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Report

drawn up on behalf of the Committee on External Economic Relations

on the proposal from the Commission of the European Communities to the Council (Doc. 39/79) for a Regulation setting up a Community system of reliefs from customs duty

Rapporteur: Mr V. GIUMMARRA

By letter of 28 March 1979 the President of the Council of the European Communities requested the European Parliament, pursuant to Articles 43 and 235 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a regulation setting up a Community system of reliefs from customs duty.

The President of the European Parliament referred this proposal to the Committee on External Economic Relations as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion.

On 5 October 1979 the Committee on External Economic Relations appointed Mr Giummarra rapporteur.

It considered this proposal at its meeting of 21 November 1979.

At the same meeting the committee unanimously adopted the motion for a resolution and the explanatory statement.

Present: Sir Fred Catherwood, chairman; Mrs Wieczorek-Zeul, Mr Van Aerssen and Mr Seal, vice-chairmen; Mr Giummarra, rapporteur, Mr Almirante, Mr Bøgh, Mrs Caretoni Romagnoli, Mr de Courcy Ling, Mr Kellett-Bowman, Mr Lemmer, Mrs Lenz, Mr Louwes, Mr Majonica, Mr Martinet, Mrs Moreau, Mr Schmitt, Mr Seeler, Sir John Stewart-Clark and Mr Welsh.

The opinion of the Committee on Economic and Monetary Affairs is attached.

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The Committee on External Economic Relations 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 regulation setting up a Community system of reliefs from customs duty

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council (COM(79) 104 final),
 - having been consulted by the Council pursuant to Articles 43 and 235 of the EEC Treaty (Doc. 39/79),
 - having regard to the reasons for the existence of a customs union,
 - having regard to the primacy of Community law over national law, particularly in customs matters,
 - having regard to the safeguards which the Commission proposal provides for the individuals concerned,
 - having regard to the probably insignificant financial effect of the extension of the reliefs and the substantial psychological benefits which may result,
 - having regard to the report of the Committee on External Economic Relations and the opinion of the Committee on Economic and Monetary Affairs (Doc. 1-548/79),
1. Welcomes the Commission proposal, which represents a new stage in the harmonization of legislation and is a welcome addition to Community customs law;
 2. Invites the Commission to adopt the following amendments as provided for in Article 149, second paragraph, of the EEC Treaty:

Proposal for a regulation setting up
a Community system of reliefs from
customs duty

Preamble and recitals unchanged

Article 1 unchanged

Article 2

1. Subject to the provisions of Article 3, any commercial consignment by letter post or any postal packet containing goods of total value not exceeding 10 EUA shall be admitted free of import duties.

Article 2

1. Subject to the provisions of Article 3, any commercial consignment by letter post or any postal packet containing goods of total value not exceeding 20 EUA shall be admitted free of import duties.

Articles 3 to 8 unchanged

Article 9

1. Until twelve months have elapsed from the date on which their entry for free circulation was accepted, personal effects which have been admitted duty-free may not be loaned, given as security, hired out or transferred, whether against payment or free of charge, without prior notification to the competent authorities.
2. The loan, giving as security, hire or transfer before the expiry of the period referred to in paragraph 1 shall entail payment of import duties on the goods concerned at the rates in force at the time of such loan, giving as security, hire or transfer, calculated according to the type of goods and the value for customs purposes ascertained or accepted at that time by the competent authorities.

Article 9

1. Until six months have elapsed from the date on which their entry for free circulation was accepted, personal effects which have been admitted duty-free may not be loaned, given as security, hired out or transferred, whether against payment or free of charge, without prior notification to the competent authorities.
2. unchanged

Articles 10 to 22 unchanged

¹ For complete text see Doc. 39/79

Article 23

1. Until twelve months have elapsed from the date on which their entry for free circulation was accepted, personal effects which have been admitted duty-free may not be loaned, given as security, hired out or transferred, whether against payment or free of charge, without prior notification to the competent authorities.
2. The loan, giving as security, hire or transfer before the expiry of the period referred to in paragraph 1 shall entail payment of import duties on the goods concerned at the rates in force at the time of such loan, giving as security, hire or transfer, calculated according to the type of goods and the value for customs purposes ascertained or accepted at that time by the competent authorities.

Article 23

1. Until six months have elapsed from the date on which their entry for free circulation was accepted, personal effects which have been admitted duty-free may not be loaned, given as security, hired out or transferred, whether against payment or free of charge, without prior notification to the competent authorities.
2. unchanged

Articles 24 to 40 unchanged

Article 41

1. The relief referred to in Article 39 shall be applied up to a total value of 40 EUA per traveller to goods other than those listed in Article 40.

Nevertheless, Member States may reduce this amount to 20 EUA for travellers under fifteen years old.
2. In determining the values referred to in paragraph 1, the value of personal effects imported temporarily by the traveller, or re-imported by him after temporary exportation, shall not be included.

Article 41

1. The relief referred to in Article 39 shall be applied up to a total value of 100 EUA per traveller to goods other than those listed in Article 40.

Nevertheless, Member States may reduce this amount to 20 EUA for travellers under fifteen years old.
2. unchanged

Articles 42 to 132 unchanged

Annexes unchanged

¹ For complete text see Doc. 39/79

EXPLANATORY STATEMENTI. Nature and operation of a customs union

1. Certain elementary facts must first be recalled: a customs union is a geographical area where free movement of goods between the member states is guaranteed and a common customs tariff is applied to goods coming from outside. The free movement of goods and the establishment of a common external tariff involve little more than the functioning of the international institutions set up.
2. In practice, the proper organization of the customs services, their ability to adapt and modernize, largely determine the speed of delivery, the minimum transport cost and the effectiveness of the measures imposed by the policy of the member states of the union. These purely national services are responsible for drawing up the regulations and ensuring that they are applied at the technical, economic, legal and administrative level. They represent their governments at many international bodies and provide the necessary links between the authorities within a state and between the services of different states.
3. They have a dual function: to apply national law and apply Community law, which involves certain difficulties and contradictions; if each partner could interpret the Common Customs Tariff in his own way and considering his own interests, no common commercial policy could be envisaged. The procedure therefore comprises three phases:
 - (1) Application of the CCT;
 - (2) Drawing up of the rules necessary for uniform application of common commercial policy measures;
 - (3) Harmonization of the rules on the import, transit and export of goods which are not put into free circulation in the Community.

II. Definition of reliefs

4. The reliefs consist in the non-application of certain duties which normally should be applied. It is in the uniform application of the CCT that obstacles arise as a result. Uniform application has the effect of producing different and even contradictory versions, to suit national needs, of the uniform rules ensuring that there is an equal customs charge on the goods. Customs reliefs on imports are corrective measures to the customs tariff and it must be ensured that they do not cause any substantial distortion.

5. The reliefs are therefore derogations from the Common Customs Tariff or the regulations adopted by the Council. To harmonize Community law and the national legislation, the present proposal seeks to define the case where there is no need for protection of the economy of the Community in imports or exports. Reliefs resulting from previous agreements (mainly diplomatic privileges or frontier agreements) are excluded. Any implementing measures will be adopted by a Committee on Duty Free Arrangements which will replace the committee set up under Article 7 of Council Regulation (EEC) No. 1798/75 of 10 July 1975 on the importation of educational, scientific and cultural materials. Certain reliefs currently applied in the Member States which are the result of agreements with third countries concern only the signatory Member States. There is no point in defining at Community level the conditions governing the granting of such reliefs.

III. Content of the proposal.

6. What is the content of the Commission proposal? It brings together and classifies the various reliefs concerned for two purposes: to try to examine the possible cases such as exist in the national legislation, which it does not seek to overturn, and above all to provide a basis of reference for the future. The following are thus included amongst the reliefs on import:

- goods imported on the occasion of a marriage,
- school outfits,
- goods contained in travellers' personal luggage,
- educational, scientific and cultural materials,
- human therapeutic substances and blood-grouping and tissue-typing reagents,
- goods for charitable or philanthropic organizations, for general purposes or for the benefit of handicapped persons, the blind and others, or for the benefit of disaster victims,
- honorary decorations or awards,
- tourist information literature,
- ancillary materials for the stowage and protection of goods during their transport,
- etc.

amongst the reliefs on export:

- commercial consignments of negligible value,
- fodder and feeding stuffs for animals during their exportation,
- etc.

The practical details and the complete list are given in the text of the proposal and its annexes.

7. Although the list is impressive, it does suggest two things: on the one hand the modest extent of the fields covered and their conventional character and, secondly, the desire to express clearly and plainly a number of concepts which varied somewhat according to the state and could leave room, if not for serious deflection of trade, at least violations of the Community idea.

IV. The Treaty of Rome and the proposal under consideration

8. It is first important to know whether the proposal under consideration conforms with the Treaty of Rome and to what extent. It is based on Articles 28, 43 and 113 of the Treaty.

9. '... After the transitional period has ended, however, the Council may, acting by a qualified majority ... decide on alterations or suspensions which shall not exceed 20% of the rate in the case of any one duty for a maximum period of six months ... (and which) may only be extended ... for one further period of six months' (Article 28). Hence the extension of reliefs is a matter for the Council. The need for unanimity provides a guarantee for the states and in practice prevents any abuse which might be damaging to them as a result of such extension.

10. Article 43 sets up a conference of the Member States to evolve a common agricultural policy and replace the national organizations. The article defines in particular an outline procedure. The Commission proposal under consideration only defines some of the cases covered by Article 43(4) (Title IX - XXVII Relief from import duties).

11. Article 113 affirms the principle of a uniform common commercial policy and describes the procedure in terms reflecting the 'General and Final Provisions' of the proposal under consideration and in particular Articles 125 and 128.

12. Reference may also be made to Article 235 of the Treaty which the proposal does not mention but which forms the basis for it. 'If action by the Community should prove necessary to attain ... one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures'. From the point of view of the Treaty therefore the proposal seems to be completely valid.

V. The proposal under consideration and the international treaties in force

13. Similar principles seem to derive from all the international conventions to which the Member States have subscribed, in particular the principal agreements drawn up under the aegis of the Council of Europe or UNESCO establishing reliefs from customs duties:

(a) European agreements on the exchange of human therapeutic substances and, secondly, blood-grouping reagents, signed in Paris on 15 December 1958 and in Strasbourg on 14 May 1962. The proposal under consideration expressly mentions these substances.

(b) agreements on customs facilities for tourists drawn up in New York on 4 June 1954.

These relate to the temporary duty-free import of personal effects of tourists and the duty-free admission of various goods purchased by tourists during a stay outside their country of residence.

The main interest in these lies in the principles and definitions which they contain and which are reproduced in the proposal under consideration.

(c) agreement on the import of educational, scientific and cultural objects, the 'Florence Agreement' which came into force on 21 May 1952.

The proposal under consideration clarifies the definitions and terms of this agreement, which were sometimes too vague in the original¹.

(d) the Beirut Agreement aimed at facilitating the international movement of visual and auditory material of an educational, scientific or cultural character.

This agreement has not been signed by the Member States of the Community, but a number of its principles are reproduced in the proposal under consideration.

14. Similarly, as regards aircraft and ships, several measures have been taken by the Council on the construction, conversion, repair and fitting out of aircraft and aimed at harmonizing national legislation, while taking account of the need to place the aircraft companies of the EEC in a competitive position with respect to their opposite numbers in third countries operating international services (decisions of 22 December 1966 and 18 June 1968). These decisions are reproduced in the proposal under consideration and do not add anything new. The same is true of Regulation (EEC) No. 1544/69 of 23 July 1969 and Directive No. 69/69/EEC of 28 May 1969 of the Council of Ministers, which standardize and provide a legal basis for the 'allowances' granted by Member States to travellers from third countries or travelling from one Member State to another. The

¹ In accordance with Regulation (EEC) No. 1027/79 of the Council of 8 May 1979 amending Regulation (EEC) No. 1798/75

document under consideration reproduces the same principles and Regulation No. 1545/69 of 23 July 1969 applicable to small packages sent to private individuals and Regulation No. 1544/69 on the duty-free import of cigarettes, alcoholic beverages and perfumes.

15. As regards GATT, standardization of the system of reliefs is based on the definition which it gives for customs unions (Article XXIV (8b)) which states:

- 'duties and other restrictive regulations of commerce ... are eliminated with respect to substantially all the trade between the constituent territories of the union, or at least with respect to substantially all the trade in products originating in such territories, and,
- ... substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union.'

It is clear that any extension of the EEC reliefs will be considered sympathetically from the point of view of GATT.

16. The Kyoto Convention is designed to organize all customs legislation and thus facilitate international trade. It consists of about 30 annexes, each of which deals with a particular sector and itself has the value of a convention. Two of these annexes relate more or less directly to the present proposal:

- E6: temporary admission for inward processing
- E7: duty-free replacement of goods.

Temporary admission for inward processing means, as a general rule, the total abolition of duties and taxes on imports. This is not a relief since, in contrast to abolition of duty, relief is not a temporary arrangement.

E7 was rejected following a recommendation by the Commission to the Council on 30 September 1975 (Doc. 253/75). The principle laid down in this annex which does not make it compulsory to export the goods concerned, in fact creates a clearing system. 'Such possibility, applied on a large scale, might well call into question all the common agricultural policy arrangements and might seriously prejudice observance of the measures taken within the framework of that policy'. The proposal under consideration is very cautious in regard to agriculture. In practice only animals or agricultural products may be admitted duty-free if they are re-entering the Community where they were produced and in a very strictly limited quantity. The proposal is therefore perfectly in accordance with the general commercial policy of the Community with respect to third countries.

VI. European law, national law and reliefs

17. As regards relations with national law, two problems have to be distinguished. First of all that of identity or 'resemblance' between the national texts and the Community text. We shall not examine this aspect because of the primacy of Community law over national law.

18. In the matter of customs the principle of 'the necessary effect' has obvious consequences: it is 'impossible for the States ... to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on the basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system.' (Costa versus ENEL 6/64, Judgment of 15 July 1964). If the proposal under consideration were adopted, it would be the responsibility of the Commission to ensure uniformity of application of the work to be carried out, in particular:

- total responsibility for negotiations of all the international conventions involving relief measures,
- investigation and elimination of national measures not covered by the provisions of the Council regulation, in particular those aiming to derogate from the Common Customs Tariff and involving inadmissible distortions of competition.

VII. The proposal under consideration and the individual

19. What is the effect of the measure proposed on natural persons considered individually? Close examination of the proposal provides the answer. In general the measures proposed were already applied to individuals by the various national laws but the borderline between the law and what was allowed was imprecise. One of the merits of the proposal under consideration is to provide guarantees and to define clearly what was already being widely applied. From this point of view it can be said that it helps to make it easier for people to move about by creating clear reference situations, without at the same time discouraging migration or providing an incentive for vast numbers of the population to move.

VIII. The proposal under consideration and the community

20. What is the impact on the community? The proposed solution is for a very specific problem, namely providing access to specific goods for the benefit of individuals or intra-community groups who need them (such as the sick, disaster victims or charitable institutions), without at the same time harming Community manufacturers or distributors of such goods and without unduly upsetting the budgetary charges of the Member States.

The risks run by the Community as a result of relief granted for 'honorary decorations or awards', paints, varnishes, wallpapers used and destroyed in trade fairs, seem to be completely negligible compared with the advantages which may result and which are not necessarily financial: access to information and culture, aid for the handicapped¹, etc. As for the other cases covered by the proposal, the close limits defining and specifying their application protect the Community as much as they help those benefiting from these exceptional measures.

The proposal under consideration is limited essentially to listing scattered provisions and bringing them together, thus giving a clearer picture of the system of reliefs actually in force. It does not involve any major rearrangement.



¹ The proposal under consideration reproduces the terms of Council Regulation (EEC) No. 1028/79 of 8 May 1979 on the importation free of Common Customs Tariff duties of articles for the use of handicapped persons.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman: Mr von WOGAU

On 12 October 1979 the Committee on Economic and Monetary Affairs appointed Mr von WOGAU draftsman.

It considered the Commission's proposal at its meeting of 21 November 1979 and unanimously adopted the opinion.

Present: Mr Delors, chairman; Mr Deleau, vice-chairman; Mr von Wogau, draftsman; Mr Beumer, Mr Collomb, Miss Forster, Mr Herman (deputizing for Mr Tindemans), Mr Lange (deputizing for Mr Walter), Mr Leonardi, Mrs Moreau, Mr Notenboom (deputizing for Mr Schnitker), Mr Petronio and Mr Rogers.

1. The Commission proposal lays down provisions specifying that goods imported or exported for certain specified purposes or by certain specified persons are to be granted relief from customs duties applicable under the Common Customs Tariff and various charges applied under the common agricultural policy ¹.

2. Relief from import or export duties affects the Community budget and it is therefore for the EEC and not the individual Member States to lay down the provisions specifying where such relief may be permitted. The object of the Commission proposal is to create a general legal basis to this effect and also to consolidate the provisions contained in a number of different Council regulations that have already been issued.

3. The Commission proposal is in line with its multiannual programme for the implementation of the customs union ². It is planned to implement the regulation with effect from 1 January 1981. To allow the customs authorities sufficient time to take the necessary measures, it is envisaged that the Council will take a decision during the first half of 1980.

4. As regards the budgetary aspects, the Commission emphasizes (point 10 of the explanatory memorandum) that the incidence of the current national rules on the budget cannot be quantified. The Commission estimates that the regulation's effect on the Community's budgetary revenue will not be much different from the present effect of the current national provisions and that implementation of the regulation will in all events facilitate better control over the Community's own resources.

5. The draftsman has not received any outside representations (either from trade organizations or private individuals) concerning this proposal for a regulation.

1

Relief from customs duty differs from zero-rating in that the rates of duty prescribed in the customs tariff remain applicable to goods imported for purposes or by persons other than those affected by the relief measure.

Relief from customs duty differs from a suspension of duty in that it is not a temporary measure.

2

COM(79) 8 final.

List of areas covered by the proposed regulation

6. The provisions of the proposal for a regulation provide for relief from import duties in the following cases:

- commercial consignments of negligible value (Title I),
- personal effects of private individuals transferring their normal place of residence from a third country to the Community (Title II),
- household effects for furnishing a secondary residence (Title III),
- goods imported on the occasion of a marriage (Title IV),
- personal effects acquired by an inheritance (Title V),
- school outfits (Title VI),
- capital goods imported on the transfer of activities from a third country into the Community (Title VII),
- products obtained by persons farming in the Community from properties located in a third country (Title VIII),
- seeds, fertilizers, and products for treatment of soil and vegetables imported by persons farming in third countries for use in properties adjoining those countries (Title IX),
- goods contained in travellers' personal luggage (Title X),
- educational, scientific and cultural materials (Title XI),
- laboratory animals (Title XII),
- human therapeutic substances and blood-grouping and tissue-typing reagents (Title XIII),
- pharmaceutical products used at sports events (Title XIV),
- goods for charitable or philanthropic organizations (Title XV),
- honorary decorations or awards (Title XVI),
- presents received in the context of good international relations (Title XVII),
- goods to be used by monarchs or heads of state (Title XVIII),
- goods imported for trade promotion purposes (Title XIX),
- goods imported for test purposes (Title XX),
- goods imported for the purposes of industrial or commercial information or research (Title XXI),
- consignments sent to organizations protecting copyrights or industrial and commercial patent rights (Title XXII),
- small consignments of a non-commercial nature (Title XXIII),
- tourist information literature (Title XXIV),
- miscellaneous documentation (Title XXV),
- ancillary materials for the stowage and protection of goods during their transport (Title XXVI),
- fodder and feedingstuffs for animals during their transport (Title XXVII),
- fuel and lubricants contained in the standard tanks and sumps of motor vehicles (Title XXVIII),
- spare parts and equipment for aircraft registered in third countries (Title XXIX),

- materials for the construction, upkeep or ornamentation of military memorials or cemeteries (Title XXX),
- coffins, funerary urns and ornamental funerary articles (Title XXXI).

7. The provisions contained in the proposal for a regulation provide for relief from export duties in the following cases:

- commercial consignments of negligible value (Title I),
- domesticated animals exported at the time of transfer of agricultural activities from the Community to a third country (Title II),
- products obtained by persons farming from third countries on properties located in the Community (Title III),
- seeds exported by persons farming in the Community for use in properties located in third countries (Title IV),
- fodder and feedingstuffs accompanying animals during their exportation (Title V).

Comments

8. As has been pointed out several times by the Committee on Economic and Monetary Affairs¹, a customs union does not consist solely in the creation of a common external tariff wall and in the removal of customs duties, import charges, quota restrictions, etc., in internal trade; it also means that the common customs tariff should be administered uniformly in the various Member States and that the national customs laws and rules should be brought into line with one another. Failing this, the general public and the business community will receive differing treatment and artificial distortions will arise in industry's pattern of trade and production, which is contrary to the objective of the EEC Treaty.

The Commission proposal is thus fully in line with the European Parliament's wish, through the formulation of common customs legislation, to secure uniform application of the common customs tariff (and also, in this instance, of the various charges levied in connection with the common agricultural policy).

¹ See the committee's most recent report on the customs union and the development of the internal market (Doc. 557/77). The European Parliament adopted the motion for a resolution contained in this report at its sitting of 12 April 1978.

9. According to information received from the Commission departments, the proposal for a regulation is comprehensive to the extent that it incorporates:

- all existing Community regulations concerning relief from import and export duties¹,
- those of the Member States' provisions which the Commission feels should be incorporated in the common rules.

According to information supplied by the Commission, only a very limited number of the national rules on relief from customs duties are not incorporated in the proposal for a regulation. These rules relate, for example, to the importation of certain goods by certain religious and political organizations, which the Commission does not feel should be incorporated in the common rules; by virtue of their content, the agreements on which such rules are based concern solely the signatory Member State. The provisions proposed by the Commission enable the Member States to maintain relief arrangements of this nature, and the Member States can be authorized to conclude new agreements granting similar reliefs.

10. It should be pointed out that - with a single exception² - the proposal for a regulation grants relief from customs duties only in cases where duty-free import does not have economic consequences, i.e. does not remove the safeguards for industry which are the purpose of the normal customs tariff. This means that the present proposal for a regulation does not include imports of, for example, military equipment.

Measures granting relief from customs duty that may have clear economic consequences 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.

¹ The incorporation of these provisions in a new regulation has not been accompanied by any change in their content.

² The import of educational, scientific and cultural material is already duty-free under the existing rules, see Council Regulation (EEC) No. 1798/75 of 10 July 1975.

CONCLUSION

The Commission proposal therefore accords fully with the wish frequently expressed by the Committee on Economic and Monetary Affairs for uniform administration of the Common Customs Tariff in order to eliminate the artificial distortions in patterns of industrial production, trade and transportation which have resulted from disparities in the laws and administrative rules applied in the Member States.

Conversely, the proposal, if adopted, is unlikely to worsen the position of undertakings within the Community in competition with those in third countries. The proposal does not in fact cover reliefs that may have economic consequences for producers in the Community. Such reliefs will continue to take the form of temporary suspensions of the rates prescribed in the Common Customs Tariff, in accordance with Article 28 of the EEC Treaty.

The Committee on Economic and Monetary Affairs therefore regards this proposal by the Commission as a useful contribution to the gradual introduction of uniform and more easily comprehensible customs legislation, and no amendments to individual provisions in the proposal were sought during the deliberations of the committee.

The Committee on Economic and Monetary Affairs would also point out that it would make an immense difference to the citizens of the Community if a similar regulation could be produced to consolidate the rules for the movement of persons and goods between the individual national markets making up the Customs Union.