

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DIRECTIVE

of 23 April 1982

laying down certain provisions for implementing Council Directive 81/177/EEC on the harmonization of procedures for the export of Community goods

(82/347/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 81/177/EEC of 24 February 1981 on the harmonization of procedures for the export of Community goods ⁽¹⁾, and in particular Article 21 (2) thereof,

Whereas, in order to define clearly the obligations which the person who draws up the export declaration must fulfil pursuant to Article 3 of Directive 81/177/EEC, it is necessary to specify the particulars which the declaration must contain and the documents which must accompany that declaration;

Whereas, in order to ensure correct application of export duties and of any other Community provisions governing the export of goods, it is necessary to establish practical, uniform procedures for the examination of the goods which the customs authority may carry out pursuant to Article 9 of Directive 81/177/EEC, and in particular for the taking of samples which this authority may carry out for the purposes of such examination; whereas, in particular, provision must be made for appropriate measures to deal with any refusal on the part of the declarant to be present at the examination and taking of samples, at the request of the customs authority, with a view to rectifying the suspended operation;

Whereas, in view of the important consequences which the results of verification by the customs authority of the export declaration and its accompanying documents have for the correct application of export duties and of any other Community provisions governing the export of goods pursuant to Article 10 (1) of Directive 81/177/EEC, the procedure according to which this authority must set out these results on the declaration must be laid down;

Whereas, in order to ensure uniform implementation of the provisions of Article 13 of Directive 81/177/EEC, whereby the customs authority may authorize export of the goods only after making certain, where appropriate, that the duties entered in the accounts have been paid or covered by security, it is necessary to lay down the rules to be respected by that authority where it authorizes the export of the goods without having the results of the checks that it has undertaken;

Whereas the provisions of this Directive shall apply without prejudice to Council Regulation (EEC) No 1736/75 of 24 June 1975 on the external trade statistics of the Community and statistics of trade between Member States ⁽²⁾, and to Council Regulation (EEC) No 2102/77 of 20 September 1977 introducing a Community export declaration form ⁽³⁾; whereas these provisions shall not affect the special provisions governing the granting of export refunds and other export amounts laid down within the framework of the common agricultural policy;

⁽¹⁾ OJ No L 83, 30. 3. 1981, p. 40.

⁽²⁾ OJ No L 183, 14. 7. 1975, p. 3.

⁽³⁾ OJ No L 246, 27. 9. 1977, p. 1.

Whereas the provisions of this Directive are in conformity with the opinion of the Committee on General Customs Rules,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive lays down certain provisions for implementing Articles 3, 9, 10 (1) and 13 of Council Directive 81/177/EEC, hereinafter referred to as 'the basic Directive'.

TITLE I

CONTENTS OF THE EXPORT DECLARATION

Article 2

1. The particulars referred to in Article 3 (1) of the basic Directive which must be contained in the export declaration shall be the following:

- (a) the declarant's name and address and, where he is acting on behalf of a third party, the legal relationship under which he does so, where such information is necessary for determining the person liable for payment of any export duties;
- (b) where the declarant is not himself the exporter of the goods, the name and address of the said exporter;
- (c) in respect of goods which are under a customs procedure, a reference to that procedure;
- (d) the number, kind, marks and serial numbers of packages containing the goods declared or, if the goods are not packed, the number of articles covered by the declaration or the word 'bulk', as the case may be, and the particulars necessary to identify such unpacked goods;
- (e) the location of the goods declared, where the customs authority considers this necessary;
- (f) in the case of goods covered by the common agricultural policy, the heading or subheading of the goods in the Common Customs Tariff nomenclature and, if necessary, in the particular agricultural nomenclature which must be used for the operation in question, and a description of the said goods in the terms of that nomenclature or in terms that are sufficiently precise to enable the customs authority to determine forthwith and unambiguously that they correspond to the tariff heading or subheading so declared;

- (g) in the case of goods other than those referred to under (f), their description in terms that are sufficiently precise to enable them to be identified and checked;
- (h) in the case of goods liable to export duties or goods in respect of which the grant of export refunds or other export amounts within the framework of the common agricultural policy will be requested, a statement of the quantity and any additional particulars that may be necessary for application of such duties or for the calculation of such refunds or amounts;
- (i) the country of destination of the goods, within the meaning of Article 12 of Regulation (EEC) No 1736/75;
- (j) the serial number, preceded by the letter(s) indicating the Member State issuing any export licence or advance-fixing certificate presented pursuant to the provisions applicable in respect of the common agricultural policy;
- (k) all other particulars needed for application of the rules governing the export of the goods.

2. In addition to the particulars referred to in paragraph 1, the Member States may require that the following be included in the declaration:

- (a) the name and address of the consignee of the goods;
- (b) the rate of any export duty applicable to the goods declared;
- (c) for information purposes the amount of export duty, as calculated by the declarant.

Article 3

1. The customs authority may, should it consider it necessary, require transport documents or, as the case may be, documents relating to the previous customs procedure, to be produced when the declaration is lodged.

Where a single item is presented in two or more packages, the customs authority may also require the production of a packing list or equivalent document stating the contents of each package.

2. The accompanying documents must be kept by the customs authority unless provided otherwise or unless the declarant requires them for other operations. In the latter case, the customs authority shall take the necessary steps to ensure that the documents in question cannot subsequently be used except in respect of the quantity or value of goods for which they remain valid.

TITLE II

VERIFICATION OF THE EXPORT DECLARATION

A. Documentary verification

Article 4

Without prejudice to verification carried out before a declaration is accepted, for the purpose of ascertaining whether it is acceptable, the customs authority may, where it considers this necessary, check the declaration and the documents accompanying it in order to ensure, that the information contained in the latter corresponds to that given in the declaration.

B. Examination of the goods

Article 5

Where the customs authority decides to examine a part of the goods only, it shall inform the declarant or his representative which items it wishes to examine. The authority's choice shall be final.

The findings of such partial examination shall apply to all goods covered by the declaration in question. However, the declarant may request a further examination should he consider that the findings of the partial examination are not valid for the remainder of the goods declared.

Article 6

1. Where the customs authority elects to examine goods, it shall so inform the declarant or his representative.
2. The declarant or the person designated by him to be present at the examination of the goods shall provide the customs authority with the assistance required to facilitate its work. Should the customs authority consider the assistance given unsatisfactory, it may require the declarant to designate another person able to give the necessary assistance.
3. 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 authority considers necessary, the latter shall set the declarant a period in which to comply, unless it considers that such an examination may be dispensed with.

If, on expiry of the period laid down, the declarant has not complied with the requirements of the customs authority, the latter 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 of any person designated in accordance with the provisions in force.

Findings made by the customs authority during examinations carried out under the conditions referred to in the preceding subparagraph shall have the same validity as if the goods had been examined in the presence of the declarant.

4. Instead of the provisions laid down in paragraph 3, Member States may provide for the customs authority to have the option of invalidating the declaration in cases where it is beyond doubt 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 is not intended to prevent, nor in effect prevents, that authority from finding that the rules governing the export of the goods have been breached.

C. Taking of samples

Article 7

1. Where the customs authority decides to take samples, it shall so inform the declarant or his representative.

Should the customs authority consider this desirable, it may require the declarant to be present at the taking of samples, or to arrange to be represented by a person able to render the authority the necessary assistance.

2. Samples shall be taken by the customs authority which may, however, ask that this be done under its 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. Quantities taken as samples should not exceed what is needed for analysis or detailed examination, including possible check analysis.

Article 8

1. The declarant or the person designated by him to be present at the taking of samples shall render to the customs authority all the assistance needed to facilitate the operation. Should the customs authority consider the assistance given unsatisfactory, it

may require the declarant to designate another person able to give the necessary assistance.

2. Where the declarant refuses to be present at the taking of samples or to designate a person able to give the assistance which the customs authority considers necessary, the provisions of Article 6 (3) and (4) shall apply.

Article 9

Where the customs authority takes samples for analysis or detailed examination, it shall authorize export of the goods in question without waiting for the results of the analysis or examination, unless there are other grounds for not doing so.

In this case, the provisions of Article 14 shall apply.

Article 10

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

The declarant may be authorized, where circumstances allow, to replace the quantities of goods taken as samples by identical goods in order to complete the consignment.

Article 11

Unless destroyed by the analysis or 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 authority, in particular after all the declarant's means of appeal against the decision taken on the basis of the results of that analysis or detailed examination have been exhausted.

Where the declarant does not ask for samples to be returned, they may either be destroyed or kept to facilitate checking of subsequent operations. In specific circumstances, however, the customs authority may require the declarant to remove any samples that remain.

D. Attestation by the customs authority

Article 12

1. Where the customs authority checks the declaration and documents accompanying it or examines the goods, it shall indicate, at least in the copy of the declaration retained by the customs authority or in a document attached to it, the subject and results

of any such check or examination. Where a partial examination of the goods is made, the references of the consignment examined shall also be given.

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

2. Should the result of the check on the declaration and documents accompanying it or of the examination of the goods not be in accordance with the particulars given in the declaration, the customs authority shall specify, at least in the copy of declaration intended for the customs authority or in the document attached to it, the particulars to be taken into account for the purposes of calculating the export duties or export refunds and other export amounts and for implementing any other Community provisions governing export of the goods.

3. The attestation by the customs authority shall be dated and shall bear the particulars needed to identify the official issuing it.

4. Member States may provide for no endorsement to be made by the customs authority on the declaration or on the document attached to it where the said authority does not check the declaration or examine the goods.

TITLE III

EXPORT AUTHORIZATION

Article 13

Export authorization shall be given on a single occasion for all the goods covered by the declaration.

Where it is necessary to indicate the date of the export authorization in order to ensure that the provisions applicable to the goods covered by the declaration are complied with, Member States may provide for this information to be given either in the declaration itself or in any other appropriate document.

Article 14

1. Where, pending the result of the checks that have been undertaken, whether in order to verify the statements made in the declaration or the documents accompanying it or to examine the goods, it is impossible to ascertain the particulars required to assess the export duties or export refunds or other export amounts to which the export of the goods may give rise, the customs authority shall, nonethe-

less, authorize the export of the goods in question unless there are other grounds for not doing so. Where this authorization is granted, the amount of export duties assessed on the basis of the statements made in the declaration shall be entered in the accounts immediately.

Where the customs authority considers that the checks which it has undertaken may enable assessment of export duties higher than those resulting from the statements made in the declaration, it shall further require the lodging of a security sufficient to cover the difference between the amount referred to in the previous subparagraph and the amount which may finally be payable on the goods. However, without prejudice to the specific provisions applicable within the framework of the common agricultural policy, Member States may provide for declarants to have the option of requesting 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 the amount of export duties assessed on the basis of the checks carried out by the customs authority differs from the amount which results from the statements made in the declaration, authorization to export the goods shall give rise to immediate entry in the accounts of the amount thus assessed.

3. Where duties must be immediately entered in the accounts as provided for in paragraphs 1 and 2, this shall be done without prejudice to any measures taken pursuant to 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 ⁽¹⁾.

TITLE IV

FINAL PROVISIONS

Article 15

Where an export declaration covers two or more articles, the particulars relating to each article shall be regarded as constituting a separate declaration.

Article 16

1. The Member States shall bring into force the measures necessary to comply with this Directive not later than 1 January 1983.

2. Each Member State shall inform the Commission immediately of the measures which it adopts for the purposes of implementing this Directive. The Commission shall communicate this information to the other Member States.

Article 17

This Directive is addressed to the Member States.

Done at Brussels, 23 April 1982.

For the Commission
Karl-Heinz NARJES
Member of the Commission

⁽¹⁾ OJ No L 146, 2. 6. 1978, p. 19.