COMMISSION REGULATION (EEC) No 4027/88

of 21 December 1988

laying down provisions for the temporary importation of containers

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2096/87 of 13 July 1987 on the temporary importation of containers (1), and in particular Article 15 thereof,

Whereas arrangements for the temporary importation of containers should be established pursuant to Regulation (EEC) No 2096/87;

Whereas certain terms used to define containers should themselves be defined;

Whereas different procedures need to be adopted for containers which are marked in a specified way and those which are not so marked; whereas containers approved for transport under customs seal are always so marked;

Whereas the rules concerning recognition of approval for the transport under customs seal of containers admutted for temporary importation should be determined;

Whereas only containers complying with the conditions laid down in Annex 4 to the 1972 Customs Convention on Containers or Annex 7 to the TIR Convention can be recognized as approved for transport under customs seal; whereas such approval must therefore be accorded by a State party to either the 1956 Customs Convention on Containers, the 1972 Customs Convention on Containers or the TIR Convention;

Whereas the conditions governing authorization of the use of the arrangements for the temporary importation of containers should be adopted; whereas the obligations of users should be established so that the customs authorities can carry out the checks needed to ensure that Community provisions are correctly applied;

Whereas the requirements that a customs document be produced and a security lodged should be reserved for exceptional cases where there is reasonable doubt or a serious risk that the obligation to re-export will not be complied with and where the payment of any resulting customs debt cannot be guaranteed, in cases where the containers are not marked as required;

(1) OJ No L 196, 17. 7. 1987, p. 4.

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee for Customs Procedures with Economic Impact,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL

Article 1

1. (a) 'Basic Regulation' shall mean Council Regulation (EEC) No 2096/87 of 13 July 1987 on the temporary importation of containers.

(b) 'Person benefiting from the arrangements' shall mean the operator of a container or his representative.

(c) 'Operator' of a container shall mean the person who, whether or not its owner, has effective control of its movements.

(d) 'Person' shall mean:

— a natural person,

— a legal person, or

— where this possibility is provided for by the rules in force, an association of persons recognized as having the capacity to carry out legal acts without having the status of a legal person.

(e) 'Transport under customs seal' shall mean the use of a container to transport goods which are identified by the sealing of the container.

(f) 'Demountable body' shall mean a loading compartment which has no independent means of movement and is specifically designed to be transported on a road vehicle, the chssis of such vehicles and the lower bodywork frame being specially designed for that purpose. This definition shall cover also movable cases which form loading compartments specifically designed for combined transport.

(g) 'Partially enclosed containers' shall mean equipment generally consisting of a floor and a superstructure marking off a loading space equivalent to that of a closed container; the superstructure is generally made up of metal members forming the frame of a

container.; containers of this type may also comprise one or more lateral or frontal walls; in some cases there is only a roof attached to the floor by uprights; this type of container is used in particular for the carriage of bulky goods (motor cars, for example).

(h) 'Platform flats' shall mean loading platforms without a superstructure, or with partial superstructure only, of the same length and width as containers and possessing top and bottom corner fittings located on the side of the platform to enable the same anchoring and lifting devices to be used as for containers.

(i) 'Accessories and equipment of the container' shall mean in particular the following devices, even if they are removable:

(i) equipment for controlling, modifying or maintaining the temperature inside the container;

(ii) small appliances, such as temporature or impact recorders, designed to indicate or record variations in environmental conditions and impact;

(iii) internal partitions, pallets, shelves, supports, hooks and simular devices used for stowing goods.

2. Notwithstanding the last indent of Article 2 (a) of the basic Regulation, the term 'container' shall apply also to containers used in air transport having an internal volume of less than one cubic metre.

Article 2

1. Containers which are placed under the temporary importation arrangements upon discharge of inward processing arrangements in the Community shall be treated in the same way as containers imported into the customs territory of the Community.

2. The containers referred to in paragraph 1 shall be placed under temporary importation arrangements on the date on which they are first used under the arrangements.

3. For the purposes of drawing up the discharge provided for under the inward processing relief arrangements the operator shall issue to the holder of the inward processing authorization a certificate replacing the documents provided for in Article 61 (3) of Council Regulation (EEC) No 3677/86 of 24 November 1986 laying down provisious for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements [1].

[1] OJ No L 351, 12. 12. 1986, p. 1.

TITLE II

SPECIAL PROVISIONS CONCERNING THE TEMPORARY IMPORTATION OF CONTAINERS PURSUANT TO ARTICLE 3 (1) OF THE BASIC REGULATION

CHAPTER 1

Provisions concerning containers

Section 1

Markings

Article 3

1. The temporary importation provided for in Article 3 (1) of the basic Regulation shall apply without customs formalities to containers, whether or not they have been approved for transport under customs seal, on which the following information has been durably marked in an appropriate and clearly visible place:

(a) teh identity of the owner or operator;

(b) the identification marks and numbers given to the container by the owner or operator;

(c) the tare weight of the container, including all its permanently fixed equipment; and

(d) the country to which the container belongs.

2. The country to which the container belongs may be shown either in full or by means of the ISO alpha-2 country code provided for in International Standard ISO 3166 or by the distinguishing initials used to indicate the country of resgistration of motor vehicles in international road traffic. The identity of the owner or operator may be shown by either his name or an established from of indication, symbols such as emblems or flags being excluded.

Section 2

Recognition of approval

Article 4

Containers which:

(a) bear, in addition to the information provided for in Article 3 (1), the following details, which shall be put on the approval plate in accordance with the provisions referred to in Article 6:

— the manufacturer's serial number (manufacturer's number); and

— if they are covered by type approval, the identification numbers or letters of the type;

(b) comply with the technical conditions referred to in Article 6; and

(c) have been approved by a Member State of by one of the countries listed in Annex II in accordance with the procedures provided for in Article 6,

shall be recognized as approval for transport under customs seal.

Article 5

Containers recognized as being approved for transport under customs seal in accordance with Article 4 which have been temporarily imported into the Community may be used under any transport arrangements involving customs sealing.

Article 6

For the purposes of this Regulation the technical conditions applying to containers which may be approved for transport under customs seal and the procedures concerning such approval shall be in accordance with those contained respectively in the first and second parts of Annex 7 to the TIR Convention annexed to Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR convention) of 14 November 1975 at Geneva [1], Any amendment which has entered into force relating to Annex 7 to the TIR Convention shall apply also for the purposes of this Regulation.

Article 7

1. If it is found that containers which have been approved do not comply with the technical conditions referred to in Article 6, the customs office shall refuse to recognize the validity of the approval, unless the defects found are of minor importance and do not involve any risk of fraud.

2. Where a container has a major defect and so no longer complies with the standards under which it was approved for transport under customs seal, the customs authority shall inform the person responsible for the container so that he may restore the container to the condition it was in when approved, provided the repairs can be carried out rapidly. When the container has been appropriately repaired it may proceed to its destination under customs seal. If the container is not appropriately repaired or if the person responsible for it prefers to have it repaired in the country in which it was approved, the customs authority shall:

(a) refuse to seal the container and refuse authorization for its use in transport in cases where sealing is considered necessary; or

(b) remove the container form use while the contents are transferred to another means of transport; or

(c) authorize it to continue its journey in accordance with the relevant procedures where there is no danger of smuggling, loss or damage to the goods transported in the container, the defect in question being indicated on the transit documents.

To ensure that the container is appropriately repaired the customs authority should, where it considers it necessary, have the approval plate removed.

Where the customs authority has the approval plate removed or where a major defect is discovered in a group of containers so that they no longer comply with the standards under which they were approved for transport under customs seal, the authority responsible for approval or, where appropriate, the customs administration responsible for approval must be notified accordingly. The authority responsible for the initial approval must be invited to participate in the procedure for the issue of a new approval where this procedure takes place within the Community.

3. A container is considered to have a major defect if:

(a) goods can be removed from, or introduced into, the sealed part of the container without leaving visible traces of tampering or without breaking the customs seal;

(b) customs seals cannot be simply and effectively affixed to it;

(c) it contains concealed spaces where goods may be hidden;

(d) all spaces capable of holding goods are not readily accessible for customs inspection.

CHAPTER 2

Provisions applicable to the persons benefiting from the arrangements pursuant to Article 8 of the basic Regulation

Article 8

For the purposes of Article 3 (1) of the basic Regulation, the persons benefiting from the arrangements must:

(a) be represented in the customs territory of the Community and supply to the customs authority of every Member State where the containers are to be kept, such information as may be necessary to identify the representative and the extent of his representative functions;

(b) at the request of the customs authority of every Member State where the containers are kept, supply that authority with details of where and when the containers entered or left the customs territory of the Community and of the movements of the said containers within each Member State.

[1] OJ No L 252, 28. 9. 1978, p. 1.

TITLE III

SPECIAL PROVISIONS CONCERNING THE TEMPORARY IMPORTATION OF CONTAINERS PURSUANT TO ARTICLE 3 (2) OF THE BASIC REGULATION

CHAPTER 1

The granting of the benefit of the arrangements

Article 9

1. An operator, or his representative, wishing to benefit from the arrangements for the temporary importation of containers pursuant to Article 3 (2) of the basic Regulation must lodge an application with the relevant customs office of the Member State where the containers to be placed under the arrangements are introduced into the customs territory of the Community.

2. The application must be in writing, in any from accepted by the customs authority. It must include the following information :

(a) name, business name and address of the operator or his representative ;

(b) an undertaking to comply with Article 8 (b).

3. The application may cover more than one temporary importation operation.

4. For a single temporary importation operation the application shall be replaced by the list referred to in Article 11.

Article 10

1. The customs office at which the application is lodged shall take a decision and where appropriate shall issue a temporary importation authorization, hereinafter referred to as an 'authorization'.

2. Authorization shall be granted only for containers which can be identified when they are re-exported.

3. The authorization shall be signed by the relevant customs office, which shall retain a copy. It shall indicate, in particular, the means by which the operator must supply the information referred to in Article 8 (b).

4. The authorization may cover more than one temporary importation operation.

5. For a single temporary importation operation, authorization shall be replaced by the customs authority's acceptance of the list referred to in Article 11.

CHAPTER 2

Placing under temporary importation arrangements of the containers referred to in Article 3 (2) and the goods referred to in Article 10 of the basic Regulation

Article 11

1. For the purposes of applying Article 6 of the basic Regulation the placing of the containers and goods referred to in Article 10 of the basic Regulation under temporary importation arrangements shall be subject to their being presented at the customs office.

2. Where the customs office has reason the doubt that the obligation to re-export will be complied with, the production of a list may be required. This list must indicate :

(a) the name, business name and address of the operator or his representative ;

(b) the means of identifiying the containers ;

(c) the number of containers and the quantity and type of the goods referred to in Article 10 of the basic Regulation.

Article 12

For the purposes of applying Article 7 of the basic Regulation, where the customs office considers that there is a serious risk that the obligation to re-export will not be complied with and that the payment of the customs debt which may arise cannot ge guaranteed, the lodging of a security shall be required.

Article 13

For the purposes of applying Article 10 of the basic Regulation, spare parts must be intended for the repair of temporarily imported containers, small repairs and maintenance being authorized under the temporary importation arangements for containers. Container accessories and normal container equipment may be imported either with a container for subsequent re-export separately or with another container, or separately for subsequent re-export with a container.

TITLE IV

GENERAL PROVISIONS

Article 14

Where the persons benefiting from the arrangements prove that the container has not been used for a certain length of time, such non-use shall constitue a particular circumstance justifiying an extension of the maximum period, as provided for in Article 5 of the basic Regulation.

Article 15

1. The customs shall, *inter alia,* carry out spot checks on containers during normal customs inspections in order to ensure that the conditions for using temporary

importation arrangements are being complied with and in particular to ensure that the containers meet the technical requirements referred to in Article 6.

2. Users of the arrangements shall submit to all supervision and inspection measures prescribed by the customs authority.

3. Where it is found that during or in connection with a temporary importation operation an infringement or irregularity has occurred in a given Member State, that Member State shall recover any duties or other charges which may be due, without prejudice to the institution of cirminal proceedings.

4. The findings of the customs authorities of a Member State during inspections carried out under the arrangements shall have the same legal force in other Member States as findings by the customs authorities of those Member States.

Article 16

1. Article 9 of the basic Regulation shall be interpreted with reference to the explanatory note contained in Annex I.

2. The provisions of the first and second parts of Annex 7 to the TIR Convention referred to in Article 6 shall be applied in accordance with the explanatory notes contained in the third part of that Annex.

3. Annex 7 to the TIR Convention and the Annexes to this Regulation shall form an integral part of this Regulation.

Article 17

This Regulation shall enter into force on 1 January 1989.

It shall apply from 1 July 1989.

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

Done at Brussels, 21 December 1988.

For the Commission

COCKFIELD

Vice-President

ANNEX I

EXPLANATORY NOTE ON THE APPLICATION OF ARTICLE 9 OF THE BASIC REGULATION

NOTES

1. Containers placed under temporary importation arrangements may be used without restriction throughout the period during which they remain within the customs territory of the Community, which may not exceed 12 months, for the transport of goods loaded within the customs territory of the Community which are to be unloaded within that territory.

2. However, the use of containers placed under temporary importation arrangements for internal transport within each Member State (transport of goods loaded within the territory of a Member State for unloading within the territory of that Member State) shall be limited to a single journey during each stay in a Member State and to situations where the containers in question would otherwise have to travel empty within that Member State. It shall be possible to return several times to a given Member State in the period during which the containers remain within the customs territory of the Community.

   Example: A container is introduced into the customs territory of the Community on 1 January by Member State A and is re-exported on 31 December from Member State B. In the year during which it remains under the arrangements it carries out the following operations:

   — Member State A: entry loaded — transport — unloading — loading — transport — unloading — loading — transport — exit to Member State B

   — Member State B: entry loaded — transport — unloading — loading — transport — unloading — exit unladen to Member State C

   — Member State C: entry unladen — journey to loading point — loading — transport — unloading — loading — transport — exit to Member Sate A

   — Member State A: entry loaded — transport — unloading — journey unladen — loading — transport — exit to Member State B

   — Member State B: entry loaded — transport — unloading — loading — transport — unloading — loading — transport — re-export

ANNEX II

LIST OF COUNTRIES REFERRED TO IN ARTICLE 4 OF THIS REGULATION

Afghanistan
Albania
Algeria
Australia
Austria
Bulgaria
Byelorussian Soviet Socialist Republic
Cameroon
Canada
Chile
China
Cuba
Cyprus
Czechoslovakia
Finland
German Democratic Republic
Hungary
Iran
Israel
Jamaica
Japan
Jordan
Kampuchea
Korea (Republic of)
Kuwait
Liechtenstein
Malawi
Malta
Mauritius
Morocco
New Zealand
Norway
Poland
Romania
Sierra Leone
Solomon Islands
Sweden
Switzerland
Trinidad and Tobago
Tunisia
Turkey
Ukrainian Soviet Socialist Republic
Union of Soviet Socialist Republics
United States of America
Uruguay
Yugoslavia