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DOCUMENT 1-646/80

Report

drawn up on behalf of the Committee on Economic and Monetary Affairs

on the proposal from the Commission of the European Communities to the Council (Doc. 1-290/80) for a directive determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods

Rapporteur: Mr K. NYBORG

By letter of 25 June 1980 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods.

The European Parliament referred this proposal to the Committee on Economic and Monetary Affairs, which on 16 July 1980 appointed Mr Nyborg rapporteur.

The committee considered the proposal at its meeting of 24 November 1980 and unanimously adopted the motion for a resolution.

Present: Mr Delors, chairman; Mr De Ferranti, Mr Macario, Mr Deleau, vice-chairmen; Mr Nyborg, rapporteur; Mr Beazley, Mr Beumer, Mr Bonaccini, Mr Damseaux, Mr De Clercq (deputizing for Mr Visentini), Mr Delorozoy, Mr I. Friedrich, Mr Herman, Mr Moreau, Mr Purvis (deputizing for Mr Balfour), Mr Ruffolo, Mr Wagner and Mr von Wogau.

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A

The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive determining the scope of Article 14(1) (d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
- having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 1-290/80),
- having regard to its opinion of 14 December 1979 on the proposal for a regulation setting up a Community system of reliefs from customs duty²,
- having regard to the report of the Committee on Economic and Monetary Affairs (Doc.1-646/80),

1. Regards the Commission's proposal as a further step towards the harmonization of the divergent national provisions on which the external and internal operation of the customs union has hitherto been based;
2. Regards the Commission's proposal as a further step towards uniform valued added tax legislation governing the movement of goods between the Member States, and thereby a simplification of administration;
3. Invites the Commission to consider how, once the various proposals for directives and regulations have been adopted by the Council, it can make more clear to the public what rules govern relief from duties and taxes within the Community;
4. Invites the Commission to adopt the following amendments by virtue of Article 149, second paragraph, of the EEC Treaty;

¹OJ No. C 171, 11.7.1980, p.8

²OJ No. C 4, 7.1.1980, p.59

Proposal for a Council directive determining the scope of Article 14(1) (d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods

Preamble, recitals and Articles 1 and 2 unchanged

Article 3

1. Personal effects imported tax-free pursuant to Articles 4 to 9 may not be transferred, hired out or loaned for the twelve months following their tax-free importation without prior notification thereof to the competent authorities. In such cases, the tax on importation shall be that to which the goods are liable on the basis of the value and rates applicable at the time of the notification.
2. The date on which last importation took place shall be taken as the starting date of the period in question.

Article 3

1. Personal effects imported tax-free pursuant to Articles 4 to 9 may not be transferred, hired out or loaned for the six months following their tax-free importation without prior notification thereof to the competent authorities. In such cases, the tax on importation shall be that to which the goods are liable on the basis of the value and rates applicable at the time of the notification.
2. unchanged

Articles 4 - 24 unchanged

Article 25

1. Samples which are of negligible value and which can be used only to solicit orders for goods of the type they represent shall be admitted tax-free.
2. For the purposes of paragraph 1, 'samples' means articles representing a category of goods whose manner of presentation and quantity, for goods of the same type or quality, rule out their being used for any purpose other than that of seeking orders.

The competent authorities may require that, to qualify for relief, certain articles be rendered permanently unusable by being torn, perforated, or clearly and indelibly marked, or by any other process, provided that, despite such treatment, they may still serve as samples.

Article 25

1. Samples dispatched from third countries which are of negligible value and which can be used only to solicit orders for goods of the type they represent shall be admitted tax-free.

2. unchanged

3. (new text) Where samples are supplied free of charge to a taxable person in the Member State of importation by a taxable person in another Member State, relief shall not be conditional upon their value being negligible.

¹For complete text, see OJ No. C 171, 11.7.1980, p.8

Articles 26 - 38 unchanged

Article 39

1. Goods contained in small consignments of a total value not exceeding 10 ECU shall be admitted tax-free.
2. The relief shall not apply to alcoholic products, tobacco products, perfumes or toilet waters.

Article 40

The Member States may relieve from payment of tax imports in respect of which the amounts due by virtue of importation do not exceed 3 ECU.

Article 39

1. Goods contained in small consignments not regularly dispatched to the same consignee and of a total value not exceeding 20 ECU shall be admitted tax-free.
2. unchanged

Article 40

The Member States may relieve from payment of tax imports in respect of which the amounts due by virtue of importation do not exceed 6 ECU.

Articles 41 - 46 unchanged

Chapter VI (new) - Severely damaged vehicles

Article 46A

1. Vehicles registered in a Member State of the Community which have been severely damaged as a result of a duly substantiated accident occurring on the territory of the Member State into which they had been duly temporarily imported shall be admitted tax-free.
2. The goods must be unusable as vehicles and sold to a taxable person for the purposes of scrap.
3. Proof of the accident must be furnished by the person standing to benefit from the relief.

Articles 47 - 50 unchanged

EXPLANATORY STATEMENTI. Background

1. In March 1979 the Commission submitted a proposal for a regulation¹ clearly defining the rules on relief from customs duty on certain goods (commercial consignments of negligible value, personal effects of individuals moving residence, etc.) The European Parliament approved this proposal for a regulation, with certain minor amendments, in its opinion of 14.12.79² (see also Doc. 1-548/79).

However, Article 14, (1) (d) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes obliges the Member States to exempt from value added tax imports qualifying for exemption from customs duties.

The object of this proposal for a directive is to establish a general legal basis for these VAT exemptions.

II. Content and remarks

2. The proposal for a regulation on reliefs from customs duty allows such reliefs only where imports on a duty-free basis would have no economic consequences, that is to say, do not remove the safeguards for industry which are the purpose of the normal customs tariff (reliefs that may have clear economic consequence for industries in the Member States must, where necessary, take the form of a temporary suspension of the rates prescribed in the Common Customs Tariff in accordance with Article 28 of the EEC Treaty.

3. The Committee on Economic and Monetary Affairs cannot but support the Commission in its efforts to model the proposed directive on exemptions from VAT as closely as possible on the aforementioned regulation on reliefs from customs duties; however, there are bound to be some differences, as reliefs from custom duties relate solely to imports from non-Member countries, while tax exemptions also affect the movement of goods within the Community. (See point 6 of the Commission's explanatory memorandum).

The most important of these differences relates to educational, scientific and cultural materials, which are exempt from customs duty by virtue of existing international conventions although distortion of competition might result. The Commission rightly feels that exemption

¹COM(79) 104 final

²OJ No C 4, 7.1.1980, p.59

from VAT on movements within the Community could result in a distortion of competition; relief from customs duty is therefore granted on these goods when imported from non-Member countries, but not exemption from VAT..

On the same ground, the Commission proposes that the rules on VAT exemption should be more restrictive than those on relief from customs duties on goods dispatched to charitable or philanthropic bodies and goods imported from non-Member countries for fitting out second residences.

The Committee on Economic and Monetary Affairs agrees with the Commission that the general desire for uniform rules for relief from customs duties and value added tax should be subordinated to the need to avoid distortions of competition as between the Member States.

4. In addition the Commission proposes various measures to facilitate the movement of goods between the Member States, that is to say within the external tariff wall of the customs union.

Thus it proposes the introduction of a relief for stocks imported upon the transfer of activities of enterprises from one Member State to another, and for capital goods imported under similar circumstances from a Member State or from a non-EEC country; the aim here is to simplify clerical procedures both for the authorities and for the taxable person, by granting the exemption upon importation, as opposed to levying the tax and then making a refund, as is the existing procedure.

5. The Committee on Economic and Monetary Affairs regards this proposal as a useful contribution to the gradual introduction of uniform and more transparent fiscal legislation.

Once the various proposals at present under consideration have been adopted, the Community will have common rules for reliefs from both customs duties and VAT; common rules have also been proposed or adopted for goods contained in travellers' personal luggage, small consignments of no commercial value, and personal effects imported by private individuals, but these reliefs relate to excise duty as well as VAT.

The Commission has therefore made a valuable contribution towards the creation of transparent and uniform Community legislation on customs duties, value added tax and other taxes on the movement of goods between the Member States and between the customs union and non-EEC countries. It is now up to the Council to adopt these proposals.

6. However, without wishing in any way to disparage the simplification which will be brought about by the introduction of Community legislation in this field, the committee would point out that the fact that these rules are dispersed among quite a number of different legal acts does not make for transparency. The committee therefore asks the Commission to consider how the citizen might be given a more transparent picture of the rights obtained for him by this Community legislation.

III. Amendments

Article 3

7. This proposed amendment is in line with that adopted by the European Parliament during its debate on the corresponding proposal for a regulation on relief from customs duty.

Article 25

8. The reasons set out by the Commission in paragraph 7 of the explanatory memorandum attached to the proposal for a directive fully justify this exemption on importation. Moreover, under the internal arrangements, Article 5(6) of the Sixth Directive provides that the application by a taxable person of goods forming part of his business for the giving of samples for the purpose of pursuing one of the activities referred to in Article 4 shall not be treated as supply for consideration, i.e. is not taxable. The supply of such samples free of charge to another taxable person is also exempted from tax under the terms of Article 2 of the same Directive.

It could be argued that Article 14(1)(a), which provides for exemption on the final importation of goods of which the supply by a taxable person is exempted within the country, has already solved this problem; nevertheless, it seems more advisable to provide explicitly for exemption than to achieve the desired aim by a certain interpretation of the provision referred to above. Both administrative reasons and the commercial operators' need for information weigh in favour of this amendment.

Articles 39 and 40

9. These proposed amendments are in line with those adopted by the European Parliament during its debate on the corresponding proposal for a regulation on relief from customs duty.

The committee is proposing that a higher limit be set in respect of value than that proposed by the Commission because the revenue from VAT on goods worth 10 ECU will not cover the administrative costs involved. Nor would a limit of 20 ECU encourage attempts to abuse this relief, as even with a limit of 20 ECU the costs of transportation would normally exceed any possible saving on VAT.

Article 39 enabling the taxation authorities to take action if a person receiving consignments from third countries appears to be systematically abusing this arrangement.

10. To avoid misunderstandings, it is emphasized that the limit on value set in Article 39 refers to consignments from a taxable person (a commercial operator) to a non-taxable person (a private individual). A different limit on value applies to small private consignments, namely 60 ECU.

Article 46A

11. The provisions concerning the importation of vehicles which have been so severely damaged, as a result of a road accident for example, that it is no longer worth returning them to their country of origin vary from one country to another, but are generally somewhat complex in nature.

There is scope for simplifying the formalities involved in such operations considerably without any risk:

- of tax avoidance, since the circumstances governing this relief are beyond the control of the person able to benefit from it;
- of budgetary losses, since the taxable amount for the purposes of importation is the value of the wreckage sold.

The only formality required of the persons concerned would be to furnish proof of the circumstances of the accident.

