

**COMMISSION REGULATION (EC) No 1335/2003
of 25 July 2003**

**amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council
Regulation (EEC) No 2913/92 establishing the Community Customs Code**

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁾, as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council⁽²⁾, and in particular Article 247 and Article 247a thereof,

Whereas:

- (1) Articles 220(2)(b) and 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code lay down that in certain cases import or export duties shall not be subsequently entered in the accounts or may be repaid or remitted for reasons of equity.
- (2) Given that under Article 8 of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources⁽³⁾ the Member States are primarily responsible for collecting traditional own resources, it should therefore primarily be up to the authorities of the Member States to decide whether or not import duties or export duties should be entered subsequently in the accounts under Article 220(2)(b) of Regulation (EEC) No 2913/92 or repaid or remitted under Article 239 of that Regulation.
- (3) However, in order to ensure uniform treatment of traders and protect the financial interests of the Communities, the obligation to transmit dossiers to the Commission for a decision should remain where Member States consider that the decision should be favourable and either (a) an active error or failing on the part of the Commission is cited, or (b) the circumstances of the case are connected to Community investigations carried out under Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters⁽⁴⁾, or (c) the amount of duties involved is EUR 500 000 or more.

(4) However, there need be no such obligation to transmit the dossier if the Commission has already adopted a decision on a case comparable in fact and law, since Member States can then base their own final decision on the most recent Commission decision comparable in fact and law.

(5) Commission Regulation (EEC) No 2454/93⁽⁵⁾, as last amended by Regulation (EC) No 881/2003⁽⁶⁾, should therefore be amended accordingly.

(6) The Customs Code Committee did not hand down an opinion within the time limit set by its Chairman. The Commission therefore sent the Council a proposal on the measures concerned. As the Council did not adopt a decision before expiry of the time limit laid down in Article 6(5) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁷⁾, it is therefore up to the Commission to adopt the said measures,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is amended as follows:

1. Article 869 is amended as follows:

(a) subparagraph (b) is replaced by the following:

'(b) in cases in which they consider that the conditions laid down in Article 220(2)(b) of the Code are fulfilled, except those in which the dossier must be transmitted to the Commission pursuant to Article 871. However, where Article 871(2), second indent, is applicable, the customs authorities may not adopt a decision waiving entry in the accounts of the duties in question until the end of a procedure initiated in accordance with Articles 871 to 876.;

(b) subparagraph (c) is deleted;

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 311, 12.12.2000, p. 17.

⁽³⁾ OJ L 253, 7.10.2000, p. 42.

⁽⁴⁾ OJ L 82, 22.3.1997, p. 1.

⁽⁵⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁶⁾ OJ L 134, 29.5.2003, p. 1.

⁽⁷⁾ OJ L 184, 17.7.1999, p. 23.

(c) the following two paragraphs are added:

'Where a request is submitted for repayment or remission under Article 236 of the Code in conjunction with Article 220(2)(b) of the Code, subparagraph (b) of the first paragraph of this Article and Articles 871 to 876 shall apply *mutatis mutandis*.

For the purposes of applying the above paragraphs the Member States shall give each other mutual assistance, particularly where an error by the customs authorities of a Member State other than the one responsible for taking the decision is concerned.'

2. Articles 870 to 872 are replaced by the following:

Article 870

1. Each Member State shall hold at the disposal of the Commission a list of the cases in which the following provisions have been applied:

- Article 869(a),
- Article 236 of the Code in conjunction with Article 220(2)(b) of the Code, where no communication is required under paragraph 2,
- Article 869(b), where no communication is required under paragraph 2.

2. Each Member State shall communicate to the Commission a list of the cases in which the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is more than EUR 50 000, and the provisions of Article 236 of the Code in conjunction with Article 220(2)(b) of the Code or of Article 869(b) have been applied, giving a short summary of each case. This communication shall be forwarded during the first and third quarters of each year for all cases in which it was decided not to enter the uncollected duties in the accounts during the preceding half-year.

Article 871

1. The customs authority shall transmit the case to the Commission to be settled under the procedure laid down in Articles 872 to 876 where it considers that the conditions laid down in Article 220(2)(b) of the Code are fulfilled and:

- it considers that the Commission has committed an error within the meaning of Article 220(2)(b) of the Code,
- the circumstances of the case are related to the findings of a Community investigation carried out under Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter

and the Commission to ensure the correct application of the law on customs and agricultural matters (*) or under any other Community legislation or any agreement concluded by the Community with a country or group of countries in which provision is made for carrying out such Community investigations, or

- the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is EUR 500 000 or more.

2. However, the cases referred to in paragraph 1 shall not be transmitted where:

- the Commission has already adopted a decision under the procedure provided for in Articles 872 to 876 on a case involving comparable issues of fact and of law,
- the Commission is already considering a case involving comparable issues of fact and of law.

3. The dossier submitted to the Commission shall contain all the information required for full consideration. It shall include detailed information on the behaviour of the operator concerned, and in particular on his professional experience, good faith and diligence. This assessment shall be accompanied by all information that may demonstrate that the operator acted in good faith. The dossier shall also include a statement, signed by the applicant for repayment or remission, certifying that he has read the dossier and either stating that he has nothing to add or listing all the additional information that he considers should be included.

4. As soon as it receives the dossier the Commission shall inform the Member State concerned accordingly.

5. Should it be found that the information supplied by the Member State is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may request that additional information be supplied.

6. Where one of the following situations occurs the Commission shall return the dossier to the customs authority and the procedure referred to in Articles 872 to 876 shall be deemed never to have been initiated:

- the dossier shows that there is a disagreement between the customs authority that has transmitted the dossier and the person who signed the statement referred to in paragraph 3 as regards the account of the facts,
- the dossier is obviously incomplete since it contains nothing that would justify its consideration by the Commission,
- under paragraphs 1 and 2, the dossier should not be transmitted,

- the existence of a customs debt has not been established,
- new information relating to the dossier and of a nature to alter substantially its presentation of the facts or legal assessment has been transmitted by the customs authority to the Commission while it is considering the dossier.

Article 872

The Commission shall send to the Member States a copy of the dossier referred to in Article 871(3) within 15 days of the date on which it received that dossier.

Consideration of the case in question shall be included as soon as possible on the agenda of a meeting of the group of experts provided for in Article 873.

(*) OJ L 82, 22.3.1997, p. 1.'

3. Articles 873 to 875 are replaced by the following:

'Article 873

After consulting a group of experts composed of representatives of all Member States, meeting within the framework of the Committee to consider the case in question, the Commission shall decide whether the circumstances under consideration are such that the duties in question need not be entered in the accounts.

That decision shall be taken within nine months of the date on which the dossier referred to in Article 871(3) is received by the Commission. However, where the declaration or detailed assessment of the operator's behaviour referred to in Article 871(3) is not included in the dossier, the nine months shall be counted only from the date of receipt of these documents by the Commission. The Commission shall notify the customs authority and the person concerned accordingly.

Where the Commission has found it necessary to ask for additional information from the Member State in order to reach its decision, the nine months shall be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information. The Commission shall notify the person concerned of the extension of the procedure.

Where the Commission conducts investigations itself in order to reach a decision, the nine months shall be extended by the time necessary to complete the investigations. Such an extension shall not exceed nine months. The Commission shall notify the customs authority and the person concerned of the dates on which investigations are opened and closed.

Where the Commission has notified the person concerned of its objections in accordance with Article 872a, the period of nine months shall be extended by one month.

Article 874

The Member State concerned shall be notified of the decision referred to in Article 873 as soon as possible and in any event within one month of the expiry of the period specified in that Article.

The Commission shall notify the Member States of the decisions it has adopted in order to help customs authorities to reach decisions in situations involving comparable issues of fact and law.

Article 875

Where it is established by the decision referred to in Article 873 that the circumstances under consideration are such that the duties in question need not be entered in the accounts, the Commission may specify the conditions under which the Member States may refrain from post-clearance entry in the account in cases involving comparable issues of fact and of law.'

4. Article 899 is replaced by the following text:

'Article 899

1. Where the decision-making customs authority establishes that an application for repayment or remission submitted to it under Article 239(2) of the Code:

- is based on grounds corresponding to one of the circumstances referred to in Articles 900 to 903, and that these do not result from deception or obvious negligence on the part of the person concerned, it shall repay or remit the amount of import or export duties concerned,
- is based on grounds corresponding to one of the circumstances referred to in Article 904, it shall not repay or remit the amount of import or export duties concerned.

2. In other cases, except those in which the dossier must be submitted to the Commission pursuant to Article 905, the decision-making customs authority shall itself decide to grant repayment or remission of the import or export duties where there is a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

Where Article 905(2), second indent, is applicable, the customs authorities may not decide to authorise repayment or remission of the duties in question until the end of a procedure initiated in accordance with Articles 906 to 909.

3. For the purposes of Article 239(1) of the Code and of this Article, "the person concerned" shall mean the person or persons referred to in Article 878(1) or their representatives, and any other person who was involved with the completion of the customs formalities relating to the goods concerned or gave the instructions necessary for the completion of these formalities.

4. For the purposes of applying paragraphs 1 and 2 the Member States shall give each other mutual assistance, particularly where an error by the customs authorities of a Member State other than that responsible for taking the decision is concerned.'

5. The following Article is inserted after Article 904:

'Article 904a

1. When no communication is required under paragraph 2, each Member State shall hold at the disposal of the Commission the list of the cases in which Article 899(2) was applied.

2. Each Member State shall communicate to the Commission a list of the cases in which it has applied the provisions of Article 899(2) and the amount repaid or remitted in respect of one or more import or export operations but in consequence of a single special situation is more than EUR 50 000, giving a short summary of each case. This communication shall be forwarded during the first and third quarters of each year for all cases in which it was decided to repay or remit duties during the preceding half-year.'

6. Articles 905 and 906 are replaced by:

'Article 905

1. Where the application for repayment or remission submitted under Article 239(2) of the Code is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which the decision-making customs authority belongs shall transmit the case to the Commission to be settled under the procedure laid down in Articles 906 to 909 where:

- the authority considers that a special situation is the result of the Commission failing in its obligations,
- the circumstances of the case are related to the findings of a Community investigation carried out under Regulation (EC) No 515/97, or under any other Community legislation or any agreement concluded by the Community with countries or groups of countries in which provision is made for carrying out such Community investigations, or

- the amount for which the person concerned may be liable in respect of one or more import or export operations but in consequence of a single special situation is EUR 500 000 or more.

The term "the person concerned" shall be interpreted in the same way as in Article 899.

2. However, the cases referred to in paragraph 1 shall not be transmitted where:

- the Commission has already adopted a decision under the procedure provided for in Articles 906 to 909 on a case involving comparable issues of fact and of law,
- the Commission is already considering a case involving comparable issues of fact and of law.

3. The dossier submitted to the Commission shall contain all the information required for full consideration. It shall include detailed information on the behaviour of the operator concerned, and in particular on his professional experience, good faith and diligence. This assessment shall be accompanied by all information that may demonstrate that the operator acted in good faith. The dossier shall also include a statement, signed by the applicant for repayment or remission, certifying that he has read the dossier and either stating that he has nothing to add or listing all the additional information that he considers should be included.

4. As soon as it receives the dossier the Commission shall inform the Member State concerned accordingly.

5. Should it be found that the information supplied by the Member State is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may request that additional information be supplied.

6. Where one of the following situations occurs the Commission shall return the dossier to the customs authority and the procedure referred to in Articles 906 to 909 shall be deemed never to have been initiated:

- the dossier shows that there is a disagreement between the customs authority that has transmitted the dossier and the person who signed the statement referred to in paragraph 3 as regards the account of the facts,
- the dossier is obviously incomplete since it contains nothing that would justify its consideration by the Commission,
- under paragraphs 1 and 2, the dossier should not be transmitted,

- the existence of a customs debt has not been established,
- new information relating to the dossier and of a nature to alter substantially its presentation of the facts or legal assessment has been transmitted by the customs authority to the Commission while it is considering the dossier.

Article 906

The Commission shall forward to the Member States a copy of the dossier referred to in Article 905(3) within 15 days of the date on which it received that dossier.

Consideration of the case in question shall be included as soon as possible on the agenda of a meeting of the group of experts provided for in Article 907.'

7. Articles 907 and 908 are replaced by:

'Article 907

After consulting a group of experts composed of representatives of all Member States, meeting within the framework of the Committee to consider the case in question, the Commission shall decide whether or not the situation which has been considered justifies repayment or remission.

That decision shall be taken within nine months of the date on which the case referred to in Article 905(3) is received by the Commission. However, where the declaration or detailed assessment of the operator's behaviour referred to in Article 905(3) is not included in the dossier, the nine months shall be counted only from the date of receipt of these documents by the Commission. The customs authority and the person applying for repayment or remission shall be notified accordingly.

Where the Commission has found it necessary to ask for additional information from the Member State in order to reach its decision, the nine months shall be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information. The person applying for repayment or remission shall be notified of the extension.

Where the Commission conducts investigations itself in order to reach its decision, the nine months shall be extended by the time necessary to complete the investigations. Such an extension shall not exceed nine months. The customs authority and the person applying for repayment or remission shall be notified of the dates on which investigations are opened and closed.

Where the Commission has notified the person applying for repayment or remission of its objections in accordance with Article 906a, the period of nine months shall be extended by one month.

Article 908

1. The Member State concerned shall be notified of the decision referred to in Article 907 as soon as possible and in any event within one month of the expiry of the period specified in that Article.

The Commission shall notify the Member States of the decisions it has adopted in order to help customs authorities to reach decisions on cases involving comparable issues of fact and law.

2. The decision-making authority shall decide whether to grant or refuse the application made to it on the basis of the Commission's decision notified in accordance with paragraph 1.

3. Where it is established by the decision referred to in Article 907 that the circumstances under consideration justify repayment or remission, the Commission may specify the conditions under which the Member States may repay or remit duties in cases involving comparable issues of fact and of law.'

Article 2

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

Article 1 shall apply from 1 August 2003 to all cases not sent to the Commission for decision before that date.

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

Done at Brussels, 25 July 2003.

For the Commission
Frederik BOLKESTEIN
Member of the Commission