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*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EEC) No 754/76

**of 25 March 1976**

**on the customs treatment applicable to goods returned to the customs territory of the Community**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 43 and 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, save where special derogations are allowed in accordance with the Treaty, the duties in the Common Customs Tariff are applicable to all goods imported into the customs territory of the Community; whereas the same applies with regard to any charges having equivalent effect which may be chargeable on certain of these goods, as well as agricultural levies and other import charges provided for either under the common agricultural policy or under the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods obtained by processing agricultural products;

Whereas certain goods which are imported into the customs territory of the Community to be entered for free circulation may previously have been exported from that territory;

Whereas where, at the time of their exportation, such goods satisfied the conditions laid down in Articles 9 and 10 of the Treaty, and where such exportation was not carried out under outward processing arrangements, the re-importation of such goods into the Community must be free of import duties applicable to them;

Whereas, in view of the Community elements contained in goods produced under inward processing arrangements, provision can be made for a similar exemption in respect of goods which, after having been exported from the customs territory of the Community under such arrangements, are returned to it to be entered for free circulation; whereas provision must however be made in such cases to ensure compliance with the provision of Council Directive 69/73/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing (3), which lays down the conditions under which compensating products resulting from an inward processing operation may be entered for free circulation in the Community; whereas, therefore, partial exemption is normally accorded in respect of the goods in question;

Whereas in order to prevent any speculation, exemption must be refused where goods returned to the customs territory of the Community are goods which, at the time of export, were the subject of customs formalities with a view to the grant of refunds or other amounts due upon export within the framework of the common agricultural policy; whereas derogation from this principle may however be allowed, provided that the sums paid out are refunded or that all measures are taken to avoid payment, where evidence is furnished to the competent authorities that it is on account of circumstances not brought about by the exporter that the goods are returned to the customs territory of the Community; whereas it must also be ensured in such circumstances that Community provisions concerning the implementation of the system of export licences and advance fixing certificates have been duly complied with;

Whereas, if returned goods have been the subject, at the time of their exportation from the customs territory of the Community, to payment of an export duty, admission of these goods under the return arrangements gives the right to repayment of amounts collected under these terms;

(1) OJ No C 93, 7. 8. 1974, p. 92.
(2) OJ No C 125, 16. 10. 1974, p. 47.
(3) OJ No L 58, 8. 3. 1969, p. 1.

Whereas returned goods should be admitted to the customs territory of the Community wholly or partly free of import duties only on condition that they are the same goods that were previously exported and have not undergone any treatment while outside the Community other than that necessary to maintain them in good condition, subject to any exceptions duly substantiated ; whereas such an exception may be made where the treatment undergone by goods has consisted of repair or restoration to good condition which was necessary as a result of unforeseeable circumstances arising outside the customs territory of the Community, provided that the value of such goods has not been increased by virtue of such treatment as compared with their value when they were exported from the customs territory of the Community ;

Whereas the granting of total or partial exemption must be subject to the production of proof that the goods entered for free circulation satisfy the conditions for the grant of total or partial exemption ; whereas it might be made easier for the person concerned to produce such proof, if, when the goods are exported, he obtains a document containing the necessary information to enable the goods to be identified in the event of their being returned to the customs territory of the Community ; whereas, in the absence of such a document, the authorities of the Member State in which is situated the customs office through which the goods have been exported should forward all the information in their possession to the authorities of the Member State in which is situated the customs office through which the goods are returned and entered for free circulation ;

Whereas, to avoid abuses of the arrangements for returned goods, it should be stipulated that, save in special circumstances, the goods should be returned to the customs territory of the Community by or at the instance of the person who exported them, and that the goods should be returned within a period of three years from the date of their exportation ; whereas this period should be reduced to six months in the case of goods for which, upon export, refunds were granted or export duties were levied in the framework of the common agricultural policy ;

Whereas it should be possible for goods returned to the customs territory of the Community to be so returned to a Member State other than that from which they were exported, in accordance with the conditions laid down above ; whereas this would be possible, however, only if there were no import or export duties between the Member States concerned ; whereas, therefore, in all cases where such duties are applicable in trade between Member States, the provisions of this Regulation should be applied only in respect of goods which are returned for free circulation in the Member State from which they were previously exported ;

Whereas it must be ensured that the provisions of this Regulation are applied in a uniform manner and to this end provision should be made for a Community procedure under which detailed rules for its application can be adopted within a reasonable time ; whereas the Committee on Duty-Free Arrangements set up under Article 7 of Council Regulation (EEC) No 1798/75 of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials [1] should be used as a means of organizing close and efficient cooperation between the Member States and the Commission in this field,

HAS ADOPTED THIS REGULATION :

*Article 1*

1. This Regulation lays down the customs treatment to be applied to goods returned to the customs territory of the Community.

2. For the purpose of this Regulation :

(a) returned goods, save as otherwise provided in Article 2, means goods which, having been temporarily or permanently exported from the customs territory of the Community, are returned to such territory to be entered for free circulation, provided that when they were exported such goods :

— satisfied the conditions laid down in Articles 9 and 10 of the Treaty ;

or

— were compensating products resulting from an inward processing operation ;

(b) import duties means customs duties and charges having equivalent effect as well as agricultural levies and other import charges provided for under the common agricultural policy or under the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods obtained by processing agricultural products ;

(c) export duties means agricultural levies and other export charges provided for under the common agricultural policy or under the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods obtained by processing agricultural products.

[1] OJ No L 184, 15. 7. 1975, p. 1.

*Article 2*

1. The following shall not be considered to be returned goods :

(a) goods previously exported from the customs territory of the Community under outward processing arrangements ;

(b) goods which, at the time of their exportation from the customs territory of the Community, were the subject of customs export formalities with a view to obtaining refunds and other amounts granted on exportation within the framework of the common agricultural policy.

2. Notwithstanding paragraph 1 (b), provided it is established that the amounts granted have been repaid or that all measures have been taken by the competent authorities for such sums to be withheld, goods referred to in the said paragraph shall be considered to be returned goods if they :

(a) could not be entered for home use in the country to which they were sent on account of any laws in force in that country ;

(b) were returned by the consignee as being defective or not in accordance with the provisions of the contract relating to them ;

(c) were re-imported into the customs territory of the Community because they could not be used for the purposes intended owing to other circumstances not brought about by the exporter.

It must be proved to the satisfaction of the competent authorities referred to in Article 10 that the goods are in one of the situations described in (a), (b) or (c) above.

*Article 3*

1. Where, at the time of their exportation from the customs territory of the Community, the returned goods satisfied the conditions laid down in Articles 9 and 10 of the Treaty they shall be entered for free circulation without payment of the import duties chargeable upon them.

2. Where, prior to their exportation from the customs territory of the Community, the returned goods had been imported for free circulation under preferential tariff treatment accorded on the basis that the goods were to be used for a specific purpose, exemption from duty under paragraph 1 shall be granted only if they are to be re-imported for the same purpose.

Where the purpose for which the goods in question are to be imported is no longer the same, the amount of import duties chargeable upon them small be reduced by any amount levied on the goods when they were first imported for free circulation. Should the latter amount exceed that levied on the entry for free circulation of returned goods, no refund shall be granted.

*Article 4*

Where returned goods are compensating products previously exported from the customs territory of the Community after completion of an inward processing operation, they shall be put on the market in accordance with Council Directive 69/73/EEC.

The import duties to be levied shall be those which would have been chargeable if, instead of being exported from the customs territory of the Community the said goods had, on the date of completion of the customs formalities relating to such export, been put on the market in accordance with the abovementioned Directive.

*Article 5*

1. Where, at the time of their exportation from the customs territory of the Community, an export duty was levied on the returned goods, entry for free circulation of these goods shall give the right to repayment of the amounts levied.

2. Paragraph 1 shall apply only to goods which are in one of the situations described in Article 2 (2).

It must be proved to the satisfaction of the competent authorities referred to in Article 10 that the goods are in one of the situations described in Article 2 (2).

*Article 6*

Articles 3, 4 and 5 shall apply even where the returned goods are only part of the goods previously exported from the customs territory of the Community.

Articles 3 and 4 shall also apply where returned goods consist of parts which the competent authorities are satisfied belong to machines, instruments, apparatus or other products previously exported from the customs territory of the Community.

*Article 7*

1. Articles 3, 4 and 5 shall not apply in respect of goods which have received treatment other than that necessary to maintain them in good condition.

Those Articles shall nevertheless apply to returned goods which have received treatment other than that necessary to maintain them in good condition, where such goods, after having been exported from the customs territory of the Community, proved to be defective or unsuitable for their intended use, provided that one of the following conditions has been fulfilled :

— such treatment was applied to the goods solely with a view to repairing them or restoring them to good condition,

— their unsuitability for their intended use became apparent only after such treatment had commenced.

2. Where returned goods have undergone treatment permitted under the second paragraph of paragraph 1, and such treatment would have rendered them liable to import duties if they had come under outward processing arrangements, the rules in force for charging duty under the said arrangements shall apply.

However, if goods have undergone treatment consisting of repair or restoration to good condition which became necessary as a result of unforeseen circumstances which arose outside the customs territory of the Community and this is established to the satisfaction of the competent authorities, exemption from import duties shall be granted provided that the value of the returned goods has not been increased, by virtue of such treatment, in relation to their value at the time of exportation from the customs territory of the Community.

*Article 8*

1. This Regulation shall apply only to returned goods entered for free circulation in the customs territory of the Community within three years of the date on which they were exported. However, this time limit may be exceeded if it is deemed necessary in order to take account of special circumstances.

2. Notwithstanding paragraph 1, the goods referred to in Articles 2 (2) and 5 must, in order to benefit under this Regulation, be entered for free circulation in the customs territory of the Community within six months of the date of completion of the customs formalities relating to their exportation.

*Article 9*

This Regulation shall apply to returned goods only where they are returned to the customs territory of the Community by or at the instance of the previous exporter. However, where circumstances so warrant, the competent authorities may permit derogations from this rule.

*Article 10*

1. The competent authorities of the Member State where the returned goods are entered for free circulation shall be responsible for according to such goods, at the request of the party concerned, the treatment provided for in this Regulation.

2. Persons who apply for such treatment to be accorded shall provide the competent authorities with evidence of all matters of fact on which the eligibility of the goods for such treatment depends. In particular, it must be proved that the goods entered for free circulation are those which were exported.

*Article 11*

When completing the customs formalities for exportation, the competent authorities shall, at the request of the party concerned, authenticate a document containing the information necessary for the identification of the goods in the event of their being returned to the customs territory of the Community.

*Article 12*

At the request of the competent authorities of the Member State in which is situated the customs office through which the goods were entered for free circulation, the competent authorities of the Member State in which is situated the customs office through which the goods were exported from the customs territory of the Community shall communicate to the former all the information at their disposal to enable them to determine whether goods satisfy the necessary conditions to benefit from the provisions of this Regulation.

*Article 13*

1. Where a monetary compensatory amount has been levied or granted by the Member State in which the customs formalities relating to the export of agricultural products or goods processed from them have been completed, this Regulation shall apply only in so far as the returned products or goods are entered for free circulation in that Member State.

2. Where no monetary compensatory amount has been levied or granted by the Member State in which the customs formalities relating to the export of agricultural products or goods processed from them have been completed, this Regulation shall apply only in so far as the returned products or goods are entered for free circulation :

(a) either in the said Member State,

(b) or in another Member State in which no compensatory amount is due to be levied or granted in respect of these same products or goods on the date of acceptance of their entry for free circulation.

*Article 14*

Goods which, within the framework of the common agricultural policy, are exported under an export licence or an advance fixing certificate may not benefit from the provisions of this Regulation unless it is proved that the relevant Community provisions have been complied with.

*Article 15*

1. The committee set up under Article 7 of Council Regulation (EEC) No 1798/75 may examine any matter relating to the application of this Regulation which is raised by its chairman, either on his own initiative or at the request of a Member State.

2. The provisions necessary for the application of Articles 2 (2), 4, 5, 7, 8, 10, 11 and 12 of this Regulation shall be adopted in accordance with the procedure laid down in Article 9 (2) and (3) of Council Regulation (EEC) No 1798/75.

*Article 16*

1. This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities.*

2. This Regulation shall apply to returned goods to be entered for free circulation on or after 1 January 1977.

However, until 1 July 1977 it shall not apply:

(a) with regard to the Community as originally constituted, unless the returned goods were previously exported from a Member State of that Community;

(b) with regard to each of the new Member States, unless the returned goods were previously exported from the Member State in question. Where an export drawback has been granted on these goods, the arrangements for returned goods shall apply to them only when the drawback has been refunded.

This Regulation shall not apply to tobacco and tobacco products listed in the Annex to Decision 73/199/EEC [1] which are entered for free circulation in the United Kingdom before 1 January 1978.

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

Done at Brussels, 25 March 1976.

*For the Council*

*The President*

M. MART

[1] OJ No L 197, 17. 7. 1973, p. 7.