Incurrence of a customs debt – changes under the UCC and impact on established case law

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1. Introduction

This year, the Union Customs Code\(^1\) has entered into effect, replacing the Community Customs Code\(^2\). With it, several changes in the customs legislation have been introduced.

In this thesis, I will investigate the new provisions of the UCC and, more specifically, how these changes affect settled case law of the Court of Justice of the European Union. In that respect, I will focus on the legislation that governs the incurrence of customs debt.

A customs debt (upon import) is the obligation to pay import duties, VAT, excise duties, consumption tax and coal tax.\(^3\) It is relevant to establish when a customs debt is incurred as it is considered to be the “taxable event” from an import duty perspective\(^4\). Once the customs debt has been incurred, the customs authorities are able to levy the import duties from the customs debtors\(^5\).

1.1 Scope

It is important to define the scope of this thesis, as customs debt provisions comprise several articles in customs legislation of the European Union\(^6\), both old and new.

Customs debt is commonly incurred by submitting a customs declaration to the customs authorities, for example an import declaration to release goods into free circulation of the European Union. After the import declaration has been accepted by the customs authorities and the goods are released for free circulation, a (regular) customs debt upon importation is incurred. The customs authorities have been able to perform checks on the goods declared on the declaration and subsequently issue an assessment for payment of import duties (if any) to the customs debtor(s).\(^7\)

Alternatively, persons trying to avoid the payment of these import duties (or for other reasons) may try to unlawfully introduce the goods into the territory of the EU (this usually concerns smuggling). In that case, the customs authorities do not have the opportunity to check the goods as typically no customs declaration will have been filed. However, if the goods are intercepted, they will be able to issue an assessment for import duties.\(^8\)

The incurrence of this kind of customs debts will not be addressed in this thesis. In my opinion, the most interesting provisions are those that relate to the unlawful removal of goods from customs supervision and non-compliance with the obligations arising from the use of a customs procedure under which the goods are placed.

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\(^3\) [Link to the Dutch government website on the incidence of a customs debt](http://www.belastingdienst.nl/bibliotheek/handboeken/html/boeken/HDU/onstaan_van_de_douaneschuld-ontstaan_van_een_douaneschuld.html). The thesis will focus on the payment of import duties.

\(^4\) Spiessens, A.E., *Heffing aan de grens: Een vergelijking studie naar de heffing van btw en van douanerechten vanwege overschrijding van de buitengrens van de Europese Unie* [2015], pag. 388.

\(^5\) (Customs) debtor is defined in both CCC and UCC as “any person liable for a customs debt”.

\(^6\) Hereafter: “EU”.

\(^7\) Article 201 CCC.

\(^8\) Article 202 CCC.
Additionally, determining the customs debtor will be touched upon briefly. The moment when the customs debt is considered to have been incurred will not be addressed in detail.

1.2 Research question and set up of thesis
The question that I will be answering in this thesis is the following:

“What are the changes in the UCC in view of the repealed CCC with respect to the incurrence of a customs debt and to which extent is established case law still relevant?”

First, I will evaluate the provisions of the relevant articles under the old customs legislation, the CCC. In that respect, I will also address relevant case law of the Court of Justice of the European Union. Then, I will set out the provisions of the UCC, which will be followed by an analysis of the changes between the former and current EU customs legislation. Lastly, I will discuss the case law mentioned before to determine how the UCC may have an impact and conclude the thesis in the final chapter.
2. Customs debt under the Community Customs Code

In this chapter, the provisions as applicable under the CCC and its Implementing Provisions (hereafter: IPCCC) regarding incurrence of the customs debt will be addressed.

In case law, the question that national courts frequently referred to the Court of Justice of the European Union was whether a customs debt had been incurred due to goods being removed from customs supervision (article 203 CCC) or whether the customs debt was due because persons did not comply with rules of a customs procedure under which the goods in question were placed (article 204 CCC).

I will first provide the relevant legislation and mention relevant case law of the CJEU. Thereafter a summary on the situation as it was under the CCC will conclude this chapter.

2.1. The unlawful removal from customs supervision

Article 203 CCC states that:

“1. A customs debt on importation shall be incurred through:

— the unlawful removal from customs supervision of goods liable to import duties.

2. (...)”

3. The debtors shall be:

— the person who removed the goods from customs supervision,

— any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,

— any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision, and

— where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.”

The first paragraph states that a customs debt incurs when goods are unlawfully removed from customs supervision. The CCC and IPCCC do not contain a definition of acts which are considered to be ‘removal’; article 865 IPCCC only contains examples of acts which can be regarded as ‘removal’. However, what does ‘customs supervision’ mean?

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10 Hereafter: “CJEU”.

11 Case C-66/99 Wandel [1 February 2001] ECLI:EU:C:2001:69, paragraph 46. In case law followed hereafter, CJEU has provided further definition on the concept of ‘unlawful removal from customs supervision’. This will be discussed in paragraph 2.1.2.
2.1.1. Customs supervision

Customs supervision has been defined in the CCC as “action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed.” Moreover, any goods that are being brought into the territory of the EU are subject to customs supervision from the time the goods have entered the EU. This means that the customs authorities will need to be able to exert controls on goods that are brought into the territory of the EU to make sure customs rules are followed. In case the customs authorities are not able to do so, a customs debt based on article 203 can be incurred.

An example of unlawful removal from customs supervision is the following.

A Dutch company places foodstuff (non-Union goods) under the transit procedure. The customs office of departure is Moerdijk in the Netherlands and the customs office of destination is Antwerp, Belgium. From Antwerp, the foodstuff will be shipped to the final destination in Africa. After a couple of months have passed, the Moerdijk office notifies the company that they have not yet received any confirmation that the goods have arrived at the Antwerp office. To prove that the transit procedure has been ended correctly, the company provided commercial transport documents (bills of lading). Afterwards, the Moerdijk office informed the Antwerp office, whereby the latter indicated that neither the goods nor the transport documents were submitted by the company. As the company was not able to prove that the goods were presented at the Antwerp office, the goods were considered to be removed from customs supervision – even though the foodstuff had apparently arrived in Africa. Therefore, based on article 203, a customs debt was incurred.

2.1.2. Further definition by CJEU

In its case law, the CJEU has further defined when an act is regarded as unlawful removal of goods from customs supervision (i.e. when a customs debt based on article 203 is incurred). Whereas more than a decade ago such debt would only arise if goods were physically removed from customs supervision, this has now further explained by case law of the CJEU. I will further elaborate on this case law below.

In the recent case DSV Road, the CJEU confirmed again that “concept [of unlawful removal of goods from customs supervision] is to be interpreted as covering any act or omission the result of which is to prevent the competent customs authority, if only for a short time, from gaining access to goods under customs supervision and from carrying out the monitoring required under Article 37, paragraph 1, of the Customs Code”.

That means that even though the customs authorities did not (try to) perform controls or monitor the goods, the customs authorities should always have had the opportunity to access the goods. If goods under customs supervision (e.g. when they are placed under a customs

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12 Article 4, paragraph 13, CCC.
13 Article 37 CCC.
14 Example based on Case C-319/14 B & S Global Transit Center BV [29 October 2015] ECLI:EU:C:2015:734.
15 The Dutch company did provide acknowledgements of receipts of the foodstuffs by the UN forces in Africa. However, these documents are not sufficient to prove that the transit procedure had ended, according to article 366 IPCCC. A customs declaration showing that the foodstuff was imported in a third country in Africa would have been sufficient.
procedure) were “lost” or not available for the authorities to access, regardless of the time the goods were inaccessible, a customs debt may be incurred based on article 203 CCC.

Another example case law is where bicycle carriers were stored under temporary storage. The carriers are subsequently declared for a transit procedure, together with other goods in storage and all documents were submitted to the customs authorities in that respect. The carriers did however not leave the temporary storage, although the other goods and transit documentation were transferred to their destination. Also in that case, a customs debt was incurred based on article 203 CCC, as the carriers, even for a short time, were removed from customs supervision, due to the fact that the carriers and the transit documentation that would also cover the carriers, were separated.

It may seem clear when an act is considered to be unlawful removal from customs supervision. In the following paragraph I will discuss when a customs debt arises in case a person does not fulfil the obligations, or does not comply with the conditions, of a customs procedure under which goods are placed.

### 2.2 Non-fulfilment or non-compliance

In the example given in paragraph 2.1.1 – about the shipping of foodstuff under a transit procedure – one could also argue that, instead of unlawful removal from customs supervision, the Dutch company did not comply with the rules for transit under which the foodstuff was placed. This argument was also brought up by the Dutch company. It is therefore necessary to understand the difference between article 203 and article 204 CCC.

In this paragraph I will address in more detail the other provision based on which a customs debt can be incurred – article 204 CCC.

#### 2.2.1. Relevant provisions for non-fulfilment or non-compliance

Non-fulfilment of obligations and non-compliance with conditions have been defined in article 204 CCC as follows:

“1. A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or

(b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods, in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. (…)

3. The debtor shall be the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed, or to comply with the conditions governing the placing of the goods under that procedure.”

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It is important to note that a customs debt based on article 204 CCC will only be incurred in case no customs debt is incurred based on article 203 CCC. The relevant of the distinction between these two articles is that a customs debt following from article 204 CCC can be extinguished\(^{21}\), whereas a customs debt arising from article 203 CCC cannot.\(^ {22}\)

2.2.2. Failures with no significant effect

Article 204 CCC mentions that in case the failures, which have led to the non-fulfilment / non-compliance with the customs procedure under which the goods are placed, can be considered to be failures with no significant effect, no customs debt will be incurred.

These failures with no significant effect on the operation of a customs procedure are listed in article 859 IPCCC\(^ {23}\). This article contains an exhaustive list of failures\(^ {24}\) with no significant effect i.e. any failures that led to non-compliance of a customs procedure and which are not listed here, cannot result in extinguishment of the customs debt incurred based on article 204 CCC.

For all failures included in article 859 IPCCC, it is mandatory that the persons involved in the failures did not have the intention to unlawfully remove the goods from customs supervision and were not (obviously) negligent. Lastly, all the formalities necessary to regularize the situation of the goods are subsequently carried out as well.

To provide some insight into a situation where a customs debt is incurred based on article 204 CCC, I will describe a short example hereafter.

2.2.3. Example case law

A Dutch company has placed a diesel engine under the transit procedure. As a condition of that procedure, the engine is to be presented at the customs office of destination at a certain point in time. The company failed to present the engine within the time-limit set, but presented it two weeks later, at which point the company placed the engine under the inward processing regime (by filing an application to the same customs authorities). After accepting that declaration, the customs authorities found that the company had unlawfully removed the engine from customs supervision. As a result, the customs authorities issued an assessment to the company, arguing that a customs debt was incurred based on article 203 CCC.

The company, on the other hand, argued that as they had not presented the engine within the set time-limit of the transit procedure, a customs debt could not arise based on article 203 CCC. This would leave article 859, paragraph 2, IPCCC a useless article. This article states that the failure of a transit procedure (such as not presenting the goods within a time-limit of a transit procedure to the customs authorities), is not a failure with significant effect on the correct operation of the transit procedure, in case the engine is presented to the customs authorities within reasonable time after expiration of the time-limit. The company therefore filed a refund request based on article 236 CCC.

\(^{21}\) Or: for import duties levied based on article 204, a (successful) refund request can be filed and a refund of those duties can be obtained.
\(^{22}\) Chin-Oldenziel, M., Art. 203 versus art. 204 CDW [Cursus Belastingrecht, EBR.6.2.8.C.b, 2016].
\(^{23}\) The full text of article 859 IPCCC is included in Annex I to this thesis.
The case was referred to the CJEU\textsuperscript{25}, which ruled that the failure to present the engine within the time-limit does not result in the incurrence of a customs debt of article 203 CCC, but constitutes a customs debt incurred on the basis of article 204 CCC, with reference to article 859 IPCCC\textsuperscript{26}. Furthermore, the CJEU considered that merely exceeding the time-limit for presenting the goods to the customs authorities may not result in a failure with significant effect on the correct operation of the transit procedure, if the goods were presented to the customs authorities within reasonable time\textsuperscript{27}.

The CJEU further ruled that it is up to the national court (i.e. the Dutch Court) to determine whether article 859 IPCCC is applicable in this case.

On 22 September 2015, the Dutch Court of Amsterdam ruled that as the company did not provide any reason why the engine was presented to the customs office of destination two weeks after expiry of the time-limit, article 859 could not be applicable in the case at hand. Therefore, a customs debt was incurred based on article 204 CCC and the refund request of the company was denied.\textsuperscript{28}

In two other recent cases, which are similar to each other, the CJEU ruled that the customs debt has been incurred based on article 204 CCC as well. One concerned the case where a company reported the information of the removal of goods from a customs warehouse in their stock records of information too late. Even though the goods were already exported out of the EU, still a customs debt was incurred based on article 204 CCC, as the company did not fulfil the obligations of the customs procedure under which the goods were placed (i.e. a timely entry into the stock records of goods that were removed from a customs warehouse).\textsuperscript{29}

In the other case, a company had placed goods under the inward processing customs procedure and afterwards had exported the goods out of the EU. One of the obligations of placing goods under this procedure is that within a prescribed period, a bill of discharge should be submitted to the customs authorities, showing which goods have been processed under the procedure. The company failed to supply the bill of discharge within the time-limit. As a result, a customs debt based on article 204 CCC was incurred.\textsuperscript{30}

\textbf{2.3 Summary}

In this chapter, I have provided background on the provisions of the former customs legislation, based on the legislation as laid down in the CCC and example case law of the CJEU in that respect. In summary, the following steps can be taken to determine whether a customs debt is incurred.

1. First, it will need to be determined whether the act constitutes an unlawful removal of goods from customs supervision. Did the customs authorities at any time not have access to the goods for monitoring purposes? If this is the case, a customs debt based on article 203 CCC will be incurred.

\begin{flushleft}
\textsuperscript{25} Case C-480/12 \textit{X BV} [15 May 2014] ECLI:EU:C:2014:329.
\textsuperscript{26} Case C-480/12 \textit{X BV} [15 May 2014] ECLI:EU:C:2014:329, paragraph 45.
\textsuperscript{27} Case C-480/12 \textit{X BV} [15 May 2014] ECLI:EU:C:2014:329, paragraph 41.
\textsuperscript{28} Dutch Court of Amsterdam, 14/01021 \textit{X BV}, 22 September 2015, ECLI:NL:GHAMS:2015:3985.
\end{flushleft}
2. If no customs debt arises from article 203 CCC, a customs debt based on article 204 CCC can be incurred. This means that with respect to goods placed under a customs procedure, either the obligations from that procedure have not been fulfilled or the conditions for that procedure have not been complied with.

3. Lastly, it should be determined whether the failure is considered to be a failure without significant effect on the correct operation of the customs procedure, as listed in article 859 IPCCC. Additionally, the failure should not constitute an unlawful removal of the goods from customs supervision and the persons involved in the failure may not have been (obviously) negligent. Lastly, all the formalities necessary to regularize the situation of the goods will need to have been carried out.
3. Customs debt under the Union Customs Code – what has changed?

Now that we have looked into the customs debt provisions under the CCC and the corresponding case law, in this chapter the new provisions laid down in the UCC, the 'Implementing Act' (hereafter: IA)\textsuperscript{31} and the 'Delegated Act' (hereafter: DA)\textsuperscript{32} will be discussed.

3.1. Customs debt through non-compliance
The provisions regarding the customs debt are formulated in the UCC as follows.

Article 79 UCC covers the customs debt incurred through non-compliance.

"Customs debt incurred through non-compliance

1. For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

(a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

(b) one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union;

(c) a condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty.

2. (…)

3. In cases referred to under points (a) and (b) of paragraph 1, the debtor shall be any of the following:

(a) any person who was required to fulfil the obligations concerned;

(b) any person who was aware or should reasonably have been aware that an obligation under the customs legislation was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation, or who participated in the act which led to the non-fulfilment of the obligation;

(c) any person who acquired or held the goods in question and who was aware or should reasonably have been aware at the time of acquiring or receiving the goods that an obligation under the customs legislation was not fulfilled."


The first thing that is noticeable is that article 79 UCC now includes both provisions regarding unlawful removal of goods from customs supervision (article 203 CCC) as well as non-compliance (article 204 CCC). By catching the former two, separate articles into one general non-compliance article, the former distinction (and discussion) between the incurrence of a customs debt based on “article 203”-situations or “article 204”-situations is gone. By having the provisions included into one, this also means non-compliance no longer only applies in cases where there is no unlawful removal from customs supervision – they are on equal footing. As a side note, that these articles would merge into one article could already be derived from the Modernised Customs Code[^33].

Customs supervision is defined in article 5, paragraph 27, UCC as action taken in general by the customs authorities with a view to ensuring that customs legislation and, where appropriate, other provisions applicable to goods subject to such action are observed. Other provisions could for example entail export controls[^34].

Customs supervision is defined in article 5, paragraph 27, UCC[^35] and has remained basically the same as under the CCC. When customs supervision starts and ends is described in article 134 UCC. This has changed compared to the corresponding article in the CCC, article 37. The basic principles have remained the same: goods entering the territory are subject to customs supervision and may be subject to customs controls. Also, the goods shall remain under such supervision for as long as is necessary to determine their customs status. In addition to this, article 134 UCC states specifically that “goods shall not be removed therefrom without the permission of the customs authorities”.

When non-Union goods are declared for release into free circulation, the customs supervision for these goods will end once the customs status has been changed (to Union goods). According to article 201, paragraph 3, UCC, release for free circulation will confer the customs status of Union goods onto non-Union goods. According to paragraph 2 of that article, release for free circulation entails (amongst others) “the collection of any import duty due” and “completion of the other formalities laid down in respect of the import of the goods”. Also, based on article 194 UCC, only once all conditions for a customs procedure are fulfilled and the particulars of the declaration have been verified, the customs authorities will release the goods. In my opinion, this means that as part of the process of releasing the goods into free circulation, the customs authorities must have given permission to remove the goods from their supervision. Only after that permission has been given, the goods will have obtained the status of Union goods. Otherwise, the goods will keep the customs status of non-Union goods: for which the customs supervision will only end if their status is changed, they are taken out of the customs territory or they are destroyed. The customs procedure

[^33]: Article 46 of the Modernised Customs code, hereafter: “MCC”, REGULATION (EC) No 450/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code). The MCC was initially developed as the follow up to the CCC, but eventually never entered into effect, amongst others due to the Lisbon Treaty. As a result, the UCC became the new “follow up” of the CCC.
[^34]: Chin-Oldenziel, M., *Douaneloezicht* [Cursus Belastingrecht EBR.6.2.2.B., 2016].
[^35]: In the CCC, customs supervision (or: supervision by the customs authorities) is defined in article 4, paragraph 13.
“release for circulation” cannot be ended correctly and the customs authorities cannot release the goods. Therefore, if the goods are removed without permission of the customs authorities after the import declaration has been filed, this will in my view result in a removal of goods from customs supervision. Additionally, removing the goods without permission will be regarded as a criminal act under Dutch customs legislation.

3.2. Extinguishment of a customs debt and failures with no significant effect

The difference between unlawful removal and non-compliance seems to have been removed. It is interesting to find that in the UCC, the failures with no significant effect have also remained but are now covered under “extinguishment of the customs debt”.

There are two articles governing the extinguishment of the customs debt and failures with no significant effect: article 124 UCC and article 103 DA.

3.2.1. Extinguishment of a customs debt

Article 124, paragraph 1, sub h, UCC bears resemblance to the first part of article 859 IPCCC. Basically, it states the basic conditions that persons need to comply with in order to have the failure qualify as a failure with no significant effect. In order for a customs debt to be eligible for extinguishment, the failure should have no significant effect on the correct operation of the customs procedure (the same as CCC) and did not constitute an attempt at deception (different from CCC). Lastly, all of the formalities necessary to regularise the situation of the goods are subsequently carried out, which is the same condition as applicable under the CCC.

The change from ‘no implication of obvious negligence by the persons involved’ to ‘no attempt at deception’ will mean that the provisions seem to have become less strict, as persons involved with the failure of a customs procedure will more likely be regarded as negligent than attempting to deceive the authorities – the latter seems to imply a more active behaviour than being (obviously) negligent / an error by the person involved. How this will work out in practice, however, remains to be seen and will likely be established by case law.

The condition of ‘no attempts at deception’ occurs regularly in the UCC, for example also in the application process for customs authorisations. It seems to be a change from CCC to UCC on a broader scale as well and not only applicable to the incurrence of customs debt.

It should be noted that in case the customs debt was incurred based on article 79 UCC, it shall only be extinguished with regard to the person whose behaviour was not considered to be any attempt at deception and who contributed to the fight against fraud. What the requirement of combating fraud will entail is at this moment not clear. It has also not been further described in the IA and DA, except for a brief note in the considerations of both regulations.

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36 Article 194 UCC. Question is whether a (double) customs debt will arise since the declaration for free circulation cannot be processed as the goods are no longer present. See also article 172 UCC.
37 Article 10:1, paragraph 1, sub f, Algemene douanewet.
38 Article 211 UCC.
39 See also preamble 38 of the UCC: “It is appropriate to take account of the good faith of the person concerned in cases where a customs debt is incurred through non-compliance with the customs legislation and to minimize the impact of negligence on the part of the debtor”.
40 Article 124, paragraph 7, UCC
For completeness’ sake, article 124 paragraph 1, sub k, UCC states that in case the customs debt was incurred pursuant to Article 79 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been taken out of the customs territory of the Union, the customs debt shall be extinguished as well. Also in this case, the customs debt will not be extinguished with respect to persons who attempted deception.\(^{41}\)

Lastly, from a formal perspective that is a subtle difference between article 124 UCC and article 204 CCC. Based on article 204 CCC, no customs debt is considered to be incurred, whereas based on the UCC the customs debt is considered to have incurred, but subsequently extinguished.\(^{42}\)

### 3.2.2. Failures with no significant effect

The failures with no significant effect on the correct application of a customs procedure are listed in article 103 DA. As the introductory text of article 103 DA is similar to the introductory text of article 859 IPCC, the failures currently listed are in my opinion the only failures eligible for extinguishment of the customs debt under the UCC\(^ {43}\). However, it is of course possible that more failures with no significant effect will be added to list in future amendments of the DA, which has also happened to article 859 IPCCC\(^ {44}\).

In addition to the change of number of failures (the IPCC contained ten failures, whereas the DA contains five failures), the failures seem to have been changed textually quite extensive.

The provisions of the IPCCC contained failures for specific customs procedures. The failures included in the DA seem to be more applicable in general (although one failure specifically concerns the transit procedure):

1. Exceeding a time-limit by a maximum period that would have been granted if extension was applied for;
2. In case where a customs debt was incurred based non-compliance and the goods have already been released into free circulation (implying no double payments of import duties).
3. Restoration of customs supervision for goods which were not formally part of a transit procedure, but were in temporary storage or placed under another special procedure with other goods which are formally under the transit procedure. This specific failure seems to relate to SEK Zollagentur case law.
4. In case goods are placed under a special procedure (not being transit/free zone), where an error has been committed concerning the information of the customs declaration to discharge the procedure, but the error does not have an impact on the discharge of the procedure.
5. Where a customs debt has been incurred based on article 79, paragraph 1, sub a, or sub b, UCC, provided that the person concerned informs the customs authorities about the non-compliance before the customs debt has been notified or the customs authorities have informed the person that they intend to perform a control.

\(^{41}\) Article 124, paragraph 6, UCC.


\(^{43}\) This is also confirmed by the Guidance Documents of the European Commission, as published on their website: http://ec.europa.eu/taxation_customs/business/union-customs-code/ucc-guidance-documents_en#debts.

\(^{44}\) For example, Commission Regulation (EC) No 1427/97 of 23 July 1997 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, introduced two more failures to article 859 IPCCC.
A further comparison between the failures in the DA and the failures in the IPCCC, I find that the failure concerning the exceeding of time limits as specifically determined for separate customs procedures under the IPCCC has now been merged into one failure under the DA.

Also, the last failure with no significant effect seems in my opinion to be a sort of catch-all provision. In case you are aware of non-compliance and report it proactively to the customs authorities, the customs debt may be extinguished. Note that still the conditions of article 124 UCC will need to have been met (i.e. no attempt at deception, contribution against fraud, etc.).

3.3 Other notable changes – the customs debtor
The provisions for customs debtor have changed as well. In the CCC, the customs debtor was the person removing the goods, who participated in the removal or was aware of the removal. Also, the person was responsible for complying with the rules for the customs procedures may be the customs debtor in non-compliance situations.

The persons that are liable to the customs debt have been expanded. In the UCC, for removal of goods from customs supervision and non-compliance with obligations for a customs procedure, the debtor is the person who was required to fulfil the obligations, the person who was aware or reasonably should have been aware, acting on behalf of the person required to fulfil the obligations and the person who acquired or held the goods and was aware or should have known that the obligations were not fulfilled.

For non-compliance with a condition for placing non-Union goods under a customs procedure, the customs debtor is the person who was required to fulfil the obligations as well as the person who (ought to have known that he) provided false information when goods are placed under a customs procedure with a customs declaration45.

Further explicit clarification is provided in article 124 UCC regarding the persons for whom the customs debt may or may not be extinguished, as already described in paragraph 3.2.1.

As can be seen throughout the UCC, more emphasis is being placed on persons involved with customs matter to act in good faith and apply reasonable care. This way, the responsibility for correct operations of procedures lies also with logistical companies or other persons supporting in customs matter, to be aware when deception or fraud may be at hand.

3.4 Interim conclusion
The UCC has changed in some respect from a customs debt perspective. The old provisions of unlawful removal and non-compliance have been merged into one article, making discussion which “kind” of customs debt incurs less relevant. Additionally, by introducing new failures, which apply to any customs debt occurred through non-compliance under the UCC, may lead to situations where a failure, resulting in unlawful removal to be a failure without significant effect. That is, there is more opportunity that a customs debt that has not been incurred by regular import can be extinguished. Naturally, this will depend on the exact nature of the failure, but the customs debt is no longer automatically incurred without possibility for recovery in case it incurred due to unlawful removal of goods from customs supervision.

45 This is basically the same provision as included in article 201, paragraph 3, CCC, but applicable to all customs declarations (instead of only customs declarations for release into free circulation).
Interesting to note is there is more attention to fraud or deception attempts with regard to persons involved in the non-compliance of a customs procedure. This means that if a person was acting in good faith, a customs debt may be extinguished sooner. This can also be found in the catch-all provision for failures with no significant effect, whereby a customs debt can be extinguished if a person proactively reports the non-compliance. In my opinion this initially seems to be facilitating companies – non-compliance can happen (as an honest mistake). If the person acted in good faith there is a chance the failure will not result into a customs debt due to non-compliance. However, the notion that the customs debt can only be extinguished with regard to the person who also contributed to the fight against fraud may quite limit the possibilities for extinguishment.\footnote{As the customs authorities will determine whether a customs debt is incurred (e.g. due to non-compliance), it will be up to the debtor to prove that the incurred customs debt can be extinguished. Thus, the debtor would need to prove that he did not attempt to deceive the customs authorities.}

If and how these changes will affect established case law, I will discuss in the next chapter.
4. Impact on established case law

The CJEU has established much case law on the incurrence of customs debt through removal from customs supervision or non-compliance. Often, the question that would need to be addressed was whether it was an “article 203”-customs debt or an “article 204”-customs debt. The consequences of which are obvious – in case it is established that an “article 204”-customs debt has been incurred, the non-compliance that lead to this debt may be considered failures which have no significant effect. This would not apply to “article 203”-customs debts.

In the last chapter I have scrutinized how the customs debt provisions as laid down in the UCC have changed compared to the CCC. In this chapter I will address a number of important, settled case law of the CJEU and analyse whether the case law still remains relevant in the era of the UCC.

Cases that I will discuss here will be the following:
- SEK Zollagentur
- B & S Global Transit Center BV

I have selected these cases because they show different outcomes after comparison with the UCC. As articles of the CCC and their interpretation by the CJEU are considered in other case law as well, the outcome of the analysis for this case law will in other cases be applicable as well.

4.1. Case law

4.1.1. SEK Zollagentur

An interesting case the CJEU has recently ruled is the SEK Zollagentur (hereafter: SEK) case and which I already addressed in paragraph 2.1.2. Bicycle carriers were stored under temporary storage. After release from the temporary storage, the carriers are subsequently declared by SEK for a transit procedure, together with other goods in storage and all documents were submitted to the customs authorities in that respect. The carriers did however not leave the temporary storage, although the other goods and transit documentation were transferred to their destination. Therefore, the recipient at the customs office of destination reported that the carriers did not arrive. SEK indicated that the holder of the temporary storage was not able to store the carriers in such way that they could be (physically) transferred with the transit procedure. As such, the carriers had remained in the temporary storage facility, whereas the transit documents covering the carriers were transferred to their destination.

According to the CJEU, a customs debt was incurred based on article 203 CCC, as the carriers, even for a short time, were removed from customs supervision, due to the fact that the carriers and the transit documentation that would also cover the carriers, were separated.

Should this case with the same facts and circumstances have occurred after May 1, 2016, would the outcome be the same? Would a customs debt be incurred? And if so, would it be possible to extinguish the customs debt under the provisions laid down in the UCC?

The provisions regarding customs supervision have not changed much basically, rather have expanded and clarified that goods should not be removed from customs supervision without permission of the customs authorities. The provisions on the transit procedure have, with respect to this case, not changed: the company is responsible for the presentation of the
goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification\(^{47}\).

It can therefore be concluded that based on article 79, paragraph 1, sub a, UCC a customs debt would be incurred.

Under the UCC, a customs debt – even if goods are removed from customs supervision – may be extinguished in case certain conditions are met:
- The failure had no significant effect on the correct operation of the procedure and did not constitute an attempt at deception;
- All the formalities necessary to regularize the situation of the goods are subsequently carried out.

Whether the non-compliance (i.e. the separation of carriers and documents) is considered to be a failure with no significant effect on the correct operation of the customs procedure is to be based on article 103 DA. The failure that may be applicable in this case is (c): “the customs supervision has been subsequently restored for goods which are not formally a part of a transit procedure, but which previously were in a temporary storage or were placed under a special procedure together with goods formally placed under that transit procedure”.

After finding out the carriers remained in the temporary storage, SEK placed the carriers under a second transit procedure (although not stated in the case law, I assume the goods in the meantime were stored in the temporary storage again, thus regularizing the situation). This time, the goods were successfully transferred to the destination. There, the carriers were released into free circulation. This would mean that the goods were placed under customs supervision again. The UCC, IA and DA do however not provide any information about restoration of customs supervision in this respect (like time-limits etc.).

The other question is whether the non-compliance constitutes an attempt at deception\(^{48}\). According to the Dutch Civil Code, deception is considered to be applicable “when a person moves another person to perform a legal act, based on deliberate incorrect statements, deliberately remaining silent regarding any fact that person was supposed to communicate, or any other artifice\(^{49}\). Based on this article, it seems in my opinion essential for an act to be considered as deception that there was an intention, an active behaviour to unlawfully remove the goods from customs supervision. In the case of SEK, the company found out after enquiry by the customs authorities that the goods had remained in the temporary storage (and probably SEK only asked the owner of the temporary storage at that moment as well). As such, in my opinion it does not mean that SEK purposely remained silent about the goods, as SEK had intended to have the goods transferred under the transit procedure. Instead, this may be considered (gross) negligence\(^{50}\) – SEK, as a professional logistical provider, should have been aware that the goods were not transported under the transit procedure. This is however based on the (interpretation of the) Dutch civil interpretation of

\(^{47}\) Article 233 UCC.
\(^{48}\) I am aware that SEK is a German case. For clarity’s sake, I apply the Dutch Civil Code.
\(^{49}\) Article 3:44, paragraph 3 Dutch Civil Code: “Bedrog is aanwezig, wanneer iemand een ander tot het verrichten van een bepaalde rechtshandeling beweegt door enige opzettelijk daartoe gedane onjuiste mededeling, door het opzettelijk daartoe verzijgen van enig feit dat de verzwijger verplicht was mede te delen, of door een andere kunstgreep. Aanwijzingen in algemene bewoordingen, ook al zijn ze onwaar, leveren op zichzelf geen bedrog op.”
\(^{50}\) As negligence is no longer a condition, \textit{Söhle & Söhlke} will in that respect also be of lesser importance for cases arisen under the UCC.
the deception. Whether this definition is the same throughout the EU is unlikely and will likely need to be further defined by the CJEU.51

Even in case the non-compliance of SEK can be regarded as no attempt at deception and a failure without significant effect, the customs debt for SEK as customs debtor can only be extinguished in case SEK did (again) not attempt any deception and contributed to combating fraud. As contribution to combating fraud has not been further defined, it can at this moment not be determined whether the customs debt for SEK could be extinguished under the UCC. An argument for a company to be ‘contributing to fighting fraud’ could be that the company is AEO-certified52 – AEO-certified companies can form a green lane where controls on customs procedures are applied and followed up the companies53. However, whether that is sufficient to be regarded as ‘combating’ fraud is unsure.

4.1.1.1. Interim conclusion

As in the CCC, removal from customs supervision remains an act based on which a customs debt can be incurred under the UCC. Since the provisions regarding customs supervision and controls has remained textually the same in the UCC, case law from the CJEU regarding which act constitute a removal of goods from customs supervision will in my view remain applicable to case law that will be established under the UCC.

Determining whether a customs debt can be extinguished seems unclear. It will depend on further clarification by the European Commission or by the CJEU whether a customs debt is extinguishable54.

4.1.2. B & S Global Transit Center BV

The second case law I will address is the case B & S Global Transit Center BV (hereafter: B&S). I have already shortly addressed it in chapter 2, but now will go more into detail.

B&S was responsible for placing goods under the transit procedure, which would leave the EU after the transit ended at the customs office of destination. According to the customs office of destination, however, the goods as well as the documentation for the transit procedure were never presented at that office. Therefore, the customs authorities issued an assessment for import duties, as in their view, a customs debt had been incurred based on article 203 – removal of goods from customs supervision. They argued that as both the goods and documentation had not been presented at the customs office of destination, the customs authorities had (temporarily) lost access to the goods and could not perform controls, even now the goods had apparently left the EU55.

B&S did provide other documentation, such as commercial transport documentation and confirmation of receipt in the third country, showing that the goods had eventually left the EU. The customs authorities argued that in line with article 366, paragraph 2, IPCC, this information is not sufficient to show that the transit procedure has been ended alternatively.

51 Similar to the extended statute of limitation, which is based on (national) act which give rise to criminal proceedings. Currently it is being investigated whether this can be harmonized throughout the EU, but the outcome remains to be seen.
52 Authorized Economic Operator.
53 Although being AEO does of course not mean that a unlawful removal from customs supervision can no longer be applied, according to B. Boersma, Douanevervoer, wat is nu een onttrekking aan het douanetoezicht?, [http://www.douaneadvies.nl/douanevervoer-wat-is-nu-een-onttrekking-aan-het-douanetoezicht/, 2015].
54 The Guidance Document of the European Commission on Customs Debts does also not provide any clarity in that respect.
The CJEU eventually ruled that presenting the goods to the customs authorities is crucial role in the functioning of the transit procedure, as it enables the customs authorities to exert their controls by comparing the data from the customs office of departure to determine whether the transit procedure has ended correctly. By not presenting the goods to the customs office nor by providing satisfactory documentation that the transit procedure had been correctly ended in another way, this act qualified as an unlawful removal of the goods from customs supervision. Lastly, although the risk of the goods entering the economic circuit of the EU improperly was very minimal, the fact remains that the goods while under the transit procedure were removed from customs supervision.

We have seen that under the UCC, the customs controls provision have remained basically the same. With respect to ending the transit procedure, the holder of the procedure is still obliged to present the goods and their documentation to the customs office of destination. Alternative proofs to end the Union transit procedure have been expanded, but still require involvement of either the EU customs authorities or the third country customs authorities. B&S did not have any documents that were handled by the customs authorities to prove the transit procedure ended. Therefore, also under the UCC, a customs debt would be incurred based on article 79 UCC.

Following article 124, paragraph 1, sub k, UCC, a customs debt incurred pursuant to article 79 can be extinguished if “evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been taken out of the customs territory of the Union”. In my view, the commercial transport documents B&S provided to the customs authorities may well qualify as evidence that the goods were not used or consumed (they were shipped to be used in the third country) and were taken out of the customs territory. Whether the evidence referred to in this article would only be covered by the documents as described in article 312 IA seems unlikely, as it does not explicitly refer back to article 124 UCC nor does article 312 IA mention any conditions that the goods may not have been used or consumed.

In future situations with similar circumstances to those in the B&S case, the outcome may therefore not be the same as currently established in the B&S case.

However, I note that for persons who attempted deception, the customs debt cannot be extinguished. Note that in this case it seems that the person, in whose respect the customs debt may be extinguished, does not need to be combating fraud. In the SEK Zollagentur case I referred to article 124, paragraph 7, UCC, as it covered a situation where a non-compliance failure occurred but where the goods remained within the territory of the EU. In the B&S case, the goods have physically left the EU. For those cases, article 124, paragraph 6, UCC applies, which states only that the person may not have been trying to deceive the customs authorities. I think this also makes sense – the goods have already left the EU, thus...

56 Being a customs document issued in a third country entering the goods for a customs-approved treatment or use or a document issued in a third country, stamped by the customs authorities of that country and certifying that the goods are considered to be in free circulation in the third country concerned, article 366, paragraph 2, IPCCC.
57 The CJEU referred again to the Hamann International and SEK Zollagentur cases.
58 Article 233 UCC.
59 Article 312 IA.
60 Article 124, paragraph 6, UCC. Interesting note: in the UCC app of Dutch Customs article 124, paragraph 6 has been described as follows: The customs debt will not be extinguished with regard to the person who attempted fraud or deception. The legal texts of the UCC, both in English as in Dutch, do however not explicitly mention “fraud” in paragraph 6.
the risk of goods entering the economic circuit of the EU is minimized. Combating fraud in other cases may be implying that the person would actively ensure the “non-compliant” goods would not be entering into the economic circuit of the EU improperly. Deception is of course still not allowed.

In my view, it would thus be strange that article 124, paragraph 7, UCC does apply here as well, as, in addition to what I argued in the previous paragraph, that would make article 124, paragraph 6, UCC a hollow provision.

4.1.2.1. Interim conclusion
Applying the provisions of the UCC on the B&S shows that the UCC may lead to different outcome in situations with similar circumstances. As a customs debt can now also be extinguished for “article 203”-customs debts, more “article 203”-case law may have different outcome under the UCC. Especially if in such cases it is established that goods have already left the territory of the EU, this may be worth investigating.

However, as also concluded in the SEK Zollagentur example, how the provisions regarding ‘attempt at deception’ or ‘combating fraud’ is to be interpreted, will remain to be seen. ‘Attempt at deception’ will be the most important element to be confirmed, as it is a requirement for any customs debt to be extinguished.

4.2. Conclusion
The case law that has been established by the CJEU so far is based on the CCC. For customs debts that have arisen during the ‘CCC’-era the ‘CCC’-case law will of course remain relevant (e.g. in pending court cases).

Furthermore, I expect that with regard to definitions, that have been further explained by the CJEU and which have conceptually remained the same under the UCC, the application of case law where the definition is explained, will remain relevant.

On the other hand, case law such as SEK Zollagentur can no longer be applied as is. Also, B&S shows that in cases with similar circumstances occurring under the UCC, another outcome may arise under the UCC.

The most interesting change, that will need be further clarified further, is that the UCC has introduced two new conditions that may need to be met by a person to have the customs debt extinguished – even in case the non-compliance is a failure with no significant effect on the correct operation of the customs procedure. These two requirements are ‘attempt at deception’ and ‘contributing to combat fraud’. Will having an AEO-status also improve the possibility that an act of a person will not be considered an attempt at deception? Or will interpretation of such definitions be (partly) based on (national) civil code case law?

As thus negligence is in so far no longer relevant to determine whether a customs debt can be extinguished, considerations by the CJEU regarding case law in that respect will to my expectation become less relevant, but may be used to clarify a distinction between deceit and negligence.

61 As also ruled by the CJEU in Case C-234/09 DSV Road [15 July 2010] ECLI:EU:C:2010:435, paragraph 33.
62 For example, X BV, where an engine placed under the procedure was presented to the customs office of destination two weeks too late, may have a different outcome under the applications of the UCC.
63 For example considerations by the CJEU in Söhl & Söhlke regarding negligence.
5. Conclusion

In this thesis I have looked into the situations where customs debt was incurred based on article 203 and article 204 CCC. By examples of case law, further clarification was given by the CJEU how these articles regarding removal of goods from customs supervision and non-compliance should be interpreted.

The UCC entered into effect last May 1st. As a result, new provisions have been introduced, also with respect to the incurrence of customs debt. I was therefore interested in what these new provisions would entail and in what way these may differ from the previous articles under the CCC. Then, I have analysed what the effects may be on established case law, i.e. is established case law still relevant under the UCC?

My research question is the following:

“What are the changes in the UCC in view of the repealed CCC with respect to the incurrence of a customs debt and to which extent is established case law still relevant?”

First, the distinction between an “article 203”-customs debt and “article 204”-customs debt seems to have disappeared. Both non-compliance and removal from customs supervision have been merged into one article 79 UCC.

Another change in the UCC is that also customs debt incurred from a removal of goods from customs supervision is in principle eligible for extinguishment. A major change in that respect is the person to whom the customs debt can be considered to be extinguished. The UCC provides for explicit provisions stating that such person may not have attempted deception and, in certain cases, should also have contributed to combating fraud.

One way for a customs debt to be extinguished is in case the failure (which led to the non-compliance) is a failure having no significant effect on the correct operation of a customs procedure. Although ten such failures were also (exhaustively) included in the IPCCC, the number of failures has now been reduced to five. Also, the ten failures of the IPCCC seemed to be specifically related to a customs procedure. Under the DA, such failures have a more general approach. More specifically, the fifth failure listed states that any failure can be a failure without having significant effect in case the person involved informs the customs authorities up front before any audit is started or notified to be initiated. Thus promoting an active attitude of the persons involved with customs procedures.

Further to these changes, the second question is to which extent established case law will then remain relevant.

I note that definitions interpreted by the CJEU which have remained the same can in my view still be applied under the UCC, such as removal of goods from customs supervision. As
such, the questions whether a customs debt will be incurred will in most cases remain the same.\(^{64}\)

In case a possible extinguishment, some established case law may have had a different outcome under the UCC, for example if goods have left the territory of the EU. In such cases, it will need to be reconsidered whether a customs debt can be extinguished based on the new provisions. Moreover, in cases of failures with no significant effect, negligence in itself will no longer be a factor to determine whether a customs debt can be extinguished. Instead, the act of the person may not have been considered an attempt at deception.

On that note, the concept of customs debtors have been changed radically as well, introducing next to attempt at deception, the concept of contribution against combating fraud as requirement for extinguishment. As these concepts have not been interpreted before in the discussed customs case law, further interpretation will need to be provided by the CJEU. From my point of view, having an AEO-status can in that respect help proving that non-compliance was due to negligence rather than deceit. Nevertheless, each case will need to be judged on its own merits.

Concluding, I find that identical definitions which have been interpreted by the CJEU in established case law will remain relevant under the UCC. As the UCC has also introduced new concepts, however, likely new interesting court cases will follow and set the landscape of customs debt under the UCC.

\(^{64}\) Focusing on the determination of a customs debt only (i.e. comparison of articles 203 and 204 UCC and article 79); not taking into account any changes with regard to specific provisions, for example, regarding the correct clearance of a transit procedure.
Literature list

Literature

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- Case C-75/13 SEK Žollargentur [12 June 2014] ECLI:EU:C:2014:1759
- Case C-319/14 B & S Global Transit Center BV [29 October 2015] ECLI:EU:C:2015:734

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Other

- UCC app Dutch Customs (DWU app Nederlandse Douane)
- Handbook of Dutch Customs, valid since 1 May 2016 (Douane Handboek, geldig vanaf 1 mei 2016), http://www.belastingdienst.nl/bibliotheek/handboeken/html/boeken/HDU/
Annex I – Article 859 IPPC

The following failures shall be considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question within the meaning of Article 204 (1) of the Code, provided:
— they do not constitute an attempt to remove the goods unlawfully from customs supervision,
— they do not imply obvious negligence on the part of the person concerned, and
— all the formalities necessary to regularize the situation of the goods are subsequently carried out:

1. exceeding the time limit allowed for assignment of the goods to one of the customs-approved treatments or uses provided for under the temporary storage or customs procedure in question, where the time limit would have been extended had an extension been applied for in time;

2. in the case of goods placed under a transit procedure, failure to fulfil one of the obligations entailed by the use of that procedure, where the following conditions are fulfilled:
   (a) the goods entered for the procedure were actually presented intact at the office of destination;
   (b) the office of destination has been able to ensure that the goods were assigned a customs-approved treatment or use or were placed in temporary storage at the end of the transit operation;
   (c) where the time limit set under Article 356 has not been complied with and paragraph 3 of that Article does not apply, the goods have nevertheless been presented at the office of destination within a reasonable time;

3. in the case of goods placed in temporary storage or under the customs warehousing procedure, handling not authorized in advance by the customs authorities, provided such handling would have been authorized if applied for;

4. in the case of goods placed under the temporary importation procedure, use of the goods otherwise than as provided for in the authorization, provided such use would have been authorized under that procedure if applied for;

5. in the case of goods in temporary storage or placed under a customs procedure, unauthorized movement of the goods, provided the goods can be presented to the customs authorities at their request;

6. in the case of goods in temporary storage or entered for a customs procedure, removal of the goods from the customs territory of the Community or their introduction into a free zone of control type I within the meaning of Article 799 or into a free warehouse without completion of the necessary formalities;

7. in the case of goods or products physically transferred within the meaning of Articles 296, 297 or 511, failure to fulfil one of the conditions under which the transfer takes place, where the following conditions are fulfilled:
   (a) the person concerned can demonstrate, to the satisfaction of the customs authorities, that the goods or products arrived at the specified premises or destination and, in cases of transfer based on Articles 296, 297, 512(2) or 513, that the goods or products have been duly entered in the records of the specified premises or destination, where those Articles require such entry in the records;
(b) where a time limit set in the authorisation was not observed, the goods or products nevertheless arrived at the specified premises or destination within a reasonable time;

8. in the case of goods eligible on release for free circulation for the total or partial relief from import duties referred to in Article 145 of the Code, the existence of one of the situations referred to in Article 204 (1) (a) or (b) of the Code while the goods concerned are in temporary storage or under another customs procedure before being released for free circulation;

9. in the framework of inward processing and processing under customs control, exceeding the time-limit allowed for submission of the bill of discharge, provided the limit would have been extended had an extension been applied for in time;

10. exceeding the time-limit allowed for temporary removal from a customs warehouse, provided the limit would have been extended had an extension been applied for in time.
Annex II – Article 103 DA

Extinguishment of a customs debt

Failures which have no significant effect on the correct operation of a customs procedure

(Article 124(1)(h)(i) of the Code)

The following situations shall be considered a failure with no significant effect on the correct operation of the customs procedure:

(a) exceeding a time-limit by a period of time which is not longer than the extension of the time-limit that would have been granted had that extension been applied for;

(b) where a customs debt has been incurred for goods placed under a special procedure or in temporary storage pursuant to Article 79(1)(a) or (c) of the Code and those goods were subsequently released for free circulation;

(c) where the customs supervision has been subsequently restored for goods which are not formally a part of a transit procedure, but which previously were in a temporary storage or were placed under a special procedure together with goods formally placed under that transit procedure;

(d) in the case of goods placed under a special procedure other than transit and free zones or in the case of goods which are in temporary storage, where an error has been committed concerning the information in the customs declaration discharging the procedure or ending the temporary storage provided that error has no impact on the discharge of the procedure or the end of the temporary storage;

(e) where a customs debt has been incurred pursuant to Article 79(1)(a) or (b) of the Code, provided that the person concerned informs the competent customs authorities about the non-compliance before either the customs debt has been notified or the customs authorities have informed that person that they intend to perform a control.