I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1430/79
of 2 July 1979
on the repayment or remission of import or export duties

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 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, in accordance with Article 10 (1) of the Treaty, the release for free circulation in the Community of goods imported from third countries involves the collection of the import duties to which such goods are subject ; whereas, pursuant to Council Directive 78/453/EEC of 22 May 1978 on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties (3), payment of these import duties may, subject to certain conditions be deferred ;

Whereas the amount of the import duties paid or deferred may prove to be higher than that legally due, either owing to an error of calculation or transcription or owing to the application of inaccurate or incomplete tax criteria, in particular with regard to the type, value or origin adopted for determining this amount ; whereas it may also happen that, as the result of an error, the entry of an article for free circulation gives rise to the assessment of an amount of import duty to which, under the provisions in force, that article is not subject ; whereas in these cases, it is justifiable either to repay or to remit the sums not due ;

Whereas, bearing in mind the facilities offered them by customs regulations and in particular by the existence of warehousing and temporary admission arrangements, importers are normally able to enter an article for free circulation with full knowledge of the facts ; whereas, therefore, the entry of an article for free circulation must in principle be of an irreversible nature ;

Whereas, however, it may happen, in particular when the declarant is not the actual consignee of the goods, that they are erroneously entered under the free circulation procedure although they were intended to be subjected to another customs procedure not involving the collection of any import duty ; whereas, providing proof of this mistake is produced to the competent authorities and the goods are placed under the procedure for which they were originally intended, it is justifiable in such a case to repay the import duties where they have been paid or to grant a remission where payment has been deferred ;

Whereas, in addition, certain special situations may arise which involve no negligence or deliberate action on the part of the declarant and which may result in preventing the goods entered for free circulation from being used for the purpose for which they were imported ; whereas this applies in particular to goods which are refused by the importer because they are defective or do not comply with the terms of the contract on the basis of which they were entered for importation ; whereas, provided these situations are defined precisely so as not to make the budget of the Communities bear the consequences of risky commercial transactions, it is also justifiable to repay or remit the duties on these goods in so far as the said goods are re-exported from the customs territory of the Community or destroyed under the supervision of the competent authorities ;

Whereas, in order to facilitate the task of charities, it is also desirable to authorize repayment or remission of import duties on goods which, as they could not be sold in the customs territory after being released for

(1) OJ No C 125, 8. 6. 1976, p. 50.
(2) OJ No C 197, 23. 8. 1976, p. 14.
(3) OJ No L 146, 2. 6. 1978, p. 19.

free circulation there, are turned over free of charge to such charitable organizations; whereas the donation of such goods to charitable organizations which operate in the customs territory of the Community can, however, justify the repayment or remission of import duties only in so far as the charitable organizations can themselves benefit from duty-free entry in respect of the importation for free circulation of similar goods from third countries;

Whereas only those special situations most frequently encountered in practice may at the present stage be covered by regulations relating to repayment or remission of import duties; whereas it is advisable to make provision for the use of a Community procedure in order to define, where appropriate, other situations which also warrant repayment or remission of import duties;

Whereas the provisions relating to repayment or remission of import duties must also be applied, wherever necessary, to the repayment or remission of export duties;

Whereas the other substantive and formal conditions upon the observance of which the grant of repayment or remission of import or export duties is conditional must be specified; whereas it is advisable in particular to lay down the time within which the person concerned may lodge an application with the competent authorities for this purpose;

Whereas Article 19 of Council Regulation (EEC) Euratom, ECSC) No 2891/77 of 19 December 1977 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources [1] stipulates that the provisions of Community law applicable to the sectors referred to in the first paragraph of Article 2 of the said Decision shall be applied by the appropriate authorities of Member States when establishing own resources;

Whereas it is important to ensure the uniform implementation of the provisions of this Regulation and, to this end, to lay down a Community procedure by which the detailed rules for its application may be adopted within an appropriate period; whereas the assistance of the Committee on Duty-Free Arrangements set up by 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 [2] should be sought in order to establish close and effective collaboration between the Member States and the Commission in this field;

[1] OJ No L 336, 27. 12. 1977, p. 1.
[2] OJ No L 184, 15. 7. 1975, p. 1.

Whereas, prior to Denmark's accession to the European Communities, that Member State had abolished the system of customs warehousing; whereas in Denmark duty-free arrangements for goods re-exported in an unaltered and unused state take the form of the repayment of import duties ('handelstoldgodtgørelse'); whereas the latter system permits the repayment of import duties for reasons other than those covered by this Regulation; whereas, in view of the period necessary for reintroducing the customs warehousing system in that Member State, maintenance of the 'handelstoldgodtgørelse' system should be authorized for a transitional period to expire not later than 31 December 1982;

Whereas the provisions of this Regulation concern repayment or remission of the various import or export duties; whereas they result from the implementation of the common agricultural policy or the implementation of the provisions of the Treaty relating to the customs union; whereas, in the latter respect, the provisions of the said Treaty do not confer on institutions of the Communities the power to adopt mandatory provisions concerning repayment or remission of import duties or export duties; whereas it is accordingly necessary to base this Regulation on Article 235 of the Treaty also,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the conditions under which the competent authorities shall repay or remit import and export duties.

2. For the purposes of this Regulation:

(a) 'import duties' means customs duties and charges having equivalent effect, as well as agricultural levies and other import charges laid down within the framework of the comon agricultural policy or in that of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;

(b) 'export duties' means agricultural levies and other export charges laid down within the framework of the common agricultural policy, or in that of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;

(c) 'repayment' means the total or partial refund of import or export duties which have been paid;

(d) 'remission' means the complete or partial waiving of import or export duties which have been entered in the accounts by the authority responsible for their collection, but which have not yet been paid;

(e) 'entry in the accounts' means the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duly determined;

(f) 'customs debt' means the obligation of a natural or legal person to pay the amount of the import or export duties applicable under the current provisions to goods subject to such duties.

3. For the purposes of Articles 2 (2), 3 (2), 5 (2), 10 (2), 16 and 17, 'customs office' shall mean any competent office where amounts of import or export duties due are entered in the accounts, even if that office does not form part of the customs administration.

TITLE I

REPAYMENT OR REMISSION OF IMPORT DUTIES

A. Cases where there is no customs debt, or where the amount is fixed at a level higher than that lawfully due

Article 2

1. Import duties shall be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts:

— relates to goods in respect of which a customs debt has either not arisen or has been settled other than by payment or prescription,

— exceeds for any reason the amount lawfully payable.

2. Import duties shall be repaid or remitted for one of the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within a period of three years from the date on which those duties were entered in the accounts by the authority responsible for their collection.

Where the competent authorities themselves discover within this period that one or other of the situations described in paragraph 1 obtains, they shall repay or remit on their own initiative.

B. Goods entered in error for free circulation

Article 3

1. Import duties shall be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts relates to goods which were entered in error for free circulation instead of being placed under another customs regime.

2. Import duties shall be repaid or remitted for the reason set out in paragraph 1 upon submission of an application to the appropriate customs office within a period of three months from the date on which those duties were entered in the accounts by the authority responsible for their collection.

However, the competent authorities may permit this period to be exceeded in exceptional cases where there is good reason for doing so.

Article 4

Repayment or remisssion of import duties in respect of the goods referred to in Article 3 (1) shall be subject to the following conditions:

(a) the competent authorities must be satisfied that:

— any use of the goods has not contravened the conditions of the customs regime under which they should have been placed,

— when the goods were entered for free circulation they were intended to be placed under another customs regime, all the requirements of which they fulfilled,

— the goods for which the benefit of that other customs regime is requested are the goods which were entered for free circulation;

(b) the goods must be immediately entered for the customs regime for which they were intended.

C. Goods refused by the importer because they are defective or do not comply with the terms of the contract

Article 5

1. Import duties shall be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts relates to goods refused by the importer because they are defective or for some reason do not comply with the terms of the contract on the basis of which they were imported.

For the purposes of this Regulation, defective goods shall be deemed to include goods damaged in transit before arrival at the customs office where they are entered for free circulation (or at any other place designated for that purpose by the competent authorities), or during the period they remain at that customs office (or at any other place designated for that purpose by the competent authorities).

2. Import duties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within a period of 12 months from the date on which those duties were entered in the accounts of the authority responsible for their collection.

However, the competent authorities may permit this period to be exceeded in exceptional cases where there is good reason for doing so.

Article 6

1. Repayment or remission of import duties on the goods specified in Article 5 (1) shall be conditional upon the re-exportation of such goods outside the customs territory of the Community under the supervision of the competent authorities.

However, the person concerned may, where circumstances permit, be authorized to destroy the goods under the supervision of the competent authorities instead of re-exporting them. Any costs entailed in such destruction shall be borne by the person concerned.

Where such authorized destruction of the goods results in the production of waste or scrap products which are not themselves exported outside the customs territory of the Community, the calculation of any import duties to which those waste or scrap products may be subject shall be made on the basis of the rules of assessment applicable to them as recognized or accepted by the competent authorities at the date of destruction.

2. The competent authorities may set a period, from the date of their decision to repay or remit import duties, for the completion of the customs formalities relating to the re-exportation or destruction of the goods under the conditions laid down in paragraph 1.

Where the competent authorities consider it possible, they may, at the request of the person concerned, authorize the customs formalities relating to the re-exportation or destruction of the goods to be completed before having ruled on the application for repayment or remission of customs duties. Such an authorization shall be entirely without prejudice to the decision of the competent authorities on that application.

3. In addition, the competent authorities must be satisfied that :

(a) the goods were already defective or did not comply with the terms of the contract at the time of clearance of the goods or any other act having equivalent legal effect in accordance with the provisions in force ;

(b) the goods have not been used, except for such initial use as may have been necessary to establish that they were defective or did not comply with the terms of the contract ;

(c) the goods in respect of which repayment or remission of import duties is requested are the goods which were imported for free circulation.

Article 7

Where it is not the complete article that is re-exported or destroyed, but one or more parts or components of that article, the amount to be repaid or remitted shall be the difference between the amount of import duties on the complete article and the amount of import duties which would have been chargeable on the remainder of the article if the latter had been put into free circulation in an unaltered state on the date on which the complete article was put into free circulation.

Article 8

Import duties shall not be repaid or remitted in respect of goods :

(a) which before being entered for free circulation were imported temporarily for testing, unless the competent authorities are satisfied that the fact that the goods were defective or did not comply with the contract could not normally have been detected in the course of such testing ;

(b) the defective nature of which was taken into consideration in the drawing up of the contract, in particular with regard to the price, in pursuance of which the goods were put into free circulation.

Article 9

Articles 5 to 8 shall not apply to goods sold by the importer after it has been ascertained that they are defective or do not comply with the terms of the contract.

D. Goods in a special situation

Article 10

1. Import duties shall be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts relates to goods in one of the following special situations:

(a) goods released for free circulation by a declarant empowered to do so on his own initiative and which, through no fault of the declarant, it has not been possible to deliver to the consignee;

(b) goods addressed to the consignee in error by the consignor;

(c) goods found to be unsuitable for the use for which the consignee intended them because of an obvious factual error in his order;

(d) goods, the use of which by the consignee for the purpose intended is prevented or substantially restricted as a result of measures of general scope taken after the date of clearance for free circulation by an authority or other body having the appropriate power of decision;

(e) goods in respect of which total or partial import duty relief, applied for by the person concerned in accordance wth existing provisions, may, through no fault of the person concerned, not be granted by the competent authorities, who shall accordingly enter in their accounts the import duties which have become due;

(f) goods which reach the consignee after the binding delivery dates stipulated in the contract in pursuance of which the goods were released for free circulation;

(g) goods which it has not been possible to sell in the customs territory of the Community and which are free of charge to charities:

— carrying out their activities in a third country, provided that they are represented in the Community,

or

— carrying out their activities in the customs territory of the Community, provided that they are eligible for relief in the case of importation for free circulation of similar goods from third countries.

2. Import duties shall be repaid or remitted for one of the reasons set out in paragraph 1 on the submission of an application to the appropriate customs office within a period of three months from the date on which those duties were entered in the accounts by the authority responsible for their collection.

However, the competent authorities may permit this period to be exceeded in exceptional cases where there is good reason for doing so.

Article 11

1. Without prejudice to paragraph 2, repayment or remission of import duties on the goods referred to in Article 10 (1) shall, except where the goods are destroyed by order of a public authority or delivered free of charge to charities carrying out their activities in the Community, be conditional upon their re-exportation outside the customs territory of the Community under the supervision of the competent authorities.

However, the person concerned may, where circumstances permit, be authorized to destroy the goods under the supervision of the competent authorities instead of re-exporting them. Any costs entailed in such destruction shall be borne by the person concerned.

Where such authorized destruction of the goods results in the production of waste or scrap products which are not themselves exported outside the customs territory of the Community, the calculation of any import duties to which such waste or scrap products may be liable shall be carried out on the basis of the rules of assessment applicable to them as recognized or accpted by the competent authorities at the date of destruction.

2. In the case of goods in one of the situations mentioned in Article 10 (1) (b) and (c), repayment or remission of import duties shall be conditional on their re-exportation to the address of the original supplier or to another address specified by him.

3. The competent authorities may determine a period, from the date of their decision to repay or remit import duties, for the completion of the customs formalities relating to the re-exportation or destruction of the goods under the conditions laid down in paragraph 1.

Where the competent authorities consider it possible, they may, at the request of the person concerned, authorize the customs formalities relating to the re-exportation or destruction of the goods to be completed before having ruled on the application for repayment or remission of import duties. Such an authorization shall be entirely without prejudice to the decision of the competent authorities on that application.

4. In addition, the competent authorities must be satisfied that :

(a) the goods have been neither used nor sold by the person concerned ;

(b) the goods in respect of which repayment or remission of import duties is requested are the goods that were imported for free circulation.

Article 12

Where it is not a complete article that is re-exported or destroyed, but one or more parts or components of that article, Article 7 shall apply.

E. Other situations which may give rise to the repayment or remission of import duties

Article 13

Import duties may be repaid or remitted in situations resulting from special circumstances in which no negligence or deception may be attributed to the person concerned.

The cases in which the first subparagraph may apply, and the detailed procedural arrangements to be followed for this purpose, shall be determined in accordance with the procedure laid down in Article 25.

TITLE II

REPAYMENT OR REMISSION OF EXPORT DUTIES

Article 14

Articles 2 and 13 shall apply *mutatis mutandis* to the repayment or remission of export duties.

TITLE III

PROVISIONS CONCERNING APPLICATIONS FOR REPAYMENT OR REMISSION OF IMPORT OR EXPORT DUTIES

Article 15

Import or export duties shall be repaid or remitted only to the person who paid or is liable to pay those duties, or to the persons who have succeeded him in his rights and obligations.

Where repayment or remission is conditional on submission of an application to the competent authorities, such application may be made either by the person referred to in the first subparagraph or by his representative.

Article 16

Without prejudice to Article 17, applications for repayment or remission of import or export duties must be submitted to the customs office where the duties in question were entered in the accounts, unless the competent authorities designate another office for this purpose.

Applications must be accompanied by all the evidence in the applicant's possession, so that the competent authorities may decide on the application taking due account of the reasons put forward by him. Where they consider it necessary, the competent authorities may lay down a time limit for the production by the applicant of additional evidence.

Article 17

Where the goods are situated in a Member State other than the one in which the import or export duties relating thereto were entered in the accounts, the customs office where the application for repayment or remission of the duties is to be submitted and the conditions under which the Member States concerned are to assist each other in dealing with such application shall be specified in accordance with the procedure referred to in Article 25 (2).

Article 18

In all cases the authorities competent to decide on applications for the repayment or remission of import or export duties shall be those of the Member State where those duties were entered in the accounts.

TITLE IV

FINAL PROVISIONS

Article 19

Subject to the second subparagraph of Article 3 (2), the second subparagraph of Article 5 (2) and the second subparagraph of Article 10 (2), the periods within which this Regulation provides that an application for repayment or remission of import or export duties shall be submitted may not be extended unless the person concerned can prove that he was prevented by unforeseen circumstances or *force majeure* from submitting his application within the prescribed periods.

Article 20

Import or export duties shall not be repaid or remitted under the conditions laid down in this Regulation unless the amount to be repaid or remitted exceeds 10 European units of account.

However, in the cases referred to in Article 2 (1), Member States may decide in favour of an application for repayment or remission involving a sum lower than this amount.

Article 21

1. Where, pursuant to this Regulation, the condition for repayment or remission of import duties is that the goods shall be re-exported, the goods may, where circumstances permit, be placed in a customs warehouse or a free zone, with the authorization of the competent authorities and under the same conditions.

However, such authorization may be granted only if a favourable decision has already been taken on the application for repayment or remission of the import duties.

The competent authorities shall take all the necessary steps to ensure that goods placed in a customs warehouse or a free zone may subsequently be acknowledged as not fulfilling the conditions laid down in Articles 9 and 10 of the Treaty.

2. Where paragraph 1 is invoked, Articles 6 (2) and (3), 11 (3) and (4), and 17 shall apply *mutatis mutandis*.

Article 22

1. Goods which, under the common agricultural policy, are put into free circulation under an import licence or advance fixing certificate shall benefit from Articles 3, 5 and 10 only in so far as the authorities referred to in Article 16 are satisfied that the necessary steps have been taken by the competent authorities to cancel the effects of putting those goods into free circulation as regards the certificate under which the importation took place.

2. Paragraph 1 shall apply also in the case of the re-exportation, the placing in customs warehouses or free zones, or the destruction of the goods, pursuant to Article 13.

Article 23

Where a monetary compensatory amount has been levied or granted by the Member State in which the customs formalities relating to the import of agricultural products or goods processed from them have been completed, Articles 3, 5 and 10 shall apply only in so far as the customs formalities for exporting these products or goods have been completed in that Member State.

Article 24

Where import or export duties are rapid or remitted pursuant to this Regulation, Member States shall establish new amounts to be subtracted from the corresponding own resources within the meaning of Regulation (EEC, Euratom, ECSC) No 2891/77.

Article 25

1. The Committee on Duty-Free Arrangements provided for in Article 7 of Regulation (EEC) No 1798/75 may examine any question relating to the application of this Regulation which may be 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, 3, 5, 6, 10, 11, 13, 14, 16, 17 and 22 of this Regulation shall be adopted in accordance with the procedure laid down in Article 9 (2) and (3) of Regulation (EEC) No 1798/75.

Article 26

This Regulation shall not prevent the maintenance by Denmark of the 'handelstoldgodtgørelse' system until this system is replaced by that of customs warehousing, and until 31 December 1982 at the latest.

Article 27

This Regulation shall enter into force on 1 July 1980.

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

Done at Brussels, 2 July 1979.

For the Council

The President

M. O'KENNEDY