COMMISSION REGULATION (EEC) No 3040/83

of 28 October 1983

laying down provisions for the implementation of Articles 2 and 14 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties [1], as amended by Regulation (EEC) No 1672/82 [2], and in particular Article 25 (2) thereof,

Whereas experience since the entry into force of Regulation (EEC) No 1430/79 has shown the need to establish certain provisions for the implementation of Article 2 of that Regulation ;

Whereas it is necessary in particular to clarify the concept of the amount of duties lawfully payable, in Article 2 (1); whereas this clarification, amongst others, is necessary in order to determine the conditions under which the person concerned may obtain repayment or remission of import duties where it is established that, on the date of acceptance of the relevant entry for release for free circulation, the goods to which his application refers fulfilled all the conditions required by the legislation in force to be eligible for preferential tariff treatment ; whereas there is a particular need to define the rules to be followed in cases where the preferential tariff treatment in question is applicable under a tariff quota, a tariff ceiling, whether or not allocated, or another analogous tariff limit ;

Whereas the provisions on the repayment or remission of import duties may not be relied upon in order to frustrate the specific rules in force in respect of the release for free circulation of goods, in particular in the area of the common agricultural policy ; whereas they may not *inter alia* permit the post-clearance production of documents which are required to be produced under the rules in question at the time of acceptance of the entry for release for free circulation ; whereas this is the case with regard to certificates for the advance fixing of levies or of levies and monetary compensatory amounts under the common agricultural policy ;

Whereas the provisions of this Regulation must be applied *mutatis mutandis* with respect to the repayment or remission of export duties ;

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 :

Article 1

1. For the purposes of Article 2 of Regulation (EEC) No 1430/79, 'the amount lawfully payable' means the amount of the import duties which, under the rules in force at the time of acceptance of the entry for release for free circulation, including provisions relating to the grant of a reduced or zero rate of duty, would have been payable in respect of the goods concerned if all the particulars and documents necessary for the implementation of such rules had been duly delcared and produced and had in fact been taken into account by the competent authorities in the calculation of the duties.

2. Where an application for repayment or remission is based on the existence, at the time of acceptance of the entry for release for free circulation of the goods, of a reduced or zero rate of import duty applicable within the limits of a tariff quota, a tariff ceiling, whether or not allocated, or another analogous tariff measure, it may be submitted even after the expiry of the period in respect of which the measure in question has been fixed.

Repayment or remission shall be granted only in so far as at the time of submission of the application for repayment or remission accompanied by the necessary documents :

— in the case of an allocated tariff quota or a tariff ceiling, the limits laid down under that allocated tariff quota or tariff ceiling in respect of the release of the goods in question for free circulation in the Community have not been reached,

— in the case of a non-allocated tariff ceiling or another analogous tariff measure, the normal rate of duty has not been re-established.

[1] OJ No L 175, 12. 7. 1979, p. 1.
[2] OJ No L 186, 30. 6. 1982, p. 1.

Repayment or remission shall, however, be granted even if the conditions laid down in the preceding paragraph have not been fufilled, where, as a result of an error on the part of the competent authorities themselves, the reduced or zero rate of duty has not been applied to goods in respect of which the entry for release for free circulation contained all the particulars and was accompanied by all the documents necessary for the application of the reduced or zero rate.

3. Where, in support of an application for repayment or remission, a certificate of origin, movement certificate, internal Community transit document or equivalent to an internal Community transit document or any other appropriate document is produced attesting that the imported goods were eligible, at the time of acceptance of the entry for release for free circulation, for Community treatment or preferential tariff treatment, the competent authorities shall grant such application only where it is duly established :

— that the document thus produced refers specifically to the goods in question and that all the conditions relating to acceptance of the said document are fulfilled,

— that all the other conditions for the grant of the preferential tariff treatment are fulfilled.

Repayment or remission shall be effected upon presentation of the goods. Where the goods cannot be presented to the competent authorities, the latter shall grant repayment or remission only where it is apparent from control information at their disposal that the certificate or document produced post-clearance applies without doubt to the said goods.

4. Certificates for the advance fixing of levies or of levies and monetary compensatory amounts under the common agricultural policy shall not be accepted in support of an application for repayment or remission.

5. For the purposes of this Article, where applicable the date of acceptance of the entry for release for free circulation shall be deemed to be the date on which any other act having the same legal effects as such acceptance, under the provisions in force, is performed.

Article 2

The provisions of this Regulation shall apply *mutatis mutandis* with respect to the repayment or remission of export duties.

Article 3

This Regulation shall enter into force on 1 January 1984.

It shall apply to applications for the repayment or remission of import duties or export duties entered in the accounts on and after that date.

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

Done at Brussels, 28 October 1983.

For the Commission

Karl-Heinz NARJES

Member of the Commission