

**Memorandum from the Commission to the Council on the Action Programme  
in the sphere of customs legislation**

(Submitted by the Commission to the Council on 2 August 1963)

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### **Introduction**

#### **The Action Programme : its aims and scope**

In its Memorandum containing the Action Programme of the Community for the second stage, the EEC Commission said that a common set of rules in customs legislation would have to be prepared and applied, supplementing the unification which is in progress in this sector, before customs union could be brought to fruition and consolidated. If this was not done in good time, throughout the transition period the Community would lack the customs mechanisms necessary for the proper application of the common external tariff and the implementation of the Community's trade policy towards third countries. Within the Community itself the continued existence of

inconsistent customs regulations, unhelpful for resolving the particular problems of the Common Market, would cause difficulties in competition and the movement of goods which were already beginning to show themselves and would inevitably go on growing with the lowering of customs barriers between Member States.

Though various forms of customs union can be envisaged and have in fact been tried, they invariably aim at replacing a number of customs areas by a single area, abolishing in the process trade, tariff, and other barriers between the member countries until the union has a common customs fron-

tier and forms a single unit as far as trade relations with third countries are concerned. Historical precedent and the preparatory work on the constitution of customs unions in Europe especially after the last war, as well as the principles behind international organizations such as the League of Nations and GATT, all go to show that a tariff community is only the first step towards customs union. To be complete and satisfactory in operation, a customs union must also rest on a body of common regulations concerning the importation, exportation and transit of goods in the relevant customs area, in other words a set of customs regulations which give meaning and direction to the tariff by defining when and how it will or will not be applicable.

Clearly the EEC is far from having reached the stage of a fully-fledged customs union at present. Behind political frontiers national customs territories still remain largely independent, the process of unification being confined to gradually aligning domestic duties on those of the common external tariff. If substantial progress is not made in the sphere of customs legislation to round off what has been achieved with regard to tariffs, the stage reached by the end of the transition period will be scarcely more than a simple tariff community; and the mere fact that customs duties have been abolished will have no decisive impact in internal economic frontiers and the obstacles thereby created.

Unless the Community succeeds in eliminating the existing differences in customs regulations which are affecting the establishment and operation of the Common Market, it is to be feared that even the progress already made in customs disarmament between Member States may only create fresh difficulties.

The Member States will therefore have to proceed with the necessary approximation of their laws and regulations as required, even though at present it cannot be foreseen just how far that approximation may have to go. Problems may arise one after another as the Common Market becomes a reality and increased incursions into the public and private law of Member States take place.

In view of the demands made by the development towards customs union however, and the Treaty's economic aims, the points outlined below must be thoroughly examined now, if definite results are to be

achieved within the required time-limit and the Common Market brought harmoniously into being. The points enumerated are by no means exhaustive.

The Action Programme has been divided into three sections. The first two cover all customs problems raised or likely to be raised by the EEC's trade relations with third countries. The third deals with creating the conditions for establishing the EEC internal market.

The first section lays stress upon the need to unify the rules of free circulation applicable to goods imported from non-member countries, upon which the execution of common trade policy and the application of the common external tariff will depend.

In particular the national provisions governing the application of the tariff must be unified so that equality of customs duties in Member States means also an equal degree of protection as regards products imported into the Community and in free circulation (definition of basis of assessment for duties in the common external tariff, regulations on customs exemptions, etc.).

The second section deals with all systems apart from free circulation, some of them of considerable importance in the economic life of Member States (processing traffic, entrepôt trade, etc.). In customs parlance it is a question here of making common rules to cover cases where the tariff does not apply or is deferred.

The third section concerns measures gradually to abolish obstacles at internal frontiers. Though such action will have to be taken as soon as possible, the fact must nevertheless be faced that success here depends not only on carrying out the measures outlined in the two previous sections, but also on the progress made in approximating legislation other than purely customs legislation.

In due course the Commission will present proposals for executing this programme without prejudice to any other measures it may deem appropriate. The present programme does not of course prejudice the application of any Treaty provision concerning the establishment of customs union to legislative matters which are the subject of the harmonization envisaged in the said programme.

## SECTION I

### Legislation concerning the importation of goods from non-member states with a view to free circulation within the Common Market

#### THE OBJECTIVE

The importation of products from abroad and their free circulation raises a number of problems which find their solution within a complex pattern of laws, regulations and administrative provisions. The customs authorities must discover for instance whether a product declared on importation is or is not banned or subject to licence, whether it enjoys preferential treatment, what tariff heading it comes under, and so on. The rate of duty applicable having been determined, the question next arises of defining its precise basis of assessment, a delicate matter in view of the fact that

ad valorem duty has become the general practice.

Free movement of goods throughout the Common Market and competition on equal terms imply that there must be customs regulations for imports into the Community which will ensure that such goods receive uniform treatment under the common commercial policy and under the terms of association agreements concluded by the EEC with other countries; and that the CET duties and the agricultural levies imposed in the various Member States will fall upon them equally.

#### THE NECESSARY STEPS

A. Preparation of customs regulations required for uniform application of measures of common commercial policy

Priority must be given to creating the necessary instruments for giving effect to the measures adopted in conformity with the Action Programme in the sphere of common commercial policy, as approved by the Council on 25 September 1962 (official gazette No. 90 of 5 October 1962). These chiefly concern the following points:

##### 1. *Definition of origin*

Upon the definition of the origin of goods depend:

a) Application of the common external tariff whenever different duties are applicable to the same product according to its country of origin (duties bound or otherwise, preferential duties) (1);

b) Application of provisions of any kind relating to the importation of goods from non-member countries or to the exportation of goods produced in the EEC (application of trade agreements; quotas; anti-dumping, countervailing and retaliatory duties).

It becomes necessary therefore:

1) To draw up a common definition of origin applicable in EEC trade with third countries both import and export;

2) To establish procedure for certifying the origin of EEC exports, and for controlling the origin of imports from third countries;

3) To introduce a system of mutual consultation to interpret and clarify the common rules as required, and also to establish methods of administrative co-operation enabling the responsible national authorities to exchange information on specific problems of application or on improper practices in the issue of certificates of origin.

##### 2. *Application of anti-dumping and countervailing duties*

In accordance with Articles 111(1) and 113 of the Treaty, Member States must base their measures of trade protection on uniform principles, including those to be taken in cases of dumping or of aids by third countries for exports to the Community.

On the basis of the rules of commercial policy to be drawn up in accordance with the above articles (especially in the matter

(1) Definitions of the scope of customs preferences based on origin, within the framework of the new EEC-AASM Convention, are in course of preparation.

of defining, and deciding as to the occurrence of, dumping or subsidies justifying the imposition of anti-dumping or counter-vailing duties) agreement must be reached on:

- a) How the duties are to be applied;
- b) What procedure and administrative co-operation is necessary to establish cases of dumping and ensure action by the customs authorities.

#### B. Introduction of the necessary customs regulations for application of the common external tariff

Common customs regulations are needed in order to ensure that by the end of the transition period the common external duties on goods admitted and in free circulation within the Community are applied on an identical basis, whatever the importing Member State, the same customs duty being imposed on imports throughout the EEC. Diversion of trade or activities will thereby be prevented, as also any disturbance of competitive conditions which might arise owing to the existence of varying national provisions. These regulations will deal with:

1. *Conditions for the free circulation of goods*
2. *Interpretation of tariff nomenclature*
  - a) Explanatory notes, supplementing those of Brussels, to facilitate the classification of goods in the sub-headings of the common external tariff;
  - b) Decisions of the central customs departments on classification and interpretation regarding tariff sub-headings will be co-ordinated and distributed (first steps towards a classified list of goods in the common external tariff). In due course consideration must be given to harmonizing national procedures for settling disputes between

importers and customs departments in Member States concerning tariffs or customs valuation.

#### 3. *Valuation of goods for customs purposes*

Uniform application of the Brussels Definition and where appropriate its adaptation to conditions in the Community customs area, in particular:

- a) Time and place elements in assessing dutiable value;
- b) Common methods of applying rules for adjusting invoice prices so as to establish the "normal price" of goods;
- c) Assigning average or representative values.

#### 4. *Methods of calculation and payment of the common external tariff duties* (1)

#### 5. *Conditions to be fulfilled to obtain refund of duty in certain cases*

#### 6. *Common list of exemptions and relevant conditions*

#### 7. *Rules applicable to reimportation into the EEC of Community products temporarily exported for processing in non-member countries, i.e.:*

- a) Conditions for treatment as temporary exports;
- b) Customs treatment of goods reimported after outwards processing (1).

#### 8. *Administrative procedure for "Community" tariff quotas*

#### C. Rules for the application of levies to agricultural imports from non-member countries

The measures provided for under B will be applied *mutatis mutandis* to agricultural levies.

## SECTION II

### Regulations concerning the importation, stay and exportation of goods not in free circulation in the Community

#### OBJECTIVE

The first section set out the steps to be taken for the uniform application of future commercial policy measures of the Com-

munity and of the common external tariff. Every Member State, however, has special arrangements whereby duties are suspended

(1) Recommendations on these subjects have already been made by the Commission.

or deferred — regulations governing the admission and stay of goods intended for re-export in the same condition or after processing, or for later consumption in the country. The object is to foster certain industrial or business activities which play an important part in international trade and

have of course been made in the interests of the Member States concerned.

These must be harmonized to the extent required to avoid distortion of competition between Member States in the Common Market or in outside markets.

### STEPS TO BE TAKEN

#### 1. Drafting of common regulations concerning inwards processing traffic

Systems governing inwards processing traffic allow foreign products intended for re-export after processing to be imported free of customs duty and normal charges. In view of their importance to Member States as regards investment policy and the growth of external trade, and in view of the problems they raise with regard to competition in the Community and on other markets, it appears advisable to organize them on a Community basis, due regard being paid to the aims of the common commercial policy. Between now and the end of the transition period the basic principles and technical regulations for processing traffic, which are at present intended only to serve national economic interests, will have to be harmonized in the perspective of the Common Market.

Harmonization must bear upon :

- a) The scope of the various systems governing inwards processing traffic, temporary admission, drawback, prior export;
- b) The economic and technical conditions qualifying for the application of these systems;
- c) The scope of rules concerning re-export on the "same-goods" principles and "equivalent goods" principle;
- d) Customs treatment of products, by-pro-

ducts and waste not re-exported to third countries.

#### 2. Drafting of common regulations concerning bonded warehouses and free ports

- a) Scope of the various bonding systems;
- b) Operations to which goods in bond may be subjected;
- c) Conditions under which goods released from bond or free ports may be placed in free circulation.

#### 3. Drafting of common regulations concerning building and repair of ships and aircraft

#### 4. Drafting of common regulations temporary admission and importation

in particular :

- a) Conditions under which tools and appliances may be imported from third countries to carry out work of any kind;
- b) Customs practice for trade fairs and exhibitions;
- c) Conditions under which motor vehicles belonging to nationals of third countries may be used in Community countries;
- d) Customs arrangements for tourism in the EEC.

## SECTION III

### Removal of obstacles to trade within the Community and progressive establishment of a common customs area

#### OBJECTIVE

The measures outlined in Sections I and II of the present programme will enable considerable progress to be made towards a true internal market in the EEC, but will not suffice to ensure the free circulation of

goods, i.e. to abolish the very idea of import and export in trade between Member States.

To bring to an end internal frontier controls it is essential :

a) to abolish obstacles resulting from disparities between various national measures applied to the importation of goods, generally by customs officers but of a non-tariff character (measures relating to public order, health, revenue, etc.);

b) to abolish obstacles of a purely administrative nature resulting from the fact that goods are imported and exported in accordance with procedures peculiar to individual

Member States, producing super-imposed checks and formalities which impede intra-Community trade.

Hence, without waiting for the first class of obstacles to be overcome, measures must be examined in the second stage to deal with national customs procedure so as to facilitate to the utmost extent the crossing of frontiers.

### STEPS TO BE TAKEN

1. Measures ensuring co-ordination and interdependence of national customs procedure in order to reduce and simplify formalities and controls within the Community

It should be possible to send any product, whether of Community origin or not, from one Member State to any other without going through transit formalities every time a frontier is crossed, in addition to the import and export formalities which are still required, with all the consequent checking, delay and expense.

Certain joint measures accompanied by increasing administrative co-operation between the customs services of Member States would facilitate the movement of goods within the Common Market and make more flexible the regulations introduced by the Commission on the basis of Articles 9 and 10 of the Treaty (system of movement certificates). The following arrangements are suggested :

a) Issue of common documents by the customs of Member States, constituting the only formality required up to the time of customs clearance in any part of the Community;

b) Mutual recognition of the probatory force of the attestations and particulars contained in such documents;

c) Harmonization and mutual recognition of the check marks on goods or vehicles;

d) Rules and procedure for mutual administrative assistance in connection with the

receipt of duties and charges levied owing to irregularities in course of transport and any penalties involved;

e) Continuation of practical improvements at the main frontier-crossing points (in accordance with the aims of the common transport policy and in conjunction with the customs authorities).

2. Progressive adaptation of the structure, organization and functioning of customs departments to the requirements of the Common Market

Clearly measures must also be considered for adapting the present customs facilities to cater for the needs arising from the progressive establishment of a customs area expanded to the scale of the EEC. Services traditionally based on customs clearance at the point of entry into national territory will have to be remoulded with an eye to the future, when they will be applying the whole body of customs and other relevant regulations only the goods imported from third countries by any Member State. A certain change of mental horizon and administrative methods will be needed, since national customs departments will more and more be called upon to consider the economy and interests of the Member States as a whole.

The national customs departments might, it is suggested, study in close co-operation what measures could usefully be adopted in the organization of work, exchanging observers, etc.