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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3069/86
of 7 October 1986
amending Regulation (EEC) No 1430/79 on the repayment or remission of
import or export duties

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 235 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, in accordance with Council Regulation (EEC) No 1430/79 ⁽⁴⁾, as last amended by Regulation (EEC) No 918/83 ⁽⁵⁾, repayment or remission of import duties relating to goods is conditional in certain cases on the goods in question being re-exported out of the customs territory of the Community, or destroyed, under the supervision of the competent authorities;

Whereas, where the persons concerned have failed to comply with the procedural requirements, they may nevertheless apply for repayment or remission under Article 13 (2) of Regulation (EEC) No 1430/79, inserted into the said Regulation by Regulation (EEC) No 1672/82 ⁽⁶⁾; whereas, as the texts stand at present, the application for repayment or remission must be sent to the Commission which is alone authorized to decide;

Whereas experience has shown that there is no reason why responsibility for deciding on such applications for repayment or remission cannot be assumed by the Member States themselves, provided it is established that, where the procedural requirements have not been observed, the substantive conditions laid down for repayment or remission have been met and that the circum-

stances are such that no deception or serious negligence may be attributed to the person concerned; whereas Article 13 should be amended accordingly;

Whereas the opportunity shall be taken to set a time limit for submission of an application for the repayment or remission of import duties on the basis of Article 13;

Whereas this time limit and those laid down in the second subparagraph of Article 3 (2), the second subparagraph of Article 5 (2), the second subparagraph of Article 10 (2) and the second subparagraph of Article 13 (2) may be exceeded only in duly justified exceptional cases; whereas Article 19 therefore applies only to the time limit referred to in Article 2; whereas the text should consequently be simplified by amending Article 2 and deleting Article 19;

Whereas experience acquired since the entry into force of Regulation (EEC) No 1430/79 has also shown that a further case must be added to Article 10, which lists the cases in which import duties shall be repaid or remitted where they relate to goods in a special situation, the additional case being that of goods which, after having been released for free circulation, are found by the competent authorities not to have complied, at the time of their release, with the rules in force concerning their use or marketing and which therefore cannot be used for the purpose intended by the consignee;

Whereas it has proved necessary to extend the Community procedure for adopting the measures implementing Regulation (EEC) No 1430/79 to the whole of that Regulation;

Whereas it is necessary to stipulate that Regulation (EEC) No 1430/79 shall apply without prejudice to Article 16 of Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community ⁽⁷⁾,

⁽¹⁾ OJ No C 22, 24. 1. 1985, p. 10.

⁽²⁾ OJ No C 229, 9. 9. 1985, p. 108.

⁽³⁾ OJ No C 169, 8. 7. 1985, p. 9.

⁽⁴⁾ OJ No L 175, 12. 7. 1979, p. 1.

⁽⁵⁾ OJ No L 105, 23. 4. 1983, p. 1.

⁽⁶⁾ OJ No L 186, 30. 6. 1982, p. 1.

⁽⁷⁾ OJ No L 201, 30. 7. 1984, p. 1.

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 1430/79 is hereby amended as follows :

1. the following subparagraph shall be inserted after the first subparagraph of Article 2 (2) :

'This period may not be extended unless the person concerned can prove that he was prevented by unforeseeable circumstances or *force majeure* from submitting his application within the prescribed period.'

2. the following Article shall be inserted :

Article 4a

1. Where goods entered in error for free circulation have been re-exported out of the customs territory of the Community without having been previously entered, in accordance with Article 4 (b), for the customs procedure under which they should have been placed, the import duties may nevertheless be repaid or remitted provided it is established that :

- (a) the other conditions laid down in Article 3 (2) and Article 4 (a) have been met ;
- (b) the circumstances are such that no deception or serious negligence may be attributed to the person concerned.

2. Repayment or remission of import duties in the circumstances referred to in paragraph 1 shall be conditional upon :

- (a) production of all items of evidence needed to enable the competent authorities to ascertain that the goods in respect of which repayment or remission is requested have in fact been re-exported out of the customs territory of the Community and that they are the goods that were released for free circulation ;
- (b) the return to the competent authorities of any document certifying the Community status of the goods in question under cover of which, where applicable, the said goods left the customs territory of the Community, or the production of any evidence which the competent authorities consider necessary so that they can be satisfied that the document in question cannot be used subsequently in connection with any importation of goods into the Community.'

3. the following Article shall be inserted :

Article 6a

1. Where the goods have been re-exported or destroyed in the absence of supervision by the competent authorities in accordance with Article 6 (1), the import duties may nevertheless be repaid or remitted provided it is established that :

- (a) the other conditions laid down in Article 5 (2) and Article 6 (3) have been met ;
- (b) the circumstances are such that no deception or serious negligence may be attributed to the person concerned.

2. The grant of repayment or remission of import duties in the circumstances referred to in paragraph 1 shall be conditional upon :

- (a) production of all items of evidence needed to enable the competent authorities to ascertain that the goods in respect of which repayment or remission is requested have been :
 - actually re-exported out of the customs territory of the Community, or
 - destroyed under the supervision of authorities or persons empowered to certify such destruction officially ;
- (b) the return to the competent authorities of any document certifying the Community status of the goods in question under cover of which, where applicable, the said goods left the customs territory of the Community, or the production of any evidence which the competent authorities consider necessary so that they can be satisfied that the document in question cannot be used subsequently in connection with any importation of goods into the Community.'

4. Article 10 (1) shall be amended as follows :

— the following point shall be inserted :

'(d) goods which, after having been released for free circulation, are found not to have complied, at the time of their release, with the rules in force concerning their use or marketing and which therefore cannot be used for the purpose intended by the consignee ;',

— the present points (d) to (g) shall become points (e) to (h) ;

5. the following Article shall be inserted :

Article 11 a

1. Where the goods have been re-exported or destroyed in the absence of supervision by the competent authorities in accordance with Article 11 (1), import duties may nevertheless be repaid or remitted provided it is established that :

- (a) the other conditions laid down in Article 10 (2) and Article 11 (2) and (4) have been met ;
- (b) the circumstances are such that no deception or serious negligence may be attributed to the person concerned.

2. Repayment or remission of import duties in the circumstances referred to in paragraph 1 shall be conditional upon :

(a) production of all items of evidence needed to enable the competent authorities to ascertain that the goods in respect of which repayment or remission is requested have been:

- in fact re-exported out of the customs territory of the Community, or
- destroyed under the supervision of authorities or persons empowered to certify such destruction officially;

(b) the return to the competent authorities of any document certifying the Community status of the goods in question under cover of which, where applicable, the said goods left the customs territory of the Community, or the production of any evidence which the competent authorities consider necessary so that they can be satisfied that the document in question cannot be used subsequently in connection with any importation of goods into the Community.';

6. Article 13 shall be replaced by the following:

Article 13

1. Import duties may be repaid or remitted in special situations other than those referred to in Sections A to D, which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

The situations in which the first subparagraph may be applied, and the detailed procedural arrangements to be followed for this purpose, shall be determined in accordance with the procedure laid down in Article 25. Repayment or remission may be made subject to special conditions.

2. Import duties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within 12

months from the date on which those duties were entered in the accounts by the authority responsible for their collection.

However, the competent authorities may permit that period to be exceeded in exceptional cases where there is good reason for doing so.';

7. Article 19 shall be deleted;

8. Article 25 shall be replaced by the following:

Article 25

1. The Committee on Duty-Free Arrangements provided for in Article 141 of Regulation (EEC) No 918/83⁽¹⁾ may examine any question relating to the application of this Regulation raised by its chairman, either on his own initiative or at the request of a Member State.

2. The provisions necessary for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 143 (2) and (3) of Regulation (EEC) No 918/83.

⁽¹⁾ OJ No L 105, 23. 4. 1983, p. 1.';

9. the following Article shall be inserted:

Article 26a

This Regulation shall apply without prejudice to Article 16 of Regulation (EEC) No 2176/84⁽²⁾.

⁽²⁾ OJ No L 201, 30. 7. 1984, p. 1.'

Article 2

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

Article 1 (2) to (6) shall apply to applications for repayment or remission of import or export duties submitted to the competent authorities on or after 1 January 1987.

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

Done at Luxembourg, 7 October 1986.

For the Council

The President

A. CLARKE