

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 192 final

Brussels, 25 May 1977

## Proposal for a Council regulation

Laying down conditions for the post clearance  
collection of import duties or export duties  
which have been underpaid on goods entered for  
a customs procedure involving the obligation  
to pay such duties

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(submitted to the Council by the Commission)

COM(77) 192 final



EXPLANATORY MEMORANDUM

On 30 December 1975, the Commission laid before the Council a proposal for a regulation on the repayment or remission of import duties or export duties (1). This proposal provides, in particular, for the correction of errors committed by the competent authorities in establishing the amount of duties payable by persons liable for payment, in such a way that they are required to pay only what is legally due.

If the amount of import duties or export duties calculated by the authorities may prove to be higher than the amount legally due, the converse situation may also arise, either as a result of a purely material error (e.g. an error of calculation) or as a result of a basic error in determining the information (nature, value, quantity, origin, end-use, etc.) to be used in calculating the import duties or export duties payable on the goods in question.

Such situations occur more frequently nowadays, since clearance procedures are becoming increasingly rapid and simple, in order that goods may be released from customs control as quickly as possible. Therefore, it is often several months after goods have been cleared for free circulation or for export from the Community that verification made by the authorities shows that the amount of import duties or export duties claimed from the person liable for payment was less than was legally due.

The import duties or export duties applied by the Community are essentially economic in nature and failure to collect them under the conditions laid down by Community legislation is automatically damaging to the Community economy. The authorities must therefore be allowed to carry out the post clearance collection of import duties or export duties which, for whatever reason, were not claimed from the person liable for payment or for which the full amount legally due was not claimed. Furthermore, this facility (which to some extent balances the facilities provided for the clearance of goods) has been incorporated, though under different conditions, in the laws of all Member States.

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(1) cf. COM(75) 685 final of 23 December 1975.

Of course, the post clearance collection of import duties or export duties impairs to some degree the certainty which persons liable for payment have the right to expect from official acts with pecuniary consequences. It is therefore appropriate to limit the possible scope of action of the competent authorities in this field by laying down reasonable time limits.

By way of principle, and so as to ensure perfect balance between the obligations on Member States to keep for a period of time the supporting documents concerning established entitlements and the making available of own resources (1) and their ability to undertake the post clearance collection of amounts not charged, the Commission proposes that the same time limit should be applied in both cases. It is on the basis of these supporting documents that the customs authorities regularly carry out investigations leading to the discovery of amounts unpaid, and it would not be fair to require Member States, under the own resources arrangements, to transfer to the Communities' budget sums established under these conditions when their own authorities had no right whatsoever to claim such sums from persons liable for payment.

However, this principle must be qualified as follows :

- (a) First of all, this restriction on action by the competent authorities should not apply where, at the time of customs clearance of the goods, the authorities have been unable to determine the exact amount of import duties or export duties owing to fraudulent action by the person liable for payment. In such cases, the common law provisions relating to undue payments in force in each of the Member States should be applied.
- (b) Conversely, where the amount of duties originally calculated is based on information determined by the competent authorities themselves or expressly recognized by them as complying with that declared, no action for collection should be taken against the person liable for payment, where it is proved that the latter had acted in good faith and had complied in all respects with the rules in force for completing his customs declaration. Such a situation would arise, for example, from a decision taken by the authorities regarding the tariff classification of goods and with which the person liable for payment has complied. It would also arise from a decision taken by the authorities regarding the tariff description of a product on the basis of their own analysis or regarding any other information (value, origin, quantity) which their officers had expressly recognized as complying with that declared by the person liable for payment. In such cases, the person's confidence in the decisions taken by the authorities is particularly justifiable and it would be unjust to require him to bear the consequences of an error committed by these authorities.

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(1) Cf. Article 3 of Council Regulation (EEC/Euratom/ECSC) No 2/71 of 2 January 1971 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources.

Furthermore, it would not seem justifiable to allow import duties or export duties collected after clearance to benefit from the facilities laid down in 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 covering, in addition, export duties (2). Neither technical reasons (to facilitate customs clearance) nor economic reasons (to allow the importer a period in which to resell the imported goods before paying the duties on them) are justified in this special case of the post clearance collection of import duties or export duties.

However, it should be possible to charge interest on arrears in respect of amounts collected after clearance, except where the non-collection of the amount legally due can be ascribed to an error made by the authorities.

This regulation will have the effect of :

- eliminating any distortion in treatment among importers of products from non-member countries (and among Community exporters of products to these countries) and

- defining precisely the conditions in which Member States may revise entitlements established regarding the Communities' own resources pursuant to Article 2 of Council Regulation (EEC/Euratom/ECSC) No 2/71 of 2 January 1971, thereby providing better control over own resources.

As this proposal for a regulation is designed mainly to harmonize the existing provisions in all the Member States (and are often stricter in many respects), its impact on budget revenue should be no less favourable than the application of existing national regulations in this field. However, precise details of its impact cannot be given owing to the lack of centralized information in the Member States regarding the application of these rules and regulations.

This proposal for a regulation is based on Articles 43 and 235 of the Treaty establishing the European Economic Community, and its adoption would represent a further step towards customs union. The Opinion of the European Parliament is required. In view of its subject matter, the Commission feels that the Economic and Social Committee should also be asked for its Opinion.

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(1) O.J. No L 58 of 8.3.1969, p. 14

(2) O.J. No C 198 of 9.8.1975, p. 6

Preliminary draft

of a

Proposal for a Council Regulation

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collection of import duties or export duties  
which have been underpaid on goods entered for  
a customs procedure involving the obligation  
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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and  
in particular Articles 43 and 235 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 amount of the import or export duties which the person liable  
for payment has been required to pay on goods which have been the subject  
of a declaration for a customs procedure involving the obligation to pay  
such duties may prove to be lower than the amount which was legally due,  
either as a result of an error of calculation or copying on the part of the  
competent authorities, or because those authorities used inaccurate or in-  
complete information, particularly as regards the nature, quantity, value,  
origin or end-use of the goods in question; whereas, because of the essen-  
tially economic nature of the import duties or export duties in force in the  
Community, the failure to collect the correct duties has prejudicial conse-  
quences for the Community economy; whereas it is therefore justified to permit  
the competent authorities to undertake the recovery of the duties remaining  
due, when they establish subsequently that such an error has been made;

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Whereas the post clearance collection of import duties or export duties involves some degree of prejudice to the certainty which persons liable for payment have the right to expect from official acts with pecuniary consequences; whereas it is therefore appropriate to limit the possible scope of action of the competent authorities in this field by fixing a time-limit after which the original payment of the import duties or export duties must be considered as definitive; whereas this restriction on action by the competent authorities cannot apply where at the time of the customs clearance of the goods the authorities have been unable, on account of fraudulent action, to determine the exact amount of the import duties or export duties; whereas, however, the taking of action for post clearance collection is under no circumstances justified where the original calculation of import duties or export duties has been established on the basis of information determined by the competent authorities themselves or expressly recognized by them as complying with that declared by the person liable for payment, when the latter had acted in good faith and had complied in all respects with the rules in force for completing his customs declaration;

Whereas there is no technical or economic reason to grant, in respect of the amounts of import duties or export duties to be collected after clearance, the facilities provided for in the Council Directive on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties (1); whereas, however, amounts subsequently collected by the competent authorities should be exempt from interest on overdue payments, when the non-collection of the amounts of import duties or export duties legally due is attributable to an error on the part of these authorities;

Whereas it does not appear to be worthwhile to undertake the post clearance collection of amounts of 5 units of account or less;

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(1) O.J. No C 198, 29.8.1975, p. 6.

Whereas post clearance collection of the amounts of import duties or export duties, payment of which has not been required of the person liable for payment when the goods were cleared from customs, presupposes a revision of the established entitlement of own resources within the meaning of Article 2 (2) of Council Regulation (EEC, Euratom, ECSC) No 2/71 of 2 January 1971 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (1); whereas the establishment of precise Community provisions in this respect allows better control of these own resources ;

Whereas the provisions of this Regulation are concerned with post clearance collection of the different import duties and export duties whether they result from the application of the common agricultural policy or from the application of the provisions of the Treaty relating to the customs union; whereas, as far as this second aspect is concerned, the provisions of the Treaty do not confer on the institutions of the Communities the power to adopt binding provisions in respect of the subsequent recovery of import duties or export duties; whereas it therefore appears to be necessary to base the provisions of this Regulation on Article 235,

HAS ADOPTED THIS REGULATION :

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(1) O.J. No L 3, 5.1.1971, p. 1.

Article 1

1. This Regulation shall determine the conditions under which the competent authorities shall undertake post clearance collection of the amount of import duties or export duties for which, for whatever reason, payment has not been required of the person liable for payment on goods declared for a customs procedure involving the obligation to pay such duties.
2. For the purposes of this Regulation :
  - a) Import duties means customs duties and charges having equivalent effect and agricultural levies and other import charges laid down within the framework of the common agricultural policy, or of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;
  - b) Export duties means agricultural levies and other export charges laid down within the framework of the common agricultural policy, or of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;
  - c) Entry in the account, means the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duly determined.

Article 2

When the competent authorities find that all or part of the amount of import duties or export duties legally due on goods entered for a customs procedure involving the obligation to pay such duties, has not been required of the person liable for payment, they shall take action to recover the duties not collected. This action must be taken within a period expiring on 31 December of the third year following that during which was effected the entry in the account of the amounts of the import duties or export duties originally calculated, or, where there is no entry in the account, during which the customs debt relating to the goods in question originated.

Article 3

Where it is determined that fraudulent action caused the competent authorities to be unable to determine the exact amount of the import duties or export duties legally due on the goods in question, the period laid down in Article 2 shall not apply.

Under these circumstances, the competent authorities shall take action for collection in accordance with the provisions in force in this respect in the Member States.

Article 4

The action on post clearance collection shall be taken by the competent authorities, subject to the relevant provisions in force, against the natural or legal persons responsible, whether in a principal or in a subsidiary capacity, for the payment of the import duties or export duties on the goods in question, or against their legal successors.

Article 5

1. No action may be initiated by the competent authorities for post clearance collection where the amount of the import duties or export duties although subsequently found to be lower than the amount which was legally due, has been calculated on the basis of information determined by the competent authorities themselves or recognized by them as being in accordance with their requirements, where it is established that the declarant had acted in good faith and had complied with all the provisions laid down in the rules in force concerning his declaration.

The above paragraph shall not apply in the case of material or copying errors affecting the amount of import duties or export duties legally due.

2. For the purposes of the first subparagraph of paragraph 1, elements of taxation shall be considered to be recognized by the competent authorities as being in accordance with their requirements, where, after having been checked by them, either on the basis of documents accompanying the declaration, or on the basis of a physical examination of the goods, they are the subject in the declaration itself of an express indication by the said authorities which formally confirms the details of that declaration as regards the elements of taxation.

Where the physical examination concerns only part of the goods, recognition by the competent authorities that the declaration is in accordance with their requirements, shall be limited to the part effectively examined.

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Article 6

The provisions adopted for the application of the Council Directive of ..... on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties (1) shall not apply in respect of the amounts to be collected under Article 2.

Article 7

Where the non-collection of the amounts of import duties or export duties legally due is attributable to an error made by the competent authorities, no interest on overdue payments shall be charged on post clearance collection.

Article 8

No action shall be taken for the post clearance collection of import duties or export duties when the amount involved is less than 5 units of account.

Member States may round up or down the amount resulting from the conversion into their national currency of the figure given in the above subparagraph.

Article 9

This Regulation shall enter into force three months following the date of its publication in the Official Journal of the European Communities.

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

Done at Brussels

For the Council

The President

