I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2503/88

of 25 July 1988

on customs warehouses

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

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

Having regard to the opinion of the European Parliament (2),

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

Whereas it is in the interests of economic operators who do not know what customs treatment will finally apply to non-Community goods or who do not yet wish such treatment to be applied to the goods to store those goods for some period without their being subject to the payment of import duties or the application of commercial policy measures; whereas this need is met by the establishment of customs warehouses and the use of the customs warehousing procedure; whereas this procedure ensures the promotion of Community activities relating to foreign trade and, in particular, the distribution of goods within the Community and elsewhere and whereas, therefore, the customs warehousing procedure is an essential instrument of the Community's commercial policy;

Whereas Directive 69/74/EEC (4), as last amended by the Act of Accession of Spain and Portugal, laid down the rules to be incorporated in Member States' own provisions governing customs warehouses; whereas the importance of the procedure in the context of the customs union calls for it to be applied uniformly throughout the Community; whereas the rules currently in force should therefore be supplemented and clarified and enacted in a form directly applicable in the Member States, thus strengthening legal certainty for individuals;

Whereas the customs warehousing procedure should apply both to Community goods which qualify for certain export-related benefits as a result of being placed in a customs warehouse and to Community goods which are subject in intra-Community trade to charges imposed under the common agricultural policy for such time as such charges are applied;

Whereas it should be possible for goods other than those placed under the customs warehousing arrangements to be stored under certain conditions on customs warehouse premises; whereas in those circumstances it falls to the Member States, where such goods are liable to domestic taxes, to decide on the conditions for, and the consequences of, placing them in customs warehouses, without prejudice to Community tax provisions;

Whereas, in keeping with the current situation in the Member States, there should be provision for identifying the different types of customs warehouse; whereas authorization to operate a specific type of customs warehouse should be issued on the basis of economic requirements and the ability of the customs authority to exercise supervision;

Whereas certain procedural facilities should be provided; whereas in particular it should be possible for goods stored in customs warehouses to be released for free circulation on certain conditions without the goods being presented or a declaration made in advance;

Whereas, where circumstances so warrant, it should be possible to use the customs warehousing procedure without the goods being stored on premises approved as a customs warehouse;

Whereas it is necessary to lay down certain rules for the charging of duties where a customs debt arises in respect of non-Community goods; whereas it should be provided that, in certain circumstances, value added within the customs territory of the Community is not to be included in the customs value of such goods;

Whereas, to ensure uniform application of this Regulation, a Community procedure for the enactment of implementing rules should be established; whereas a committee should be set up to provide a forum for close and effective cooperation between the Member States and the Commission in this field,

(1) OJ No C 283, 6. 11. 1985, p. 3.
(2) OJ No C 120, 20. 5. 1986, p. 16.
(3) OJ No C 283, 20. 10. 1986, p. 6.
(4) OJ No L 58, 8. 3. 1969, p. 7.

HAS ADOPTED THIS REGULATION:

TITLE 1

General provisions

Article 1

1. This Regulation lays down the rules governing the customs warehousing procedure.

2. The customs warehousing procedure shall allow for storage in a customs warehouse of:

(a) non-Community goods, these goods not being subject to import duties or, save as otherwise provided, to commercial policy measures;

(b) Community goods for which specific Community rules provide, as a result of their being placed in a customs warehouse, the benefit of measures normally attaching to the export of such goods.

3. For such time as Community goods are subject in intra-Community trade to charges imposed under the common agricultural policy, those goods may be stored under the customs warehousing procedure in a customs warehouse without such charges being applied.

4. For the purposes of this Regulation:

(a) *'customs warehouse'* means any place approved by and under the supervision of the customs authority where goods may be stored under conditions laid down in accordance with this Regulation ;

(b) *'public warehouse'* means a customs warehouse available for use by all persons for the warehousing of goods;

(c) *'private warehouse'* means a customs warehouse reserved for the warehousing of goods by the warehousekeeper;

(d) *'warehousekeeper'* means any person authorized to operate a customs warehouse;

(e) *'depositor'* means the person bound by the declaration placing the goods under the customs warehousing procedure or to whom the rights and obligations of such a person have been transferred;

(f) *'Community goods'* means goods:

— entirely obtained in the customs territory of the Community, without the addition of goods from third countries or territories which are not part of the customs territory of the Community,

— from countries or territories not forming part of the customs territory of the Community which have been released for free circulation in a Member State,

— obtained, in the customs territory of the Community, either from the goods referred to exclusively in the second indent or from the goods referred to in the first and second indents;

(g) *'non-Community goods'* means goods other than those referred to in (f).

Without prejudice to the agreements concluded with third countries for the implementation of the Community transit arrangements, goods which, while fulfilling the conditions laid down in (f), are reintroduced into the customs territory of the Community after export therefrom shall also be considered as non-Community goods;

(h) *'import duties'* means not only customs duties and charges having equivalent effect but also agricultural levies and other import charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products;

(i) *'customs authority'* means any authority competent to apply customs rules, even if that authority is not part of the customs administration;

(j) *'person'* means:

— a natural person,

— 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 legal persons.

Article 2

1. Subject to paragraph 2 and Article 4, the goods referred to in Article 1 (2) and (3) may be placed under the customs warehousing procedure whatever their nature, quantity and country of origin or consignment or their destination.

2. Paragraph 1 shall not preclude the imposition of prohibitions or restrictions on grounds of public morality, public policy or public security, protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.

TITLE II

Authorization to operate a customs warehouse

Article 3

1. The operation of a customs warehouse by a person other than a customs authority shall be subject to an authorization from that authority.

2. Any person wishing to operate a customs warehouse must make a request in writing containing the information required for granting the authorization, in particular demonstration that an economic need for warehousing exists.

The request must be supported by any document which the customs authority considers necessary.

3. Authorization shall be granted only to persons established in the Community and offering the necessary guarantees of compliance with the provisions of this Regulation, and only if the necessary supervision and checks can be carried out without requiring the establishment of an administrative system out of proportion to the economic needs involved.

Article 4

The special conditions for the operation of the customs warehouse shall be set out in the authorization.

The authorization shall specify *inter alia* the customs office responsible for supervising the warehouse. It may also specify, where appropriate, that goods which present a danger or are likely to spoil other goods or which, for other reasons, require particular facilities must be placed in customs warehouses specially equipped to receive them.

If a private warehouse is concerned, it may also specify the categories of goods which may be admitted to that warehouse.

Article 5

The warehousekeeper shall be required to notify the customs authority of all factors arising after the issue of the authorization which are likely to influence its continuation or contents.

Article 6

Without prejudice to Article 7, where the circumstances under which the authorization was issued are found to have changed, the customs authority shall amend the authorization accordingly.

Article 7

Cases where the authorization is to be revoked and cases where it is found to be null and void, as well as the consequences deriving therefrom, shall be determined in accordance with the procedure laid down in Article 28.

TITLE III

Responsibility and guarantee

Article 8

The warehousekeeper shall be responsible for:

(a) ensuring that while the goods are in the customs warehouse they are not removed from customs supervision;

(b) executing the obligations that arise from the storage of goods covered by the customs warehousing procedure; and

(c) complying with the particular conditions specified in the authorization.

Article 9

1. By way of derogation from Article 8, where the authorization concerns a public warehouse it may provide that some or all of the responsibilities referred to in Article 8 (a) and (b) devolve exclusively upon the depositor. In this case, the depositor must be informed of his responsibilities by the warehousekeeper and the customs warehouse shall be designated a public warehouse under the responsibility of the depositor.

2. The depositor shall at all times be responsible for executing the obligations arising from the placing of goods under the customs warehousing procedure.

Article 10

The rights and obligations of a warehousekeeper or of a depositor arising from this Regulation may, with the agreement of the customs authority, be transferred to another person.

Article 11

Without prejudice to the guarantees provided with regard to the common agricultural policy, the customs authority may demand a guarantee in connection with the responsibilities specified in 8 and 9.

TITLE IV

Placing of goods under the customs warehousing procedure

Article 12

The conditions governing the placing of goods under the customs warehousing procedure shall be determined in accordance with the procedure laid down in Article 28.

They shall provide in particular, in addition to the usual procedure, that goods may be placed under the customs warehousing procedure:

(a) when the goods are physically deposited in the customs warehouse, subject to:

— entry of the information necessary for their identification in the stock records referred to in Article 14, or

— production of the goods to the customs authority and lodging of a commercial or administrative document accepted by the customs authorities containing the information necessary for their identification;

(b) without the goods being stored in a customs warehouse.

TITLE V

Operation of the customs warehouse and the customs warehousing procedure

Article 13

The customs authority shall take all the measures required to supervise and ensure the smooth operation of the customs warehouse and to carry out checks on goods placed under the customs warehousing procedure.

Article 14

Save as provided in Article 16 (2), the person designated by the customs authority must keep, in a form approved by that authority, stock records of all the goods placed under the customs warehousing procedure. These stock records must be kept at the disposal of the customs authority to enable it to carry out the checks referred to in Article 13.

Article 15

1. Where an economic need exists and customs supervision is not adversely affected, the customs authority may allow:

(a) Community goods other than those referred to in Article 1 (2) (b) and (3) to be stored on the premises of the customs warehouse;

(b) non-Community goods to be processed on the premises of the customs warehouse under inward processing arrangements, subject to the conditions provided for by those arrangements. The formalities which may be dispensed with in a customs warehouse will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No 1999/85 [1];

(c) non-Community goods to be processed on the premises of the customs warehouse under the arrangements for processing under customs control, subject to the conditions provided for by those arrangements. The formalities which may be dispensed with in a customs warehouse will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No 1999/85.

2. In the cases referred to in paragraph 1, goods shall not be regarded as placed under the customs warehousing procedure.

3. The customs authority may require the goods referred to in paragraph 1 to be entered in the stock records provided for in Article 14.

Article 16

1. Goods placed under the customs warehousing procedure must be entered in the stock records provided for in Article 14 as soon as they are deposited in the customs warehouse.

2. The customs authority may permit the administrative document referred to in Article 12 (a), second indent, to replace the entry in the stock records, as referred to in paragraph 1, with the proviso that such document entails the obligation to discharge it upon completion of the customs warehousing procedure.

Article 17

1. The period of storage of goods under the customs warehousing procedure shall not be limited.

However, in exceptional cases, the customs authority may set a time-limit within which the depositor must deal with the goods in one of the ways provided for in Article 21 or Article 24.

2. Specific time-limits for certain goods referred to in Article 1 (2) (b) covered by the common agricultural policy may be laid down in accordance with the procedure laid down in Article 28, without prejudice to Article 29.

Article 18

1. Where non-Community goods, or the Community goods referred to in Article 1 (3), are placed under the customs warehousing procedure, they may undergo the usual forms of handling intended to ensure preservation, to improve their presentation or marketable quality or to prepare them for distribution or resale.

A list of cases in which those forms of handling shall be prohibited for goods covered by the common agricultural policy may be drawn up if this is necessary to ensure the smooth operation of the common organization of markets.

2. Community goods referred to in Article 1 (2) (b) which are placed under the customs warehousing procedure and covered by the common agricultural policy may undergo only the forms of handling expressly stipulated for such goods.

3. The forms of handling provided for in the first subparagraph of paragraph 1 and paragraph 2 must be authorized in advance by the customs authority, which shall lay down the conditions under which they may take place.

[1] OJ No L 188, 20. 7. 1985, p. 1.

4. The lists of the forms of handling referred to in paragraph 1 and 2 shall be established in accordance with the procedure laid down in Article 28, without prejudice to Article 29.

Article 19

Where the circumstances so warrant, goods placed under the customs warehousing procedure may be temporarily removed from the customs warehouse. This removal must be given prior authorization by the customs authority, which shall set out the conditions on which it may take place.

During the period for which they are outside the customs warehouse the goods may undergo the handling referred to in Article 18 on the conditions set out therein.

Article 20

The customs authority may allow goods placed under the customs warehousing procedure to be transferred from one warehouse to another. The conditions under which goods may be transferred from one warehouse to another without the procedure being terminated shall be determined in accordance with the procedure laid down in Article 28.

TITLE VI

Discharge of the customs warehousing procedure

Article 21

Without prejudice to special provisions adopted under specific customs arrangements, the customs warehousing procedure shall be discharged for non-Community goods:

— released for free circulation or placed under another customs procedure, or

— placed in a free zone, or

— exported, or

— abandoned to the Exchequer, where national regulations provide for this possibility, or

— destroyed under the supervision of the customs authority; waste and scrap resulting from this destruction may be dealt with in one of the ways for which provision is made in the preceding indents.

The abandoning or destruction of goods must not give rise to any expense to the Exchequer.

Article 22

1. Where a customs debt is incurred in respect of non-Community goods placed under the customs warehousing procedure, the customs value of such goods shall be determined in accordance with Regulation (EEC) No 1224/80 [1], as last amended by the Act of Accession of Spain and Portugal.

Where the customs value is based on a price actually paid or payable which includes the cost of the warehousing and of preserving goods while they remain in the warehouse, those costs need to be included in the customs value if they are distinguished from the price actually paid or payable for the goods.

2. Where the said goods have undergone the usual forms of handling within the meaning of Article 18, the nature of the goods, the value for customs purposes and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant, be those which would be taken into consideration if the goods concerned had not undergone the said handling. However, derogations from this provision may be adopted in accordance with the procedure laid down in Article 28.

Article 23

1. Community goods referred to in Article 1 (2) (b) which are covered by the common agricultural policy and placed under the customs warehousing procedure must be dealt with in one of the ways provided for by the rules under which they are eligible, because they are placed under the said procedure, for measures normally attaching to the export of such goods.

2. Application may be made for cancellation of the declaration placing the goods under the customs warehousing procedure. The customs authority shall grant such application where the specific rules governing cases of non-compliance with the specified intended use of the goods have been followed. The list of cases in which the declaration may not be cancelled shall be drawn up in accordance with Article 28, without prejudice to Article 29.

3. If, on expiry of the time-limit set pursuant to Article 17 (2), no request has been made for the Community goods covered by that provision to be dealt with in one of the ways referred to in paragraph 1, the customs authority shall revoke the declaration placing the goods under the customs warehousing procedure and shall take the measures referred to in paragraph 2.

Article 24

Community goods referred to in Article 1 (3) which have been placed under the customs warehousing procedure may be put to any purpose which is permitted for such goods.

Article 25

The conditions for the discharge of the customs warehousing procedure shall be laid down in accordance with Article 28. In particular, they shall provide, in addition to the usual procedure, that:

[1] OJ No L 134, 31. 5. 1980, p. 1.

— the release for free circulation of non Community goods and the entry for home use of Community goods referred in Article 1 (3), which are placed under the customs warehousing procedure, shall take place without the goods being presented to the customs authority and before the declaration relating thereto is lodged:

(a) on condition that the nature of the goods, the value for customs purposes and the quantity of the goods were recognized or permitted when the goods were placed under the customs warehousing procedure. These charges shall also be applied at the time of release for free circulation unless the party concerned requests that, on release for free circulation, more favourable charges be applied and provided that such charges can be verified without a physical examination of the goods,

or

(b) subject to the information necessary for their identification being entered in the stock records referred to in Article 14;

— the exportation or dispatch of the goods placed under the customs warehousing procedure shall take place without the goods being presented to the customs authority and before the declaration relating thereto is lodged subject to the information necessary for their identification being entered in the stock records referred to in Article 14;

— for the other permitted customs purposes, the simplified procedures provided for in connection with such purposes shall be applied.

TITLE VII

Final provisions

Article 26

1. A Committee on Customs Warehouses and Free Zones, hereinafter called 'the committee', is hereby established; it shall be composed of representatives of the Member States; a representative of the Commission shall be chairman.

2. The comittee shall adopt its own rules of procedure.

Article 27

The committee may examine any matter concerning the implementation of this Regulation raised by its chairman either on his own initiative or at the request of the representative of a Member State.

Article 28

1. The provisions required to implement this Regulation shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3.

2. The representative of the Commission shall submit to the committee a draft of the provisions to be adopted. The committee shall deliver its opinion on the draft within a time-limit set by the chairman, having regard to the urgency of the matter. Opinions shall be delivered by a majority of votes, as provided in Article 148 (2) of the Treaty.

The chairman shall not vote.

3. (a) The Commission shall adopt the provisions envisaged where they are in accordance with the opinion of the committee.

(b) Where the provisions envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall without delay propose to the Council the provisions to be adopted. The Council shall act by a qualified majority.

(c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed provisions shall be adopted by the Commission.

Article 29

This Regulation shall be without prejudice to the adoption of specific provisions relating to the common agricultural policy, which remains subject to the rules on the implementation of the aforesaid policy.

Article 30

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

It shall be implemented one year after the date of entry into force of the implementing provisions adopted in accordance with the procedure laid down in Article 28.

2. Directive 69/74/EEC and the provisions of Directive 71/235/EEC [1] which are adopted for the application thereof shall be repealed on the date on which this Regulation is implemented. References to those Directives shall be construed as references to this Regulation.

3. Authorizations granted by customs authorities regarding the operation of customs warehouses shall be revoked when their substance conflicts with the provisions of this Regulation. They shall continue to apply in all other cases.

[1] OJ No L 143, 29. 6. 1971, p. 28.

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

Done at Brussels, 25 July 1988

For the Council

The President

Th. PANGALOS