

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 658 final

Brussels, 3<sup>rd</sup> November 1980

PROPOSAL FOR A COUNCIL DECISION (EEC)  
ON THE DEFINITION OF THE CUSTOMS TERRITORY OF THE COMMUNITY

(presented by the Commission to the Council)

COM(80) 658 final

Explanatory Memorandum

Council Regulation (EEC) No 1496/68 of 29 September 1968 (1) defined the customs territory of the Community.

Article 1 of this Regulation has already been amended twice, to take account of the accession to the Community, first of Denmark, Ireland and the United Kingdom, and secondly of Greece.

The Regulation has not however settled all the problems inherent in the territorial application of Community law. Article 4 states that it shall not affect:

- the customs system applicable to the continental shelf or that applicable to the waters and foreshores situated between the coast or shore and the limit of territorial waters; or
- the provisions applicable in accordance with Community rules to be adopted with regard to free zones.

These provisions were justified at the time by the fact that in these fields work on harmonization that was in progress, but not yet completed, did not make it possible to define precisely their relationship with the customs territory of the Community.

Since then the situation has become considerably clearer. With regard to the arrangements for free zones, Council Directive 69/75/EEC of 4 March 1969 (2) clearly defined free zones as any territorial enclave established by the competent authorities of Member States in order that goods therein may be considered as being outside the customs territory of the Community for purposes of applying customs duties, agricultural levies, quantitative restrictions or any charges or measures having equivalent effect (Article 1 (2)).

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(1) OJ No L 238, 28.9.1968, p. 1; English Special Edition 1968 (II), p. 436

(2) OJ No L 58, 8.3.1969, p. 11; English Special Edition 1969 (I), p. 86

The provision under Article 4 of Regulation (EEC) No 1496/68 which reserved the legal status of free zones is therefore no longer necessary, since this status has now been clearly defined.

With regard to the customs arrangements applicable to the continental shelf, it should be pointed out, in the light of current provisions concerning the matter at international level, and particularly Article 2 of the Convention on the Continental Shelf signed at Geneva on 29 April 1958, that no specific measure is necessary with respect to the definition of the customs territory of the Community.

In accordance with the provisions of Article 4 (2) (h) of Council Regulation (EEC) No 802/68 of 27 June 1968, on the common definition of the concept of the origin of goods (1), "products taken from the sea-bed or beneath the sea-bed outside territorial waters, if that country has, for the purposes of exploitation, exclusive rights to such soil or subsoil" must be considered wholly obtained in a Member State of the Community (that is, "originating" in that Member State within the meaning of Article 9 (2) of the Treaty). Since Article 2 of the Geneva Convention referred to above confers on the coastal state sovereign rights over the continental shelf for the purposes of exploring the latter and exploiting its natural resources, it follows that all products taken from the sea-bed or beneath the sea-bed of the continental shelf adjacent to a Member State are Community products. The only products awaiting definition are certain petroleum products listed in Annex I to Regulation (EEC) No 802/68 in respect of which, under the terms of Article 3, the concept of origin will be defined later.

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(1) OJ No L 148 of 28.6.1968, p. 1; English Special Edition 1968 (I), p. 165

Since the customs arrangements for the continental shelf concern only products which may be taken from it, they therefore coincide with current Community rules concerning origin, and it is not desirable to go on implying, in the Regulation on the definition of the customs territory of the Community, that these arrangements have yet to be defined.

As there is no justification at present for integrating the continental shelf next to the Member States into the Community Customs Territory, the deletion of the present reference to the continental shelf in the definition of this territory will remove any doubts.

With regard to the customs arrangements for territorial waters, the Community's consistent interpretation (particularly when concluding association agreements with developing countries) has been that a Member State's territorial waters are an integral part of its territory and, consequently, of the customs territory of the Community. However, since Article 4 of Regulation (EEC) No 1496/68 states that "This Regulation shall not affect: the customs system applicable to ..... the waters and foreshores situated between the coast or shore and the limit of territorial waters", it suggests that the Member States are justified in applying different customs rules in this case, not only varying from one to another, but also in relation to those applicable in the land customs territory of the Community. Such a concept, which gives rise to inconsistent treatment of the Community's economic operators, is clearly unacceptable.

It is also advisable to eliminate this provision from Regulation (EEC) No 1496/68 so that it is perfectly clear that the Member States' territorial waters are an integral part of the customs territory of the Community. At the same time, it should be stated that the air space over which the Member States exercise their sovereignty is also part of the customs territory of the Community.

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The customs territory of the Community being thus fully redefined, it should be stated that, except where there are specific exemptions, the whole of Community customs law applies uniformly over the entire customs territory. Such exemptions may be necessary particularly in order to ensure that international law is respected (for example, innocent passage of ships in territorial waters).

The full significance of the customs territory of the Community will thus become apparent: the definition of the geographical space in which Community customs rules apply.

These definitions and amendments to Regulation (EEC) No 1496/68 seem sufficiently extensive to justify replacing the latter by a new regulation also taking account of the amendments which have already been made with regard to Article 1.

This then is the subject of this proposal for a Council Regulation, the adoption of which meets the objectives set out in the 1980 programme for the achievement of the customs union with regard to the definition of the customs system for territorial waters (C.3.).

This proposal is based on Article 235 of the Treaty establishing the European Economic Community and thus requires the opinion of the European Parliament. It would also be advisable to obtain the opinion of the Economic and Social Committee.

proposal for a Council Regulation  
on the definition of the customs territory  
of the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 235 thereof;

Having regard to the proposal from the Commission; (1)

Having regard to the opinion of the European Parliament; (2)

Having regard to the opinion of the Economic and Social Committee; (3)

Whereas the customs territory of the Community is defined by Council Regulation (EEC) No 1496/68 (4), last amended by the Act of Accession of Greece (5); whereas Article 4 of the above Regulation provides that it shall not affect the customs system applicable to the continental shelf or that applicable to the waters and foreshores situated between the coast or shore and the limit of territorial waters, or the provisions applicable in accordance with Community rules to be adopted with regard to free zones;

Whereas Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods (6) defined the customs system applicable to products taken from the continental shelf; whereas there is no justification for integrating the continental shelf adjacent to the Member States into the customs territory of the Community;

Whereas Council Directive 69/75/EEC of 4 March 1969 on provisions relating to free zones (7) established the Community rules applicable in those zones;

(1) OJ No C.....

(2) OJ No C.....

(3) OJ No C.....

(4) OJ No L 238, 28.9.1968, p. 1

(5) OJ No L 291, 19.11.1979, p. 17

(6) OJ No L 148, 28.6.1968, p. 1

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

Article 3

Except where there are specific provisions to the contrary, particularly those arising from the application of international conventions, the customs rules of the Community shall apply uniformly throughout the whole of the customs territory of the Community.

Article 4

The provisions of this Regulation shall apply without prejudice to the arrangements set out in the Protocol to the Treaty on German internal trade and connected problems, particularly to German rules regarding the German customs territory.

Article 5

1. Regulation (EEC) No 1496/68 is hereby repealed.
2. In all Community acts referring to Council Regulation (EEC) No 1496/68, such reference shall be considered as applying to this Regulation.

Article 6

This Regulation shall enter into force on 1 July 1981.

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

Done at Brussels

For the Council

The President

ANNEX

1. GERMANY

The Austrian territories of Jungholz and Mittelberg as defined in the following treaties:

- with regard to Jungholz - Treaty of 3 May 1868 (Bayerisches Regierungsblatt 1868, p. 1245);
- with regard to Mittelberg - Treaty of 2 December 1890 (Reichsgesetzblatt 1891, p. 59),

2. FRANCE

The territory of the Principality of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (Official Journal of 27 September 1963, p. 8679)

3. ITALY

The territory of the Republic of San Marino as defined in the Convention of 31 March 1939 (Law of 6 June 1939, No 1220).