

Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (repealed)

PART I

GENERAL IMPLEMENTING PROVISIONS

TITLE VIII

EXAMINATION OF THE GOODS, FINDINGS OF THE CUSTOMS OFFICE AND OTHER MEASURES TAKEN BY THE CUSTOMS OFFICE

Article 239

1 The goods shall be examined in the places designated and during the hours appointed for that purpose by the customs authorities.

2 However, the customs authorities may, at the request of the declarant, authorize the examination of goods in places or during hours other than those referred to in paragraph 1.

Any costs involved shall be borne by the declarant.

Article 240

1 Where the customs authorities elect to examine goods they shall so inform the declarant or his representative.

2 Where they decide to examine a part of the goods only, the customs authorities shall inform the declarant or his representative which items they wish to examine. The customs authorities' choice shall be final.

Article 241

1 The declarant or the person designated by him to be present at the examination of the goods shall render the customs authorities the assistance required to facilitate their work. Should the customs authorities consider the assistance rendered unsatisfactory, they may require the declarant to designate another person able to give the necessary assistance.

2 Where the declarant refuses to be present at the examination of the goods or to designate a person able to give the assistance which the customs authorities consider necessary, the said authorities shall set a deadline for compliance, unless they consider that such an examination may be dispensed with.

If, on expiry of the deadline, the declarant has not complied with the requirements of the customs authorities, the latter, for the purpose of applying Article 75 (a) of the Code, shall proceed with the examination of the goods, at the declarant's risk and expense, calling if necessary on the services of an expert or any other person designated in accordance with the provisions in force.

3 The findings made by the customs authorities during the examination carried out under the conditions referred to in the preceding paragraph shall have the same validity as if the examination had been carried out in the presence of the declarant.

4 Instead of the measures laid down in paragraphs 2 and 3, the customs authorities shall have the option of deeming a declaration invalid where it is clear that the declarant's refusal to be present at the examination of the goods or to designate a person able to give the necessary assistance neither prevents, nor seeks to prevent, those authorities from finding that the rules governing the entry of the goods for the customs procedure concerned have been breached, and neither evades, nor seeks to evade, the provisions of Article 66 (1) or Article 80 (2) of the Code.

Article 242

1 Where the customs authorities decide to take samples, they shall so inform the declarant or his representative.

2 Samples shall be taken by the customs authorities themselves. However, they may ask that this be done under their supervision by the declarant or a person designated by him.

Samples shall be taken in accordance with the methods laid down in the provisions in force.

3 The quantities taken as samples should not exceed what is needed for analysis or more detailed examination, including possible check analysis.

Article 243

1 The declarant or the person designated by him to be present at the taking of samples shall render the customs authorities all the assistance needed to facilitate the operation.

2 Where the declarant refuses to be present at the taking of samples or to designate a person to attend, or where he fails to render the customs authorities all the assistance needed to facilitate the operation, the provisions of Article 241 (1), (2) and (3) shall apply.

Article 244

Where the customs authorities take samples for analysis or more detailed examination, they shall authorize the release of the goods in question without waiting for the results of the analysis or examination, unless there are other grounds for not doing so, and provided that, where a customs debt has been or is likely to be incurred, the duties in question have already been entered in the accounts and paid or secured.

Article 245

1 The quantities taken by the customs office as samples shall not be deducted from the quantity declared.

2 Where an export or outward processing declaration is concerned, the declarant shall be authorized, where circumstances permit, to replace the quantities of goods taken as samples by identical goods, in order to make up the consignment.

Article 246

1 Unless destroyed by the analysis or more detailed examination, the samples taken shall be returned to the declarant at his request and expense once they no longer need to be kept by the customs authorities, in particular after all the declarant's means of appeal against the decision taken by the customs authorities on the basis of the results of that analysis or more detailed examination have been exhausted.

2 Where the declarant does not ask for samples to be returned, they may either be destroyed or kept by the customs authorities. In specific cases, however, the customs authorities may require the declarant to remove any samples that remain.

Article 247

1 Where the customs authorities verify the declarations and accompanying documents or examine the goods, they shall indicate, at least in the copy of the declaration retained by the said authorities, or in a document attached thereto, the basis and results of any such verification or examination. In the case of partial examination of the goods, particulars of the consignment examined shall also be given.

Where appropriate, the customs authorities shall also indicate in the declaration that the declarant or his representative was absent.

2 Should the result of the verification of the declaration and accompanying documents or examination of the goods not be in accordance with the particulars given in the declaration, the customs authorities shall specify, at least in the copy of the declaration retained by the said authorities, or in a document attached thereto, the particulars to be taken into account for the purposes of the application of charges on the goods in question and, where appropriate, calculating any refunds or other amounts payable on exportation, and for applying the other provisions governing the customs procedure for which the goods are entered.

3 The findings of the customs authorities shall indicate, where appropriate, the means of identification adopted. They shall be dated and bear the particulars needed to identify the official issuing them.

4 Where the customs authorities neither verify the declaration nor examine the goods, they need not endorse the declaration or attached document referred to in paragraph 1.

Article 248

1 The granting of release shall give rise to the entry in the accounts of the import duties determined according to the particulars in the declaration. Where the customs authorities consider that the checks which they have undertaken may enable an amount of customs duties higher than that resulting from the particulars made in the declaration to be assessed, they shall further require the lodging of a security sufficient to cover the difference between the amount according to the particulars in the declaration and the amount which may finally be payable on the goods. However, the declarant may request the immediate entry in the accounts of the amount of duties to which the goods may ultimately be liable instead of lodging this security.

2 Where, on the basis of the checks which they have carried out, the customs authorities assess an amount of import duties different from the amount which results from the particulars in the declaration, the release of the goods shall give rise to the immediate entry in the accounts of the amount thus assessed.

3 Where the customs authorities have doubts about whether or not a prohibition or restriction applies and this cannot be resolved until the results of the checks the authorities have carried out are available, the goods in question cannot be released.

Article 249

1 The customs authorities shall determine the form of release, taking due account of the place in which the goods are located and of the special arrangements for their supervision.

2 Where the declaration is made in writing, a reference to the release and its date shall be made on the declaration or, where applicable, a document attached, and a copy shall be returned to the declarant.

Article 250

1 Where the customs authorities have been unable to grant release for one of the reasons specified in the second or third indent of Article 75 (a) of the Code, they shall give the declarant a time limit to regularize the situation of the goods.

2 Where, in the circumstances referred to in the second indent of Article 75 (a) of the Code, the declarant has not produced the requisite documents within the time limit referred to in paragraph 1, the declaration in question shall be deemed invalid and the customs office shall cancel it. The provisions of Article 66 (3) of the Code shall apply.

3 In the circumstances referred to in the third indent of Article 75 (a) of the Code, and without prejudice to any measures taken under the first subparagraph of Article 66 (1) or Article 182 of the Code, where the declarant has neither paid nor guaranteed the duties due within the time limit referred to in paragraph 1, the customs authorities may start the preliminary formalities for the sale of the goods. In this case the goods shall be sold unless the requisite conditions have been fulfilled in the interim, if necessary by forced sale where the law of the Member State of the authorities in question so permits. The customs authorities shall inform the declarant thereof.

The customs authorities may, at the risk and expense of the declarant, transfer the goods in question to special premises under their supervision.

Article 251

By way of derogation from Article 66 (2) of the Code, a customs declaration may be invalidated after the goods have been released, as provided below:

1. where it is established that the goods have been declared in error for a customs procedure entailing the payment of import duties instead of being placed under another customs procedure, the customs authorities shall invalidate the declaration if a request to that effect is made within three months of the date of acceptance of the declaration provided that:
 - any use of the goods has not contravened the conditions of the customs procedure under which they should have been placed,
 - when the goods were declared, they were intended to be placed under another customs procedure, all the requirements of which they fulfilled, and
 - the goods are immediately entered for the customs procedure for which they were actually intended.

The declaration placing the goods under the latter customs procedure shall take effect from the date of acceptance of the invalidated declaration.

The customs authorities may permit the three-month period to be exceeded in duly substantiated exceptional cases;

2. where the goods have been declared for export or for the outward processing procedure, the declaration shall be invalidated provided that:
 - (a) in the case of goods which are subject to export duty, to an application for the repayment of import duty, to refunds or other export amounts or to other special measures on export:
 - the declarant provides the customs office of export with evidence that the goods have not left the customs territory of the Community,

- the declarant returns to the said office all copies of the customs declaration, together with any other documents issued to him on acceptance of the declaration,
- the declarant provides the customs office of export with evidence that any 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 departments concerned to ensure that they are not paid, and
- the declarant, in accordance with the provisions in force, complies with any other obligations laid down by the customs office of export to regularize the position of the goods.

Invalidation of the declaration shall entail cancellation of any adjustments made on an export licence or advance-fixing certificate presented in support of the declaration.

Where the goods declared for export are required to leave the customs territory of the Community by a specified time limit, failure to comply with that time limit shall entail invalidation of the relevant declaration;

- (b) in the case of other goods, the customs office of export has been informed in accordance with Article 796 that the goods declared have not left the customs territory of the Community.
3. In so far as the re-export of the goods entails the lodging of a declaration, (2) above shall apply *mutatis mutandis*.
 4. Where Community goods have been placed under the customs warehousing procedure within the meaning of Article 98 (1) (b) of the Code, invalidation of the declaration of entry for that procedure may be requested and effected provided that the measures provided for in the relevant legislation in the event of failure to comply with the treatment or use prescribed have been taken.

If, on the expiry of the period laid down for the goods to remain under the customs warehousing procedure, no application has been made for their assignment to a treatment or use provided for in the relevant legislation, the customs authorities shall take the measures provided for in that legislation.

Article 252

Where the customs authorities sell the goods pursuant to Article 75 of the Code, this shall be done in accordance with Article 188.