs posts shall be created and extinguished by the Minister responsible for Finance, under proposal from the Customs General Director
2. The customs administration should affix on the façade of each post, in a visible location, a board stating the following “Customs”.

## **Article 62**

### **Opening and Closing Customs Posts**

The customs posts operating hours shall be fixed by the Government.

**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) To humiliate or mistreat them or to perturb them in the exercise of their functions or on account of the exercise of their functions;
- b) To oppose to this exercise.

2. The civil, military and police authorities are obligated, upon the first requisition, to lend a strong hand to the customs agents, in the exercise of performance of their mission.

3. Customs agents include the functionaries of the privative staff of the Customs General Directorate.

4. Customs oversight agents include the elements of the Fiscal Guard or of other corporations, with legal competence to exercise customs oversight.

**Article 64**  
**Use and Bearing of Arms**

1. Customs agents and customs oversight agents have the right to use and bear arms, with or without a license.

2. Aside from the case of legitimate defense, they can make use of the arm when:

- a) They have been the object of violence or attempted violence or when they are threatened by armed individuals;
- b) They cannot immobilize by another means, the vehicles, sea vessels and other means of transportation, whose drivers refuse to comply with the order to stop;
- c) It is not possible, by other means, to oppose the passage of a group of persons that do not halt upon the intimidations addressed to them.

## **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 they must be carried out under the terms and within the limit of the penal law.
- 3. If the diligence is carried out before night-fall, it may be concluded during the night.
- 4. In the case of establishments, stores, warehouses or other closed enclosures other than residential homes, and during their normal hours of operation, or of means of transportation that are in circulation, the diligences referred to in number one of this Article may be carried out during the night.
- 5. In case of resistance by the owner or when the latter abandons the local of the search or does not return to it for having obtained knowledge of the operation under way, the place will be broken into in the presence of witnesses;
- 6. In the absence of owner, a depository shall be appointed to look after the patrimony and assist in the search, and whatever is not apprehended shall be turned over to the depository to return to the owner when he or she

shows up. Mention shall be made of this fact in the break-in and search report, subscribed by the depository and the witnesses.

7. Breaking down doors, closets, drawers, boxes and furniture, when there is refusal to open them or it is alleged that the keys are not available, in order to facilitate the examination by the oversight officials.

8. If the agent in charge of the operation suspects there is a hiding place, he/she shall proceed so as to recognize its existence and proceed with the search.

## **Article 67**

### **Cautionary Providences Regarding the Means of Proof**

1. To prevent erasing or altering the elements of proof of the infraction before they are examined by the legally competent elements, any agent qualified to carry out or collaborate in the customs oversight operation may, independently of the presence or the authorization by the competent entity, prohibit, if necessary, the entry or the transit of strangers in the local where the infraction was committed or any other acts that may harm the discovery of the truth.

2. With the same objective of securing the elements of proof, any agent qualified to carry out or collaborate in the customs oversight operation may, independently of the presence or the authorization referred to in number one of this Article, practice the acts needed to maintain the state of the things and the places, collect information from the persons that can contribute to the discovery of the infractors and the reconstitution of the infraction, and take the cautionary providences relatively to the objects that must be apprehended.

## **Article 68**

### **Access to the Postal Stations**

1. The customs agents have access to the fixed or movable postal stations, correspondence to the outside, there to search in the presence of postal functionaries, the postal shipment of products subject to customs control, sealed or not, originating inside or outside the country. Returns in transit are exceptions.

2. The postal administration must submit to customs control, under the conditions foreseen in the conventions and arrangements of the Universal Postal Union, the shipments of products liable to pay duties and other impositions, whose collection is the responsibility of the customs administration, and of forbidden goods or goods subject to restrictions or entry and exit formalities.

3. Under no circumstance will the secrecy of correspondence be violated.

## **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 reciprocity, to supply to the qualified authorities of foreign countries all the information, certificates, verbal processes and other documents susceptible of establishing the violation of laws and regulations applicable to the entry into and exit from their territories.

## **Article 70**

### **Control of Identity**

The customs and the customs oversight agents may control the identity of persons who enter or exit the customs territory or circulate in it.

## **Article 71**

### **Vigilance With Regard to the Forwarding of Hallucinogenic and Psychotropic Substances**

1. In order to verify the customs infractions to importation, exportation or detention of substances or plants classified as hallucinogenic or psychotropic substances, to identify the authors and accomplices of these infractions, as well as those who participated as interested parties and of executing the apprehensions foreseen in this code, the customs or customs oversight agents, qualified by the Minister responsible for the Finance area, under the conditions established by the Minister, may, after having informed the Procurator of the Republic and under his/her control, shall proceed to the vigilance of the forwarding of those substances or plants.

2. The provisions of the preceding number are, for the same purposes, applicable to the substances that are utilized in the illicit fabrication of hallucinogenic products and the psychotropic substances, whose list is fixed

by Government decree, as well as to the materials that serve for this fabrication.

## **Article 72**

### **Identification Cards**

In the exercise of their functions the customs and the customs oversight agents must carry with them identification cards as customs functionaries, which they are obligated to display whenever solicited.

## **Article 73**

### **Prohibitions and Incompatibility**

Aside from being subjected to other prohibitions and incompatibilities foreseen in the general law, the following is also prohibited to all personnel that work in the customs, as well as the customs oversight personnel:

- a) Discharge, even if by an interposed person, any activity susceptible of affecting the uprightness and the prestige demanded in the exercise of the respective functions;
- b) Advocate or serve as an agent on behalf of someone else in the progress of any issue or business in the customs;
- c) Buy by bidding, directly or through an interposed person, any object or good in the auctions carried out by the customs;
- d) Buy or sell any object or good within the customs posts and bring to the outside of the posts or their dependencies, any goods, including the packaging, even if they are abandoned or offered by the owners or representatives;
- e) Receive, directly or indirectly, any gratification or reward;
- f) Enter game rooms, except when on duty;
- g) Place him/herself or his/her family in the position of owing favors to physical or moral person, who could benefit from of seek, in some way or other, obtain from him/her a particular treatment or favor.

## **Article 74**

### **Declaration of Assets and Revenue**

1. The customs and the Fiscal Guard agents are obligated to declare, annually, to the General Procurator of the Republic all the assets and revenues for its family aggregate, including the amounts of the bank deposits and the numbers of the respective accounts, presenting justification for the same if so solicited.



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.

### **Article 76**

#### **Professional Secret**

The customs agents and the customs oversight agents, as well as any persons called by their functions or by their attributions to exercise, under any title, functions in the central administration or in the foreign services of the customs or to intervene in the application of the customs legislation, are obligated to maintain the professional secret, in the conditions and under the penalties foreseen in Articles 191 and 192 of the Penal Code.

## **Title III**

### **Conducing and Presenting Goods in the Customs**

#### **Chapter I**

##### **General Provisions**

### **Article 77**

#### **Submission to Customs Formalities**

All the goods introduced in the national customs territory or destined for exportation must be presented to the customs to be submitted to the customs formalities.

### **Article 78**

#### **Summary Declaration**

1. Without prejudice for the provisions applicable in the matter of objects imported by travelers and of postal shipments, all goods introduced in

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,

by the person who introduced the goods, for them to be submitted to the customs control and be attributed a customs destination.

## **Article 82**

### **Free Practice**

1. The ships that make to any port or enter the territorial waters cannot communicate with land or with any other ship before dropping anchor, at the places designated by the maritime authorities, except to receive a pilot, visits from health authorities or from customs agents and customs oversight agents and, in the case of merchant ships, before they receive free practice from the customs authorities.

2. As soon as any ships enter the port, the port captaincies or maritime delegations shall communicate the fact to the customs posts at the locality, with an indication as to what time the ships dropped anchor.

3. Non-compliance with numbers 1 and 2 of this Article shall be punished with a fine of ..... to .....

## **Article 83**

### **Port of Entry**

Save for duly justified cases of force major, or express authorization from the customs authority, no ship can dock in a port that is not provisioned with a customs post with competence for the customs processing of the goods.

## **Article 84**

### **Right of Visit**

1. Upon transposing the territorial waters of respect the ship's captain must:

a) Permit access on board of any customs agent or any customs oversight agent, even before the visit by the health authorities, if such is deemed necessary. In the latter case, the agents are subject to maritime sanitation legal requirements, and cannot disembark before the visit by the health authorities;

b) Surrender the original of the manifest for the *ne variatur* visa to the customs agents that are to go aboard, and hand to them a copy of the manifesto.

2. The agents mentioned in the preceding number have access to most of the ships' parts and compartments and the right to demand from the commander the presentation of all the on-board documents that the customs

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 crew list;

e) The list of passengers and their respective luggage;

f) A written declaration that indicates:

- the name, nationality and the ship's complement;

- 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 unloading and unpacking of goods, in order to assure the control, of both the goods and the means of transportation they are in.

## **Article 90**

### **Throwing Cargo Overboard**

1. If for circumstance or case of *force major* the ship's captain consumes or throws part of the cargo overboard during the trip, he/she should so declare to the customs in the act of presentation on arrival, indicating precisely, if possible, the part of the cargo that was consumed or thrown overboard.

2. Similar declaration should be made relatively to any part of the cargo that, for justified reason, may have been unloaded in some port of call or that was put into, and in such case, prove his/her declaration by a certificate from the customs of the referred port.

## **Article 91**

### **Customs Franchise**

1. The ships that enter with in-transit cargo, because they were forced to put into port or simply because they received orders to do so, without commercial motives, shall be granted dispensation from presenting the goods on board, and may likewise receive dispensation from presenting the manifest, by authorization from the director or the chief of the customs post.

2. The referred dispensation can go beyond ten days only if a duly justified motive is presented by the ship's captain.

3. In the cases this Article refers to the captain may seal the hatches and wind screens of the cargo bays and be dispensed from the oversight of the personnel on board.

## **Article 92**

### **Representation of the Ship's Captain**

No person can represent a ship's captain before the customs without the person's name being registered in the same, as agent of the respective company, enterprise or operator and without having the on board documents indicate that the person is a consigner.

## **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 general declaration, the list of passengers and the cargo manifest, in conformity with the norms and recommendations of Annex IX to the Convention Relative to International Civil Aviation.

## **Article 96**

### **Throwing Cargo Overboard**

1. Any unloading or throwing of cargo overboard is prohibited through the entire route.
2. However, the aircraft commander has the right to throw overboard the ballast and the postal mail, in the places officially designated to do so, as well as the transported goods, in the situations in which throwing the cargo overboard is indispensable to save the aircraft.

## **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 departments or sections of the postal shipments, under control of the customs services, and are subject to the specific regulations for the postal shipments.

4. The special warehouses in the port and airport terminals will be hereinafter designated as warehouses and customs clearing areas.

## **Article 101**

### **Period of Permanence**

1. The maximum period of stay in the warehouses and customs clearing areas is thirty days for goods arriving by air and forty-five days for the goods arrived by sea, except for the following:

- a) Live animals should be cleared immediately,
- b) Fresh, refrigerated or frozen products, and the perishable products should be cleared within a maximum of forty-eight hours;
- c) Flammable products, pollutants and dangerous products should be cleared immediately.

2. Explosives, weapons and munitions, should be channeled to the Armed Forces or Police dumps immediately upon unloading.

3. The customs directors or the chiefs of the customs posts may reduce the warehousing periods established above, whenever the state of conservation of the goods does not permit their permanence in these deposits or when such a delay may cause a reduction or total loss of their value, notifying the interested parts of this decision and fixing a deadline for the goods to clear the customs under legal terms.

5. When there are deteriorated goods or goods in the process of deterioration in the warehouses and the customs clearing areas, this fact should be immediately communicated to the customs.

## **Article 102**

### **Tacit Abandonment of Goods**

The goods that remain in the warehouses and in the customs clearing areas beyond the established deadlines shall be considered abandoned in favor of the National Treasury and conducted to the auction warehouses there to be sold in public auction, after the competent administrative process has been organized.

**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 open any packages, as well as to substitute or alter marks, wrappers or a form of conditioning the goods contained in those packages, without prior authorization from the customs and without the presence of customs agents or agents of the Fiscal Guard.
2. The customs may authorize the separation of the goods contained in each package or container of the goods in bulk existing in the warehouses and customs clearing areas, when the reasons presented are acceptable and there is no inconvenience to the Public Treasury.
3. The packages obtained from the division of packaging referred to in the preceding number shall receive the same mark as the package that the goods belong to whose packaging was performed, which shall also be numbered. The necessary mention of the alterations performed shall be made in the respective book entry.

## **Article 109**

### **Interdictions**

No package shall be accepted in the warehouses and customs clearing areas, if it is not duly sealed, or any package in an evident state of

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 accepted by the customs functionaries must be recorded immediately.

2. Declarations that are presented in irregular form or that are not accompanied by mandatory documents should not be accepted.

## **Article 114**

### **Rectification of the Declaration**

1. After being accepted and recorded by the customs the declaration constitutes an authentic document, acceptable in good faith in judgment.

2. At his/her request, the declarer may proceed to the rectification of one or more elements of the declaration, as long as he/she presents a justified motif. However, the justification cannot make the declaration applicable to goods distinct from those initially referred to.

3. The rectification cannot be authorized is the respective request is formulated after the customs authorities have:

- a) Informed the declarer of its intention to perform a verification on the goods;
- b) Verified an inexactness of the elements in question;
- c) Authorized the goods to exit.

## **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 not duly explained.

## **Article 118**

### **Elements and Circuits of the Declaration**

1. The detailed declarations must contain all the indications necessary for the application of the customs measures and to establish the foreign trade statistics.

2. They must be signed by the declarer and authenticated by the rubber stamp in use by the declarer.

3. All the documents whose presence is necessary for the application of the provisions that govern the customs regime under consideration and for the control of foreign trade and application of the sanitary, phytosanitary and other measures, required by law, must be attached to the declaration.

4. The Customs General Director determines the form and the circuit of the declarations, their contents and the documents that must be attached to them.

## **Article 119**

### **Customs Terminology**

When there is contradiction in a declaration between a reference, in words or in numbers, written in accordance with the customs technology, and a reference that does conform to the customs terminology, the latter reference is null.

## **Article 120**

### **Simplified Procedures**

1. In order to simplify compliance with the customs formalities and procedures as much as possible, safeguarding the legality of the operations, the Customs General Director may, by a Service Order, determine simplified customs clearing procedures, permitting acceptance of a simplified declaration, under the form of an administrative or commercial document, in substitution for the detailed declaration, that shall be completed subsequently by a complementary detailed declaration that could assume a global, periodic or recapitulative character.

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 destinataires.

## **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.



**Chapter III**  
**Persons Qualified to Declare**

**Article 124**  
**Persons Qualified to Declare**

1. Only the persons indicated next are qualified to declare in the customs and to intervene in clearing goods from customs:

a) The owners or consignatories of the goods when they present themselves in person and prove their identity, whenever the customs so require, or when they are represented by their attorney in fact.

b) The cashiers of the owners and consignatories of the goods, with the faculty to sign the declarations, conferred by the Customs General Director;

c) The customs brokers of the transporting companies, when dealing with goods consigned to them, or whose delivery they are responsible for;

d) The official dispatchers.

2. In the customs posts where there are no candidates to official dispatchers, that comply with the conditions imposed by Article 128 of this code, the Customs General Director may authorize other persons to make declarations in the customs and interfere in clearing goods through customs, as long as they have as minimum qualification a high/school education or equivalent and has a good civil, criminal and fiscal behavior.

3. The cashiers and representatives dealt with in subparagraphs b) and c) of the preceding number shall be designated cashier dispatcher and can intervene only in goods belonging or consigned to the enterprises or the organizations that they service.

4. The qualification of the persons referred to in number one to declare and intervene in customs dispatches shall be indicated in an authorization issued by the Customs General Director.

5. The directors of the customs circumscriptions shall issue to all the persons indicated in this Article an identification document that will contain the number and the date of the respective authorization and the photograph of the bearer and will serve as proof of the bearer's qualification before the customs posts as well as for the exercise of their rights.

6. No official dispatcher may be qualified to declare or to intervene in the customs dispatches in more than one customs post.

7. Customs clearing is understood to be a set of formalities necessary to clear goods, ships and aircrafts from customs.

## **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**

### **Persons Interdicted from Intervening in Clearing Goods from Customs**

1. The customs functionaries that have been dismissed from the General Directorate of Customs, the bankrupt not rehabilitated businessmen, those that have been condemned for contraband and deviation of duties or in some of the major penalties established in the penal law or yet by the crimes of theft, abuse of confidence, fraud, receiving stolen goods and falsity, even if they are not presented in the quality of owners or cosignatories or the goods or as attorneys in fact of the latter, cannot be qualified to declare or to intervene in customs dispatches.

2. The customs directors may temporarily suspend, in the faculty of soliciting dispatches, any of the persons indicated in No. 1 and 2 of Article 123, as well as prohibit their entry into the customs posts, when accused in fiscal processes or pronounced in administrative or criminal cases, with the suspension ending as a result of a dispatch or absolving sentence, amnesty or pardon, or yet by serving the sentence, if in any of the cases he/she had not been dismissed.

3. In case of an emergency the chiefs of the customs delegations may use the faculty granted in the preceding number, informing the higher hierarchy of the fact.

4. The directors or the chiefs of the customs posts may deny the intervention in customs clearing to the owners or consigners of goods or to their attorneys in fact when it is proven that the same do not have the knowledge necessary relatively to the customs declaration procedure.

## **Article 126**

### **Limitation of the Number of Official Dispatchers**

1. The number of official dispatchers in each customs post is limited and constitutes a separate staff.
2. The Minister of Finance shall fix by Ordinance the number of official dispatchers in each customs post and can alter that number if the service needs so require, by proposal of the General Directorate of Customs

## **Article 127**

### **Requisites for Appointment**

1. Only the dispatcher assistants or the cashier dispatchers, that have a high school education or equivalent, as minimum qualification, may be appointed official dispatchers.
2. The dispatcher assistants and the cashier dispatchers that propose to be appointed official dispatchers may request to be admitted to a qualification exam that shall be taken at the General Directorate of Customs before a jury appointed by the General Directorate of Customs and in which must include an official dispatcher.
3. Only the dispatcher assistants with more than two years of effective service and the cashier dispatchers with more than five years of effective service can be admitted in the exams referred to in the preceding number.
4. Only the individuals that have a high school education or equivalent as qualification and the necessary knowledge to discharge such functions, which shall be proven by exam taken before the jury referred to in numbers one and two of the preceding Article, may be authorized to exercise the function of cashier dispatcher.

## **Article 128**

### **Official Dispatcher Contest**

1. The replacements to fill the official dispatcher openings shall be accomplished by documental contest, open for a period of sixty days, executed at the General Directorate of Customs, before a jury appointed under the terms of number two of Article 118.
2. The contest referred to in the preceding number shall be valid for three years.

## **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 responsible for the acts of his assistant, such fact shall imply immediate dismissal of the respective assistant and cessation of the respective authorization and identification document.

## **Article 130**

### **Duties of the Official Dispatchers**

1. The following are duties of the Official Dispatcher:

a) Use the maximum of loyalty towards other dispatchers;

b) Be assiduous in the service;

c) Demonstrate the greatest zeal in the dispatches he is responsible for, and not promote diligences he/she recognizes as useless;

d) Give account to the goods owners of all the amounts he/she may have received or spent;

e) Fix his/her honoraries in accordance with the respective official rates.

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 and 3 of No.1 of this Article.

7. The official dispatchers who are dismissed from their functions as a result of a disciplinary process are forbidden from entering the customs posts until the final decision of their respective cases.

### **Article 133**

#### **Disciplinary Competence**

1. The disciplinary competence for the application of the penalty of paragraph 2 of No. 1 of the preceding Article belongs to the Directors of the customs circumscription, and they have the obligation to communicate the fact to the higher ups.

2. The application of the penalty of paragraph 3 of No.1 of the preceding Article is of the Minister responsible for the Finance sector.

### **Article 134**

#### **Appeal**

The decisions of the circumscription Directors may be appealed to the Customs General Director; those that have been proffered by the Customs General Director can be appealed to the Minister responsible for the Finance sector and those proffered by the Minister can be appealed to the Supreme Tribunal of Justice.

### **Article 135**

#### **Leaves and Absences**

1. The official dispatchers who, save for reason of illness are absent from work for more than thirty days, in a row or staggered, without duly approved leave, shall be placed in the inactive lists, and in this situation, they cannot intervene in any customs matter.

2. The Customs General Director may grant up to ninety days leave in each year and the directors of the respective customs circumscriptions up to thirty days, to be spent in –country. The leaves that exceed ninety days and those that are to be spent outside the country can be granted only by the Minister responsible for the Finance sector.

3. O disposto no número dois deste Article não se aplica aos casos de doença, que, indo além de trinta dias, será justificada mensalmente, perante o chefe da respectiva estância aduaneira, por atestado médico.

**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 verification of the goods renders the necessary assistance to the customs agents responsible for the verification, in order to facilitate this task. If the agents in charge of the verification do not consider the assistance provided satisfactory, they may demand that the declarer indicates a more apt person to provide them the necessary assistance.
3. When the declarer does not present him/herself to attend the verification of the goods or does not indicate a qualified person to substitute for him/her, or, eventually, does not indicate an apt person to provide assistance considered necessary, the customs services shall set a 24 hour deadline for him/her to comply with his/her obligations, save if they consider that they can renounce that verification.
4. If, at the end of the fixed deadline, the declarer has not complied with the determination of the customs services, the latter proceed *ex-officio* to the verification of the goods, under the responsibility and at the expense of the declarer, recurring, if necessary, to the service of an expert or of any person designated in accordance with the disposition in effect.
5. The verifications that the customs authorities make, during the verifications performed under the conditions referred in the preceding number, have the same validity they would have had if the verification had been performed in the presence of a declarer.



## **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. The amounts to be extracted must not exceed those necessary to permit the analysis or the thorough control, including an eventual counter-analysis.
4. The declarer or the person designated by him/her to attend the extraction of samples must render the customs authorities the assistance necessary to facilitate the operation.
5. Whenever the declarer does not show-up to attend the extraction of samples or does not designate a person to attend the extraction of the samples, or, if designated, the latter also did not show-up, the customs authorities shall proceed in conformity with the provisions of the preceding Article, and their observations shall have the same validity they would have if the extraction had been performed in the presence of the declarer.
6. The quantities extracted as samples by the customs services are not deducted from the quantities declared.
7. In the case of a declaration of exportation or of passive improvement, whenever the circumstances so permit, the declarer is authorized to substitute the quantities of goods extracted as samples for identical goods, to complete the shipment.
8. Save if they are rendered useless by the analysis or by the thorough control, the samples extracted are returned to the declarer, at his/her request and expenses, as long as their being kept by the customs authorities becomes unnecessary, namely, when all the possibilities of appeal by the declarer against the decisions taken by the customs services based on the result of the analysis or of the thorough control have been exhausted.
9. The samples whose return has not been solicited by the declarer may be either destroyed or conserved by the customs services. However, in some special cases, the customs services may demand the interested party remove the remaining samples.
10. The extraction of samples does not lead to any indemnity payment by the customs administration, but the expenses for analysis and control are supported by the latter.

## **Article 142**

### **Certificate of Visit**

When the customs services proceed to check the declaration and the documents attached to the physical verification of the goods, they indicate in the declaration document destined for them or in a document annexed, the type of control performed, the elements that the object of this checking up or verification, the number of samples eventually extracted, as well as the results attained. In the even of partial verification of the goods, the references pertaining to the lot examined are also indicated. The observations must be dated and include the identification of the intervening functionary.

## **Article 143**

### **Contesting**

1. When the results of checking the declaration and of the documents attached or the verification of the goods, performed by the customs services, do not agree with the elements of the customs declaration relative to the Tables classification, the origin or the value, and the declarer contests that result, the respective process is regulated by the provisions foreseen in Title VII of this code.

2. Nevertheless, there is no room for appeal of this procedure when the law and the regulations foresee a special procedure to determine the kind, the value or the origin.

## **Article 144**

### **Reviewing Travelers and Their Baggage**

1. The search of travelers and their baggage can only be performed in the places designated by the customs services to this effect.

2. It is incumbent on the traveler or the transporter used by the traveler for the services, to take the baggage to the review location.

3. The opening of the baggage, the handling necessary for the verification is performed under responsibility of the traveler or the traveler's representative.

4. The baggage taken to the review locations more than eight days ago and that have not been verified due to absence of the declarer, shall be removed to the auction warehouses by the customs services, and under the conditions fixed by Article 102 of this code.

5. The baggage cannot be removed without authorization from the customs services.

**Chapter V**  
**Liquidation and Payment of the Duties and Other Impositions**

**Article 145**

1. The duties and other impositions to be applied are those that are in effect on the date the respective declaration is recorded.
2. The duties and other impositions whose collection is under customs responsibility are applied according to the results of the verification or, if such is the case, according to the decisions of the Customs Technical Council homologated by the Minister responsible for the Finance sector or according to the judicial decisions that have been judged.
3. When the customs services do not proceed to the verification of the declared goods, the duties and other impositions and other customs measures are applied according to the elements contained in the declaration.
4. The duties and other impositions liquidated by the customs services are paid in current currency or by means of a bank approved check or by inter-bank transfer.
5. The check must be issued to the order of the treasurer or of the chief of the respective customs post, and the bank that has approved the check will be obligated to reserve the funds pertaining to each check it has approved, for the purposes indicated in the preceding number,
6. The duties and other impositions demandable for each Table article and for each line item are rounded up, to the nearest escudo.

**Article 146**

**Deadline for Payment of the Declarations**

1. The declarations whose payments are not made within ten work days after its entry into the treasury are ordered annulled and the goods they pertain to will be considered as having exceeded the legal warehousing period and remitted to the auction warehouses and the process of selling them in public auction shall be initiated.
2. At the request of the interested parties and for justified reasons the deadline referred to in the preceding number may be prorogued for an equal period by the chief of the customs post.
3. However, when the goods are live animals, fresh or refrigerated goods and products of a dangerous nature or flammable, the customs debt corresponding to the declaration should be paid within a maximum period of twenty-four hours, after their entry into the treasury.

## **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 does not serve as a guarantee or ceased to be a secure and integral guarantee for the payment of the guaranteed fiscal obligations, they will require the posting of a complementary guarantee or the substitution of the initial guarantee by a new guarantee.

4. The customs authorities shall refuse the proposed guarantee, when they consider that the same is not a secure guarantee of payment of the cautioned obligations.

## **Article 149**

### **Moment for Posting Guarantee**

The guarantee referred to in the preceding Article may be demanded:

- Either at the moment when the regulation that foresees the possibility of demanding it is applied;

- 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 the Customs General Director in the ambit of their respective competences.

### **Article 153**

#### **Seizure and Sale of Goods**

At the necessary measures, including seizure and sale, shall be adopted, to normalize the situation of goods whose exit authorization has not been granted either:

a) because it was not possible to initiate or proceed with its verification within the deadline fixed by the customs services, for reasons imputable to the declarers,

b) or because of non-presentation of the documents indispensable to subject them to the declared customs regime,

c) or because the duties or other impositions that should have been paid or guaranteed, were not paid within the deadline fixed,

d) or because they are subject to restriction or contingency measures.

### **Chapter VIII**

#### **Credit-related Privileges**

### **Article 154**

#### **Special Movable Property Privilege**

The goods, baggage or any other valuables existing in the customs or in the provisional depositories, stations under the customs regime, and in any other locations under customs fiscal action, answer for the payment of the duties and other impositions, and for the payment of fees and fines, owed by their owners and consigners, although it does not directly pertain to them. The latter will take advantage of these credits that have special movable property privileges over the goods dealt with in this Article, with preference over any others.

## **Article 155**

### **Seizure of Goods**

1. The goods deposited in the customs, provisional deposits, customs station or in any other location under customs fiscal action, cannot be seized or detained there except by the customs administration itself and to guarantee the duties and other impositions, fines or other debts of any other nature to the National Treasury.

2. When the judicial authorities or any others have to impose the seizure of the goods referred to in the preceding number that shall solicit the customs that have fiscal action over the goods to execute the seizure.

3. The sale at auction of the goods under fiscal action that are seized at the request of the judicial authorities can be executed only after the concurrence of those authorities.

4. The application of the precept alluded to in this Article is extensive to any other goods that because they are proposed for dispatch or for any other reason, are under direct action of the customs posts, even though outside of the posts.

## **Chapter IX**

### **A Posteriori Revision and Control of the Declarations**

## **Article 156**

### **A Posteriori Revision and Control**

1. The customs authorities may, ex-officio, at the request of the declarer, shall proceed to the revision of the declaration after concession of the exit authorization for the goods.

2. After granting authorization for the exit of the goods and to certify of the exactness of the elements in the declaration, the customs authorities may proceed to the control of the documents and commercial data relative to the import and export regulations, as well as to the subsequent commercial operations relative to these goods. These controls may be performed before the declarer, any person directly or indirectly interested professionally in the cited operations or any other person who, by his/her professional quality, has hold of the referred documents and data. The referred authorities may, likewise, proceed to the verification of the goods, if the same can be still presented.

3. When it is determined that as a result of the review of the declaration or of the *a posteriori* controls that the provisions that govern the customs regime under consideration were applied on the basis of inexact or incomplete elements, the customs authorities, in deference to the provisions

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 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 condition of the goods.

2. The goods excluded from the warehousing station regime are designated by Ordinance of the Minister responsible for the Finance sector.

## **Subsection II**

### **Public Customs Station**

## **Article 171**

### **Objective**

The public customs station is destined to satisfy the general interest needs. They can be utilized by any person to store the goods coming from outside the country, in the condition in which they were imported.

## **Article 172**

### **Users of the Regime**

1. Granting the authorization for the exploration of the public customs station is the competence of the Customs General Director, having heard the competent services.

2. The referred authorization must be granted, by order of priority to:

- The port and airport administrations,
- The air and sea transportation companies,
- Other public entities,
- The Chambers of Commerce and Industry,
- To entrepreneurial associations.

## **Article 173**

### **Exemption from Guarantee**

The goods deposited in public customs stations are not subject to any type of caution.

## **Article 174**

### **Installations**

1. The installations from which the customs stations operate must obey the following conditions:

a) Be built with material of great resistance and have the conditions necessary for the establishment of an effective fiscal isolation;

b) The doors must have two keys of different molds, supplied by the customs at the cost of the concessionaire, the latter keeping one of the keys and the customs post, the other;

c) The windows must skylights and other openings existing in the same building must be blocked with a strong grid, with strands not thicker than 1cm<sup>2</sup>.

2. Whenever they deem it convenient the Customs have the faculty to have the keys referred to in subparagraph b) of the preceding number of this Article replaced, at the cost of the public customs station concessionaire.

3. The public customs stations are subject to permanent customs oversight.

4. The location, the construction and the utilization of the installations for the operation of the public customs station are approved by the Customs

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. Granting the authorization for the exploration of an industrial customs station is the competence of the Customs General Director, having heard the competent services, and is subject to the posting of a guarantee.
2. The industrial establishments whose installations meet the minimum required conditions may benefit from the industrial customs station regime.

**Article 182**

**Goods Admitted**

1. The raw-materials and their subsidiaries and the finished or semi finished products destined to be incorporated, transformed and in the conditioning of the products manufactured by the concessionaire enterprise, are admissible in the industrial customs station.
2. By dispatch of the Customs General Director, having heard the competent service, authorization may be given to admit in the industrial customs station other products not foreseen in the preceding number.



### **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 process that do not have any economic utility are destroyed under customs control, at the expense of the concessionaire.

2. The residues that have economic utility are subject to the payment of customs duties and other impositions, when introduced in consumption.

3. The General Directorate of Customs, having heard the competent technical department of the respective sector of activity, shall establish a percentage of breakage or admitted loss, for the purpose of exclusion of fiscal responsibility.

## **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 being exported subsequently, in the form of compensating products.
2. By improvement operation it is understood:
  - the complement of goods fabrication, including their assembly, bringing together parts and adaptation to other goods;
  - the transformation of goods;
  - the reparation of goods, including their restoration and fine tuning.
3. By importation goods it is understood the goods subject to the active improvement regime.
4. By compensating products it is understood the products resulting from the improvement operation for which the active improvement regime was authorized.
5. By equivalent goods it is understood the national or imported goods, identical to those that were imported, in kind, quality and technical characteristics, with a view to an active improvement operation, and that they replace.
6. By revenue index it is understood the quality or the percentage of compensating products obtained from the improvement of a specific quantity of importation goods.

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**

### **Introduction of Compensating Products in Internal Consumption**

Exceptionally and by authorization of the Minister responsible for the finance sector, the sale of part of the compensating products in the internal market may be authorized by the Minister responsible for the Finance area, under the following conditions:

- a) The total volume of the sales must not exceed 15% of the total previous year production of the enterprise named in the regime;
- b) The products referred to in the preceding sub-paragraph are subject to the importation duties and other impositions and to the trade policy measures, under the terms of the legislation in effect.

## **Article 195**

### **Location Destined for the Operation**

1. The location destined to carry out the active improvement operation and the warehousing of the importation goods and of the compensating goods is fixed in the authorization, by advice of the chief of the customs delegation with competence to oversee that location.

2. The goods referred above can only be transferred from the approved location by the customs authorities:

- a) For exportation or re-exportation;
- b) For sale in the internal market under the terms of Article 194 of this Code;
- c) To complement fabrication;
- d) To render it useless under customs control.

## **Article 196**

### **Obligations of the Holder of the Authorization**

1. The holders of the authorization to use the active improvement regime are subject to the following obligations:

- a) Submit to the customs oversight;
- b) Submit the location where the activity is carried out and the warehousing spaces for the importation goods and the compensating goods to the approval of the customs authorities;
- c) Conserve the goods subject to the regime, as well as the compensating products in the improvement and warehousing locations approved by the customs authorities;

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, at 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. By drawback it is understood the amount of duties and other taxes due on importation and that is the object of reimbursement by virtue of the application of the drawback regime.

#### **Article 200**

##### **Granting the Drawback**

1. The beneficiary of the drawback regime may request reimbursement of the duties and other taxes paid on importation as long as it can be proven to the satisfaction of the customs authorities that:

a) The imported products, for which drawback is requested, entered in the composition of the exported product;

b) The compensating products were exported or entered into a franc zone.

2. The deadline for concession of the drawback is one year after the importation of the products that entered in the composition of the compensating product, prorogable for two identical periods of ninety days each, for justifiable reasons.

#### **Article 201**

##### **Yield**

##### **Obligations of the Beneficiary of the Regime**

With the necessary adaptations, Articles 191 and 196 of this Code are applicable to the drawback regime.

## **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.

3. Save for the cases expressly foreseen in the law, the customs directors are competent to grant the temporary importation regime.

## **Article 205**

### **Duration**

Save for cases expressly foreseen in the law and in international conventions ratified by the State of Cape Verde, the maximum duration for temporary importation is one year, prorogable for two additional periods of one month, in duly justified cases.



**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 expeditor 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. Whenever the respective means of transportation is not sealed, the goods in transit must be sealed by capacity or by package. The competent authority of the competent departing customs post may dispense with this operation when dealing with easily identifiable goods, unless an international agreement requires it.

2. When the goods or means of transportation are not sealed, the transportation must be made under customs escort.

3. By means of transportation it is understood:

- 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 duly authorized by the competent customs authorities of the departing customs post, who has previously guaranteed the duties and other impositions of the goods in relation to which the debt is susceptible of being constituted, may be the transporter.

2. For the goods in national transit, in the case of transporters with duly recognized fiscal credibility, the director or chief of the departure customs post may authorize that the guarantee referred to in the preceding number be replaced by a term of responsibility, prepared in the respective notary's office.

## **Article 220**

### **Responsibilities of the transporter**

1. The transporter is committed, by means of a declaration made in the transit declaration, itself, to follow the itinerary established by the customs authorities, without unjustifiable stops, and to deliver the goods at the destination customs post, in the condition in which they were received.

2. If there is an interruption in the trip for reasons against the will of the transporter, the same shall adopt all the cautions to assure the inviolability of the goods under his/her responsibility, for the duration of the interruption.

3. In the event of break-down or accident involving the means of transportation, that gives to the need to proceed to the transbord to another means of transportation, the transporter shall give knowledge of the fact, by the quickest means, to the nearest customs post, who will take the necessary actions.

4. At the destination customs post the transporter shall account for any delay or occurrences verified along the way, including the involuntary stops without any implication in the condition and conservation of the goods being transported, presenting for each fact related the circumstantial proofs available.

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 necessary information, may be accepted as constituting the descriptive part of the declaration of goods for transshipment.

#### **Article 223**

##### **Competence**

The director or chief of the respective customs post is competent to authorize the transshipment.

## **Chapter X**

### **Franc Zones**

#### **Article 224**

##### **Definitions**

1. It is understood as franc zone a part of the national territory, unequivocally delimited, such that the goods introduced therein are

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 limited.

## **Article 226**

### **Exemption of Guarantee**

The customs do not require any modality of guarantee to admit goods into a franc zone.

## **Article 227**

### **Customs Post**

1. A customs post shall operate inside a franc zone and the expenses for its installation shall be a responsibility of the concessionaire.
2. A fiscal post shall also operate inside a franc zone with the staff deemed necessary for its normal operation, in conformity with customs instructions, with all the costs of installation of the post being the responsibility of the concessionaire.

## **Article 228**

### **Customs Destination**

1. The goods deposited in a franc zone may be re-exported, introduced in consumption or placed under another customs regime, duly authorized by the customs authority.
2. The introduction in consumption of goods deposited in a franc zone is subject to the payment of goods and other obligations due on importation, under the terms of the customs legislation in effect, and is subject to

observance of the regulations pertaining to foreign trade, applicable in importation.

## **Article 229**

### **Constitution**

1. The constitution, the geographical limits, the nature and the modalities of operation of a franc zone are determined by the Government, by means of a Regulatory Decree.

2. The franc zone must be conveniently isolated from the rest of the customs territory, with fixed points of access and exit.

3. The exterior zone contiguous to the delimited area must be conceived so as to permit adequate customs oversight, and any constructions within twenty meters, counting from the fence, are prohibited.

4. No construction must be undertaken inside the franc zone, within ten meters from the fence.

## **Article 230**

### **Customs Oversight**

1. The customs determine the conditions for the exercise of the control activity, including the requirements in matters of conception, construction and organization of the franc zones.

2. The limits and the points of access and exit of a franc zone are fixed by the customs authorities and are subject to customs oversight.

3. The means of transportation that enter into a franc zone are subject to customs control.

4. The customs authorities may control the goods that enter remain in or exit a franc zone. Whenever this control is ordered, the goods must be made available to the customs authorities.

5. Without prejudice for the provisions of the preceding number, the entry or exit of goods from a franc zone does imply presenting them to the customs authorities. Goods must be presented to the customs authorities are those :

a) That are subject to a customs regime and whose entry in a franc zone depends on the verification of the referred regime;

b) That have been the object of a decision to grant reimbursement or of an exemption on the payment of duties and other impositions due on importation, that imply placing these goods in the franc zone;

c) For which there are founded doubts that they are goods such as those referred to in the second part of No. 1 and the Nos. 2 and 3 of Article



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 accounting of the existences, approved by the Customs General Director.

2. The operator must present a written request for approval of the system for the accounting of the existences referred to in the preceding number.

3. The operator will initiate its activities only after approval by the Customs General Director of the accounting system for the existences.

4. The operator must exhibit its accounting system and presents the goods it had in hand whenever solicited by the competent authorities.

5. Approval of the system for the accounting of the existences shall be altered or revoked by the Customs General Director when the operator ceases to offer the guarantees necessary for the correct application of the provisions foreseen in this legislation.

6. The approval shall be revoked by the Customs General Director when there is repeated, verified disappearance of goods that cannot be satisfactorily explained.

7. When the approval is revoked, the activities of the operator the system to account for the existences apply to can no longer be applied in the franc zone.

## **Title VI**

### **Customs Fiscal Litigation**

#### **Chapter I**

#### **General Principles and General Dispositions**

#### **Section I**

#### **General Principles**

## **Article 234**

### **Customs Fiscal Infraction**

Customs fiscal infraction is a typical fact, illicit and culpable declared punishable by customs fiscal law.

**Article 235**  
**Principles of Legality**

The customs fiscal infraction shall be punishable only if it is described and declared punishable by law in existence prior to the moment in which it committed.

**Article 236**  
**Classification**

The customs fiscal infractions can be classified as crimes or as contraventions.

**Article 237**  
**Application in Space**

This legislation is applicable to facts committed in the Cape Verdean customs territory and, save convention to the contrary, to those practiced outside of it, as long as they have produced the typical result in Cape Verde.

**Article 238**  
**Place and the Commitment of the Fact**

The fact is considered committed in the place where, totally or partially, and under any form of co-participation, the agent acted or, in the case of omission, should have acted, as well as in that in which a typical result was produced.

**Article 239**  
**Moment in Which the Fact is Committed**

The fact is considered committed at the moment in which the agent acted, or in case of omission, should have acted, independently of that in which the typical result is verified.

## **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 the omission of the action adequate to avoid it, except if the intention of law is different.

2. Committing a fact by omission is punishable only when over the committing befalls the legal duty that would obligate him/her personally to avoid the typical result.

**Article 245**  
**Responsibility of Collective Persons or Comparable**

1. Without prejudice for the individual responsibility, the collective persons or comparable entities are responsible for the customs fiscal infractions committed by its organs or representatives, in its name or in the interest of the respective collectivity, save if the agent acted against the orders or instructions of those it represented.

2. In the case of entities without juridical personality, the common patrimony shall answer for compliance with the pecuniary sanction, and, in the absence or insufficiency of patrimony, the patrimony of each of the associates.

**Article 246**  
**Joint Responsibility**

1. If the infraction is committed by diverse singular or collective persons, they all respond jointly for the payment of the duties or other impositions due.

2. The same regime of joint responsibility shall be applied in the event of a subordinated work relationship, whether the fact is committed by a subordinate agent of a singular or collective person or comparable entity, as long as the latter acted in the exercise of that representation.

3. If the collective person or comparable entity no longer has legal existence at the moment the respective process is instituted, the individuals that made part of it shall respond jointly.

### **Article 247**

#### **Civil Responsibility**

1. The singular or collective persons, or comparable, to whom are subordinated those who, in the performance of the functions that are entrusted to them, commit a fact punishable according to the provisions of this Code, relatively to the infractions committed by them, are subsidiarily responsible for the payment of the amount corresponding to the pecuniary sanction applicable for the commitment of the infraction.

2. In the event that the collective person or comparable entity does not have legal existence at the moment the process is instituted, the individual that made part of it when the infraction was committed shall respond jointly for the payment of the pecuniary sanction.

3. The provisions of the preceding number shall not apply if it is proven that the responsible entity took all the necessary providences and cautions to observe the legal and regulatory requirements.

### **Article 248**

#### **Responsibility of Parents and**

#### **Legal Representatives of Minors and Invalids**

In the infractions are committed by minors or invalids the parents or their legal representatives are responsible for the payment of the duties and other impositions due and for the pecuniary sanctions applicable for committing the infraction.

### **Article 249**

#### **Acting in Someone Else's Name**

Whosoever acts, while responsible for a collective person or mere defacto association organ, or as someone else's representative, even when they do not entrust in him/her the conditions, the qualities or the relationships required by the type to affirm the authorship of the infraction, but rather, in the person in whose name he/she acts, is punishable.

**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 the result are impeded by circumstances independent of the agent's conduct, if he tries seriously to avoid one or the other.



## **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 agent, to make the respective penalty applicable to all co-participants it suffices that it be verified in any of them, save for a different intention of the law.

2. Whenever, by application of the provisions of the preceding number, the gravest sanction is applied to one of the co-participant, the same can be freely attenuated or substituted for the one that would have been applied if the rule established in the preceding number did not intervene.

3. The rule of No. 1 shall not apply if the law should determine that a fact, qualifying in principle as contra-ordination, should be considered a crime by virtue of certain qualities or special relationships of the agent.

## **Article 260**

### **Guilt in the Co-participation**

Each co-participant is punished according to the guilt, independently of the punishment or degree of guilt of the other co-participants.

## **Article 261**

### **Conflicting Norms**

If the same fact constitutes simultaneously a crime and a contra-ordination, the agent shall be punished under the title of crime, without prejudice for the accessory sanctions foreseen for contra-ordination...

## **Article 262**

### **Conflicting Infractions**

1. When the same infraction constitutes, both, a customs fiscal infraction and an infraction of another nature, the sanctions foreseen for each one of them is cumulative, whenever distinct legal assets have been violated.

2. The fact that is qualified, in whole or in part, as a customs fiscal infraction by more than one legal provision shall be punished by the provision that establishes the gravest sanction.

**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 authorities;

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 customs dispatches;

e) They have as object prohibited or conditioned importation or exportation goods or goods with a value greater than ecv 1.000.000\$00;

f) The goods are composed, in whole or in part, of objects with high historical, cultural or artistic value.

#### **Article 270**

##### **Privileged Contraband**

If the crimes foreseen in the preceding Article have for object goods whose value is less than ecv 40.000\$00, the agent shall be punished with a fine reduced to half in the minimum limit and to one fifth in the maximum limit.

#### **Article 271**

##### **Contraband Crime in Special Dispositions**

The facts expressly qualified as contraband crimes in special provisions are punished according to the circumstances, with the penalties foreseen in the preceding Articles, save if those provisions result in a heavier penalty.

#### **Article 272**

##### **Material Assistance**

Whosoever, after the consummation of a crime, materially assists someone else to take advantage of the economic benefit provided by goods object of contraband, shall be punished with the penalties foreseen for the reduced crime of one third in their maximum and minimum limits.

#### **Article 273**

##### **Fraud to the Customs Fiscal Guarantees**

Whosoever:

a) being the owner, depository or driver of apprehended goods under the terms of this title, damages, destroys or renders them useless, in the act of apprehension or subsequent to it;

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 operation 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 goods object of a customs fiscal infraction, wit the intention of obtaining for self or for third parties, some patrimonial advantage, shall be punished with imprisonment of three months to two years, or a fine from ecv 50.000\$00 to 20.000.000\$00.

2. If the agent makes receiving a way of life, or practices it habitually, the penalty shall be imprisonment of six months to three years or a fine from ecv 100.000\$00 to 24.000.000\$00.

3. If before trial, the agent turns the goods object of the infraction to the competent authority and indicates, truthfully, the person from who he/she received the goods, he/she may be exempt from penalty or the penalty can be freely attenuated, if it is not possible to prove that the circumstances referred to in No. 2 or that he/she has been sentenced for the crime of receiving, foreseen in this legislation.

## **Article 278**

### **Privileged Receiving**

If the good object of the receiving has a value of less than ecv 30.000\$00, the agent shall be punished with a fine from ecv 50.000\$00 to 500.000\$00.

## **Article 279**

### **Criminal Association**

1. Whosoever promotes, founds, leads, manages or makes part of groups, organizations or associations whose principal or accessory activity is directed to the practice of customs fiscal infractions foreseen in this legislation, as well as whosoever supports them supplying weapons, munitions, crime instruments, guard service or meeting place, or any assistance for them to recruit new elements, shall be punished with imprisonment from eight to twelve years.

2. Whosoever is part of such groups, organizations or associations, whosoever supports them, supplying weapons, munitions, crime instruments,

guard service or meeting places, or any other assistance for them to recruit new elements, shall be punished with imprisonment from one to five years.

3. The agent may be exempt from penalty or the penalty may be freely attenuated, if he/she voluntarily impedes or seriously strives to impede the continuation of the groups, organizations or associations or communicates their existence to the authorities in time for the latter to prevent the practice of customs fiscal infractions.

## **Subsection II**

### **Provisions Applicable to Customs Fiscal Infractions**

#### **Article 280**

##### **Amount of the Fine Penalty**

1. The amount of the fine penalty to be applied for the practice of a customs fiscal crime shall never be less than double the value of the goods in the internal market, at the moment of realization of the fact, without prejudice for the result of the application of the rules on free or extraordinary attenuation that may have taken place in the concrete case.

2. Its sale price to the public, on the date of the infraction, is considered to be the value of the good.

#### **Article 281**

##### **Equivalence Between Penalties**

Whenever, for any juridical effect or by virtue of the application of the norms contained in the penal legislation in effect, it is necessary to establish the equivalence between the duration of the penalties foreseen in this legislation and in the legislation in effect, the following shall be attended to:

a) The imprisonment penalty whose maximum limit is greater than three years they correspond to the greater imprisonment penalty of two to eight years;

b) The imprisonment penalty whose maximum limit is not greater than two years they correspond to the correctional imprisonment penalties.

#### **Article 282**

##### **Alternative Imprisonment**

1. Whenever the agent has been condemned to a fine penalty the respective sentence shall condemn in alternative imprisonment penalty, to be



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, whoever 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**

#### **Deviation**

1. A fine of ecv 50.000\$00 to 10.000.000\$00 shall be applied to any fact whose purpose is to prevent, in whole or in part, the payment of the customs tributary installments, that does not constitute contraband under the terms of this legislation, or to cause to pass through the customs or to remove any goods therefrom without being submitted to the competent dispatch formalities, or through false indications.

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.

2. If the value of the good is less than ecv 10.000\$00, the competent authority may freely attenuate the penalty.

## **Article 288**

### **Opposition to Verification or Exam**

Whosoever refuses to turn over or present written book-keeping, accounting, declarations and documents, or refuses to present goods to the entities with competence for the investigation and documentation of the infractions of the infractions foreseen in this legislation, or impede or makes difficult any verification or exam ordered for the goods by a competent functionary, when such fact does not constitute customs fiscal crime or deviation, shall be applied the fine of ecv 100.000\$00 to 2.000.000\$00.

## **Article 289**

### **Negligent Acquisition**

When a stronger penalty is not applicable to the fact, a fine of ecv 25.000\$00 to 1.000.000\$00 to whosoever, without previously having assured of its legitimate provenance, acquires or receives under any title, anything that by its quality or by its condition from whoever offers the good at the proposed price, reasonably suspects that the good is the object of the customs fiscal crime of deviation.

## **Article 290**

### **Other Contra-Ordinations**

1. For all effects of application of the juridical regime instituted by this legislation, the facts considered by law or other normative act as customs fiscal transgression and cannot be incorporated in the provisions that define fiscal crimes or contra-ordinations, under the terms of this title, shall be considered contra-ordinations.

2. The fine of ecv 1.000\$00 to 250.000\$00 shall be applicable to whosoever practices the facts referred to in the preceding number unless those infractions are punishable as penalties of fines in greater amounts, in which case the fines shall be the amounts corresponding to those fines.

**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.

5. The sale operations shall be carried out by the customs post, under the terms of applicable laws, with the product of the sale deposited to the order of the respective process.

6. If the final decision does not decree the loss, the proceeds from the sale shall be turned over to the injured party.

## **Article 300**

### **Guarantee of Payment**

1. The goods, the means of transportation and the assets apprehended from the accused or the suspect, as well as the amounts corresponding to the former, constitute guarantee of payment of the pecuniary sanction, of the duties and other impositions as long as their loss has not been decreed.

2. If the goods and other assets referred to in the preceding number belong to persons without any responsibility in the infraction, they respond only for the duties and other impositions.

3. The goods, baggage and any other assets or valuables that, although they do not pertain to the customs fiscal process, in deposit of customs regime or free regime, and in any other locations under fiscal action, or of which they are receivers or co also constitute guarantee of payment of the amounts that the accused or any other person responsible for the infraction may have to answer for.

4. The goods and other assets referred to in the preceding number are considered seized and can be delivered only if a guarantee is posted for their value or for the responsibility.

5. The goods whose knowledge, letter of ownership or any other property title have been endorsed by the accused or someone else responsible for the infraction, subsequently to the notification of the pronouncement dispatch, in the case of crime, or equivalent dispatch, in the case of a contra-ordination, or over which any type of commercial operation has been performed by them or the enterprises or firms they belong to, shall not likewise be delivered without the guarantee referred to in the preceding number.

## **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, with the specialties included in the provisions of this Code.

##### **Article 302**

##### **Contra-Ordination Action**

The process pertaining to customs fiscal contra-ordinations is regulated by the norms contained in the base-law for contra-ordinations, with the specialties included in the provisions of this Code.

##### **Article 303**

##### **News of the Infraction**

The functionaries and agents of the Customs General Directorate, Fiscal Guard, Public Order Police and Judiciary Police, as well as any other authorities or authority agents, when they witness any customs fiscal infraction they shall proceed to the apprehension of the goods, means of transportation, weapons and other instruments utilized in the practice of the fact, and prepare the competent description of the fact.

The description referred to in the final part of the preceding number shall be signed by the persons who proceeded to the diligence, by the accused who wishes to or can do so, and by two witnesses if there are any and they know how to write, and the local, day and time in which the detention and the apprehension were made, the reasons that led to them and all the surrounding circumstances, a list of the articles apprehended, their presumed value and destination given to them, status, and residence of the witnesses and whatever was possible to investigate about the name, status, profession, age, country of birth, residence and fiscal precedents of the reported parties and of those responsible civil wise. All the papers and documents found or presented, that may be of interest in getting at the truth shall be attached to the report.



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 infração 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.

#### **Article 305**

##### **Participation**

1. The entities referred to in Article 303 that may have knowledge in any form, of facts that may constitute customs fiscal infraction must communicate that information to the court or competent entity.

2. The communication may be done verbally or in writing and is not subject to any special formalities.

3. The verbal communication is then converted to writing and signed by the person making the communication and by the entity that receives it.

Whenever possible, the communication shall contain the following:

a) Complete description of the facts, date, time and place where they were committed;

b) Name, civil status, profession address, country of origin of the infractor, as well as any other elements that may serve to identify who committed the infraction;

c) Description of the witnesses;

d) The quality, quantity, the value and presumed destination of the goods, means of transportation, weapons and other instruments pertaining to the infraction and all else that may contribute to the discovery of the agents of the infraction.

## **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 reservations regarding the private life are admissible only with the consent of the legally competent entity.

**Article 316**  
**Competent Entities**

The following entities are competent to process the customs fiscal contra-ordinations and to apply the respective fines:

- a) The Customs General Director;
- b) The Directors of the Customs Circumscriptions;
- c) The Customs Directors;
- d) The Chiefs of the Customs Delegations.

**Article 317**  
**Territorial Competence**

1. The Directors of the Customs Circumscriptions are competent in the respective areas of jurisdiction, with the exception of those that are covered by the competence of the entities referred to in the numbers that follow.

2. The Customs Directors are competent in the city or village where the main office of the respective Customs are located, their ports, airports, enclosures, customs stations and deposits and franc zones.

3. The Chiefs of the Customs Delegations are competent in the respective areas of jurisdiction.

4. The territorial competence is determined either by the local where the infraction was committed or discovered, or by the local where the goods object of the infraction were apprehended.

## **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 appealed to the territorially competent customs fiscal court.

2. The appeal shall be interposed within eight days counting the date the impugned decision is known, and, if dealing with the application of a fine, it suspends the appealed decision, as long as the accused posts guarantee, before the customs, of the payment of the pecuniary sanction applied by the customs authority.

3. In all else, with the necessary adaptations, the appeal shall obey the provisions of the contra-ordination base-law.

**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% of the part attributed to the process writers or participants shall belong to the denouncer.

### **Article 328**

#### **Distribution of the Proceeds From Sales**

1. The amounts that proceeds from the sales of goods, means of transportation and any other instruments of the infraction, shall revert to the National Treasury.

2. When the penalty or fine have not been paid, the product of the sales shall be distributed under the terms of the preceding Article, up to the limit of the applied sanction, after the charges referred to in Article 342 .

### **Article 329**

#### **Limit of the Participation in the Fine**

1. In as much as the functionaries are persons that, under the terms of the preceding Articles have the right to a percentage of the amount of the fine applied, they cannot receive for each process an amount greater than their annual salary not counting the emoluments.

2. The excedent part shall revert to the National Treasury.

### **Article 330**

#### **Decision to Distribute**

1. In the counter-ordination processes, the authority that documented the process is competent, after the condemning sentence becomes executable, to determine the distribution indicated in the preceding Articles.

2. In the processes for customs fiscal crimes the provisions of No. 2 of Article 309 shall be obeyed.

## **Section V**

### **Of the Voluntary Payments, the Execution and Costs**

### **Article 331**

#### **Voluntary Payment of the Penalty**

1. In the infractions foreseen in this diploma to correspond only a monetary penalty, and if the form of transaction process is not followed, the

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.

6. In all else, the expenses regime pertaining to contra-ordination processes shall obey the base-law on contra-ordinations, in all that is not contrary to this legislation.

## **Article 336**

### **Execution**

1. With the ending of the deadlines mentioned in the preceding Article patrimonial execution can be undertaken.

2. If neither the accused nor the entity with civil responsibilities liquidate their contra-ordination processes within the foreseen deadlines the competent liquidation, in the following form and form, shall be undertaken:

a) By the amounts and values deposited in the process;

b) By the proceeds from the sale of goods and the means of transportation and other instruments of the infraction, when they should not be declared lost to the National Treasury;

c) By the proceeds from the sale of goods, baggage and other assets that may have been in the customs or in any other location subject to fiscal action or that is receivers or consigners.

## **Article 337**

### **Remittance to the Execution Court**

1. If the results obtained under the terms of the preceding Article do not reach the same value as the amounts due, having the executed amount been distributed, a certificate shall be extracted which shall include the decision or sentence, the account, the date of the respective notifications and the indication of the amounts obtained in the auction sales made, and remitted to the fiscal execution of the locality in whose area the accused is domiciled, and there the competent execution shall be instituted in harmony with the applicable legal precepts.

2. If there a plurality of accused, the execution shall be instituted at the court in the area where the largest number is domiciled.

3. If the domicile of the accused is not known, or in the case of several accused, if an equal number is domiciled in different areas, or if none of tem has domicile in Cape Verde, an execution shall be instituted in the court of the area in which the customs fiscal process occurred.

4. The amounts realized by virtue of the execution shall be deposited to the order of the customs director, with the execution court participating in the result of the execution.

5. If from the coercive collection or fiscal execution, carried out under the terms foreseen in this legislation, the amount obtained is greater that that

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 the National Treasury regarding the right of the return.

### **Article 341**

#### **Subsidiary Application of the General Law**

In all that is not especially regulated in this Code, in matter of execution, the provisions of the Penal Process Code shall be applied, if dealing with crimes, and in the contra-ordination base-law, or in its absence, in the Penal Process Code, if dealing with contra-ordinations.

**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 referred to in the preceding Article, the intervening functionary should prepare the initial report of the technical controversy process and promote the collection of the necessary samples.

2. The initial report, in duplicate, shall be signed by the intervening functionary and by the declarer, and should contain the following elements:

a) The identification of the dispatch document namely, nature, customs station, numbers and dates of record;

b) The names and addresses of the owners or consigners of the goods and of their representative;

c) The name and category of the intervening functionary;

d) The description of the controversial good;

e) The table classification, rates, origin and value attributed by the declarer and by the services;

f) The enumeration of the samples extracted, with the indication of whether or not they should be returned.

**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.

3. Within a maximum of twenty days counting from the date the additional elements referred to in the preceding number are presented to the Customs General Director who shall join them to the process and initialed by the other recorders.

4. The recorders should develop the process to the Council's Secretariat within three days counting from the date in which they receive it.

5. Once the initials are obtained, the process shall be presented to the president of the Council who shall convoke a meeting with a minimum advance notice office days counting from the date fixed for the meeting.

6. The owners or consigners of the goods or their representatives are allowed to be present in the initial Council session, upon request addressed to the president of the Council, and formulated with the necessary antecedence, to present verbally the reasons they think will assist them, but they should exit before the debates are initiated.

7. The deliberations of the Council, homologated under the terms foreseen in Article 10, shall be transmitted to the Customs for notification of the interested parties and conclusion of the dispatches.

### **Article 358**

#### **Review of the Council's Deliberations**

For reasons duly fundamented by the Customs General Director, having heard the Customs Technical Council, proposes to the member of the Government responsible for the area of Finance and revise any previously homologated deliberation.

### **Article 359**

#### **Applicability of the Council's Deliberations**

Upon homologation, under the terms of Article 346 of this Code, the Council's deliberations are obligatorily applicable, by the customs services, not only to the subject cases, but also to all the identical cases that may occur, beginning with the date of homologation.

### **Article 360**

#### **Validity of the Council's Deliberation**

The deliberations of the Council, homologated under the terms foreseen in this legislation are valid until they are:

a) Modified by other deliberations proffered by the Council, homologated under the terms of Article 346, or revised under the provisions of Article 358;

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

### **Article 361**

#### **Publication of the Council's Deliberations**

Upon homologation, the deliberations of the Council are published in a circular from the General Directorate of Customs, maintaining confidential the names of the stakeholders in the process and the trademarks of the goods.

### **Article 362**

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

1. The Customs Technical Customs Council, homologated by the member of the Government responsible for the area of Finance, can be appealed to the Supreme Court of Justice.
2. The appeal is circumscribed to matters of law.

### **Article 363**

#### **Removal of the Goods**

1. As long as he/she disposes of all the elements necessary to the evaluation of the litigation, the contestant may remove from the customs station the contested goods that do not constitute prohibited importation, by guaranteeing payment of the larger duties and other impositions. Should fiscal responsibility be presumed, the caution should also include the amount deemed sufficient to guarantee that responsibility.

2. The identical goods that are or come to be subjected to dispatch, will be subject, in the applicable part, to the provisions of the preceding number, if the interested parties do not opt to await the final decision from the competent entities.

3. For the purposes prescribed in No. 2 of this Article, the customs station where the contestation was raised shall make the competent communication to the other fiscal houses.

**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.

3. As soon as they receive the requests referred to in this Article, the Customs Directors shall organize the respective process and proceed to remit the same to the Customs General Director, accompanied by two samples, drawings or photographs of the goods, at the expense of the interested part.

4. The Customs General Director shall pronounce him/herself on the object of the consultation within 30 days from the date of entry of the process and samples that accompany it, into the Customs General Directorate.

5. Prior consultations shall not be permitted:

a) When they incide over goods of undetermined composition or composition that cannot be easily identified;

b) When they incide over goods clearly specified in the Tables, in the respective Explanatory Notes, whose classification may have been the object of deliberation from the Customs Technical Council, of dispatch proffered under the terms of number 4 of this Article, or in litigious appeal.

### **Article 368**

#### **Validity of the General Director's Decision**

The General Director's dispatches deciding on prior consultations may be:

a) Modified by dispatch of the General Director;

c) Modified by virtue of deliberation in a different direction of the Customs Technical Council;

d) Modified by a different decision proffered in litigious appeal;

e) Modified by ulterior legal disposition.

### **Title VIII**

#### **Administrative Litigation**

##### **Chapter I**

##### **General Principles**

### **Article 369**

#### **Resolution of Administrative Processes**

The customs administrative processes shall be resolved according to precepts established under this title.

### **Article 370**

#### **Cases that Lead to Administrative Processes**

1. The following lead to customs administrative processes:

- 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 referred to in the preceding number, and even so in the cases that are the object of requisition by the State in accordance with the applicable legislation, based on the complaint presented by the competent customs functionary.

3. Delayed goods are those stored in any of the temporary deposits or in customs stations, when they exceed the respective storage periods.

### **Article 371**

#### **Legal Presumption of Abandonment of Goods**

1. The delayed goods are always presumed abandoned in favor of the National Treasury.

2. The presumption established in the preceding number may be refuted before the goods are turned over to the State or municipal services or to the public assistance and beneficence service, or of their utilization in public provisionment, or before their sale is announced, or yet before they are sold at auction but before they are places in public auction, as long as the respective owners request the dispatch of the goods and pay this dispatch within five days, counting from the date in which they were informed of the decision made regarding the request, if favorable.

3. The goods dispatched under the provisions of the preceding number are captive of payment of all the expenses they may have originated, specifically those pertaining to services rendered, announcements and notices that may have been published, and also five percent over the value, which shall constitute revenue for the State.

4. If dealing with goods destined or consigned for public institutions and services, local government or diplomatic corps or non-governmental institutions recognized by the State, that are exclusively for humanitarian, religious, cultural, educational, sports, public health and other social purposes, as well as those donated or financed in the ambit of the international cooperation, and in other cases of international courtesy, may, by fundamented reasons, be exempted, by the member of the Government

responsible for the area of Finance, from the levies referred to in the preceding number.

## **Chapter II**

### **Organization and Documentation of the Administrative Processes**

#### **Article 372**

##### **Trâmites Após a Apresentação da Participação**

1. Once the complaint referred to in No. 2 of Article 2 is filed, the same shall be recorded and acted upon by the functionary that serves as recorder, and the process is remitted by the functionaries designated by the chief of the customs post for immediate verification, counting of the duties and other impositions due and formation of lots.

2. The verification and counting and the forming of lots may be done by the same functionary of the customs technical staff, which shall proceed to the formation of lots, according to the designation and values attributed to the goods, and as much as possible, by each owner or consigner.

3. Next, the process shall be returned to the recorder who, within 24 hours, to the auction warehouse-keeper, or whoever has that function, for the purpose of describing the values and recording and transcribing them in the books of lists, in which shall be indicated the number and the entry record of the process, the countermarks, marks and numbers of the packages, the owners and consigners of the goods, when they are known, and the value at which the goods shall auctioned.

4. Having complied with the provisions of the preceding number, a label shall be affixed to each lot indicating the number of record, quantity and quality of the good. The process shall be immediately returned to the recorder.

#### **Article 373**

##### **Notice - Contents**

1. The recorder shall write the notice that shall be affixed at the door of the customs post, announcing the day, hours and location where the good will be sold at auction., indicating the commercial value of the good to be sold, the base auction sale price, the name of the means of transportation, the countermarks, marks and number of packages, the names of the owners or consigners, if known, the numbers of the ownership titles.

2. If dealing with goods that by their condition and nature are subject to becoming denatured, the notice or announcement shall mention that they shall be auctioned off after they have become denatured under legal terms and that the expenses of the denaturing process, at the expense of the buyer.

### **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 shall be transferred to the agencies, branches or delegations of the central bank, where they shall remain deposited to the order of the Customs General Director, until resolution of the respective habilitation process.

3. The values referred to in the preceding number shall be turned over to only whoever they are due after the expenses they are captive for are paid. They are exempt from duties.

4. The objects mentioned in No. 2 of this Article, independently of predatory, may be sold at public auction with the authorization of the Minister of Finance, ten years after they constituted deposited, if there has been no claim from the interested part, which shall be preceded by 90 days notices.

5. When the goods are of prohibited, the following provisions shall apply:

5.1. In the case of relative prohibitions, the bidder that proposes to buy them for importation may only be, in any of the auction locations, entities that are duly qualified to import such goods or who will agree to provide proof of such qualification by the time he claims the goods. However, this requisite is foregone when, in exceptional cases duly justified, the competent member of the Government so authorizes;

5.2. If the prohibition is absolute, and it is convenient to the State to sell the goods at public auction, they may be sold at any of the auction locations, for reexportation.

6. For compliance with the provisions of the preceding number, the customs posts where the goods are located in the conditions indicated by the post, detailed lists of the same goods are forwarded to the Customs General Directorate.

7. Save for provisions to the contrary, the auction of goods that are under fiscal action, both those stored in customs stations as well as those in



other locations, except for the postal refuses, shall be conducted by the customs administration.

8. The sale at auction of the postal refuses that are held captives for payment of customs duties and of other taxes collected by the customs shall be made through the postal services.

### **Article 375**

#### **Value of the Goods Sold at Auction**

1. The goods referred to in subparagraphs a) to e) of Article 370 shall be sold at auction for the amount of the respective customs duties and other impositions, with the customs value added and of any other expenses for which the same are captive, save if the buyers request in writing to the customs authorities, and before the auction, that specific goods for sale are destined for reexportation if they buy them, in which case they will be auctioned at the respective location only for the customs value or for the amount that has been attributed by the expert appraisers, with the referred expenses added on.

2. When the goods submitted to auction sale do not obtain in the first auction a bid that covers the value stipulated in the preceding number, the will be placed in a second auction in another location, ten work days later., and at the same time, for a value not lower than the amounts of the respective duties and other customs impositions.

4. If the goods do not obtain in the second auction a bid that covers the amount of the duties and other customs impositions, they may be sold at a third auction, for any amount.

4. The goods shall be announced for sale at the 2nd and 3rd auctions when it is recognized that there is no convenience in utilizing them in the service of the State, municipalities or non-governmental institutions recognized by the State, that have exclusively humanitarian, religious, cultural, educational, sports, public health or other social purposes.

5. The Directors of the customs circumscriptions may authorize the sale of the goods by settlement, when they do not obtain a bid during the 3rd auction.

### **Article 376**

#### **Destruction or Gratuitous Delivery of the Goods**

1. It behooves the Minister responsible for the area of Finance to order their destruction or the gratuitous delivery of the goods to the institutional services mentioned in No. 4 of Article 375 of the goods that were not bid on at a second or third auction.

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**

1. The auction sales shall be presided by the customs Directors or by the customs agents, on whom the former delegate the auction sales that are conducted at the customs offices, including their urban stations. The same directors may also preside over the auctions conducted outside the mentioned offices, if it deems so necessary.

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 Infractors from the Auction Locations**

The presence in the auction location is forbidden to the condemned individuals or those indicted for customs fiscal crimes or for deviation of duties.

### **Article 382**

#### **Identification of the Bidders**

Save for the cases where they are acquaintances of the president, the bidders shall be identified by the respective identification card.

### **Article 383**

#### **Auction Sale or non-Sale Report**

The competent report shall be prepared of the sale or non-sale at the auction.

### **Article 384**

#### **Purchase and Payment Authorization**

1. When the good has been bought at auction, following the respective report, the recorder shall issue the competent payment authorizations, independently of whether or not 25% of the sale value being demanded immediately.

2. To the purchase price shall be added a 10% to which nothing more shall be added.

3. Of the proceeds from the percentage referred to in the preceding number 5% shall be distributed to the auctioneer and 30% to the customs director or to the chief of the customs station, as the case may be, 25% to the

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.

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:

**Article 390**  
**Rescue Under the Captain's Charge**

If the captain, on his/her own behalf or in someone else's behalf, takes it under his/her charge to proceed to the rescue, the customs authorities referred to in the preceding Article shall limit themselves to preside over the oversight and to inventory the saved goods and mention this circumstance in report.

**Article 391**  
**Removal of the Saved Goods**

1. Whenever, to avoid damage to the saved goods or for any other justified motive, it is deemed convenient to remove the saved goods to the nearest warehouse or to the customs station itself, the assisting functionary shall so propose.

2. The provisions of the preceding number are extensive to all the cases in which the interested parties solicit the referred removal, as long as the guaranteed value covers the expenses.

**Article 392**  
**Announcement of the Accident**

1. With inventory added to the case's dossier, the customs director or the chief of the customs station shall announce, in legal terms, all the circumstances of the accident, with the indication of the characteristics of the saved goods contained in the inventory, and invite whom it may concern to make its claim within a deadline that should not be less than thirty days, and declaring that, at the end of this deadline, the sale at auction shall be ordered.

2. If the nature and the condition of the goods make their immediate sale indispensable, it shall so be done, followed by the notice referred to in the preceding number to claim the proceeds from the sale.

**Article 393**  
**Claiming the Salvaged Goods**

1. If the owner or his/her legitimate representative, to make a claim, the salvaged goods or the proceeds of their sale shall be turned over to him/her, after proof of the rights, upon payment of the duties and other legal impositions, as well as the salaries and other charges due.

2. If there is no claim, the salvaged goods are submitted to auction, in harmony with the formalities prescribed in the preceding Sections.

**Article 394**  
**Found and Stranded Goods and Their Finders**

1. Those who find the found goods at sea or stranded at sea, regardless of the quality or category, should communicate the fact to the nearest customs station or post.

2. An inventory shall be made of the found or stranded objects, which shall remain under oversight and to which are applicable the provisions of Article 392, under the terms of Article 389. The inventory should contain the name of the finders, the location where the objects were found, and their approximate value.

3. The customs or Fiscal Guard authorities that are finders or to whom the communication referred in No. 1 of this Article should communicate this occurrence in writing under the terms foreseen in numbers 2 and 3 of Article 387, and attach the competent inventory to the written communication.

4. Once the elements indicated in the preceding number are received, the customs director or chief of the customs station, after having them recorded or reported on, should proceed in harmony with the provisions of Article 392.

5. In the cases of legitimate claims, the provisions of No. 1 of Article 393 should be observed; however, the claimant should abandon one third of the amount found or of the proceeds of the auction sale, to be given to the finder, as a salvaging salary.

6. The third part of the amount referred to in the preceding number shall be calculated by the value attributed to the find by a customs technical functionary designated for that purpose.

8. If there is no claim, the procedures prescribed in Section III shall be followed.

**Article 395**  
**Search for Object on the Bottom of the Ocean**

1. The finds from historical remains found on the bottom of the sea are, under the terms of the law, property of the State, and their search and collection or underwater archeological research on and disposition of the finds and stranded goods obey regulations proper of them.

2. The search of objects on the bottom of the sea that are not covered under the provisions of the preceding number, require a license from the competent marine authorities, which is valid only after it has been validated by the customs authority.

3. The percentage to be attributed to the concessionaire of the license foreseen in nO.2 of this Article shall be fixed by the marine authorities,

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**

With regard to the ship-wrecks and stranded goods, the provisions of the Commercial Code must be observed as must, also, in one and the other case, take always into account the precepts consigned in international conventions.

**Section V**  
**Abandonment of Goods**

**Article 398**  
**Definition**

1. By abandonment it is understood the renunciation of ownership of any goods under fiscal action on the part of the good’s legitimate owner or consigner.

2. The abandonment is express when the renunciation is tacitly done in writing when it obvious or deduced from facts that leave no room for doubts.

**Article 399**  
**Formalities Pertaining to Express Abandonment**

1. The express abandonment must be indicated in the declaration presented to the customs director or chief of the customs station that has jurisdiction over the goods, which shall be duly specified, with indication of the packages in which they are conditioned. The signature, whether of the requestor, the consigner or his/her attorney in fact, should be affixed in the presence of the customs authority, or be recognized by a notary.



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.

5. The seizures referred to in the preceding number apply to the goods under fiscal action whose embarkation notices, transportation authorization or any other property titles have been endorsed by those responsible for the payment of amounts due subsequent to the date in which the shortfall due was discovered by the customs services.

6. By the same token, as required in No. 1 of this Article, when it is verified that any cash deposit made is insufficient to guarantee the obligations assumed before the customs and those responsible for do not make the necessary effort to augment the deposit or to voluntarily make the payment of the amounts due within the fixed deadline.

#### **Article 402**

##### **Liquidation of the Amount Due**

1. Once the seizure order and the inventory of the goods, baggage or other valuables are received, the customs director of the Chief of the Customs Delegation shall determine in favor of proceeding with the competent liquidation of the amount due by the proceeds of the auction sale of the goods object of the seizure.

2. In the purchase at auction referred to in the preceding number, the provisions of this Code shall be observed.

#### **Article 403**

##### **Remittance to the Fiscal Execution Court**

F the results obtained by the execution of the provisions of the preceding number does not reach the amount due by those responsible, the provisions of Article 337 of this Code shall be applied.

#### **Article 404**

##### **Order to Archive the Customs Fiscal Execution Portfolio**

When subsequently, new goods are seized and sold at auction, the customs director shall make the necessary order to the director of the competent finance department where the fiscal execution process is running, through the Customs Notary's Office, to have the portfolio archived as soon as the proceeds from the auction sales reach the amount necessary to pay the total amount of the debt.

## **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.

3. When the goods are distributed to services from the State or public utility institutions it will behoove the latter to pay at the customs station the amount necessary to pay the charges referred to in subparagraphs a) and b) of No. 1 of this Article.

**Section VIII**  
**Diverse**

**Article 407**

In the cases where it is necessary to destroy or to distribute the goods to services from State, municipalities, organisms or assistance, benevolence or public solidarity establishments, and to public utility institutions, the terms shall be prepared with the legal formalities, and in the cases of distribution, to collect the receivable which shall be added to the process.

**Article 408**  
**Obligations in the Case of Distributed Goods**

The entities to whom goods are distributed are subject to the obligation of applying them solely and directly to their purposes, and for the purposes deemed necessary, the Customs General Directory may order the investigation of compliance with this obligation.

**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.