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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 127 final

Brussels, 2 April 1976

Proposal for a

COUNCIL DIRECTIVE

on the harmonization of provisions laid
down by law, regulation or administrative
action relating to customs debt

(submitted to the Council by the Commission)

Explanatory memorandum

The import duties and export duties to which goods may be liable pursuant to the Community regulations in force (Common Customs Tariff, agricultural levies, etc.,) are duties which apply to the goods themselves. However, it is the responsibility of the person liable for payment of these duties to pay them and, subject to the application of the Community provisions governing deferred payment of import or export duties, the goods subject to such duties can be released by the competent authorities only if the duties have been paid by that person.

A number of legal situations therefore give rise to an obligation on the part of a natural or legal person to pay the import duties or export duties applying to goods liable to such duties. This obligation to pay, which takes the form of a debt to the Public Treasury, is referred to in this proposal for a directive, as it is moreover in the legislation of certain Member States, as "customs debt".

The legal situations giving rise to this customs debt are as follows :

a) at importation (article 2) :

(i) the entering of third country goods into free circulation in the customs territory of the Community, in compliance with the customs procedure laid down for this purpose ;

(ii) the introduction into the customs territory of the Community of third country goods in violation of the rules on the customs treatment of goods (smuggling) ;

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(iii) the removal of goods from customs control, or failure to comply with the various obligations concerning the use of such goods (handling, processing operations, etc.,) which result either from the customs regime under which these goods have been placed (warehouse, inward processing, temporary importation, etc.,) or from their being placed in temporary storage in accordance with Article 5 of the Council Directive of 30 July 1968 on the harmonisation of the provisions laid down by law, regulation or administrative action relating to :

1. customs treatment of goods entering the customs territory of the Community - 2. temporary storage of such goods (1) ;

(iv) failure within the time-limits fixed to use for the purposes intended goods which were put into free circulation with total or partial relief from import duties because they were intended for particular purposes, or the use of goods for purposes other than those intended.

(b) at exportation (Article 5) :

(i) the departure of goods liable to duties at exportation from the geographical territory of the Community ;

(ii) use of the goods for a purpose other than that for which they were entitled to leave the geographical territory of the Community with total or partial relief from duties at exportation (the amount of the export levy varying according to the area to which the goods are exported).

The establishment of the time at which the customs debt resulting from these various situations is created is of considerable importance because this date has a direct effect on the extent of the liability towards the Public Treasury of the person liable for payment. For example, until such time as the customs debt is created, damage and loss (breakage, evaporation, drying, etc.,) which may be suffered by the goods, must normally be taken into consideration in the determination of the elements of taxation of the said goods (nature, quantity, value, etc.,).

(1) JO No L 194 of 6.8.1968, p.13

On the other hand, once this customs debt is created, the consequences of this same damage or loss must normally be borne by the person liable for payment.

It is therefore important that the time when the customs debt is created should be clearly specified so that all the Community's importers and exporters receive identical treatment.

The choice of Community regulations in this field is a matter for agreement, since a number of solutions are possible (for example, at importation, it would be possible to adopt the time when the goods cross the external frontier of the Community, or the time when the entry of the goods for free circulation is accepted or when the competent authorities release the goods into free circulation). Since the duties at importation or at exportation in force in the Community are of an essentially economic nature, the Commission considers that the time when the customs debt is created should be :

- (i) at importation, at the closest possible time to the moment when the goods are actually integrated into the economy of the Community ;
- (ii) at exportation, at the closest possible time to the moment when the goods actually leave the geographical territory of the Community.

The ideal situation would naturally be to make the time when the customs debt is created coincide in all cases with the time referred to above, which actually justifies the application of the duties at importation or at exportation. Account must be taken however of the various

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legal situations listed above which give rise to the customs debt, some of which do not permit a very exact determination of the time when the goods are actually integrated into the Community economy or actually leave the Community. It is therefore necessary, in order to have simple and definite rules in this matter, to adapt the principle adopted to the various legal situations giving rise to a customs debt.

Consequently, this proposal for a directive contains the following provisions :

(a) at importation (Article 3) :

(i) where third country goods are integrated into the Community economy by being put into free circulation, the moment at which the customs debt is created shall be the time when the competent authorities accept the entry of the goods for free circulation (or any other act having the same effect in law as such acceptance). Of the various official acts involved in the customs procedure for the entry of goods for free circulation, acceptance of the entry is the only one which has a clear date which cannot be contested ; adoption of this time therefore offers the maximum advantages from a practical viewpoint.

(ii) in other cases, the customs debt shall be deemed to be created when the legal situation creating the customs debt actually arises.

(b) at exportation (Article 6) :

(i) when goods leave the geographical territory of the Community following a customs declaration for their exportation out of that territory, the customs debt shall be deemed to be created, for the same reasons as those set out in the first paragraph of (a) above, when the competent authorities accept that declaration (or any other act having the same effect in law as such acceptance).

(ii) in the other cases, the time when the customs debt is created shall in principle be when the goods are used for a purpose other than that for which they were entitled to leave the geographical territory of the Community with total or partial relief from duties at exportation. However, since this time is often difficult to establish by the competent authorities, it should be replaced, where appropriate, by the moment of expiry of the time-limit fixed for the production of proof that the goods have actually been used for the purpose which gave entitlement to such relief.

In order to avoid the creation of customs debt relating to goods which are not actually integrated into the Community economy or are not actually exported from the geographical territory of the Community, there are qualifications to these provisions of principle (see Articles 4 and 8). These qualifications take account of the various circumstances relating to the goods, the effect of which is to render economically unjustified the application of duties at importation or at exportation (withdrawal or cancellation of the entry of the goods for free circulation, destruction of the goods because of unforeseen circumstances or force majeure before the goods have been cleared from customs, etc.).

Lastly, this proposal for a directive defines the moment from which the competent authorities can require the payment by the person liable of the amount of the customs debt (Article 7). By adopting for this purpose the time when the amount of the duties at importation or at exportation to be collected are entered into the accounts, this proposal ensures complete accordance with the provisions of the Council Directive of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action for deferred payment of customs duties, charges having equivalent effect and agricultural levies (1), which the Commission has recently proposed to replace by a new text which would also apply to duties at exportation (2); under the Council directive of 4 March 1969 the time-limit for payment is calculated from the date on which the amounts due are entered in the accounts of the authority responsible for collection thereof.

(1) OJ No L 58 , 8.3.1969, p. 14

(2) OJ No C 190, 29.8.1975, p.6

The implementation of the provisions of this proposal for a directive will not only provide a better guarantee of equal treatment for Community importers (or exporters) , whatever the Member State in which they are resident, but will also make it possible to clarify the conditions for determining the own resources accruing to the Communities' budget ; the amount of these own resources is established when the amount of the customs debt to be paid by the person liable is entered into the accounts.

Since it is based on Article 100 of the EEC Treaty, this proposal for a Directive requires the Opinions of the European Parliament and of the Economic and Social Committee.

Proposal for a Council Directive
on the harmonization of provisions laid down by
law, regulation or administrative action relating to
customs debt

THE COUNCIL OF THE EUROPEAN COMMUNITIES ,

Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 43 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas the Community is based upon a customs union ;

Whereas, subject to the transitional measures provided for in Chapter I
of Part Four of the Act of Accession(1), the establishment of the customs
union is governed mainly by Chapter I of Title I of Part Two of the Treaty;
whereas that Chapter contains a series of specific provisions dealing, in
particular, with the abolition of customs duties between Member States, the
establishment and progressive introduction of a Common Customs Tariff and
the autonomous alteration or suspension of the duties thereunder;

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(1) OJ No L 73, 27.3.1972, p.14

Whereas, while Article 27 provides that before the end of the first stage Member States shall, in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action in respect of customs matters, it does not empower the institutions of the Community to make binding provisions in that field ; whereas , however, a thorough survey undertaken jointly with Member States has shown the need in certain fields to establish, by binding acts of the Community, measures essential for the introduction of customs legislation, which will ensure uniform application of the duties on imports or exports between the Community and third countries; and

Whereas the amount of the duties to which imports or exports are subject to under provisions in force must be paid by a natural or legal person, on whom there is an obligation to pay the said amount, which is hereinafter referred to as "customs debt";

Whereas time of creation of the customs debt itself helps to determine in many cases certain criteria on which the taxation of the goods depends, in particular their nature, quantity and taxable value ; whereas it is therefore necessary to establish common rules for determining the time at which the customs debt is created, not only in order to ensure uniform application of the Community provisions in force on imports and exports, but also to obtain a greater degree of uniformity in determining the funds accruing to the budget of the Communities;

Whereas the time of the creation the customs debt must be defined in the light of the essentially economic nature of the duties on imports and exports;

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Whereas the moment the customs debt is created on imports in terms of the conditions under which the goods liable to import duties are integrated into the economy of the Community should be defined; whereas, to this end, reference should be made in particular, according to the circumstances, either to the provisions governing the entry into free circulation in the customs territory of the Community of goods from third countries, or to the obligations resulting from the provisions of the Council Directive of 30 July 1968 on harmonization of the provisions laid down by law, regulation or administrative action relating to⁽¹⁾:

1. Customs treatment of goods entering the customs territory of the Community,
2. Temporary storage of such goods - hereinafter referred to as the "Directive on the customs treatment of goods" - or to the obligations relating to the customs control or the utilization of the goods applicable by virtue of the use of the customs regime under which the said goods are placed;

Whereas it is appropriate to define the moment when the customs debt is created on exports in terms of the conditions under which the goods liable to duties on exportation leave the geographical territory of the Community; whereas it is therefore necessary to draw a distinction between the goods in question which are or are not the subject of a customs declaration with a view to their exportation and, where appropriate, those goods which are or are not actually used for the purpose shown in that declaration;

Whereas it is necessary to fix the moment the payment of the amount of the customs debt can be called for by the competent authorities and to specify in what circumstances the customs debt may not arise or may be settled; whereas, except where the customs debt is paid or the application of periods of limitation is in accordance with the provisions in force, the reasons for this settlement must be based on determining whether the goods have not in fact been used for the economic purpose which justified the application of import or export duties.

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(1) CJ No L 194, 6.8.1968, p. 13.

HAS ADOPTED THIS DIRECTIVE :

Article 1

1. This Directive determines the rules which must be incorporated in the provisions laid down by law, regulation or administrative action in Member States, in respect of the creation, liability for payment, and settlement of the customs debt.
2. For the purpose of this Directive, the following definitions shall apply:
 - (a) customs debt
means the obligation on a natural or legal person to pay the amount of the import or export duties which apply under current legislation, to goods liable to such duties;
 - (b) 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 set out in Article 235 of the Treaty applying to certain goods produced by the processing of agricultural products;

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(c) export duties

means agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements set out in Article 235 of the Treaty applying to certain goods produced by the processing of agricultural products;

(d) entry in the accounts

means the official act by which the amount of the import or export duties to be recovered by the competent authorities is duly determined.

TITLE I

Creation of the customs debt

A. Customs debt on imports

Article 2

A customs debt on imports shall be created by :

- (a) the placing of goods liable to import duties into free circulation in the customs territory of the Community ;
- (b) the introduction into the customs territory of the Community of goods liable to import duties in violation of the provisions adopted in implementation of Article 2 of the Directive on the customs treatment of goods.

Any goods coming from a free zone , within the meaning of Article 1 (2) of the Council Directive of 4 March 1969.

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on the harmonisation of provisions laid down by law, regulation or administrative action relating to free zones (1), situated in the customs territory of the Community shall be treated in the same way as goods introduced into the customs territory of the Community.

(c) the removal of goods liable to import duties :

either from the customs control imposed by the customs regime to which they have been subjected or by their being placed in temporary storage;

or, from the obligations concerning the use of such goods imposed by the said customs regime or by their being placed in temporary storage.

Where the export of compensating products derived from the processing of goods of the same kind, quality and characteristics as those of the imported goods, as authorized under an inward processing operation on the basis of equivalence under to Article 24 of the Council Directive of 4 March 1969 on the harmonisation of provisions laid down by law, regulation or administrative action in respect of inward processing (2), does not take place, this shall be deemed to be a removal from the obligations concerning the use of goods placed under inward processing arrangements.

(d) the failure to use for the intended purposes within the time-limit set goods put into free circulation which benefit from total or partial relief from import duties because of their intended use for particular purposes, or their use for purposes other than those intended.

The destruction of the goods before their actual use for the intended purposes shall be deemed to be a use for purposes other than those intended.

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(1) CJ No L 58, 8.3.1969, p.11

(2) CJ No L 58, 8.3.1969, p.1

Article 3

The time of creation of a customs debt on imports shall be deemed to be :

- (a) in those cases governed by Article 2 (a) , the time when the competent authorities accept the entry of the goods for free circulation or any other act having the same effect in law as such acceptance, under current legislation;
- (b) in those cases governed by Article 2 (b), the time of introduction of the goods into the customs territory of the Community ;
- (c) in those cases governed by Article 2 (c), the time of the removal of the goods from the customs control imposed by the regime under which they have been placed or by their being placed in temporary storage;
- (d) in those cases governed by Article 2 (d) :
 - (i) if the use of the goods for purposes other than those for which total or partial relief from import duties was provided is carried out with the authorization of the competent authorities , the time of such authorization;
 - (ii) in all other cases, the time of the expiry of the time-limit set for the use of the goods for their intended purposes, or, where appropriate, the time when the goods are first used for purposes other than those for which total or partial relief from import duties was provided.

Article 4

No customs debt on importation shall be deemed to be created when the person concerned proves to the satisfaction of the competent authorities that the non-compliance with the obligations arises from :

- (i) either the provisions adopted in application of Article 2 of the Council Directive on the customs treatment of goods ,
- (ii) or the use of the customs procedure under which the goods have been placed ,
- (iii) or the temporary storage of goods ,

which results from the destruction or irretrievable loss of the goods by reason of the nature of the goods themselves or because of unforeseen circumstances or force majeure.

B. Customs debt on exportation

Article 5

A customs debt on exportation shall be created by :

- (a) goods liable to duties on exportation leaving the geographical territory of the Community as defined for the purpose of applying such export duties ;
- (b) failure to use goods for the purpose for which they were allowed to leave the geographical territory of the Community, within the meaning of paragraph (a) above, with total or partial relief from export duties.

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Article 6

The time of creation of a customs debt on exportation shall be deemed to be :

(a) in those cases governed by Article 5 (a) :

(i) if the goods in question are the subject of a customs declaration with a view to their exportation outside the geographical territory of the Community, the time when the competent authorities accept that declaration or any other act having the same effect in law as such acceptance, in accordance with the provisions in force ;

(ii) if the goods in question have not been the subject of the customs declaration referred to above, the time when the goods have in effect left the geographical territory of the Community;

(b) in those cases governed by Article 5 (b) :

(i) if the change of use to which the goods are put is carried out with the authorization of the competent authorities, the time when that authorization is given ;

(ii) in other cases, the time when the goods are used for a purpose other than that for which they were allowed to leave the geographical territory of the Community with total or partial relief from export duties, or, where the competent authorities are unable to determine that time, the time of expiry of the time-limit set for the production of proof that the goods have actually been used for the purpose which entitled them to that relief.

TITLE II

Liability for payment of the amount
of the customs debt

Article 7

Without prejudice to the time-limits for payment which the debtor may be allowed under the provisions in force, the amount of the import or export duties which constitutes the customs debt shall be liable for payment to the competent authorities from the time when the said duties are entered into the accounts.

However, when a customs debt results from the failure of the debtor to fulfil his customs obligations, immediate payment of the amount of the import or export duties shall be required.

TITLE III

Settlement of the customs debt

Article 8

1. A customs debt shall be settled :
 - (a) by the payment of the amount of the import or export duties applying to the goods in question;
 - (b) by prescription depending on the relevant provisions in force.
2. In addition
 - (a) the customs debt on importation shall be settled, up to the amount which corresponds to the quantity of goods concerned:
 - (i) when the declaration of entry of the goods in free circulation is, for a reason admissible under the regulations in force, cancelled or rendered invalid by the competent authorities, or when the latter authorise the declarant to withdraw any such declaration and to replace it by an entry to another customs regime;
 - (ii) when the goods declared to be in free circulation are, before their release from customs charge, destroyed on the order of or with the authorisation of the competent authorities ;
 - (iii) when the person concerned proves to the satisfaction of the competent authorities that the goods declared to be in free circulation were destroyed or irretrievably lost before their release from customs charge as a result of the very nature of the goods or of unforeseen circumstances or force majeure;

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- (iv) when the person concerned proves to the satisfaction of the competent authorities, that the goods put into free circulation with the benefit of total or partial relief from import duties because of their use for a particular purpose, were, before being so used, destroyed as a result of unforeseen circumstances or force majeure, or reexported or destroyed with the agreement, and under the control of the competent authorities ;
- (v) when the person concerned proves, to the satisfaction of the competent authorities, that the fact which caused the non-execution of the obligations imposed by the customs regime under which the goods were placed, or imposed by their being placed in temporary storage consists of:
 - either the exportation of the goods concerned out of the customs territory of the Community or their introduction into a free zone,
 - or the despatch of the goods concerned, to another Member State where they have been treated in accordance with their legal status.
- (b) the customs debt on exportation shall be settled in respect of the amount corresponding to the quantity of goods concerned :
 - (i) when the export declaration is, for a reason admissible under the regulations in force, cancelled or rendered invalid by the competent authorities;
 - (ii) when the person concerned provides evidence, to the satisfaction of the competent authorities, that the goods declared for exportation were not allowed to leave the geographical territory of the Community.

TITLE IV

Provisions applicable to trade between Member States

Article 9

To the extent that goods meeting the requirements of the provisions of Articles 9 and 10 (1) of the Treaty are liable to duties on importation and exportation when they are the subject of trade between Member States, the provisions of Articles 2 to 8 of this Directive shall apply, *mutatis mutandis*, in respect of the creation of the customs debt resulting from this situation, liability for payment and the settlement thereof.

TITLE V

Final provisions

Article 10

The provisions of this Directive shall apply without prejudice to the provisions in force in the Member States by virtue of which the goods constitute security for the import or export duties to which they are liable and as such may be subject to seizure or confiscation.

Article 11

Member States shall, not later than 1 January 1977, bring into force the measures necessary to comply with this Directive.

Article 12

Each Member State shall inform the Commission of the provisions which it adopts in order to comply with this Directive.

The Commission shall forward such information to the other Member States.

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Article 13

This Directive is addressed to the Member States.

Done at Brussels,

For the Council