COMMISSION REGULATION (EEC) No 2783/79

of 12 December 1979

laying down provisions for the implementation of Council Regulation (EEC) No 1028/79 on the importation free of Common Customs Tariff duties of articles for the use of handicapped persons

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1028/79 of 8 May 1979 on the importation free of Common Customs Tariff duties of articles for the use of handicapped persons [1], and in particular Article 7 (2) thereof,

Whereas the importation free of Common Customs Tariff duties of articles for the use of handicapped persons pursuant to Article 2 (1), Article 3 (1) and (2), or Article 5 of Regulation (EEC) No 1028/79 must be subject to the completion of certain administrative formalities enabling the competent authorities to check that the goods in question properly satisfy the conditions laid down in that Regulation, and that they will in fact be used for the purposes for which duty-free admission is granted;

Whereas, in order to accord the fullest assistance to institutions and organizations authorized by the competent authorities to receive the articles in question duty-free, it is desirable to apply, on a general basis and from the entry into force of the abovementioned Regulation, the last subparagraph of Article 3 (1) thereof, by allowing a derogation in every case from the condition that duty-free admission is granted only where equivalent articles are not currently manufactured in the Community;

Whereas it will, however, be possible to maintain this position only in respect of articles the duty-free admission of which is not liable to prejudice the production of equivalent articles within the Community; whereas provision should be made for a Community procedure to enable the Commission, after consulting experts from all Member States, to exclude one or more types of article from duty-free admission where it is established, on the basis of information in its possession, that such duty-free admission is liable to prejudice the production of equivalent articles within the Community;

Whereas, where articles for the use of handicapped persons are loaned, hired or transferred between institutions or organizations situated in different Member States, provision should be made for supervision of the destination and use of the articles in question by means of a Control Copy T No 5 in accordance with the rules laid down in Commission Regulation (EEC) No 223/77 of 22 December 1976 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure [2];

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee on Duty-Free Arrangements,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

A. Obligations on the part of the institution or organization to which the articles are consigned

Article 1

1. The duty-free admission of articles referred to in Article 2 (1), Article 3 (1) and (2) and Article 5 of Regulation (EEC) No 1028/79 shall entail the following obligations on the part of the institution or organization to which they are consigned:

— to dispatch the articles in question directly to the declared place of destination,

— to account for them in its inventory,

— to use them exclusively for the purposes specified in Regulation (EEC) No 1028/79,

— to facilitate any verification which the competent authorities consider necessary in order to ensure that the conditions for granting duty-free admission are satisfied, or remain satisfied.

2. The head of the institution or organization to which the articles are consigned, or his authorized representative shall furnish the competent authorities with a statement declaring that he is aware of the various obligations listed in paragraph 1 and including an undertaking to comply with them.

[1] OJ No L 134, 31. 5. 1979, p. 8.

[2] OJ No L 38, 9. 2. 1977, p. 20.

The competent authorities may require that the statement referred to in the preceding subparagraph be produced for each import, or for several imports, or for all the imports to be carried out by the institution or organization to which the articles are consigned.

B. Provisions to be applied where the articles are lent, hired out or transferred

Article 2

1. Where the provisions of the first sentence of the second subparagraph of Article 6 (2) of Regulation (EEC) No 1028/79 are applied, the institution or organization to which an article for the use of handicapped persons is lent, hired out or transferred shall, from the date or receipt of the article, comply with the same obligations as those set out in Article 1.

2. Where the institution or organization to which an article in lent, hired out or transferred is situated in a Member State other than that in which the institution or organization that lent, hired out or transferred the articles is situated, upon the dispatch of such articles to that Member State, the competent customs office of the Member State of dispatch shall issue a Control Copy T No 5 in accordance with the rules laid down in Regulation (EEC) No 223/77 in order to ensure that such articles are put to a use entitling them to continue to qualify for duty-free admission.

For this purpose, the said Control Copy shall include, in box 104 under the heading 'other', one of the following entries :

— Article for handicapped persons — to be admitted duty-free (UNESCO).
Implementation of Article 6 (2) (second subparagraph) of Regulation (EEC) No 1028/79,

— Toldfrit indført genstand bestemt til handicappede (UNESCO).
Anvendelse af artikel 6, stk. 2, andet afsnit, i forordning (EØF) nr. 1028/79,

— Zollfreier Gegenstand für Behinderte (UNESCO).
Anwendung von Artikel 6 Absatz 2, zweiter Unterabsatz der Verordnung (EWG) Nr. 1028/79,

— Objet destiné aux personnes handicapées, en franchise des droits de douane (UNESCO).
Application de l'article 6 paragraphe 2 deuxième alinéa du règlement (CEE) n° 1028/79,

— Ogetto destinato ai minorati, in franchigia dai dazi doganali (UNESCO).
Applicazione dell'articolo 6, paragrafo 2, secondo comma del regolamento (CEE) n. 1028/79,

— Voorwerp bestemd voor gehandicapten, met vrijstelling van douanerechten (UNESCO).
Toepassing van artikel 6, lid 2, tweede alinea, van Verordening (EEG) nr. 1028/79.

3. The provisions of paragraphs 1 and 2 shall apply, *mutatis mutandis,* to the loan, hire or transfer of spare parts, components or accessories specifically for articles for the use of handicapped persons which have been admitted duty-free under the second subparagraph of Article 2 (1) and Article 3 (2) of Regulation (EEC) No 1028/79.

C. Non-fulfilment of the conditions governing the granting of duty-free admission

Article 3

1. An institution or organization which ceases to fulfil the conditions giving entitlement to duty-free admission, or which is proposing to use articles acquired duty-free for purposes other than those provided for by Regulation (EEC) No 1028/79, shall so inform the competent authorities.

2. Where articles are used for purposes other than those provided for in Regulation (EEC) No 1028/79, they shall be liable to the relevant customs duty at the rate applying on the date on which they are to be put to another use according to their type and value as ascertained or accepted on that date by the customs authorities.

TITLE II

SPECIAL PROVISIONS RELATING TO THE DUTY-FREE ADMISSION OF ARTICLES REFERRED TO IN THE FIRST SUBPARAGRAPH OF ARTICLE 2 (1) OF REGULATION (EEC) No 1028/79

Article 4

In order to obtain duty-free admission of an article for the use of the blind in accordance with the first subparagraph of Article 2 (1) of Regulation (EEC) No 1028/79, the head of the institution or organization to which the article is consigned, or his authorized representative, must submit an application to the competent authority of the Member State in which the institution or organization is situated.

Such application must be accompanied by all information which the competent authority considers necessary for the purpose of determining whether the conditions laid down for granting duty-free admission are fulfilled.

TITLE III

SPECIAL PROVISIONS RELATING TO THE DUTY-FREE IMPORTATION OF ARTICLES REFERRED TO IN ARTICLE 3 (1) OF REGULATION (EEC) No 1028/79

Article 5

For as long as it has not been established by a decision of the Commission adopted in accordance with the procedure laid down in Article 8 (3) and (4) that the duty-free admission of articles referred to in Article 3 (1) of Regulation (EEC) No 1028/79 is liable to prejudice production of equivalent articles within the Community, duty-free entry shall be granted without checking whether the condition laid down in Article 3 (1) (b) of that Regulation is fulfilled.

Article 6

1. In order to obtain duty-free admission of an article for the use of handicapped persons under the provisions of Article 3 (1) of Regulation (EEC) No 1028/79, the head of the institution or organization to which the article is consigned, or his authorized representative, must submit an application to the competent authority of the Member State in which the institution or organization is situated.

2. The application referred to in paragraph 1 must contain the following information relating to the article in question :

(a) the precise trade description of the article used by the manufacturer, its presumed Common Customs Tariff classification and the objective technical characteristics indicating that it was specially designed for the education, employment or social advancement of handicapped persons ;

(b) the name or business name and address of the manufacturer and, where appropriate, of the supplier ;

(c) the country of origin of the article ;

(d) the place of destination of the article ;

(e) the use for which the article is intended ;

(f) the price of the article or, if known, its value for customs purposes ;

(g) the quantity of the article in question ;

(h) the estimated delivery period ;

(i) the date when the article was ordered if it has already been ordered.

Documentary evidence providing all relevant information on the characteristics and technical specifications of the article shall be furnished with the application.

Article 7

Without prejudice to the provisions of Article 9, the competent authority of the Member State in which the institution or organization to which the articles are consigned is situated, shall take a direct decision on applications under Article 6.

Article 8

1. The competent authorities of the Member States shall provide the Commission, on their own initiative or at the latter's request, with any information at their disposal, including the relevant, technical documents, so that it can assess whether the duty-free admission of a given article is liable to prejudice production of equivalent articles within the Community.

2. Where the Commission is of the opinion, in the light of the information at its disposal, that the duty-free admission of an article is liable to prejudice the production of equivalent articles within the Community, it shall as soon as possible notify a group of experts composed of representatives of all the Member States, who shall meet within the framework of the Committee on Duty-free Arrangements in order to examine the matter or matters concerned.

The information at the Commission's disposal shall be communicated to the experts as soon as possible.

3. Where the examination undertaken in accordance with paragraph 2 shows that the duty-free importation of an article is liable to prejudice the production of equivalent articles within the Community, the Commission shall adopt a decision establishing that the conditions for duty-free admission of the said article are not fulfilled.

4. In urgent cases the Commission may adopt the decision referred to in paragraph 3 without waiting for consultation of the experts from the Member States as provided for in paragraph 2.

Such decision shall be provisional and must be confirmed or revoked by the Commission once the examination provided for in paragraph 2 has taken place.

Pending the completion of that procedure, the competent authorities may authorize the provisional duty-free importation of the article concerned, subject to an undertaking by the institution or organization to which the article is consigned to pay the relevant customs duties should the Commission's decision be confirmed.

The competent authorities may make such provisional duty-free importation conditional on the provision of security on terms to be laid down by it.

5. Commission decisions shall be notified to all Member States as soon as they have been adopted.

6. At least once each year, the Commission shall, on the basis of information supplied by the Member States concerned, examine the situation in depth with the group of experts referred to in paragraph 2 in order to determine whether it is necessary to revoke all or part of the decisions excluding certain articles from duty-free admission.

Article 9

1. Where the competent authority of the Member State in which is situated the institution or organization to which the articles are consigned is unable to determine whether the article for which the application under Article 6 was made should be regarded as being specially designed for the education, employment or social advancement of handicapped persons, the application, together with the relevant technical documents, shall be forwarded to the Commission in order to enable the latter to initiate the procedure laid down in paragraphs 2 to 6 below.

Pending the completion of that procedure, the competent authority may authorize the provisional duty-free importation of the article subject to an undertaking by the institution or organization to which the article is consigned to pay the relevant customs duties should duty-free admission not be granted.

The competent authority may make such provisional duty-free importation conditional on the provision of security on terms to be laid down by it.

2. Within two weeks of the date of receipt of the application, the Commission shall dispatch a copy to each of the other Member States together with the relevant documentation.

3. If, on the expiry of a period of three months from the date of such dispatch, no Member State has sent the Commission objections concerning the duty-free admission of the article under consideration, the said article shall be deemed to fulfil the conditions required for duty-free admission. The Commission shall notify the Member States of this circumstance within two weeks following the expiry of the aforesaid period.

4. If, within the period of three months laid down in paragraph 3, a Member State has sent the Commission objections regarding the duty-free importation of the article under consideration, the Commission shall as soon as possible notify a group of experts composed of representatives of all the Member States, who shall meet within the framework of the Committee on Duty-Free Arrangements in order to examine the matter.

The objections referred to in the preceding subparagraph must include a statement of the grounds therefor. Such grounds must indicate why the article concerned should not be regarded as being specially designed for the education, employment or social advancement of handicapped persons.

The Commission shall transmit these objections to the Member States as soon as they are received.

5. Where the examination undertaken in accordance with paragraph 4 shows that the article for which duty-free admission has been requested must be regarded as being specially designed for the education, employment or social advancement of handicapped persons, the Commission shall adopt a decision declaring that the said article fulfils the conditions required for duty-free admission.

In the contrary case the Commission shall adopt a decision declaring that the said article does not fulfil the conditions required for duty-free admission.

Commission decisions shall be notified to all Member States within two weeks.

6. If, on the expiry of a period of six months from the date on which the application was received by the Commission, the latter has not adopted any decision under paragraph 5, the article in question shall be deemed to fulfil the conditions required for duty-free admission.

Article 10

Authorizations for duty-free admission shall be valid for a period of six months.

The competent authorities may, however, set a longer period in the light of the particular circumstances of each case.

TITLE IV

SPECIAL PROVISIONS RELATING TO THE DUTY-FREE ADMISSION OF ARTICLES REFERRED TO IN ARTICLE 5 OF REGULATION (EEC) No 1028/79

Article 11

1. In order to obtain duty-free admission of an article for the use of handicapped persons under the provisions of Article 5 of Regulation (EEC) No 1028/79, the head of the institution or organization to which the article is consigned, or his authorized representative, must submit an application to the competent authority of the Member State in which the institution or organization is situated.

2. Such application must contain the information specified in Article 6 (2) (a) to (e) and must be accompanied by a document or documents giving all relevant information on the characteristics and technical specifications of the article concerned.

It must also include :

(a) the name or business name and address of the donor ;

(b) a declaration by the applicant that the articles for which duty-free admission is requested are in fact being offered to the institution or organization concerned without a reciprocal commercial concession of any kind, in particular without any publicity being involved.

Article 12

1. The competent authority of the Member State in which is situated the institution or organization to which such articles are consigned shall take a direct decision on applications under Article 11.

2. The competent authority shall authorize duty-free admission of that article only if it has been established to its entire satisfaction that the donor is not deriving any direct or indirect commercial advantage from his gift to the institution or organization to which the article is consigned.

3. Where the competent authority of the Member State in which is situated the institution or organization to which an article is consigned is unable to decide on the basis of information at its disposal whether the article for which duty-free admission has been requested should be regarded as being specially designed for the education, employment or social advancement of handicapped persons, the procedure laid down in Article 9 shall apply.

TITLE V

SPECIAL PROVISIONS RELATING TO THE DUTY-FREE ADMISSION OF SPARE PARTS, COMPONENTS OR ACCESSORIES UNDER THE SECOND SUBPARAGRAPH OF ARTICLE 2 (1) AND ARTICLE 3 (2) OF REGULATION (EEC) No 1028/79

Article 13

For the purpose of the second subparagraph of Article 2 (1) and Article 3 (2) of Regulation (EEC) No 1028/79 'specific accessories' means items specially designed for use with a specific article for the purpose of improving its performance and scope.

Article 14

In order to obtain duty-free admission of spare parts, components or specific accessories under the second subparagraph of Article 2 (1), or Article 3 (2) of Regulation (EEC) No 1028/79, the head of the institution or organization to which the articles are consigned, or his authorized representative, must submit an application to the competent authority of the Member State in which the institution or organization is situated.

This application must be accompanied by all data deemed necessary by the competent authority for the purpose of determining whether the conditions laid down in the second subparagraph of Article 2 (1) or in Article 3 (2) of Regulation (EEC) No 1028/79 are fulfilled.

Article 15

The competent authority of the Member State in which is situated the institution or organization to which such articles are consigned shall give a direct decision on applications under Article 14.

TITLE VI

FINAL PROVISIONS

Article 16

This Regulation shall enter into force on 1 January 1980.

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

Done at Brussels, 12 December 1979.

For the Commission

Étienne DAVIGNON

Member of the Commission