II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DIRECTIVE

of 17 December 1981

laying down certain provisions for implementing Council Directive 79/695/EEC on the harmonization of procedures for the release of goods for free circulation

(82/57/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation [1], and in particular Article 26 (1) thereof,

Whereas, in order to define clearly the obligations which the person who completes an entry for release for free circulation must fulfil pursuant to Article 3 of Directive 79/695/EEC, it is necessary to specify the particulars which the entry must contain and the documents which must accompany the entry;

Whereas the specification of those particulars and the production of those documents are, under Article 6 (1) of the abovementioned Directive, prerequisites for the acceptance of the entry; whereas Article 6 (2), however, permits the customs authority, at the request of the declarant and for reasons which that authority deems valid, to waive that requirement and accept an incomplete entry subject to certain conditions; whereas it is necessary, therefore, to indicate the particulars and documents which are in any event essential for the acceptance of the entry and to specify the time limits for completion of the entry;

Whereas the subsequent failure to produce particulars or documents which were missing at the time when the entry was accepted may affect the amount of the import duties payable in respect of the goods in question; whereas it is necessary, therefore, to lay down precise rules to ensure that the Community regulations are applied correctly and that any duties payable in respect of the goods in question are paid;

Whereas, in order to ensure as far as possible the correct application of import duties, it is necessary to establish practical, uniform procedures for the prior examination of goods and the taking of samples by the person concerned; whereas similar provision must also be made with regard to the examination of goods and taking of samples by the competent authorities following acceptance of the entry; whereas, in the latter instance, provision must be made in particular for appropriate measures to deal with any refusal on the part of the declarant to be present at the examination and taking of samples, at the request of the customs authority, with a view to rectifying the suspended operation;

Whereas it is necessary to lay down the measures to be taken by the competent authorities in order to provide for the situation of goods where these cannot be released for free circulation for one of the reasons specified in Article 15 (1) (b) or (c) of Directive 79/695/EEC;

[1] OJ No L 205, 13. 8. 1979, p. 19.

Whereas the provisions of this Directive shall apply without prejudice to Council Regulation (EEC) No 1736/75 of 24 June 1975 on the external trade statistics of the Community and statistics of trade between Member States [1];

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on General Customs Rules,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive lays down certain provisions for implementing Articles 3, 4, 6, 9 (1), (4) and (5), 10 (1), 13, 14 and 15 (1) of Directive 79/695/EEC, hereinafter referred to as 'the basic Directive'.

TITLE I

CONTENTS OF THE ENTRY FORM FOR RELEASE FOR FREE CIRCULATION

A. Particulars to be supplied

Article 2

1. The particulars referred to in Article 3 (1) of the basic Directive which must be contained in the entry shall be the following:

(a) the declarant's name and address and, where he is acting on behalf of a third party, the legal conditions under which he does so where such information is necessary to determine the person liable for payment of any customs debt;

(b) where the declarant is not himself the consignee of the goods, the name and address of the said consignee;

(c) where goods have been entered for free circulation at a customs office subsequent to the lodging in respect of those goods of the summary declaration referred to in Article 3 of Directive 68/312/EEC of 30 July 1968 on harmonization of the provisions laid down by law, regulation or administrative action relating to: 1. customs treatment of goods entering the customs territory of the Community; 2. temporary storage of such goods [2], a reference to this summary declaration unless the customs authority undertakes to enter this information itself;

(d) where the summary declaration referred to in (c) has not been lodged in respect of goods entered for free circulation:

— which have not previously been entered under another customs procedure, the particulars for identifying the means of transport in which the goods reached the customs office,

— which have previously been entered under another customs procedure, a reference to that procedure.

(e) the number, kind, marks and serial numbers of packages containing the goods declared or, if the goods are not packed, the number of articles covered by the declaration or the words 'bulk', depending on the circumstances, and the particulars necessary to identify those unpacked goods;

(f) the location of the goods declared, where the customs authority considers this necessary;

(g) the Common Customs Tariff nomenclature heading or subheading of the goods and a description of the said goods in conformity with the terms of that nomenclature or in terms that are sufficiently precise to enable the customs authority to determine forthwith and unambiguously that they correspond to the tariff heading or subheading declared;

(h) in the case of goods liable to *ad valorem* duty, their customs value calculated in accordance with the Community provisions in force as well as, if necessary, the quantitative data needed in order to assess that value;

(i) in the case of goods liable to a specific duty, the quantity and any additional particulars that may be necessary for application of such duty;

(j) in the case of goods liable to *ad valorem* duty with a minimum or a maximum duty based on specific particulars, all the information referred to under (h) and (i);

(k) the country of consignment of the goods within the meaning of Article 10 of Regulation (EEC) No 1736/75 and their country of origin within the meaning of Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods [3] or, in the case of goods for which preferential treatment has been requested by virtue of their origin, of the Community instruments or agreements providing for such preferential treatment;

[1] OJ No L 183, 14. 7. 1975, p. 3.
[2] OJ No L 194, 6. 8. 1968, p. 13.
[3] OJ No L 148, 28. 6. 1968, p. 1.

(l) the number, preceded by the letter(s) indicating the issuing Member State, and the date of issue of any import licence or advance-fixing certificate presented pursuant to the provisions applicable in respect of the common agricultural policy;

(m) all other particulars needed for application of the rules governing the release for free circulation of the goods declared.

2. In addition to the particulars referred to in paragraph 1, the Member States may require that the following be included in the entry:

(a) the name and address of the consignor of the goods;

(b) the rate of import duty applicable to the goods declared;

(c) for information purposes the amount of import duty, as calculated by the declarant.

3. Where a Member State does not apply the provisions contained in Article 17 (b) of the basic Directive and the goods in question qualify either for a flat rate system of imposing charges or for relief from import duty, the particulars referred to in paragraph 1 (g) may be indicated in simplified form.

In addition, where goods qualify for relief from import duty, the particulars referred to in paragraph 1 (h) (i), (j) and (k) shall not be required unless the customs authority considers it necessary in order to enable the provisions governing the release of the goods in question for free circulation to be applied.

B. Documents to accompany the entry

Article 3

1. The documents which, under Article 3 (2) of the basic Directive, must accompany the entry, shall be:

(a) the invoice on the basis of which the customs value is declared, as required to comply with Commission Regulation (EEC) No 1496/80 of 11 June 1980 on the declaration of particulars relating to customs value and on documents to be furnished (1);

(b) where it is required under Regulation (EEC) No 1496/80, the declaration of particulars for the assessment of the customs value of the goods declared, drawn up in accordance with the conditions laid down in the said Regulation;

(c) the documents required for the application of preferential tariff arrangements or other measures derogating from the general legal rules applicable to the goods declared;

(d) all other documents required for the application of the provisions governing the release for free circulation of the goods declared.

2. The customs authority may, should it consider it necessary, require transport documents or, as the case may be, documents relating to the previous customs procedure to be produced when the entry form is lodged.

Where a single item is presented in two or more packages, the customs authority may also require the production of a packing list or equivalent document indicating the contents of each package.

3. Where a Member State does not apply the provisions contained in Article 17 (b) of the basic Directive and the goods in question qualify either for a flat-rate system of imposing charges or for relief from import duty, the documents referred to in paragraph 1 (b) and (c) may be dispensed with.

In addition, where goods qualify for relief from import duty, the documents referred to in paragraph 1 (a) shall not be required unless the customs authority considers it necessary in order to enable the provisions governing the release of the goods in question for free circulation to be applied.

4. The accompanying documents must be kept by the customs authority unless provided otherwise or unless the declarant requires them for other operations. In the latter case the customs authority shall take the necessary steps to ensure that the documents in question cannot subsequently be used except in respect of the quantity or value of goods for which they remain valid.

C. Examination of goods and taking of samples before lodging of the entry

Article 4

1. The examination of goods and the taking of samples referred to in Article 4 of the basic Directive may be carried out only by authorization of the customs authority. Such authorization shall be granted at the request of the person concerned.

(1) OJ No L 154, 21. 6. 1980, p. 16.

2. Examination of goods may be authorized at the oral request of the person concerned, unless the customs authority considers, having regard to the circumstances, that a written application is required.

The taking of samples may be authorized only at the written request of the person concerned.

3. A written request as referred to in paragraph 2 must be signed by the person concerned and lodged with the customs office concerned. It must include the following particulars :

— name and address of the applicant,

— the location of the goods,

— number of the summary declaration save where the customs authority undertakes to enter such information, or indication of the previous customs procedure, or the particulars for identifying the means of transport on which the goods are located,

— all other information necessary for identifying the goods.

The customs authority shall indicate its authorization on the request presented by the person concerned. Where the request is for the taking of samples, the said authority shall indicate the quantity of goods to be taken.

4. Prior examination of goods and the taking of samples shall be carried out under the supervision of the customs authority, which shall specify the procedures in each particular case.

The person concerned shall bear the risk and the cost of unpacking, weighing, repacking and any other operation involving the goods. He shall also pay any costs in connection with analysis.

5. Where the samples taken are not covered in due course by the entry for release for free circulation in respect of the goods to which they relate, the import duties to which they may be liable shall be calculated on the basis of the particulars given in the written request referred to in paragraph 2 at the rate applicable at the date on which the request was accepted.

D. **Incomplete entries**

Article 5

Entries which the customs authority may, pursuant to Article 6 (2) of the basic Directive, accept without their containing certain of the particulars referred to in Article 2 must contain at least the particulars referred to in Article 2 (1) (a), (c), (d) and (e) and :

— a description of the goods in terms that are sufficiently precise to enable the customs authority to determine forthwith and unambiguously the tariff heading or subheading concerned,

— where the goods are liable for *ad valorem* duties, their value for customs purposes, or, where it appears that the declarant is not in a position to declare this value, a provisional indication of value which is deemed acceptable by the customs authority, due account being taken in particular of the information available to the declarant,

— any further particulars deemed necessary by the customs authority in order to identify the goods, implement the provisions governing their release for free circulation and determine the amount of any security required before the goods may be released for free circulation.

Article 6

1. Entries which the customs authority may, pursuant to Article 6 (2) of the basic Directive, accept without their being accompanied by certain of the documents specified in Article 3 must be accompanied at least by those documents which must be produced before the goods declared can be released for free circulation.

2. By way of derogation from paragraph 1, an entry not accompanied by any of the documents required before the goods can be released for free circulation may be accepted once it is established, to the satisfaction of the customs authority, that :

(a) the document concerned exists and is valid ;

(b) it could not be annexed to the entry form for reasons beyond the declarant's control ;

(c) any delay in accepting the entry would prevent the release of the goods for free circulation or make them liable to a higher rate of import duty.

Data relating to missing documents shall, in all cases, be indicated in the entry.