COMMISSION REGULATION (EEC) No 3185/90

of 31 October 1990

amending Commission Regulation (EEC) No 2458/87 laying down provisions for the implementation of Council Regulation (EEC) No 2473/86 on outward processing relief arrangements and the standard exchange system

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system [1], and in particular Article 27 thereof,

Whereas Commission Regulation (EEC) No 2458/87 [2], as last amended by Regulation (EEC) No 4151/87 [3], laid down provisions for the implementation of Council Regulation (EEC) No 2473/86;

Whereas Regulation (EEC) No 2458/87 should be amended to include the opportunity of using a document checking system, to specify the precise conditions subject to which the standard exchange system may be used;

Whereas, in certain situations, it is necessary to provide for an aggregation of the discharges of outward processing operations in order to simplify the system's operation;

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:

Article 1

Regulation (EEC) No 2458/87 is hereby amended as follows:

1. Article 3 is replaced by the following:

'*Article 3*

1. Before issuing the authorization, the customs authority shall check that the conditions for use of the arrangements, in particular the economic conditions, are fulfilled.

2. For the purposes of Article 5 (1) (c) of the basic Regulation, the customs authorities shall ensure that it is possible to establish that the compensating products have been made from temporarily exported goods, by means, in particular, of the following:

(a) the statement or description of special marks or manufacturer's numbers;

(b) the affixing of plombs, seals, clip-marks or other distinctive marks;

(c) the taking of samples, illustrations or technical descriptions;

(d) the carrying-out of analyses;

(e) the examination of supporting documents relating to the transaction under consideration (such as contracts, correspondence, invoices) which leave no room for doubt that the compensating products are manufactured from the temporarily exported goods.

The customs authority may also use the 'information document to facilitate the temporary exportation of goods sent from one country for manufacture, processing or repair in another' provided for by the Customs Cooperation Council recommendation of 3 December 1963 and contained in Annex II.

3. Where the arrangements are used for the repair of goods, including restoring them to their original condition and putting them in order, whether or not in combination with the standard exchange system, the customs authority shall establish that the temporarily exported goods are capable of being repaired. If the customs authority considers that this condition is not fulfilled, it shall refuse authorization.

4. Where the standard exchange system is used, the customs authority shall, *inter alia,* make use of the verification methods listed in paragraph 2 (a), (c), (d) or (e). In the case of paragraph 2 (e), supporting documents shall clearly demonstrate that the repair in question will be carried out by supplying a replacement complying with the conditions set out in Article 17 (1) of the basic Regulation.

5. For the application of paragraph 4, the customs authority shall, in particular, ensure that the benefit to be obtained by using the arrangements for substitution provided for in Article 16 (1) of the basic Regulation shall not be accorded for the improvement of the technical performance of the goods.

The customs authorities shall therefore check:

— the contracts and other supporting documents relating to the repair, and

— the sales or leasing contracts and/or invoices relating to the temporarily exported goods or the goods incorporating temporarily exported goods and, in particular, the terms set out therein.

6. All copies of the papers examined in accordance with paragraphs 1 to 5 shall be kept for at least three calendar years from the end of the year in which the authorization was issued.

[1] OJ No L 212, 2. 8. 1986, p. 1.
[2] OJ No L 230, 17. 8. 1987, p. 1.
[3] OJ No L 391, 31. 12. 1987, p. 1.

7. Where it is not possible to establish whether the compensating products will be made from the temporarily exported goods and application is made to the customs authority for a derogation under Article 5 (1) (c) of the basic Regulation, the authority shall submit the application to the Commission which shall decide in accordance with Article 31 (2) and (3) of Council Regulation (EEC) No 1999/85 (*) if and under what conditions an authorization may be granted.

(*) OJ No L 188, 20. 7. 1985, p. 1.'

2. The following Article 25a is inserted :

'Article 25a

1. Where an authorization for outward processing is issued which does not provide for a repair and, the customs authority is able, in agreement with the holder of the authorization, to set an approximate amount of duty payable under the provisions on partial relief from import duties, the said authority may set an average rate of duty applicable to all processing operations to be carried out under that authorization (aggregated discharge) in the case of undertakings which frequently carry out outward processing arrangements.

2. The rate referred to in paragraph 1 shall be fixed for each period not exceeding six months on the basis of :

— an approximate estimate made in advance of the sum payable for that period, or

— experience gained, with regard to the collection of the amount paid in respect of an earlier equivalent period.

The rate shall be increased as appropriate with a view to avoiding a situation in which the amount of import duty recorded and entered into the accounts is less than the amount legally due.

3. The rate referred to in paragraph 1 shall apply provisionally to the processing charges for compensating products released for free circulation for a reference period identical to that used for the calculations referred to in paragraph 2, thereby avoiding the need to calculate precisely the amount of import duty payable every time items are released for free circulation.

4. The amount of import duty obtained by applying this Article shall be recorded and entered in the accounts under the conditions and within the time limits provided for in Council Regulation (EEC) No 1854/89 (*).

5. At the end of each reference period the customs authority shall discharge the arrangements and make the final calculation in accordance with the provisions relating to partial relief from import duties.

6. If it emerges from the final calculation that the import duty has been set too high, or that, in spite of the increase effected in accordance with paragraph 2, the amount of import duty recorded and entered into the accounts is less than the amount legally due, an adjustment shall be made.

7. The provisions of paragraphs 1 to 6 may be applied in respect of triangular traffic only if the provisions of Article 8 (2) and (3) of Council Regulation (EEC) No 1970/88 (**) are respected.

(*) OJ No L 186, 30. 6. 1989, p. 1.
(**) OJ No L 174, 6. 7. 1988, p. 1.'

Article 2

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

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

Done at Brussels, 31 October 1990.

For the Commission
Christiane SCRIVENER
Member of the Commission