COUNCIL REGULATION (EEC) No 2144/87
of 13 July 1987
on customs debt

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 (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt (4) defined the various situations giving rise to a customs debt on importation or exportation ; whereas that Directive also determined the moment to be taken into consideration for the determination of the amount of customs debt and its liability for payment, as well as specifying the circumstances in which a customs debt is extinguished ;

Whereas the rules governing the incurrence of a customs debt, the determination of its amount, when it becomes due and its extinction are so important for the proper functioning of the customs union that it is essential to ensure that such rules are implemented as uniformly as possible in the Community ; whereas, to this end, the present provisions of Directive 79/623/EEC should be embodied in a Regulation ; whereas this will lead to greater legal certainty for individuals ;

Whereas all the principles embodied in Directive 79/623/EEC should be incorporated in this Regulation, together with further principles based on experience gained since the Directive was adopted ; whereas provision should be made, in particular, that the *de facto* integration into the Community economy of goods the importation of which is subject to measures of prohibition or restriction of whatever kind, but excluding narcotic drugs, causes a customs debt to be incurred ;

Whereas, indeed, the economic and financial effect on the Community economy of such *de facto* integration is identical to that which would result from an importation carried out lawfully pursuant to an authorization granted by the competent authorities permitting a derogation from the import, prohibition or restriction measure involved ; whereas, moreover, the Common Customs Tariff makes no distinction, as regards application of the rates of duty set out therein, between goods which are integrated into the Community economy lawfully and those which are not ;

Whereas provision should also be made that a customs debt on exportation is incurred even if it concerns goods the exportation of which is subject to measures of prohibition of whatever kind, where, as a result of an unlawful act, those goods actually leave the customs territory of the Community ;

Whereas it is justifiable to provide that the customs debt on importation is extinguished in respect of goods where they are seized by the customs authorities and confiscated ;

Whereas account should also be taken, when determining the situation in which a customs debt is incurred, of the provisions of Council Regulation (EEC) No 3599/82 of 21 December 1982 on temporary importation arrangements (5), as last amended by the Act of Accession of Spain and Portugal, which provide, in certain cases, for the use of such customs arrangements only with partial relief from import duties ;

Whereas the provisions of Article 10 of Directive 79/623/EEC, which concern trade between Member States, should be supplemented by drawing up specific rules on the compensatory levy collected in certain circumstances on the dispatch from one Member State to another Member State of goods obtained under the inward processing procedure ; whereas account should also be taken on the provisions applicable to trade between the Community and the non-member countries which constitute the European Free Trade Association ; whereas the agreements concluded with those non-member countries provide for the application of preferential tariff treatment for goods originating in Member States ; whereas, where compensating products obtained or produced in the Community under the inward procesing arrangements are concerned, such preferential tariff treatment is conditional on payment of the import duties payable on goods from non-member countries contained in the said compensating products ;

Whereas it is deemed more appropriate to include the rules on liability for payment of the customs debt, which are currently set out in Article 8 of Directive 79/623/EEC, among the provisions concerning entry in the accounts and the terms of payment of customs debts ;

Whereas it is necessary to safeguard the uniform implementation of the provisions of this Regulation and to provide to that end for a Community procedure enabling the rules for their implementation to be adopted within an appropriate period ; whereas the Committee on

(1) OJ No C 261, 29. 9. 1984, p. 4.
(2) OJ No C 122, 20. 5. 1985, p. 158.
(3) OJ No C 44, 15. 2. 1985, p. 8.
(4) OJ No L 179, 17. 7. 1979, p. 31.
(5) OJ No L 376, 31. 12. 1982, p. 1.

General Customs Rules set up by Article 24 of Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation [1] as last amended by Directive 81/853/EEC [2] is the appropriate body to organize close and effective collaboration between the Member States and the Commission in this field;

Whereas this Regulation concerns customs debt, whether it results from the implementation of the common agricultural policy or from the implementation of the Treaty provisions concerning the customs union; whereas this measure is necessary to attain, in the course of the operation of the common market, one of the objectives of the Community; whereas the Treaty has not provided, in the case of the customs union, the necessary powers for this purpose; whereas it is therefore necessary to base this Regulation also on Article 235 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the rules in respect of:

(a) the incurrence of a customs debt;

(b) the moment to be taken into consideration for the determination of the amount of a customs debt;

(c) the extinction of a customs debt.

2. For the purposes of this Regulation:

(a) *'customs debt'* means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply under the provisions in force to goods liable to such duties;

(b) *'person'* means:

— a natural person, or

— a legal person, or

— when this possibility is provided for in the rules in force, an association of persons recognized as having legal capacity but lacking the legal status of a legal person;

(c) *'Community goods'* means goods:

— entirely obtained in the customs territory of the Community, without the addition of goods from third countries or territories which are not part of the customs territory of the Community,

— from countries or territories not forming part of the customs territory of the Community which have been released for free circulation in a Member State,

— obtained in the customs territory of the Community either from the goods referred to exclusively in the second indent or from goods referred to in the first and second indents;

(d) *'import duties'* means customs duties and charges having equivalent effect, and agricultural levies and other import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;

(e) *'export duties'* means agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products.

TITLE I

INCURRENCE OF CUSTOMS DEBT

A. Customs debt on importation

Article 2

1. A customs debt on importation shall be incurred by:

(a) the placing of goods liable to import duties in free circulation or the placing of such goods under the temporary importation procedure with partial relief from import duties;

(b) the unlawful introduction into the customs territory of the Community of goods liable to import duties.

When the goods liable to import duties coming from a free zone situated within the customs territory of the Community are unlawfully introduced into another part of that territory, such introduction shall be considered as an unlawful introduction into the customs territory of the Community.

For the purposes of this point, unlawful introduction means any introduction in violation of the provisions adopted in implementation of Article 2 of Council Directive 68/312/EEC of 30 July 1968 on the harmonization of the provisions laid down by law, regulation or administrative action relating to customs treatment of goods entering the customs territory of the Community, and the temporary storage of such goods [3], as last amended by the Act of Accession of Spain and Portugal;

(c) the removal of goods liable to import duties from the customs supervision involved in the temporary storage of the goods or their being placed under a customs procedure which involves customs supervision;

[1] OJ No L 205, 13. 8. 1979, p. 19.
[2] OJ No L 319, 7. 11. 1981, p. 1.
[3] OJ No L 194, 6. 8. 1968, p. 13.

(d) the non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or non-compliance with a condition to which the placing of the goods under that procedure is subject, unless it is established that these failures have no significant effect on the correct operation of the temporary storage or customs procedure in question;

(e) the non-fulfilment of one of the obligations arising in respect of goods from their being put into free circulation with total or partial relief from import duties because of their intended use for a particular purpose; or the failure to meet one of the conditions laid down for granting this exemption, unless it is established that these failures have no significant effect on the use of the goods for the intended purpose;

(f) the definitive retention, in the customs territory of the Community, of waste or scrap liable to import duties which results from the destruction of goods with the prior authorizaation of the competent authorities, where such destruction has the effect:

— in accordance with Article 4 (1) (b), of not causing to be incurred in respect of the said goods the customs debt which should have been incurred pursuant to point (e) of this paragraph, or

— of permitting the repayment or remission, on the basis of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties [1], as last amended by Regulation (EEC) No 3069/86 [2], of the import duties payable on the goods in respect of which the corresponding customs debt arose.

2. The customs debt on importation shall be incurred even if it relates to goods subject to measures of prohibition or restriction on importation of whatever kind.

However, no customs debt shall be incurred on the unlawful introduction into the customs territory of the Community of narcotic drugs which do not enter into the economic circuit strictly supervised by the competent authorities with a view to their use for medical and scientific purposes. For the purposes of criminal law as applicable to customs offences, the customs debt shall nevertheless be deemed to have been incurred where, under a Member State's criminal law, customs duties provide the basis for determining penalties, or the existence of a customs debt is grounds for taking criminal proceedings.

Article 3

The moment when a customs debt on importation is incurred shall be deemed to be:

(a) in the cases referred to in Article 2 (1) (a), the moment when the competent authorities accept the entry of the goods for free circulation or temporary importation or the time of any other act which, in accordance with the provisions in force, has the same effect in law as such acceptance;

(b) in the cases referred to in Article 2 (1) (b), the moment when the goods are unlawfully introduced into the customs territory of the Community;

(c) in the cases referred to in Article 2 (1) (c), the moment when the goods are removed from customs supervision;

(d) in the cases referred to in Article 2 (1) (d), either the moment when the obligation, non-fulfilment of which causes the customs debt to be incurred, ceases to be met, or the moment when the goods were placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure was not in fact fulfilled;

(e) in the cases referred to in Article 2 (1) (e), either the moment when the obligation, non-fulfilment of which causes the customs debt to be incurred, ceases to be met, or the moment when the goods were placed in free circulation where it is established subsequently that one of the conditions governing the placing of the said goods in free circulation was not in fact fulfilled;

(f) in the cases refered to in Article 2 (1) (f), the moment at which the goods which give rise to waste or scrap are destroyed.

Article 4

1. No customs debt on importation shall be deemed to be incurred in respect of specific goods:

(a) by way of derogation from Article 2 (1) (b) and (d), where the person concerned proves that the non-fulfilment of the obligations which arise from:

— the provisions adopted in implementation of Article 2 of Directive 68/312/EEC, or

— keeping the goods in question in temporary storage, or

— the use of the customs procedure under which the goods have been placed,

results from the total destruction or irretrievable loss of the goods by reason of the nature of the goods themselves or because of unforeseeable circumstances or *force majeure,* or following an authorization given by the competent authorities.

For the purposes of this point, goods shall be irretrievably lost when they are made unusable by any person.

[1] OJ No L 175, 12. 7. 1979, p. 1.
[2] OJ No L 286, 9. 10. 1986, p. 1.

(b) by way of dergation from Article 2 (1) (e), where the goods having first been released for free circulation with total or partial relief from import duties because of their intended use for particular purposes, are, with the authorization of the competent authorities, re-exported from the Community or destroyed;

(c) by way of derogation from the first indent of Article 2 (1) (f), where the amount of the import duties relating to scrap and waste resulting from the destruction of goods released for free circulation with partial relief from import duties because of their intended use for particular purposes, is less than or equal to the amount of the import duties resulting from the release for free circulation of the destroyed goods.

2. Where the amount of the import duties relating to the scrap and waste resulting from the destruction of goods released for free circulation with partial relief from import duties because of their intended use for particular purposes is higher than the amount of the import duties resulting from the release for free circulation of the destroyed goods, the amount of the customs debt on importation incurred by virtue of the first indent of Article 2 (1) (f) shall be equal to the difference between the amount of the import duties relating to the scrap and waste and the amount of the import duties resulting from the release for free circulation of the destroyed goods.

B. Customs debt on exportation

Article 5

1. A customs debt on exportation shall be incurred by:

(a) goods liable to export duties leaving the customs territory of the Community; goods destined for the island of Heligoland shall not be deemed to be exported frm that customs territory;

(b) failure to comply with the conditions under which the goods were allowed to leave the customs territory of the Community with total or partial relief from export duties.

2. The provisions of Article 2 (2) relating to customs debt shall apply *mutatis mutandis* to goods subject to measures of prohibition or restriction on exportation of whatever kind.

Article 6

The moment when a customs debt on exportation is incurred shall be deemed to be:

(a) in the cases referred to in Article 5 (1) (a):

— if the goods in question are the subject of an export declaration, the moment when the competent authorities accept that declaration or the time of any ther act which, in accordance with the provisions in force, has the same effect in law as such acceptance,

— if the goods in question have not been the subject of a customs declaration as referred to in the first indent, the moment when the goods actually leave the customs territory of the Community;

(b) in the cases referred to in Article 5 (1) (b), the moment when the goods reach a destination other than that for which they were allowed to leave the customs territory of the Community with total or partial relief from export duties or, should the competent authorities be unable to determine that moment, the moment of expiry of the time-limit set for the production of proof that the conditions which entitle the goods to such relief have been complied with.

TITLE II

MOMENT TO BE TAKEN INTO CONSIDERATION FOR THE DETERMINATION OF THE AMOUNT OF CUSTOMS DEBT

Article 7

Subject to the special provisions adopted under specific customs or agricultural legislation:

(a) the amount of the import or export duties payable on goods shall be determined on the basis of the rules of assessment applicable to the goods at the moment when the customs debt in respect of them is incurred, and, in the case of goods covered by temporary admission arrangements with partial relief from import duties, shall be determined by the number of months or fractions of a month the goods in questions have been covered by such arrangements;

(b) where it is not possible to determine precisely when the customs debt is incurred, the material time for determining the rules of assessment applicable to the goods concerned shall be the moment when the competent authorities conclude that the goods are in a situation in which a customs debt is incurred.

However, where the information available to the competent authorities enables them to establish that the customs debt was incurred at a moment prior to that at which they reached that conclusion, the amount of the import or export duties payable on the goods in question shall be determined on the basis of the rules of assessment applicable to the goods at the most distant moment in the past at which existence of the customs debt arising from this situation may be established from the information available.

TITLE III

EXTINCTION OF CUSTOMS DEBT

Article 8

1. Without prejudice to the provisions in force concerning the withdrawel of action to recover the amount of a customs debt in the event of the time bar for that debt having lapsed, and also concerning the non-recovery of such amounts due to the establishment by judicial process of the insolvency of the debtor, a customs debt shall be extinguished :

(a) by payment of the amount of the import or export duties payable on the goods in question or, where appropriate, by remission of that amount pursuant to the Community provisions in force ;

(b) by confiscation of the goods. For the purposes of criminal law applicable to customs offences, the customs debt shall nonetheless be deemed as not to have been extinguished where, under a Member State's criminal law, customs duties provide the basis for determining penalties, or the existence of a customs debt is grounds for taking criminal proceedings.

2. Customs debt on importation shall also be extinguished ;

(a) where, before they have been released, the entry of the goods for release for free circulation or for temporary importation with partial relief from import duties is, for a reason admissible under the rules in force, cancelled or rendered invalid by the competent authorities, or where the latter authorize the declarant to replace such declaration by an entry for another customs procedure ;

(b) where the goods entered for release for free circulation or for temporary importation with partial relief from import duties are, before their release, destroyed on the order or with the authorization of the competent authorities or surrendered, in the same state or after destruction, to the exchequer with the agreement of the said authorities ;

(c) where the person concerned that the goods entered for release for free circulation or for temporary importation with partial relief from import duties were destroyed or irretrievably lost before their release as a result of the actual nature of the goods or of unforeseeable circumstances or *force majeure* ;

(d) where the person concerned proves that the circumstances which caused the non-fulfilment of an obligation arising, in respect of goods liable to import duties, from their being kept in temporary storage or from the use of the customs procedure under which they were placed were due either to :

— the exportation of the goods concerned from the customs territory of the Community or their introduction into a free zone, or

— the consignment of the goods concerned to another Member State where they were treated in accordance with their legal status therein.

3. Customs debt on exportation shall also be extinguished :

(a) where the export declaration is, for a reason admissible under the rules in force, cancelled or rendered invalid by the competent authorities ;

(b) where the person concerned proves that it has not been possible for the goods declared for export to leave the customs territory of the Community.

TITLE IV

PROVISIONS APPLICABLE TO TRADE BETWEEN THE COMMUNITY AND CERTAIN THIRD COUNTRIES

Article 9

1. In so far as agreements concluded between the Community and certain third countries provide for the granting on importation into those countries of preferential tariff treatment for goods originating in the Community within the meaning of such agreements, on condition that, where they have been obtained or produced under the inward processing arrangements, products from third countries used in producing the said goods are subjected to payment of the import duties payable thereon, the validation of the documents necessary to enable such preferential tariff treatment to be obtained in third countries shall cause a customs debt on importation to be incurred.

The moment when such customs debt is incurred shall be deemed to be the moment when the competent authorities accept the export declaration relating to the goods in question or any other act which, in accordance with the provisions in force, has the same effect in law as such acceptance.

The amount of the import duties corresponding to this customs debt shall be determined under the same conditions as in the case of a customs debt resulting from the acceptance, on the same date, of the declaration of release for free circulation of the goods concerned terminating the inward processing arrangements.

2. Article 8 (1), (2) (b) and (2) (c) shall apply *mutatis mutandis* to the extinction of the customs debt referred to in paragraph 1 of this Article. The said customs debt shall also be extinguished when the formalities completed to enable preferential tariff treatment to be obtained are cancelled.

TITLE V

PROVISIONS APPLICABLE TO TRADE BETWEEN MEMBER STATES

Article 10

1. To the extent that Community goods are liable to customs or agricultural charges when traded between Member States, Articles 2 to 8 shall apply *mutatis mutandis,* as regards the incurrence of the customs debt arising from this situation, to the moment to be taken into consideration for determining the amount of the customs debt and its extinction.

2. In so far as, during the transitional period laid down by the Acts of Accession to the Community of new Member States, the placing in free circulation in the new Member States of goods obtained or produced under the inward processing procedure in other Member States, and vice versa, is subject to the charging of a compensatory levy, the completion of the formalities necessary to permit the placing in free circulation of the goods in question shall cause a customs debt on importation to be incurred.

The moment when such customs debt is incurred shall be deemed to be the moment when the competent authorities accept the declaration for dispatch to the Member State of destination concerned, or any other act which, in accordance with the provisions in force, has the same effect in law as such acceptance.

Article 8 (1), (2) (b) and (2) (c) shall apply *mutatis mutandis* to the extinction of such customs debt. The said customs debt shall also be extinguished when the formalities completed to place the goods in question in free circulation are cancelled.

TITLE VI

FINAL PROVISIONS

Article 11

This Regulation shall be without prejudice to the provisions in force in the Member States under which the goods themselves constitute security for the import or export duties to which they are liable and as such may be liable to seizure or confiscation.

Article 12

The measures necessary to implement this Regulation shall be adopted in accordance with the procedure laid down in Article 26 (2) and (3) of Directive 79/695/EEC.

Article 13

Directive 79/623/EEC is hereby repealed with effect from 1 January 1989.

Any references to that Directive shall be read as referring to this Regulation.

Article 14

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

It shall apply with effect from 1 January 1989.

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

Done at Brussels, 13 July 1987.

For the Council

The President

P. SIMONSEN