II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 24 February 1981

on the harmonization of procedures for the export of Community goods

(81/177/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the Community is based upon a customs union;

Whereas, without prejudice to the transitional measures laid down in Title I, Chapter 1, of Part Four of the 1972 Act of Accession, the establishment of the customs union is governed in the main by Title I, Chapter 1, of Part Two of the Treaty; whereas that Chapter contains a series of specific provisions dealing with the elimination of customs duties between Member States, the establishment and progressive introduction of the Common Customs Tariff and the autonomous alteration or suspension of the duties of the latter;

Whereas, while Article 27 of the Treaty provides that Member States shall, before the end of the first stage, in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action relating to customs matters, it does not empower the Community insitutions to issue binding provisions in that field; whereas, however, a thorough examination undertaken jointly with the Member States has shown the need in certain fields for decision, by binding acts of the Community, upon measures essential for the introduction of customs arrangements which will ensure uniform application of the various Community provisions governing trade between the Community and third countries;

Whereas the procedural rules laid down by law, regulation or administrative action in the Member States relating to the export of goods are framed mainly in the light of national interests; whereas they do not always take sufficient account of the requirements of the customs union on which the Community is based;

Whereas these provisions also show considerable disparities in certain cases, which result in the application, under differing conditions, of export duties of the other Community provisions to which the export of Community goods from the customs territory of the Community may give rise; whereas the resulting distortions of treatment for Community exporters, depending on the Member State in which the customs clearance formalities are carried out, may lead to deflections of trade and artificial movement of activities;

Whereas these provisions directly affect the establishment and operation of the common market;

(1) OJ No C 34, 11. 2. 1980, p. 116.
(2) OJ No C 83, 2. 4. 1980, p. 10.

Whereas, taking into account the progress made in creating the customs union, it is necessary to fix common rules of procedure for the export of Community goods, from the customs territory of the Community, in the form of a Directive at least;

Whereas these common rules must make it possible to ensure the correct application of both export duties and any other Community provisions to which the export of Community goods from the customs territory of the Community may give rise; whereas, however, such rules must dispense with all unnecessary formalities; whereas, moreover, they must be sufficiently flexible to be adaptable to differing circumstances and to take into account progress in administrative techniques, particularly with regard to data processing;

Whereas it is important to ensure uniform application of these common rules and to provide, for this purpose, a Community procedure which will allow the measures for implementing them to be adopted within appropriate time limits,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Without prejudice to any special provisions which have been, or will be, adopted under specific customs arrangements or the common agricultural policy, this Directive determines the rules which shall be laid down in the laws, regulations or administrative provisions of the Member States in respect of the export from the customs territory of the Community of goods fulfilling the conditions laid down in Article 9 (2) of the Treaty.

Goods sent to the island of Heligoland shall not be regarded as exports from the customs territory of the Community.

2. For the purposes of this Directive:

(a) *export duties* mean the agricultural levies and other charges provided for under the common agricultural policy or the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;

(b) *customs office* means any office competent to accept the export declaration referred to in Article 2.

3. Component parts of industrial plant coming under a single heading in the Nomenclature of Goods for the External Trade Statistics of the Community (NIMEXE) in accordance with the Decisions adopted in this field pursuant 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 shall be deemed to consitute a single item of goods (1).

TITLE I

GENERAL PROCEDURE

Article 2

The export from the customs territory of the Community of the goods referred to in Article 1 (1) shall be conditional upon the lodging at a customs office, in accordance with the conditions laid down in this Directive, of an export declaration (hereinafter referred to as 'the declaration').

The natural or legal person who makes the declaration shall hereinafter be referred to as 'the declarant'.

Article 3

1. The declaration shall be made in writing on a form corresponding to the appropriate official model determined by the competent authorities in accordance with the Community provisions in force. It shall be signed and contain the particulars necessary for the identification of the goods and, where appropriate, for the application of the export duties and any other provisions governing the export of the goods.

2. The declaration shall be accompanied by all the documents required for the correct application of the export duties and any other provisions governing the export of the goods.

(1) OJ No L 183, 14. 7. 1975, p. 3.

Article 4

For the purpose of making the declaration and in so far as the goods to be exported are under a specific customs procedure, the customs authority shall, under conditions which it shall specify, authorize the prior examination of the said goods and the taking of samples.

Article 5

1. The goods to be exported shall be presented at any Community customs office which is competent, in accordance with the provisions in force in the Member State to which the office is responsible, to complete the export formalities relating thereto.

Where goods are consigned direct from a Member State to a particular third country, the competent authorities of the Member State in question may require the goods to be presented at a competent customs office within its authority.

2. The declaration shall be lodged at the customs office at which the goods are presented. It may be lodged once the goods have been presented there.

However, the customs authority may authorize the declaration to be lodged before the declarant is in a position to present the goods. In this case, the customs authority may set a time limit, to be determined according to the circumstances, for presentation of the goods. If the goods have not been presented within this time limit, the declaration shall be deemed not to have been lodged.

3. For the purposes of applying paragraphs 1 and 2, goods shall be deemed to have been presented at a customs office when their presence at that customs office, or at another place designated by the competent authorities, has been notified to the latter in the manner required to enable them to control or inspect them.

4. The declaration shall be lodged at the competent customs office during the days and hours appointed for opening.

However, the customs authority may, at the request of the declarant and at his expense, authorize the declaration to be lodged outside the appointed days and times.

5. Any declaration lodged with the officials of a customs office in any other place duly designated for that purpose by agreement between the competent authorities and the person concerned shall be regarded as having been lodged in the aforementioned office.

6. This Article shall not preclude the application of national provisions which the Member States may adopt on the basis of Article 36 of the Treaty, when the goods declared in a Member State for export outside the customs territory of the Community are required to pass through the territory of another Member State.

Article 6

1. Only declarations which comply with the conditions laid down in Article 3 may be accepted by the customs authority. Such declarations shall be accepted by the customs authority forthwith in accordance with the procedures laid down in each Member State.

However, where, pursuant to Article 5 (2), second subparagraph, a declaration has been lodged before the goods to which it relates have arrived at the customs office or at another place designated by the customs authority, it may be accepted only after the goods in question have been presented to the competent authorities, within the meaning of Article 5 (3).

2. Member States shall take all necessary steps to ensure that the date of acceptance of each declaration can be clearly established for the purpose of determining the operative date for the application of Article 11, where appropriate.

Article 7

1. The declarant shall, at his request, be authorized to correct declarations accepted by the customs authority under the conditions laid down in Article 6, as regards one or more of the particulars referred to in Article 3 (1), subject to the following:

(a) the correction shall be requested before the goods are released from the customs office or place designated for that purpose, unless the request relates to details which the customs authority can check as being correct without the goods being present;

(b) the correction may no longer be allowed where the request is made after the customs authority has informed the declarant that it intends to examine the goods or that it has itself established that the particulars in question are incorrect;

(c) the correction shall not result in the application of the declaration to goods other than those to which it originally related.

2. The customs authority may allow or require that the corrections referred to in paragraph 1 be made by the lodging of a new declaration intended to replace the original declaration. In that event, the date for determining the export duties relating to the goods in question and for the application of any other export provisions shall be that of the acceptance of the original declaration.

Article 8

1. So long as the goods have not left the customs territory of the Community, the declarant may request that the relevant declaration be cancelled or, where the legislation of the Member State concerned does not permit such cancellation, that it be invalidated.

However, when the customs authority has informed the declarant of its intention to examine the goods in respect of which the declaration was made, a request for cancellation or invalidation may not be made until this examination has taken place.

2. The customs authority shall not authorize the cancellation or invalidation of the declaration unless the declarant:

(a) provides the competent authorities with proof that the goods have not left the customs territory of the Community;

(b) returns to the said competent authorities all copies of the export declaration, together with any other documents delivered to him on acceptance of the declaration;

(c) where appropriate, provides the competent authorities with proof that the refunds and other amounts granted on the strength of the export declaration for the goods in question have been repaid or that the necessary measures have been taken by the services concerned so that they are not paid;

(d) where appropriate, and in accordance with the provisions in force, complies with the other obligations which may be set by the competent authorities to regularize the position of the goods.

3. The cancellation or invalidation of the declaration shall, where appropriate, result in the cancellation of attributions on any export licence or advance-fixing certificate presented in support of the declaration.

4. The cancellation or invalidation of the declaration shall in no way preclude the application of sanctions for an offence committed by the declarant.

5. Where the goods declared for export are required to leave the customs territory of the Community within a specified period, failure to respect the time limit shall result, in the cancellation or invalidation of the relevant declaration, except where the time limit is extended by the competent authorities.

In the situation referred to in the first subparagraph, paragraph 2 (b), (c) and (d) and paragraph 3 and 4 shall apply.

Article 9

1. Without prejudice to any other means of control at its disposal, the customs authority may examine all or part of the declared goods.

2. The goods shall be examined in the places designated and during the hours appointed for that purpose.

However, the customs authority may, at the request of the declarant, authorize the examination of goods in places or during hours other than those referred to above. Any costs involved shall be borne by the declarant.

3. Transport of the goods to the places where they are to be examined, unpacking, repacking and all other operations necessitated by such examination shall be carried out by the declarant or on his responsibility. In all cases, any costs involved shall be borne by the declarant.

4. The declarant shall be entitled to be present at the examination of the goods or to be represented at it. If the customs authority sees fit, it may require the declarant to be present at the examination of the goods, or to be represented at it in order to assist with the examination, as necessary.

5. When examining the goods, the customs authority may take samples for analysis or for more detailed examination. The costs arising from such analysis or more detailed examination shall be borne by the administrative authority.

6. Paragraph 5 shall not preclude application of Article 8 (2) of Council Regulation (EEC) No 3035/80 of 11 November 1980 laying down general rules