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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1854/89

of 14 June 1989

on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

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

Whereas the entry in the accounts of import duties or export duties is of decisive importance for the implementation of the majority of specific customs regulations; whereas the conditions under which such entry in the accounts must take place are currently defined only in Council 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 ⁽⁴⁾; whereas, in other cases, the conditions under which the amounts of import duties or export duties are entered in the accounts are determined by the Member States; whereas the best possible arrangements must accordingly be made for their uniform application throughout the Community; whereas to that end the present provisions of Directive 78/453/EEC should be replaced by a Regulation incorporating all necessary clarifications and adjustments;

Whereas the rules on entry in the accounts and terms of payment of customs debt are of particular importance for the smooth functioning of the customs union and for ensuring the optimum degree of equal treatment of traders in the collection of import and export duties;

Whereas it can be left to the Member States to determine the practical procedures for the entry in the accounts of amounts

of import duties or export duties; whereas the main requirement is to fix the periods within which such entry in the accounts must take place;

Whereas it is advisable to fix also the periods within which the amounts of import duties or export duties entered in the accounts must be paid; whereas the payment facilities which are granted in the Member States, other than deferment of payment, ought to be maintained in a harmonized form; whereas, in the interests of clarity, it is appropriate to give a new form to all the measures concerning the payment of import duties or export duties, including those relating to deferment of payment currently contained in Directive 78/453/EEC, by including them in a single text;

Whereas in the case of payment facilities other than deferment of payment, and of late payment and failure to pay by the time limit fixed, the present legal situation in which interest must be paid is maintained;

Whereas, having regard to the constant growth in commercial traffic and the need to release goods as quickly as possible, the methods of control used by the customs departments have been adjusted so that they only examine goods before release in a very small number of cases; whereas checks on compliance with import and export rules are thus deferred and consist mainly of bookkeeping checks, which may entail post-clearance recovery of an additional amount of duties; whereas such post-clearance checks may similarly give rise to repayment of an amount of duty paid in excess; whereas the amount of duty paid in excess will have been calculated on the basis of information declared for tax purposes by the person concerned himself and whereas the latter will have had access to the goods far more rapidly than if they had been examined before release was granted;

Whereas, in view of the current conditions under which credit policy is determined in the various Member States, it is not possible to fix a rate of credit interest and a rate of interest on arrears applicable throughout the Community; whereas it is essential, however, to avoid, within each Member State, excessive disparities of treatment between persons liable for

⁽¹⁾ OJ No C 41, 13. 2. 1985, p. 5.

⁽²⁾ OJ No C 229, 9. 9. 1985, p. 107, and OJ No C 96, 17. 4. 1989.

⁽³⁾ OJ No C 169, 8. 7. 1985, p. 6.

⁽⁴⁾ OJ No L 146, 2. 6. 1978, p. 19.

payment of credit interest pursuant to this Regulation and those who contract loans with credit institutions; whereas, to that end, the rate of interest due in the case of payment facilities other than deferred payment must be fixed by the Member States on the basis of the rate ruling on their money and financial markets; whereas, in view of its purpose, the rate of interest on arrears may be higher than the rate of credit interest;

Whereas, in the context of transit operations, security provided has the benefit of more generous facilities as regards time limits for payment of interest than those provided for in this Regulation; whereas those more favourable provisions appear in certain international conventions and cannot be affected by the introduction of Community rules on the subject; whereas the same must apply to the Community transit procedure in so far as that procedure is applicable, under the Convention concluded with the EFTA countries, to goods moving between the customs territory of the Community and those countries; whereas the same must also apply to the temporary importation of goods effected under the conditions provided for in the Convention concluded at Brussels on 6 December 1961 (ATA Convention);

Whereas Directive 78/453/EEC, the provisions of which are incorporated in this Regulation, should be repealed; whereas, to take account of the above cases in which it is provided that no interest has to be paid by the persons liable for payment or the customs authority, as the case may be, Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties ⁽¹⁾, as last amended by Regulation (EEC) No 3799/86 ⁽²⁾, should contain an additional provision to this effect and, on the other hand, the provisions concerning the charging of interest must be deleted from Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties ⁽³⁾, as last amended by Regulation (EEC) No 918/83 ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt.
2. For the purposes of this Regulation:
 - (a) '*customs debt*' means the obligation on a 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) '*person*' means:
 - a natural person, or
 - a legal person, or
 - when this possibility is provided for in the rules in force, an association of persons recognized as having legal capacity but lacking the legal status of the legal person;
 - (c) '*entry in the accounts*' means the entry by the customs authority in the accounts books, or any other medium used in their stead, of the amount of import duties or export duties corresponding to a customs debt;
 - (d) '*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 arrangements applicable to certain goods resulting from the processing of agricultural products;
 - (e) '*export duties*' means agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;
 - (f) '*customs authority*' means any authority empowered to apply customs legislation, even if that authority does not form part of the customs administration.

TITLE I

ENTRY IN THE ACCOUNTS OF THE AMOUNTS OF IMPORT DUTIES OR EXPORT DUTIES

Article 2

1. Each amount of import duties or export duties resulting from a customs debt — hereinafter called 'amount of duty' — shall be calculated by the customs authority as soon as it has the necessary data, and entered in the accounts by that authority.

⁽¹⁾ OJ No L 175, 12. 7. 1979, p. 1.

⁽²⁾ OJ No L 352, 13. 12. 1986, p. 19.

⁽³⁾ OJ No L 197, 3. 8. 1979, p. 1.

⁽⁴⁾ OJ No L 105, 23. 4. 1983, p. 1.

The first subparagraph shall not apply in cases in which a provisional anti-dumping or countervailing duty has been imposed or in those in which Article 5 of Regulation (EEC) No 1697/79 may be applied.

2. The Member States shall determine the practical procedures for the entry in the accounts of the amounts of duty. These procedures may differ according to whether or not, in view of the circumstances in which the customs debt was incurred, the customs authority is satisfied that payment of the said amounts is assured.

The Commission shall be notified of the procedures by which the customs authority will enter amounts of duty in the accounts in the various possible situations.

Article 3

1. Without prejudice to paragraph 2, where a customs debt arises as a result of the acceptance of the declaration of goods for a customs procedure other than temporary importation with partial relief from import duties or from any other act having the same legal effect as such acceptance, the amount corresponding to such customs debt shall be entered in the accounts as soon as it has been calculated and within two days at the latest of the date on which the customs authority granted release or authorized export of the goods.

However, provided that its payment has been guaranteed, the total amount of duty relating to all the goods which have been released — or in respect of which export authorization has been granted — to one and the same person during the course of a period fixed by the customs authority, which may not exceed 31 days, may be covered by a single entry in the accounts at the end of the period. Such entry in the accounts shall take place within five days of the date on which the period in question expires.

2. Where it is provided that goods may be released subject to certain conditions laid down in Community law which govern either determination of the amount of the debt arising or its collection being met, the entry in the accounts must be made no later than two days after the day on which either the amount of the debt or the obligation to pay the duties resulting from that debt are definitively determined or fixed.

However, when the customs debt relates to a provisional anti-dumping or countervailing duty, the duty shall be entered in the accounts no more than two months after the publication in the *Official Journal of the European Communities* of the Council Regulation establishing a definitive anti-dumping or countervailing duty.

3. In the case of a customs debt which arises under conditions other than those referred to in paragraph 1, entry in the accounts of the corresponding amount of duty must occur within two days of the date on which the customs authority is in a position to:

- (a) calculate the amount of duty in question, and
- (b) determine the person liable for payment of that amount.

Article 4

1. The time limits for entry in the accounts referred to in Article 3 may be extended:

- (a) either for reasons to do with the administrative organization of the Member States, and in particular where the accounts are centralized;
- (b) or where special circumstances prevent the customs authority from observing the said time limits.

Time limits may not, after extension, exceed 14 days.

2. The limits laid down in paragraph 1 shall not apply in unforeseeable circumstances or cases of *force majeure*.

Article 5

Where the amount of duty resulting from a customs debt has not been entered in the accounts in accordance with Articles 3 and 4 or has been entered in the accounts at a level lower than the amount legally owed, the entry in the accounts of the amount of duty to be recovered or remaining to be recovered must take place within two days of the date on which the customs authority noticed the situation and is in a position to calculate the amount legally owing and to determine the person liable for payment of that amount. This time limit may be extended in accordance with Article 4.

Article 6

1. As soon as it has been entered in the accounts, the amount of duty shall be communicated to the person liable for its payment, in accordance with the appropriate procedures.

2. Where the amount of duty payable has been entered, for guidance, in the customs declaration, the customs authority may specify that it shall not be communicated in accordance with paragraph 1 unless the amount of duty stated does not correspond to the amount determined by the authority.

Without prejudice to application of the second subparagraph of Article 3 (1), where use is made of the possibility provided for in the preceding subparagraph, release of the goods — or their authorization for export — by the customs authority shall be equivalent to communication of the amount of duty entered in the accounts to the person liable for its payment.

Article 7

Where action to recover duty may no longer be taken pursuant to the second subparagraph of Article 2 (1) of Regulation (EEC) No 1697/79, the Member States need apply neither Article 2 nor Article 6 of this Regulation.

TITLE II

TIME LIMIT AND PROCEDURES FOR PAYMENT OF THE AMOUNTS OF IMPORT DUTIES OR EXPORT DUTIES

Chapter A

Principle

Article 8

Each and every amount of duty communicated in accordance with Article 6 shall be paid by the person liable for its payment within the following time limits:

- (a) if the person is not entitled to any of the payment facilities laid down in Chapter B, payment shall be made within the period prescribed.

Without prejudice to the provisions applicable as regards right of appeal, this period shall not exceed 10 days following communication to the person liable of the amount of duty owed and, in the case of aggregation of entries in the account under the conditions laid down in the second subparagraph of Article 3 (1), it must be so fixed as not to enable the person liable for payment to obtain a longer period for payment than if he had been granted deferred payment under the conditions laid down in Chapter B, Section 1.

An extension of the period allowed shall be granted automatically where it is established that the party concerned received the payment demand too late to settle it within the time allowed for making payment.

Extension of the period may also, at the request of the person liable for payment, be granted by the customs authority when the amount of duty to be paid results from action for post-clearance recovery. Without prejudice to the provisions of Article 15, any extension of the period granted must not exceed the time necessary for the person liable for payment to take appropriate steps to discharge his obligation.

- (b) if the person is entitled to any of the payment facilities laid down in Chapter B, payment shall be made before expiry of the time limit(s) set in connection with those facilities.

Article 9

Payment must be made in cash or by any other means with similar discharging effect in accordance with the provisions in force in the Member State concerned (cash payment). It may also be made by way of set-off when the provisions in force so allow.

Chapter B

Payment facilities

Section 1

Deferred payment

Article 10

In so far as the amount of duty payable by the person concerned relates to goods entered for a customs procedure which entails the obligation to pay such duty, the customs authority shall, at that person's request, grant deferment of payment of that amount under the conditions laid down in Articles 11 to 14.

Article 11

The granting of deferment of payment shall be made conditional on the provision of security by the applicant.

In addition, the granting of deferment of payment may give rise to the collection of ancillary costs for opening a file or for services rendered.

Article 12

1. The competent customs authority shall decide which of the following procedures must be used when granting deferment of payment:

- (a) either separately in respect of each amount of duty entered in the accounts under the conditions laid down in the first subparagraph of Article 3 (1);
- (b) or globally in respect of all the amounts of duty entered in the accounts under the conditions laid down in the first subparagraph of Article 3 (1) during a period not exceeding 31 days to be fixed by the customs authorities;
- (c) or globally in respect of all amounts of duty forming a single entry in the accounts pursuant to the second subparagraph of Article 3 (1).

2. Deferred payment shall also be granted, under the same conditions as those laid down in paragraph 1, for amounts of duty on goods which are the subject of a declaration under the customs arrangements for temporary importation with partial relief from import duties.

Article 13

1. The period for which payment is deferred shall be 30 days. It shall be calculated as follows:

- (a) where payment is deferred in accordance with Article 12 (a), the period shall be calculated from the day following the date on which the amount of duty is entered in the accounts by the customs authority.

Where Article 4 is applied, the period of 30 days calculated in accordance with the first subparagraph shall be reduced by the number of days corresponding to the period in excess of two days used to enter the amount in the accounts;

- (b) where payment is deferred in accordance with Article 12 (b), the period shall be calculated from the day following the date on which the period covered by the aggregation deferment expires. It shall be reduced by the number of days corresponding to half the number of days in the aggregation period;
- (c) where payment is deferred in accordance with Article 12 (c), the period shall be calculated from the day following the expiry date of the period during which the goods in question were released, or their export was authorized. It shall be reduced by the number of days corresponding to half the number of days in the period concerned.

2. Where the number of days in the periods referred to in paragraph 1 (b) and (c) is an odd number, the number of days to be deducted from the 30-day period pursuant to paragraph 1 (b) and (c) shall be equal to half the next lowest even number.

3. To simplify matters, where the periods referred to in paragraph 1 (b) and (c) are a calendar week or a calendar month, Member States may provide that the amount of duty in respect of which payment has been deferred shall be paid:

- (a) if the period is a calendar week, on the Friday of the fourth week following that calendar week;
- (b) if the period is a calendar month, by the 16th day of the month following that calendar month.

Article 14

1. Deferment of payment may not be granted in respect of amounts of duty which, although relating to goods entered for a customs procedure which entails the obligation to pay such duty, are entered in the accounts in accordance with the provisions in force concerning acceptance of incomplete declarations, because the declarant has not, by the time of expiry of the time limit set, provided the information necessary for the definitive valuation of the goods for customs purposes or has not supplied the particulars or the document missing when the incomplete declaration was accepted.

2. However, deferment of payment may be granted in the cases referred to in paragraph 1 where the amount of duty to be recovered is entered in the accounts before the expiry of a period of 30 days from the date on which the amount originally charged was entered in the accounts or, if it was not entered in the accounts, from the date on which the declaration relating to the goods in question was accepted. The duration of the deferment of payment granted in such

circumstances may not extend beyond the date of expiry of the period which, pursuant to Article 13, was granted in respect of the amount of duty originally fixed, or which would have been granted had the amount of duty legally due been entered in the accounts when the goods in question were declared.

Section 2

Other payment facilities

Article 15

Member States may make provision for the person liable for payment of an amount of duty to be granted payment facilities other than the deferred payment referred to in Section 1.

The granting of such payment facilities shall be made conditional on the provision of security. However, such security need not be required where to require it would, because of the situation of the person concerned, create serious economic or social difficulties.

Section 3

Payment before expiry of the time limits

Article 16

Whatever the payment facilities granted to the person liable for payment of an amount of duty, that person may in any case pay all or part of the amount without awaiting expiry of the period he has been granted for payment.

Section 4

Payment by a third party

Article 17

Any amount of duty may be paid by a third party instead of the person liable for payment.

Chapter C

Enforcement

Article 18

Where the person liable for payment of an amount of duty has not discharged his obligation within the period granted him, the customs authority shall avail itself of all options open to it under the prevailing legislation, including enforcement, to secure payment of the amount.

TITLE III

PAYMENT OF INTEREST

Article 19

Where a Member State grants payment facilities in accordance with Article 15, the expenses borne by the person liable for payment for the granting of these facilities, and in particular any interest, must be calculated in such a way that the amounts are equivalent to those which would be charged for this purpose on the money market or financial market in the State concerned.

In the event of late payment or failure to pay within the time limits fixed, the interest rate on arrears may be higher than that defined in the preceding subparagraph.

would be likely to create serious economic or social difficulties.

2. Member States may also waive collection of interest on arrears if the amount concerned is less than, or equal to, ECU 20 or if the duties are paid within five days of the deadline for their payment. This amount may be amended in accordance with the procedure laid down in Article 24 (2).

Article 20

1. Member States may waive application of Article 19 where, because of the situation of the person concerned, it

3. Member States may fix minimum periods for calculation of interest.

TITLE IV

FINAL PROVISIONS

Article 21

Without prejudice to any provisions connected with offences against customs rules which might be applied, no interest other than the interest provided for in Article 19 shall be charged on amounts of duty payable by a person liable for payment.

However, interest on arrears may be collected in respect of post-clearance recovery if national provisions so stipulate.

on the harmonization of procedures for the release of goods for free circulation ⁽¹⁾, as last amended by Directive 81/853/EEC ⁽²⁾, may examine any questions relating to the implementation of this Regulation which are referred to it by its chairman, either on his own initiative or at the request of a representative of a Member State.

2. The measures necessary for implementation of this Regulation shall be adopted in accordance with the procedure laid down in Article 26 (2) and (3) of Directive 79/695/EEC.

Article 22

This Regulation shall not preclude the application of provisions which lay down that customs authorities need not enter in the accounts amounts of duty of less than ECU 10.

Article 25

1. Directive 78/453/EEC is hereby repealed.

References to that Directive shall be construed as references to this Regulation.

Article 23

Application of this Regulation shall be without prejudice to the more favourable provisions laid down with regard to security under the transit procedure and under the Convention for the temporary admission of goods concluded at Brussels on 6 December 1961 (ATA Convention).

2. Article 6 of Regulation (EEC) No 1697/79 is hereby repealed.

3. The following Article is hereby inserted in Regulation (EEC) No 1430/79:

Article 24

1. The Committee on General Customs Rules set up by Article 24 of Council Directive 79/695/EEC of 24 July 1979

Article 17a

Repayment by the competent authorities, pursuant to this Regulation, of amounts of import duties or export duties

⁽¹⁾ OJ No L 205, 13. 8. 1979, p. 19.

⁽²⁾ OJ No L 314, 7. 11. 1981, p. 1.

or of credit interest or interest on arrears collected on payment of such duties shall not give rise to the payment of interest by those authorities. However, interest may be paid if national provisions so provide.'

4. Article 13 of Directive 81/177/EEC is hereby amended as follows:

'Article 13

Without prejudice to any prohibition or restriction measures that may apply to goods declared for export, the customs authorities shall only authorize export of the goods after they have satisfied themselves, if necessary, that the export duties relating to them have been paid or covered by security or have been the subject of deferred payment under the conditions laid down in Council

Regulation (EEC) No 1854 of 14 June 1989 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt ⁽¹⁾.

⁽¹⁾ OJ No L 186, 30. 6. 1989, p. 1.'

Article 26

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

It shall apply from 1 July 1990.

It shall apply to amounts of duty entered in the accounts on and after that date.

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

Done at Luxembourg, 14 June 1989.

For the Council

The President

P. SOLBES