

# COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EEC)

temporarily suspending import duties on  
certain weapons and military equipment.

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(presented by the Commission)

**EXPLANATORY MEMORANDUM**

Proposal for a  
**COUNCIL REGULATION (EEC)**  
**TEMPORARILY SUSPENDING**

**IMPORT DUTIES ON CERTAIN MILITARY EQUIPMENT****INTRODUCTION.**

1. The annexed proposal provides a coherent Community framework for the suspension of the duties of the common customs tariff on imports of specified items of military equipment for the use of the armed forces of the Member States. Its adoption will bring to an end divergent national practices which prejudice the Community's industrial policy, create budgetary inequalities and whose legality is contested by the Commission.

**BACKGROUND.**

2. Since 1968, the Community has had a common customs tariff. This tariff is designed to ensure a fair basis for competition for Community producers and is intended to be applied to all imports of goods from third countries unless specific Community measures provide otherwise. In practice, the normal third country tariff has been waived or reduced by a considerable number of Community measures providing for tariff preferences or suspensions of duty in cases where this is justified by commercial or industrial policy reasons. These measures have been adopted under Articles 28, 43 or 113 of the Treaty.

3. Article 223 (1)(b) of the Treaty enables any Member State to ".....take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material;.....". Paragraph (2) of the same Article required the Council to draw up a list of products to which the provisions of paragraph 1(b) apply. This list was drawn up in 1958 and has not been modified since, although an amendment procedure is laid down in Article 223.

4. Certain Member States have interpreted Article 223 as enabling them to waive the duties of the common customs tariff on military equipment covered by the 1958 list. The extent of duty waivers varies considerably between Member States and some do not allow any such relief at all. The Commission has contested the interpretation that Article 223 allows Member States to give relief from import duty. It considers that the application of customs duties to imported military equipment is not inconsistent with the interests of national security. Furthermore, it considers that nothing in Article 223 provides a legal basis for the waiver of customs duties and that if a duty waiver is to be provided it must be based on the appropriate Treaty provision - Article 28.

5. In addition, the Commission cannot ignore the fact that the amounts of duty foregone are considerable. Although it is notoriously difficult to make valid calculations, the losses of duty have been estimated at around 200 Mio ECU per annum. Furthermore, the divergent application of duty waivers produces inequities in so far as the Community budget is concerned. The duties foregone by certain Member States have to be made up by additional VAT-based contributions from others.

6. In view of the infringements of the Treaty inherent in the situation described above, the Commission has initiated actions against the Member States in question under Article 169 of the Treaty. These procedures have been suspended pending the adoption of this Regulation. The Commission reserves the right to review the situation in the light of discussion in the Council of this proposal. Furthermore, the Commission reserves the position it will adopt on the issue of own resources.

**POLICY CONSIDERATIONS.**

7. In considering whether a Community scheme of tariff suspensions for military equipment should be introduced, due regard needs to be paid to industrial and commercial policy considerations as well as those of defence. The tariff treatment accorded by the Community's trading partners - particularly the United States - to our exports of military equipment is also an important factor to weigh in consideration. In the Single European Act, the High Contracting Parties have expressed their determination to maintain the technological and industrial conditions necessary for their security and to work to that end both at national level and, where appropriate, within the framework of the competent institutions and bodies.

8. It is clearly in the interest of the defence of the Community as a whole that Member States should be enabled to procure the most technologically advanced and suitable weapons and military equipment for the use of their armed forces. It is also clear that the imposition of customs duties on imported weapons and equipment may, to a certain extent, reduce the funds which are available for procurement of weapons not only from outside but also from within the Community.

9. On the other hand, the customs tariff is designed to provide Community manufacturers with a fair basis for competition amongst themselves and with foreign suppliers and is part of a whole range of measures aimed at promoting an efficient and internationally competitive industrial sector within the Community. The markets for the Community defence industries have tended to be restricted by national standards and procurement policies. Although this situation should change after 1992 with the introduction of the Single Market, the defence industries have not yet achieved the economies of scale essential to enable them to compete on even terms with major defence suppliers, such as those of the United States. Furthermore, much of the more advanced equipment is produced by the high technology electronics and communications sectors which are striving hard to compete with their United States and Far Eastern competitors. It is,

consequently, important that any measures taken to relieve imports of military equipment from import duties should not prejudice the development of strong defence industries within the Community.

10. Account also needs to be taken of the fact that since Article 223 was first adopted there has been a fundamental change in the tariff situation. In 1958 import duties were payable on virtually all imported military equipment. Now such equipment can be procured free of customs duties not only in any Member State but also in any of the EFTA countries. In addition, the level of import duties which are payable has been substantially reduced in successive GATT Rounds. Furthermore, the following items of military equipment are already free of duty in the Common Customs Tariff:

8906 00 10 : warships

9301 00 00 : military weapons, other than revolvers,  
pistols and arms of heading No 9307

9305 90 10 : parts and accessories for military  
weapons falling within heading  
No 9301

In addition, customs duties are already suspended in respect of goods intended for incorporation in warships for the purposes of their construction, repair, maintenance or conversion, and in respect of goods intended for fitting to or equipping such ships.

11. The existence of divergent practices in Member States also has implications for the creation of the Single Market. Goods which are imported free of duty into one Member State but are not entitled to duty free importation into another cannot be regarded as being in free circulation. Consequently, in order to meet the requirements of the Single Market, harmonized Community rules will have to be adopted by the end of 1992 at the very latest.

### TARIFF SUSPENSIONS.

12. The Commission has come to the conclusion that there is a case, at least at present, for providing some measure of relief from import duties on weapons and military equipment required by the armed forces of the Member States. However, in the light of the foregoing policy considerations, the Commission considers that the list of products should be strictly limited and that it should cover only major items of military procurement.

13. In providing for tariff suspensions for military equipment it is not possible to follow normal practice. Normally, proposals for duty suspensions on industrial products are expressed in very precise and detailed terms to limit their scope and to enable Community producers to contest them on the grounds that they can produce such goods. Given the generally secret nature of specifications of military equipment, the use of detailed descriptions of the products and the practice of committee discussion of the capacity of Community firms to produce them are excluded. As a consequence, in this case, the list of suspensions has to be couched in more general terms.

14. Taking account of the policy considerations and the principles set out above, the Commission has prepared a proposed list of tariff suspensions. In addition to weapons and equipment themselves, it is proposed that the suspensions should cover parts and components for manufacture, and spare parts for the refurbishment, repair and maintenance of such weapons and equipment. It is also proposed that the suspensions should be extended to goods necessary for the manufacture and testing of weapons and equipment on the suspensions list.

15. Since surplus military equipment may be sold for non-military use or as scrap, provision has been made for the payment of duty in the event of any diversion to civil use.

### PROCEDURAL REQUIREMENTS

16. As indicated in para. 13, the list of military equipment eligible for duty suspension has necessarily been defined in general terms. Consequently, a customs control system will be required to ensure that the conditions for duty relief are met. The proposed arrangements are based upon a system of certification by the competent authority of the importing Member State. They have been kept as simple as possible and follow well tried and tested procedures for the customs control of imports by defence departments.

17. The proposal includes a requirement that the Member States shall provide annual estimates of the total amount of duty waived under these arrangements. The security implications of such information are recognised and it is provided that the information may be furnished in such a way as to avoid prejudicing military secrecy.

### PERIOD OF VALIDITY AND REVIEW.

18. As a general rule, tariff suspensions are adopted for a period of one year or less. In this case, the Commission considers that they should apply for three years.

19. The Commission also considers that it should report on the operation of the regulation before 31 December 1990 to enable it to make such proposals as it may deem appropriate for the period after the expiry of the regulation.

**CONCLUSIONS.**

20. The Commission considers that its proposals for a limited scheme of duty suspensions for major items of military procurement provide a reasonable balance between the requirements of the defence of the Community as a whole and the economic interests of Community producers of military equipment. It also meets the Single Market requirement to establish Community rules to replace divergent national ones. Once adopted, the regulation will put an end to irregularities which have existed for many years as well as eliminating certain inequities on the income side of the Community budget.

21. The Council is, accordingly, invited to treat these proposals as a matter of priority and to adopt them without undue delay.



temporarily suspending import duties on certain weapons and military equipment

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and, in particular Article 28 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas in the Single European Act the High Contracting Parties expressed their determination to maintain the technological and industrial conditions necessary for their security and to work to that end both at national level and, where appropriate, within the framework of the competent institutions and bodies;

Whereas the Community is based upon a customs union which requires the application of a common customs tariff in relations with third countries;

Whereas the common customs tariff is designed to provide Community manufacturers with a fair basis for competition amongst themselves and with foreign suppliers and it is essential that the said tariff be applied to all imports of goods from third countries unless specific Community measures provide otherwise;

Whereas it is in the interests of the defence of the Community as a whole that Member States should be enabled to procure for the use of their armed forces the most technologically advanced and suitable weapons and military equipment and that Community manufacturers should be able to meet the greater part of these needs; whereas it is compatible with the interests of the Community that certain of these weapons and equipment may be imported free of import duties; whereas it is appropriate to suspend the charging of import duties on such weapons and equipment and to this end a common list of duty suspensions for weapons and military equipment should be established; whereas uniform measures are required for the purpose of creating the Single Market;

Whereas it is necessary to lay down conditions for the granting of the benefit of the suspension of duties; whereas a declaration by the competent authority of the Member State for whose forces the weapons or military equipment are destined would constitute an appropriate guarantee that these conditions are fulfilled; whereas the declaration should be given in the form of a certificate; whereas it is appropriate to specify the form which such certificates must take;

Whereas it is necessary that the Member States should provide information on the amount of import duties foregone as a result of the application of this Regulation, having due regard to the requirements of military security;

Whereas it is necessary to provide procedures for the application of this Regulation;

Whereas it is appropriate that the Commission should make a report on the working of this Regulation after an initial period,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. This Regulation, lays down the conditions for the suspension of import duties on certain weapons and military equipment imported from third countries.
2. Imports of weapons and military equipment not covered by this Regulation shall continue to be subject to the appropriate duties of the common customs tariff.

## Article 2

1. The autonomous duties of the common customs tariff applicable to imports of the goods listed at Annex 1 imported shall be suspended at 0 per cent.

2. Such duties shall also be suspended at 0 per cent for:

(a) parts, components or sub-assemblies imported for incorporation in or fitting to goods included in the list at Annex 1 or for the repair, refurbishment or maintenance of such goods;

(b) goods imported for use in the manufacture and testing of goods included in the list at Annex 1.

## Article 3

1. Entry for free circulation of goods for which the benefit of a duty suspension under the provisions of Article 2 is claimed shall be accompanied by a certificate issued by the competent authority of the Member State for whose armed forces the goods are destined. The certificate shall be in the form set out in Annex 2 and shall be submitted to the customs authorities of the importing Member State together with the goods to which it refers.

2. The competent authority issuing the certificate shall notify the customs authorities of its Member State of any diversion of goods from military use to civil use.

3. In case of such diversion, the competent authority shall pay the import duties applicable to the goods in question.

## Article 4

1. Each Member State shall communicate to the Commission the name of the authority which is competent to issue the certificate referred to in Article 3 together with a specimen of the stamp used by the said authority. The Commission shall forward this information to the customs authorities of the other Member States.

2. Each Member State shall take such measures as may be necessary for the application of this Regulation.

3. Where the goods are entered for free circulation in a Member State other than that in which the certificate was issued, a copy of the certificate shall be forwarded by the customs authorities of the importing Member State to the customs administration of the Member State whose competent authority issued the certificate.

## Article 5

1. The Member States shall communicate to the Commission all relevant information concerning the application of this Regulation.

2. They shall also transmit to the Commission no later than three months after the end of each calendar year information on the total amount of import duties foregone in respect of goods imported under the provisions of this Regulation. The information shall be provided in such form as may be necessary to avoid the disclosure of military secrets.

## Article 6

The Commission shall, on the basis of the information referred to in Article 5, report to the European Parliament and the Council before 31 December 1990 on the operation of this Regulation and shall make such proposals as it may deem appropriate for the period after the expiry of this Regulation.

## Article 7

This Regulation shall enter into force on 1 January 1989.

It shall apply until 31 December 1991.

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

Done at Brussels,

For the Council

## ANNEX 1

LIST OF WEAPONS AND MILITARY EQUIPMENT ON WHICH IMPORT  
DUTIES ARE SUSPENDED.

| <u>CN Code</u> | <u>Description</u>  |
|----------------|---|
| ex 8710 00 00  | : Tanks and other armoured fighting vehicles, motorized   |
| 8802 11 90     | : helicopters, of an unladen weight not exceeding 2000 kg   |
| 8802 12 90     | : helicopters, of an unladen weight exceeding 2000 kg   |
| 8802 20 90     | : aeroplanes and other aircraft, of an unladen weight not exceeding 2000 kg                         |
| 8802 30 90     | : aeroplanes and other aircraft, of an unladen weight exceeding 2000 kg but not exceeding 15 000 kg |
| 8802 40 90     | : aeroplanes and other aircraft, of an unladen weight exceeding 15000 kg                            |
| ex 9306 90 10  | : bombs, grenades, torpedoes, mines and missiles  |

ANNEX 2

CERTIFICATE FROM COMPETENT AUTHORITY

|  |   |
|--|---|
| 1 Exporter (Full name and address including country)       | <p style="text-align: center;"><b>CERTIFICATE<br/>FOR MILITARY EQUIPMENT</b></p> <p>No _____ ORIGINAL</p> |
| 2 Importer (Full name and address including Member State)  |   |
| 4 Consignee (Full name and address including Member State) |   |
| 3 ISSUING AUTHORITY (preprinted)                           |   |

**NOTES**

- A. The original and a copy of this certificate must be presented in support of the entry for free circulation of the goods.
- B. The Customs office concerned must keep the copy of this certificate, endorse the original and sent it back to the issuing authority.

|  |                  |
|--|------------------|
| 5 Marks and numbers - Number and kind of packages - General description of goods | 6 Commodity code |
|  | 7 Quantity(1)    |
| 5 Marks and numbers - Number and kind of packages - General description of goods | 6 Commodity code |
|  | 7 Quantity(1)    |
| 5 Marks and numbers - Number and kind of packages - General description of goods | 6 Commodity code |
|  | 7 Quantity(1)    |
| 5 Marks and numbers - Number and kind of packages - General description of goods | 6 Commodity code |
|  | 7 Quantity       |

|   |   |       |       |      |
|---|---|-------|-------|------|
| <p><b>8 CUSTOMS ENDORSEMENT</b></p> <p>Number and date of entry for free circulation:</p> <p>Name of Customs office :</p> <p>Place and date :</p> <p>Signature of Customs officer :                      Stamp:</p>           | <p>9 Last day of validity</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 33%;">Day</td> <td style="width: 33%;">Month</td> <td style="width: 33%;">Year</td> </tr> </table> | Day   | Month | Year |
|   | Day   | Month | Year  |      |
| <p>10 This is to certify that the goods described above are for the exclusive use of the armed forces of _____ (Member State)</p> <p>Place and date :</p> <p>Signature of authorized person :                      Stamp:</p> |   |       |       |      |

(1) Gross mass(kg) or number of items.