COUNCIL DIRECTIVE

of 24 July 1979

on the harmonization of procedures for the release of goods for free circulation

(79/695/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 (1),

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

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

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 Act of Accession, the establishment of this 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 in particular 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, that Article does not empower institutions of the Community to issue binding provisions in that field; whereas, however, a thorough examination undertaken jointly with 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 Common Customs Tariff and of the various charges laid down within the framework of the common agricultural policy;

Whereas, for that purpose, the Council has already adopted *inter alia* Directive 68/312/EEC of 30 July 1968 on 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 temporary storage of such goods (4), as well as Directive 78/453/EEC of 22 May 1978 on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties (5);

Whereas the release for free circulation, within the meaning of Article 10 (1) of the Treaty, of goods imported from a third country into a Member State has effect throughout the Community; whereas it therefore assumes a specifically Community character and, in this respect, differs from the release for home use of these same goods, which requires moreover the application of different national provisions, particularly of a fiscal nature, and can therefore take place only in the Member State in which such goods are actually consumed;

Whereas the Member States' laws, regulations or administrative provisions determine the rules of procedure which, in most cases, are devised exclusively for the release of goods for home use; whereas, as a result, the release for free circulation of goods, particularly with a view to their subsequent release for home use in another Member State most often cannot take place in isolation;

Whereas these provisions also show considerable disparities which result in the application, under differing conditions, not only of the Common Customs Tariff duties, charges having equivalent effect and agricultural levies or other charges laid down within the framework of the common agricultural policy, but also of any other Community provisions governing the release of goods for free circulation; whereas the resulting distortions of treatment for Community importers, depending on the Member State in which the customs clearance formalities are carried out, may lead to deflection of trade and artificial movement of activities;

Whereas the said provisions of the Member States directly affect the establishment and operation of the common market;

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(1) OJ No C 14, 15. 2. 1974, p. 45.
(2) OJ No C 85, 18. 7. 1974, p. 24.
(3) OJ No C 125, 16. 10. 1974, p. 10.
(4) OJ No L 194, 6. 8. 1968, p. 13.
(5) OJ No L 146, 2. 6. 1978, p. 19.

Whereas, taking into account the progress made in creating the customs union, it is necessary to fix common rules of procedure for the release of goods for free circulation, in the form of a Directive at least; whereas the same rules may also be followed for the release for home use of goods in the Member State of importation;

Whereas these common rules must make it possible to ensure the correct application not only of customs duties, charges having equivalent effect, agricultural levies or other charges laid down within the framework of the common agricultural policy, but also of any other Community provisions governing the release of goods for free circulation; 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 administration techniques, particularly with regard to informatics;

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, this Directive determines the rules which must be laid down in the laws, regulations and administrative provisions of the Member States in respect of the release for free circulation, within the meaning of Article 10 (1) of the Treaty, of goods which:

— have been produced to customs and which may have been placed in temporary storage, in accordance with the conditions laid down in Directive 68/312/EEC, or

— are under another customs procedure.

2. For the purposes of this Directive, 'import duties' means customs duties and charges having equivalent effect, as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy or of the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products.

TITLE I

GENERAL PROCEDURE

Article 2

The release for free circulation of the goods referred to in Article 1 shall be conditional upon the lodging at a customs office, in accordance with the conditions laid down by this Directive, of an entry form for release for free circulation, hereinafter referred to as 'the entry'.

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

Article 3

1. The entry shall be made in writing on a form corresponding to the appropriate official model determined by the competent authorities. It shall be signed and contain the particulars necessary for the identification of the goods and for the application of the import duties and any other provisions governing the release of the goods for free circulation.

2. The entry shall be accompanied by all the documents required for the correct application of the import duties and any other provisions governing the release of the goods for free circulation.

Article 4

For the purpose of making entry, the customs authority shall, under conditions which it shall specify, authorize the prior examination of goods and the taking of samples.

Article 5

1. The entry may be lodged at any customs office in the Community which is competent, in accordance with national provisions, to release for free circulation the goods to which the entry relates, on presentation of the goods at that office.

However, the customs authority may authorize the entry 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 entry shall be deemed not to have been lodged.

2. For the purpose of applying paragraph 1, goods shall be deemed to have been presented at a customs

office when their arrival at the 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 to inspect them.

3. The entry shall be lodged in 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 entry to be lodged outside the appointed days and hours.

4. Any entry 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.

Article 6

1. Only entries which comply with the conditions laid down in Article 3 may be accepted by the customs authority.

2. However, at the declarant's request and for reasons deemed valid by the customs authority, the latter may accept an entry which does not contain certain of the particulars referred to in Article 3 (1) or to which some of the documents referred to in Article 3 (2) are not attached; it shall then set a time limit for the communication of the particulars or the production of the said documents. In this case, the release of the goods for free circulation, referred to in Article 13, may be made conditional on the provision of security.

The entry shall, in any case, contain the particulars necessary for the identification of the goods to which it relates.

3. An incomplete entry accepted under the conditions set out in paragraph 2 may be either completed by the declarant or, by agreement with the customs authority, replaced by another entry which complies with the conditions laid down in Article 3. In the latter case, the operative date for the fixing of the import duties and the application of any other provisions governing the release of goods for free circulation shall be the date of acceptance of the incomplete entry.

Article 7

1. Entries which comply with the conditions laid down in Article 3 and those which are accorded the facilities provided for in Article 6 (2) shall be accepted by the customs authority immediately, in accordance with the procedures laid down in each Member State.

However where, pursuant to the second subparagraph of Article 5 (1), an entry 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, the entry may be accepted only after the goods in question have been presented to the competent authorities, within the meaning of Article 5 (2).

2. The date of acceptance of the entry shall be noted on that document for the purpose of determining the operative date for the application of Article 11 (1).

Article 8

1. The declarant shall, at his request, be authorized to correct entries accepted by the customs authority under the conditions laid down in Article 7, 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 for free circulation;

(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 entry applying to goods other than those to which it originally related.

The customs authority may allow or require that the corrections referred to in the preceding subparagraph be made by the lodging of a new entry intended to replace the original entry. In that event, the date for determination of the import duties and for the application of any other provisions governing the release of goods for free circulation shall be that of the acceptance of the original entry.

2. Where the declarant provides proof, to the satisfacion of the competent authorities, that goods have been entered for free circulation by mistake or that, as a result of special circumstances, the release of the goods for free circulation is no longer justified, the customs authority shall authorize cancellation or invalidaton of the entry relating to them. Such authorization may be given as long as the customs authority has not released the goods.

Article 9

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

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 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.

Article 10

1. The results of the examination of the entry and the documents attached to it, whether or not combined with examination of the goods, shall be used for calculating the import duties and for applying any other provisions governing the release of goods for free circulation. Where neither the entry and the documents attached to it, nor the goods themselves are examined, such duties shall be calculated and such provisions shall be applied on the basis of the particulars contained in the entry.

2. Paragraph 1 shall be without prejudice to either any subsequent verification by the competent authorities of the Member State in which the goods have been released for free circulation or the possible consequences of applying the provisions in force, particularly as regards any change in the amount of import duty charged on these goods.

Article 11

1. Without prejudice to special rules applicable under general or specific Community legislation, and subject to paragraph 2, import duties shall be levied in accordance with the rates and amounts in force at the date of acceptance of the entry. Without prejudice to the said special rules, that same date shall be the operative date for determining other particulars material to the calculation of duty on the goods and for applying any other provisions governing the release of goods for free circulation.

2. In as much as the import duty payable on goods is a customs duty, where the rate of this customs duty is reduced after the date of acceptance of the entry but before the release of the goods for free circulation has been authorized by the customs authority, the declarant may claim the application of the most favourable rate.

The preceding subparagraph shall not apply to goods which the customs authority has been unable to release for free circulation for reasons attributable solely to the declarant.

Article 12

Without prejudice to any changes which may occur pursuant to Article 10 (2), the amount of the import duties determined by the competent authorities shall be entered in the accounts by the latter under the procedure laid down for that purpose and shall be communicated to the declarant.

Article 13

1. Without prejudice to any prohibitive or restrictive measures provided for in respect of the goods, the customs authority may release the goods for free circulation only when the import duties have been paid or guaranteed or payment of them has been deferred under the conditions laid down in Directive 78/453/EEC.

2. The customs authority itself shall determine the form in which it releases goods, taking due account of the place in which the said goods are located and of the special precedures for their control.

3. Until released for free circulation, goods may not be moved from where they are, or handled in any way whatsoever, without the authorization of the customs authority.

Article 14

1. The declarant may be authorized by the customs authority, before the goods have been released for free circulation:

— either to surrender the goods free of charge to the Exchequer, if such a possibility is provided for under national regulations,

— or to destroy them under the supervision of the customs authority; any costs incurred by such destruction shall be borne by the declarant.

2. Where goods are surrendered to the Exchequer or destroyed under the supervision of the customs authority, the declarant shall not be required to pay the import duties.