

## COUNCIL DIRECTIVE

of 25 June 1979

on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt

(79/623/ECC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 100 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the Community is based upon a customs union;

Whereas, without prejudice to the transitional measures provided for in Chapter I of Title I of Part Four of the Act of Accession, the establishment of this customs union is governed mainly by Chapter I of Title I of Part Two of the Treaty; whereas that chapter contains a series of specific provisions dealing, in particular, with the abolition of customs duties between Member States, the establishment and progressive introduction of a common customs tariff and the autonomous alteration or suspension of the duties thereunder;

Whereas, while Article 27 of the Treaty provides that before the end of the first stage Member States shall, in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action in respect of customs matters, it does not empower the institutions of the Community to adopt binding provisions in that field; whereas, however, the thorough survey undertaken jointly with Member States has shown the need in certain fields to establish, by binding Community Acts, measures essential for the introduction of customs rules which will ensure uniform application of the duties on the

import and export of goods which are the subject of trade between the Community and third countries;

Whereas the amount of the duties to which imports and exports are subject under the provisions in force must be paid by a natural or legal person, on whom there is an obligation to pay the said amount, which is hereinafter referred to as 'customs debt';

Whereas the moment when the customs debt is incurred is that which should be taken into consideration in many cases to determine certain criteria on which the taxation of the goods depends, in particular their description, quantity and value; whereas it is therefore necessary to establish common rules for determining the moment when the customs debt is incurred, in order to ensure uniform application of the Community provisions in force on imports and exports;

Whereas the moment when the customs debt is incurred must be defined in the light of the essentially economic nature of the duties on imports and exports;

Whereas the moment when the customs debt is incurred on imports should be defined in terms of the conditions under which the goods liable to import duties are integrated into the economy of the Community; whereas, to this end, reference should be made in particular, according to the circumstances, either to the provisions governing the entry into free circulation in the customs territory of the Community of goods from third countries, or to the obligations resulting from Council 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 <sup>(4)</sup> or to the obligations relating to the customs supervision or the utilization of the goods applicable by virtue of recourse being had to the customs regime under which the said goods are placed;

Whereas the moment when the customs debt is incurred on exports should be defined in terms of the conditions under which the goods liable to export duties leave the geographical territory of the Community; whereas it is

<sup>(1)</sup> OJ No C 128, 10. 6. 1976, p. 48.

<sup>(2)</sup> OJ No C 238, 11. 10. 1976, p. 42.

<sup>(3)</sup> OJ No C 299, 18. 12. 1976, p. 14.

<sup>(4)</sup> OJ No L 194, 6. 8. 1968, p. 13.

therefore necessary to draw a distinction depending on whether the goods in question are or are not the subject of a customs entry with a view to their exportation and, where appropriate, on whether they are or are not actually used for the purpose shown in that entry;

Whereas it is necessary to fix the moment to be taken into consideration for the determination of the amount of the customs debt and that at which payment thereof may be demanded by the competent authorities and to specify in what circumstances the customs debt may be deemed not to have arisen or to be extinguished; whereas except where the amount of the customs debt is paid or subject to the operation of a time bar in accordance with the provisions in force, the reasons for this extinction must be based on the recorded fact that the goods have not been used for the economic purpose which justified the application of import or export duties;

Whereas inasmuch as goods complying with the conditions of Articles 9 and 10 (1) of the Treaty are liable to customs or agricultural charges when traded between Member States, the provisions of this Directive should be observed in respect of the customs debt arising from the existence of such a charge,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

1. This Directive determines the rules which must be incorporated in the Member States' provisions laid down by law, regulation or administrative action, in respect of:

- the incurrance of a customs debt,
- the moment to be taken into consideration for the determination of the amount of a customs debt and its liability for payment,
- the extinction of a customs debt.

2. For the purposes of this Directive, the following definitions shall apply:

- (a) 'customs debt' means the obligation on a natural or legal person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply under the provisions in force to goods liable to such duties;
- (b) 'import duties' means customs duties and charges having equivalent effect, and agricultural levies and other import charges laid down under the common agricultural policy or under the specific regimes applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;

(c) 'export duties' means agricultural levies and other export charges laid down under the common agricultural policy or under the specific regimes applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;

(d) 'entry in the accounts' means the administrative act by which the amount of the import or export duties to be levied by the competent authorities is duly determined.

### TITLE I

#### INCURRENCE OF THE CUSTOMS DEBT

##### A. Customs debt on importation

#### Article 2

A customs debt on importation shall be incurred by:

- (a) the placing of goods liable to import duties in free circulation in the customs territory of the Community;
- (b) the introduction into the customs territory of the Community of goods liable to import duties in violation of the provisions adopted in implementation of Article 2 of Directive 68/312/EEC.

Any goods coming from a free zone — within the meaning of Article 1 (2) of Council Directive 69/75/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to free zones <sup>(1)</sup> — situated in the customs territory of the Community, shall be treated in the same way as goods introduced into the customs territory of the Community;

- (c) the removal of goods liable to import duties from the customs supervision involved in the temporary storage of the goods or their being placed under a customs regime which involves such supervision;
- (d) the non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs regime under which they are placed, or non-compliance with a condition to which the grant of the regime is subject, unless the competent authorities are satisfied that these failures have no

<sup>(1)</sup> OJ No L 58, 8. 3. 1969, p. 11.

significant effect on the correct operation of the temporary storage procedure or customs regime in question;

- (e) the failure to use for the stipulated purpose within the set time limit goods put into free circulation totally or partially exempted from import duties because of their intended use for a particular purpose, or their use for purposes other than those stipulated.

The destruction of the goods without the prior authorization of the competent authorities, before their actual use for the stipulated purpose, shall be deemed to be a use for purposes other than those stipulated.

- (f) the definitive retention, in the customs territory of the Community, of waste or debris liable to import duties which results from the destruction, with the prior authorization of the competent authorities, of goods in free circulation, where such destruction has, pursuant to the provisions in force, the effect:
- either of preventing the incurrance of a customs debt in respect of the goods in question,
  - or of permitting the reimbursement or cancellation of the import duties relating to the said goods.

#### Article 3

The moment when a customs debt on imports is incurred shall be deemed to be:

- (a) in the cases referred to in Article 2 (a), the moment when the competent authorities accept the entry of the goods for free circulation or the time of any other act which, in accordance with the provisions in force, has the same effect in law as such acceptance;
- (b) in the cases referred to in Article 2 (b), the moment when the goods are introduced into the customs territory of the Community;
- (c) in the cases referred to in Article 2 (c), the moment when the goods are removed from customs supervision;
- (d) in the cases referred to in Article 2 (d), either the moment at which the obligation, non-fulfilment of which causes the customs debt to be incurred, ceases to be met, or the moment at which the customs regime was granted where it is established subsequently that a condition governing the grant of the said regime was not in fact fulfilled;
- (e) in the cases referred to in Article 2 (e):
- if the goods are used with the authorization of the competent authorities for purposes other

than those qualifying for total or partial exemption from import duties, the moment when such authorization was issued,

- in other cases, the moment when the time limit set for use of the goods for their stipulated purposes expires or, where appropriate, the moment when the goods are first used for purposes other than those qualifying for total or partial exemption from import duties;
- (f) in the cases referred to in Article 2 (f), the moment when the goods are destroyed.

#### Article 4

By way of derogation from Article 2, no customs debt on importation shall be deemed to be incurred in respect of specific goods:

- (a) where the person concerned proves to the satisfaction of the competent authorities that the non-fulfilment of the obligations which arise from:
- the provisions adopted in application of Article 2 of Directive 68/312/EEC, or
  - keeping the goods in question in temporary storage, or
  - the use of the customs regime under which the said goods have been placed,
- results from the total destruction or irretrievable loss of the said goods by reason of the nature of the goods themselves or because of unforeseeable circumstances or *force majeure*;
- (b) where the goods concerned, previously put into free circulation with total or partial exemption from import duties because of their intended use for special purposes, are with the authorization of the competent authorities re-exported outside the Community or destroyed.

#### B. Customs debt on exportation

#### Article 5

A customs debt on exportation shall be incurred by:

- (a) goods liable to export duties leaving the geographical territory of the Community as defined for the purpose of applying such duties;
- (b) failure to use goods for the purpose for which they were allowed to leave the geographical territory of the Community, within the meaning of paragraph (a) above, with total or partial exemption from export duties.

*Article 6*

The moment when a customs debt on exportation is incurred shall be deemed to be:

(a) in the cases referred to in Article 5 (a):

- if the goods in question are the subject of a customs entry with a view to their exportation outside the geographical territory of the Community, the moment when the competent authorities accept that entry or the time of any other act which, in accordance with the provisions in force, has the same effect in law as such acceptance,
- if the goods in question have not been the subject of a customs entry as referred to above, the moment when the goods have actually left the geographical territory of the Community;

(b) in the cases referred to in Article 5 (b):

- if the different use to which the goods are put is authorized by the competent authorities, the moment when that authorization is given,
- in other cases, the moment when the goods are used for a purpose other than that for which they were allowed to leave the geographical territory of the Community with total or partial exemption from export duties, or, should the competent authorities be unable to determine that moment, the moment of expiry of the time limit set for the production of proof that the goods have actually been used for the purpose which entitled them to such exemption.

## TITLE II

**MOMENT TO BE TAKEN INTO CONSIDERATION TO DETERMINE THE AMOUNT OF THE CUSTOMS DEBT AND ITS LIABILITY FOR PAYMENT**

*Article 7*

Subject to the special provisions adopted for specific customs or agricultural regulations:

- (a) the amount of the import or export duties payable on goods shall be determined on the basis of the taxation elements appropriate to the goods at the moment when the customs debt in respect of them is incurred;
- (b) where it is not possible to determine precisely when the customs debt is incurred, the moment to be taken into consideration for the purposes of determining the taxation elements appropriate to the goods concerned shall be the moment when the competent authorities record that the goods are in a situation which has given rise to a customs debt.

However, where the information available to the competent authorities enables them to establish that the customs debt was incurred at a moment prior to that at which they recorded the incurrance of the debt, the amount of the import or export duties payable on the goods in question shall be determined on the basis of the taxation elements which were appropriate to the goods at the most distant moment in the past at which the existence of the customs debt arising from this situation can be established.

*Article 8*

Without prejudice to the periods for payment which he may be allowed under the provisions in force, the person liable shall be liable to pay the amount of the import or export duties which constitute the customs debt from the moment when the competent authorities enter these duties in the accounts.

## TITLE III

## EXTINCTION OF THE CUSTOMS DEBT

*Article 9*

1. Without prejudice to the provisions applicable in the case of insolvency of the debtor, as duly established by judicial proceedings, the customs debt shall be extinguished:

- (a) by the payment of the amount of the import or export duties payable on the goods in question or by remission of this amount pursuant to Community provisions;
- (b) by the operation of a time bar, in accordance with the provisions in force.

2. In addition:

- (a) the customs debt on importation shall be extinguished:
  - where, before they have been released from customs supervision, the entry of the goods with a view to their release for free circulation is, for a reason admissible under the existing regulations, cancelled or rendered invalid by the competent authorities, or where the latter authorize the declarant to withdraw any such declaration and replace it by an entry for another customs regime,
  - where the goods entered with a view to their release for free circulation are, before their release from customs supervision, destroyed on the order of or with the authorization of the competent authorities or surrendered to the State treasury with the agreement of the said authorities,

- where the person concerned proves to the satisfaction of the competent authorities that the goods entered with a view to their release for free circulation were destroyed or irretrievably lost before their release from customs supervision as a result of the actual nature of the goods or of unforeseeable circumstances or *force majeure*,
  - where the person concerned proves, to the satisfaction of the competent authorities, that the circumstances which caused the non-fulfilment of an obligation arising, in respect of goods liable to import duties, from their being kept in temporary storage or from the use of the customs regime under which they were placed were due to:
    - either the exportation of the goods concerned outside the customs territory of the Community or their introduction into a free zone,
    - or the dispatch of the goods concerned to another Member State where they were treated in accordance with their legal status therein;
- (b) the customs debt on exportation shall be extinguished:
- where the export entry is, for a reason admissible under the existing regulations, cancelled or rendered invalid by the competent authorities,
  - where the person concerned proves, to the satisfaction of the competent authorities, that it has not been possible for the goods declared for export to leave the geographical territory of the Community.

## TITLE IV

## PROVISIONS APPLICABLE TO TRADE BETWEEN MEMBER STATES

*Article 10*

To the extent that goods complying with the conditions of Articles 9 and 10 (1) of the Treaty are liable to customs or agricultural charges when traded between

Member States, Articles 2 to 9 of this Directive shall be applicable by analogy, as regards the incurrence of the customs debt arising from this situation, to the moment to be taken into consideration for determination of the amount of the customs debt, its liability for payment and its extinction.

## TITLE V

## FINAL PROVISIONS

*Article 11*

This Directive shall not constitute an impediment to the provisions in force in the Member States under which the goods themselves constitute security for the import or export duties to which they are liable and as such may be subject to seizure or confiscation.

*Article 12*

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 1 January 1982.

2. Each Member State shall inform the Commission of the provisions which it adopts to implement this Directive. The Commission shall forward this information to the other Member States.

*Article 13*

This Directive is addressed to the Member States.

Done at Luxembourg, 25 June 1979.

*For the Council*

*The President*

J. LE THEULE