COMMISSION REGULATION (EEC) No 2784/79

of 12 December 1979

laying down provisions for the implementation of Council Regulation (EEC) No 1798/75 on the importation of Common Customs Tariff duties of educational, scientific or cultural materials

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1798/75 of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific or cultural materials (1), as amended by Regulation (EEC) No 1027/79 (2), and in particular Article 9 (1) thereof,

Whereas Commission Regulation (EEC) No 3195/75 (3), as amended by Regulation (EEC) No 1324/76 (4), laid down provisions for the implementation of the aforementioned Council Regulation ;

Whereas, as a result of the amendments made to Regulation (EEC) No 1798/75 by Regulation (EEC) No 1027/79, it is necessary to amend the said implementing provisions ; whereas, in particular, it is necessary to lay down special rules for the duty-free admission of spare parts, components or specific accessories for scientific instruments or apparatus and of tools to be used for their maintenance, control, adjustment or repair ;

Whereas it is also necessary to amend Article 9 of Regulation (EEC) No 3195/75 in order to take account of Council Regulation (EEC) No 2779/78 of 23 November 1978 on the procedure for applying the European unit of account (EUA) to legal acts adopted in the customs sphere (5) ;

Whereas, where educational, scientific or cultural materials admitted duty-free are loaned, hired out or transferred between establishments or organizations situated in different Member States, provision should be made for supervision of the destination and use of the materials 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 (6) ;

Whereas, furthermore, it appears necessary, on the basis of experience acquired, to make certain amendments to the procedure established by Regulation (EEC) No 3195/75, particularly as regards the time limits laid down in Article 4 thereof ;

Whereas it seems expedient, in view of the numerous amendments to be made to the provisions of Regulation (EEC) No 3195/75 and in the interests of clarity, to consolidate within a single text all the provisions for the implementation of Regulation (EEC) No 1798/75, and consequently to repeal Regulation (EEC) No 3195/75 ;

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 establishment or organization to which the goods are consigned

Article 1

1. The duty-free admission of educational, scientific or cultural materials referred to in Article 2 (1) Article 3 (1) and (2) and Article 5 of Regulation (EEC) No 1798/75, hereinafter referred to as 'goods', shall entail the following obligations on the part of the establishment or organization to which the goods are consigned :

— to dispatch the goods 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 1798/75,

(1) OJ No L 184, 15. 7. 1975, p. 1.
(2) OJ No L 134, 31. 5. 1979, p. 1.
(3) OJ No L 316, 6. 12. 1975, p. 17.
(4) OJ No L 149, 9. 6. 1976, p. 7.
(5) OJ No L 333, 30. 11. 1978, p. 5.
(6) OJ No L 38, 9. 2. 1977, p. 20.

— 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 establishment or organization to which the goods 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.

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 establishment or organization to which the goods are consigned.

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

Article 2

1. Where the provisions of the first subparagraph of Article 6 (2) of Regulation (EEC) No 1798/75 are applied, the establishment or organization to which goods are lent, hired out or transferred shall, from the date or receipt of the goods, comply with the same obligations as those set out in Article 1.

2. Where the establishment or organization to which goods are lent, hired out or transferred is situated in a Member State other than that in which the establishment that lent, hired out or transferred the goods is situated, upon the dispatch of such goods 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 goods 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 :

— Goods admitted duty-free (UNESCO).
Implementation of Article 6 (2) of Regulation (EEC) No 1798/75,

— Toldfrit indførte varer (UNESCO).
Anvendelse af artikel 6, stk. 2, i forordning (EØF) nr. 1798/75,

— Zollfreie Ware (UNESCO).
Anwendung von Artikel 6 Absatz 2 der Verordnung (EWG) Nr 1798/75,

— Object en franchise des droits de douane (UNESCO).
Application de l'article 6, paragraphe 2, du règlement (CEE) n° 1798/75,

— Oggetto in franchigia dai dazi doganali (UNESCO).
Applicazione dell'articolo 6, paragrafo 2, del regolamento (CEE) n. 1798/75,

— Voorwerp met vrijstelling van douanerechten (UNESCO).
Toepassing van artikel 6, lid 2, van Verordening (EEG) nr. 1798/75.

3. The provisions of paragraphs 1 and 2 shall apply, *mutatis mutandis,* to the loan, hire or transfer of spare parts, components or specific accessories for scientific instruments or apparatus, and to tolls for the maintenance, control, calibration or repair of scientific instruments or apparatus, which have been admitted duty-free under Article 3 (2) of Regulation (EEC) No 1798/75.

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

Article 3

1. An establishment or organization which ceases to fulfil the conditions giving entitlement to duty-free admission, or which is proposing to use goods acquired duty-free for purposes other than those provided for by Regulation (EEC) No 1798/75, shall so inform the competent authorities.

2. Where goods are used for purposes other than those provided for in Regulation (EEC) No 1798/75, 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 EDUCATIONAL SCIENTIFIC OR CULTURAL MATERIALS IN ACCORDANCE WITH ARTICLE 2 (1) OF REGULATION (EEC) No 1798/75

Article 4

In order to obtain duty-free admission of goods in accordance with Article 2 (1) of Regulation (EEC) No 1798/75, the head of the establishment or organization to which the goods are consigned, or his authorized representative, must submit an application to the competent authority of the Member State in which the establishment 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 SCIENTIFIC INSTRUMENTS OR APPARATUS UNDER ARTICLE 3 OF REGULATION (EEC) No 1798/75

Article 5

1. For the purposes of the first indent of Article 3 (3) of Regulation (EEC) No 1798/75, the 'objective technical characteristics' of a scientific instrument or apparatus shall be understood to mean those characteristics resulting from the construction of that instrument or apparatus or from adjustments to a standard instrument or apparatus which make it possible to obtain high-level performances above those normally required for industrial or commercial use.

Where it is not possible to establish clearly on the basis of its objective technical characteristics whether an instrument or apparatus is to be regarded as a scientific instrument or apparatus, reference shall be made to the general uses in the Community of instruments or apparatus of the type for which duty-free admission is requested. If this examination shows that the instrument or apparatus in question is used mainly for scientific purposes, it shall be deemed to be of a scientific nature.

2. In making the comparison provided for in the third indent of Article 3 (3) of Regulation (EEC) No 1798/75, only such technical characteristics as have a decisive influence on the outcome of the specific work planned may be regarded as 'essential'.

The following, in particular, shall not be taken into account in making this comparison :

— the technical conception of an instrument or apparatus,
— the fact that an instrument or apparatus is able to achieve performances superior to those which are necessary for a proper execution of the specific work to be carried out,
— the external appearance of an instrument or apparatus,
— its commercial value,
— the servicing intervals,
— any after-sales service that may be provided.

Article 6

1. In order to obtain duty-free admission of a scientific instrument or apparatus under the provisions of Article 3 (1) of Regulation (EEC) No 1798/75 the head of the establishment or organization to which the goods are consigned, or his authorized representative, must submit an application to the competent authority of the Member State in which the establishment or organization is situated.

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

(a) the precise trade description of the instrument or apparatus used by the manufacturer, its presumed Common Customs Tariff classification and the objective technical characteristics on the basis of which the instrument or apparatus is considered to be scientific ;

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

(c) the country of origin of the instrument or apparatus ;

(d) the place where the instrument or apparatus is to be used ;

(e) the use for which the instrument or apparatus is intended ;

(f) a detailed description of the project for which the instrument or apparatus is to be used ;

(g) the price of the instrument or apparatus, or, if known, its value for customs purposes ;

(h) the estimated delivery period ;

(i) the date when the instrument or apparatus was ordered if it has already been ordered ;

(j) the name or business name and address of the Community firm or firms which have been approached with a view to the supply of a instrument or apparatus of a scientific value equivalent to that for which duty-free admission is requested, the outcome of these approaches and, where appropriate, detailed reasons why an instrument or apparatus which is available in the Community would not be suitable for the particular scientific work to be undertaken.

Documentary evidence providing all relevant information on the characteristics and technical specifications of the instrument or apparatus must be furnished with the application.

Article 7

1. The competent authority of the Member State in which is situated the establishment or organization to which the goods are consigned shall take a direct decision on applications under Article 6 in all cases where

the information at its disposal, if necessary after consultation with the trade circles concerned, enables it to assess whether or not the instrument or apparatus is scientific and whether or not there exist instruments or apparatus of equivalent scientific value which are currently manufactured in the Community.

2. Where the competent authority of the Member State in which is situated the establishement or organization to which the goods are consigned is unable to take a decision as provided in paragraph 1, the application, together with the relevant technical documents, shall be forwarded to the Commission in order to enable the latter to commence the procedure prescribed in paragraphs 3 to 7.

Pending the completion of that procedure, the competent authority may authorize the provisional duty-free importation of the instrument or apparatus concerned, subject to an undertaking by the establishment or organization to which the goods are 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.

3. 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.

4. 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 instrument or apparatus under consideration, the said instrument or apparatus 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.

5. If, within the period of three months laid down in paragraph 4, a Member State has sent the Commission objections regarding the duty-free importation of the instrument or apparatus 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 either why the instrument or apparatus concerned should not be regarded as being scientific, or should indicate the exact type of the instruments or apparatus manufactured in the Community which are regarded as having a scientific value equal to that for which duty-free admission is requested, together with the name or business name and address of the Community firm or firms who can supply them. In the latter case, the technical literature relating to the instruments or apparatus under consideration manufactured in the Community should be forwarded to the Commission as soon as possible.

The Commission shall transmit this information to the Member States as soon as it is received.

6. Where the examination undertaken in accordance with paragraph 5 shows that the instrument or apparatus for which duty-free admission has been requested must be regarded as being scientific and that instruments or apparatus of equivalent scientific value are currently not manufactured in the Community, the Commission shall adopt a decision declaring that the said instrument or apparatus fulfils the conditions required for duty-free admission.

Where this examination shows that the instrument or apparatus for which duty-free admission has been requested is not to be regarded as scientific, or that there is an instrument, or apparatus of equivalent scientific value currently manufactured in the Community, the Commission shall adopt a decision declaring that the said instrument or apparatus does not fulfil the conditions required for duty-free admission.

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

7. 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 6, the instrument or apparatus in question shall be deemed to fulfil the conditions required for duty-free admission.

Article 8

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 SCIENTIFIC INSTRUMENTS OR APPARATUS UNDER ARTICLE 5 OF REGULATION (EEC) No 1798/75

Article 9

1. In order to obtain duty-free admission of scientific instruments or apparatus under the provisions of Article 5 of Regulation (EEC) No 1798/75, the head of the establishment or organization to which the

goods are consigned or his authorized representative, must submit an application to the competent authority of the Member State in which the establishment 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 instrument or apparatus concerned.

It must also include :

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

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

Article 10

1. The competent authority of the Member State in which is situated the establishment or organization to which such goods are consigned shall take a direct decision on applications under Article 9.

The competent authority shall authorize duty-free admission of the instruments or apparatus under consideration only if it has been established to its entire satisfaction that the donor attaches no commercial considerations whatsoever to the gift to the establishment or organization to which the goods are consigned.

2. Where the competent authority of the Member State in which is situated the establishment or organization to which the goods are consigned is unable to decide on the basis of information at its disposal whether or not the instrument or apparatus for which duty-free admission has been requested should be regarded as scientific, the procedure laid down in Article 7 (2) to (7) shall apply.

Article 11

The provisions of Article 9 and 10 shall apply *mutatis mutandis*, to tools for the maintenance, control, calibration and repair of scientific instruments or apparatus which have been admitted duty-free under Article 5 of Regulation (EEC) No 1798/75.

TITLE V

SPECIAL PROVISIONS RELATING TO THE DUTY-FREE ADMISSION OF SPARE PARTS, COMPONENTS OR SPECIFIC ACCESSORIES OR TOOLS UNDER ARTICLE 3 (2) (a) AND (b) OF REGULATION (EEC) No 1798/75

Article 12

For the purpose of Article 3 (2) (a) of Regulation (EEC) No 1798/75 'specific accessories' means those articles specially designed for use with a specific scientific instrument or apparatus for the purpose of improving its performance and scope.

Article 13

In order to obtain duty-free admission under Article 3 (2) of Regulation (EEC) No 1798/75 either of spare parts, components or specific accessories, or of tools, the head of the establishment or organization to which the goods are consigned, or his authorized representative, must submit an application to the competent authority of the Member State in which the establishment 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 Article 3 (2) (a) or (b) of Regulation (EEC) No 1798/75 are fulfilled.

Article 14

1. Subject provided in paragraph 2 hereof, the competent authority of the Member State in which is situated the establishment or organization to which the goods are consigned shall take a direct decision in respect of the application mentioned in Article 13.

2. The procedure set out in Article 7 (2) to (7) shall apply, *mutatis mutandis*, in cases where the competent authority of the Member State in which is situated the establishment or organization to which the goods are consigned is unable to determine whether or not :

— the instrument or apparatus for which are intended the spare parts, components, specific accessories or tools forming the subject of an application as referred to in Article 13 would qualify for duty-free admission if it were itself currently imported into the Community,

— tools equivalent to those for which duty-free admission is requested are currently manufactured within the Community.

Article 15

The provisions of Article 8 shall apply to authorizations for duty-free admission issued under Article 3 (2) of Regulation (EEC) No 1798/75.

TITLE VI

COMMUNICATION OF INFORMATION TO THE COMMISSION AND THE MEMBER STATES

Article 16

1. Each Member State shall send the Commission a list of the instruments, apparatus, spare parts, components, accessories and tools of which the price or the value for customs purposes exceeds 3 000 European units of account and for which it has authorized duty-free admission under Article 7 (1) or 14 (1).

The list shall give the trade description of the goods referred to in the preceding paragraph and the Common Customs Tariff heading or subheading indicated in the application. It shall also include the name of the manufacturer or manufacturers, the country or countries of origin and the price or customs value of the goods concerned.

2. Lists as referred to in paragraph 1 shall be sent during the the first and third quarters of each year and shall contain particulars of those goods whose duty-free admission has been authorized during the preceding six months.

3. The Commission shall forward these lists to the other Member States.

4. The equivalent in national currency of the 3 000 European units of account referred to in paragraph 1 shall be calculated in accordance with the rules laid down in the first subparagraph of Article 2 (2) of Regulation (EEC) No 2779/78.

5. Member States shall be entitled to round off the sum arrived at by converting 3 000 European units of account into national currency.

6. Member States shall be entitled to maintain unchanged the equivalent in national currency of 3 000 European units of account if, at the time of the annual adjustment provided for in the first subparagraph of Article 2 (2) of the abovementioned Regulation (EEC) No 2779/78, the conversion of this amount results, before the rounding off provided for in paragraph 5, in a change in the equivalent in national currency of less than 5 %.

Article 17

1. Each Member State shall also send the Commission a list of the instruments, apparatus, spare parts, components, accessories and tools for which it has authorized duty-free admission under Articles 10 and 11. The list shall contain the name or business name and address of the manufacturer and the trade descripions of the goods in question, together with their Common Customs Tariff heading or subheading as given in the application for duty-free admission.

2. Lists as referred to in paragraph 1 shall be sent during the first and third quarters of each year and shall contain particulars of those goods whose duty-free admission has been authorized during the preceding six months.

3. The Commission shall forward these lists to the other Member States.

Article 18

The lists referred to in Articles 16 and 17 shall be examined periodically by the Committee on Duty-Free Arrangements.

TITLE VII

FINAL PROVISIONS

Article 19

Regulation (EEC) No 3195/75 is hereby repealed.

Article 20

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