REGULATION (EEC) No 338/75 OF THE COUNCIL

of 10 February 1975

amending Regulation (EEC) No 803/68 on the valuation of goods for customs purposes

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof ;

Having regard to the proposal from the Commission ;

Having regard to the Opinion of the European Parliament (1) ;

Having regard to the Opinion of the Economic and Social Committee (2) ;

Whereas Council Regulation (EEC) No 803/68 (3) of 27 June 1968 on the valuation of goods for customs purposes, set itself the essential aims of avoiding inequality in treatment of importers and preventing any deflection of trade and activities and any distortion of competition ; whereas certain changes should be made to this Regulation to achieve these aims ;

Whereas it may prove necessary to make some simplifications in the use of factors serving as a basis for the determination of value for customs purposes, particularly as regards the use of computers when determining the costs, charges and expenses to be incorporated in this value ; whereas it should be possible to lay down methods for the application of these simplifications in accordance with the procedure set out in Article 17 of Regulation (EEC) No 803/68 ;

Whereas, despite the adoption of Community provisions specifying the application of the concept of value for customs purposes, the aims of Regulation (EEC) No 803/68 have not been fully achieved in certain cases, particularly as regards goods put into free circulation in one Member State to be forwarded to other Member States ; whereas, in such cases, the Member State in which customs clearance takes place is, as a general rule, in a position to base its valuation only on factors applicable to this same Member State ;

Whereas this situation can be remedied by provisions adopted in accordance with the procedure laid down in Article 17 of Regulation (EEC) No 803/68 determining at Community level the elements to be taken into consideration in calculating value for customs purposes ;

Whereas, in view of the characteristics of the foreign exchange market, reference should generally be made, for the purpose of currency conversion when determining value for customs purposes, to the latest selling rate recorded on the most representative exchange market or markets of the Member State in which valuation takes place ; whereas, however, it should be possible to have recourse, in exceptional circumstances, to the procedure laid down in Article 17 of Regulation (EEC) No 803/68 ;

Whereas, any person or undertaking directly or indirectly concerned should provide customs authorities in the Member States with all the information and documents required to determine value for customs purposes ;

Whereas, in order to be able to determine at Community level the elements to be taken into consideration in calculating value for customs purposes, the Commission must be in possession of the necessary information and documents ;

Whereas, the application of Article 12 of Regulation (EEC) No 803/68 also requires implementing provisions to be adopted in accordance with the procedure laid down in Article 17 of this Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

The current provisions of Article 7 of Regulation (EEC) No 803/68 shall constitute paragraph 1 of this Article.

The following shall be inserted in Article 7 as paragraph 2 :

'2. The methods for including these costs, charges and expenses in the value for customs purposes may be fixed by the procedure laid down in Article 17, taking into account the practical requirements of determining this value.'

Article 2

The following Article shall be inserted in Regulation (EEC) No 803/68 :

'Article 9a

Where the determination at national level of value for customs purposes gives or may give rise to deflection of trade and activities or to distortion of competition, the elements to be taken into consideration in calculating value for customs purposes may be determined at Community level, in accordance with the procedure laid down in Article 17.'

(1) OJ No C 129, 11. 12. 1972, p. 73.
(2) OJ No C 60, 27. 7. 1973, p. 5.
(3) OJ No L 148, 28. 6. 1968, p. 6.

Article 3

The text of Article 12 of Regulation (EEC) No 803/68 shall be replaced by the following :

'1. Where factors used to determine the value for customs purposes of goods are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used shall be the latest selling rate recorded on the most representative exchange market or markets of that Member State.

2. Where such a rate does not exist or where the application of paragraph 1 would lead to results inconsistent with Article 1, the rate of exchange to be used shall be determined by the procedure laid down in Article 17.'

Article 4

The following Article shall be inserted in Title I of Regulation (EEC) No 803/68 :

'Article 14a

1. With a view to determining value for customs purposes and without prejudice to national provisions which confer wider powers on the customs authorities of Member States, any person or undertaking directly or indirectly concerned with the import transactions in question shall supply all necessary information and documents to those authorities within the time limits prescribed by the latter.

2. The Member States shall provide the Commission with all the information and documents necessary for applying Article 9a.

3. Information and documents supplied to the Commission by a Member State pursuant to paragraph 2 may be used by the Commission or other Member States only for the purpose for which they were requested. They shall be subject to professional secrecy and in particular may not be communicated to persons other than those who, within the institutions of the Communities or the Member States, are required to have access to them by virtue of the functions they exercise.'

Article 5

Article 17 (1) of Regulation (EEC) No 803/68 shall be amended as follows :

'1. Provisions necessary for the implementation of Articles 1 to 3 an 6 to 12 shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3 of this Article.'

Article 6

This Regulation shall enter into force six months following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 February 1975.

For the Council

The President

G. FITZGERALD