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COMMISSION REPORT

on the Community Customs Code

Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)

amending Council Regulation (EEC) No 2913/92
establishing the Community Customs Code

(presented by the Commission)

I

COMMISSION REPORT

ON THE COMMUNITY CUSTOMS CODE

SUMMARY

Council Regulation (EEC) No 2913/92 establishing the Community Customs Code requires the Commission to present a report before the end of 1997 on any changes that may be necessary, for instance in the light of internal market requirements.

The Commission therefore presents herewith its report on the proposed amendments together with a review of the experience gained in applying the Code during the past four years.

The Community Customs Code has brought about much more transparency than there was before it was established. It has been taken as a model by many third countries in Europe, and even beyond. Its role is to underpin several Community policies and provide a common framework for the operations of the national customs administrations.

The quality objective of codifying (or recasting) the legislation seems to have been achieved for the Basic Regulation but further work is still needed on the implementing provisions. The Customs 2000 action programme and the objective of simplification represent the frame of reference for a modern code, whilst the Community's transit action plan and the communication on the management of the preferential tariff arrangements are also affecting the Code's development.

Whilst the transposition into Community law of the outcome of the Uruguay Round dominated the first set of amendments, future developments will concentrate on further simplification of the rules, greater flexibility in the Basic Regulation, improvements to the recovery procedure and alignment of the provisions on customs representation with the principle of a single market.

I. Introduction

Council Regulation (EEC) No 2913/92 of 12 October 1992[1] established the Community Customs Code. Its final provisions commit the Council to reviewing the Code after four years in the light of experience gained from the practical application of the measures during that period. The four years was up at the end of 1997.

Customs legislation has been codified at two levels. The first is the Basic Regulation referred to above, which embodies the principles, and the second is the implementing regulation (Commission Regulation (EEC) No 2454/93 of 2 July 1993)[2] which, within a framework laid down by the Basic Regulation, contains the more detailed provisions. The Council's mandate to the Commission to review the legislation will not be properly fulfilled until the implementing provisions have also been reviewed. However, the amendments submitted with this Communication relate to the Basic Regulation only.

II. Community Customs Code - long-term achievement and modern impact

With the codification of Community customs law, the Community crossed a threshold.

As the outcome of a process of harmonizing laws over a quarter of a century, the Code remains a good example for other areas of Community law. It has brought about a level of transparency and simplification that can perhaps only be fully appreciated by those who, before 1994, had to apply or comply with several hundred legal texts spread across a whole library of Official Journals.

III. The Code's influence beyond the Community's frontiers

Although this was not a deliberate aim when the Code was established, it has aroused considerable interest beyond the Community's frontiers. Even before it was adopted or applied, the draft and final forms of the Code were regarded as a source of guidance by many countries, particularly those which, having emerged from a state-trading system, were in urgent need of operational customs legislation that would enable them to integrate into the world of international trade. The interest shown in the Code by Central and Eastern European countries, the successor states to the former Soviet Union and Yugoslavia, and even by a group such as Mercosur, is witness to a credibility which seems to derive as much from the general image of the European Union as from the Code's intrinsic quality, the Code being regarded as the legislative embodiment of balanced compromise between different approaches and philosophies.

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1 OJ L 302, 19.10.1992.

2 OJ L 253, 11.10.1993.

It goes without saying that, as a concise body of rules, the Code - like any codified legislation - simplifies preparations for an exercise such as Community enlargement. The recent expansion from 12 to 15 members demonstrated as much, and it is likely to prove its worth again in future.

In addition, the provisions of the Community Customs Code are used extensively for the purposes of the customs unions the Community has entered into with Andorra, San Marino and Turkey.

IV. The Code's role in the context of the various policies based on customs union

The Code's importance to the Community derives from the part played by the instruments of the Customs Union in implementing Community policies.

Although the Code's procedural framework is also used in applying restrictions and prohibitions on imports and exports, it is primarily deployed for the purpose of collecting or waiving customs duties.

In connection with **commercial policy**, although the customs tariff is losing its importance as an instrument for the protection of certain industries, it is still used for the purposes of preferences, and the importance of correct management of preferential policy was recently stressed in the Commission's communication of 23 July 1997 (COM(97) 402). Anti-dumping and countervailing duties however, are trade and industrial protection measures which are applied in accordance with the rules and procedures of the Community Customs Code.

The **agricultural policy** uses the Code's customs procedures for managing the export refund arrangements. Since the changes following the Uruguay Round, the agricultural sector also depends on the Code for import protection. As agricultural levies have been replaced by customs duties, the new system relies on the basic concept of customs value, and, even if the Code's flexible rules are overridden by specific agricultural mechanisms aimed at stricter application, the Code rules remain the touchstone.

For **external trade statistics** the Single Administrative Document provided for in the Code Implementing Provisions remains the instrument on which the gathering of statistics is based.

The effect of Community customs legislation on **indirect taxation** remains important, even now that the single market has been established. Whilst that reduced the scope of the suspensive customs arrangements in relation to internal trade considerably, the link between the Code's customs procedures and the charging of VAT on products imported from third countries has been tightened.

Apart from the Code's importance across all these policies, it has a "vertically" cohesive role to play since the entity responsible for their implementation consists of 15 separate national administrations. Their very awareness that the Code provides a framework within which they carry out their common activities is as important for integration between these administrations as the range of measures provided for in the Customs 2000 programme.

And, since the Code embodies a number of concepts pertaining to general administrative law (e.g. annulment, repeal of a decision, protection of legitimate reliance where an administrative error occurs), it has also played a part in creating a European legal area.

More generally, the Community Customs Code has a pivotal place in the legal provisions on which determination of the amount of duty and of the persons liable for payment are based. It is the legal basis for recovery. It is an essential instrument for the protection of the Community's financial interests and the smooth operation of Community policies.

Nevertheless, this is not to hide the evolution in frauds and irregularities uncovered. Since 1992 the sums involved have risen steeply, the problems of detection have multiplied because of the increasingly sophisticated nature of the practices, and there has been increasing involvement by organized crime which has clearly chosen to move into customs fraud because of the substantial gains it can make without incurring any real risk.

The annual reports on the fight against fraud demonstrate both the constant increase in own resources evaded and the difficulties in recovering them and making them available to the budget. For example, this amount was ECU 787 million in 1996, representing nearly 6% of the sum of customs duties and agricultural levies, which came to ECU 13.7 thousand million that year.

V. Qualitative aspects of the codification of Community customs legislation

To discover whether this codification exercise has been a success, we have to look at the way in which it was carried out. The consistency and transparency of a regulatory system - the main objectives of any codification exercise - are neither the necessary outcome nor the free bonus of such an undertaking. The interest the Community attaches to these principles was emphasized in the Council Resolution of 25 October 1996 on the simplification and rationalization of the Community's customs regulations and procedures[3].

Going well beyond mere consolidation or compilation of the rules, a codification in the qualitative sense means major recasting. This requires, *inter alia*:

- separating the material into general rules and more detailed stipulations, e.g. on documentary formalities: this means provisions have to be divided up between a Basic Regulation and a regulation containing the implementing provisions;

- linking up the material and organizing it into a rigorous, systematic structure;

- eliminating repetitions, *inter alia* by boiling down groups of provisions all of which have a general application;

- taking the two levels of legislation - the Basic Regulation and the implementing provisions - as a whole, not just in the legal sense but also from the point of view of presentation.

Examining the **Basic Regulation** in this light, and without wishing to claim that it is unimproveable, we may conclude that on the whole it meets the qualitative codification criteria. It should be stressed that the legislator enabled the material to be split into the two levels of rules by delegating generous powers to the Commission, whilst at the same time retaining the committee procedure formula which ensures participation by the Member States.

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3 OJ C 332, 7.11.1996.

As regards the drafting of the **implementing provisions** it has to be said this good legislative practice was somewhat lacking. This was a more difficult task than the Basic Regulation. The work coincided with the final phase of preparations for the single market and was accorded a lesser priority. Because of the volume involved and the pressure of time, work had to be limited to assembling "blocks" of legislation, each finalized by the appropriate section of the future Customs Code Committee, but without really recasting the material.

The qualitative aspect of codification therefore needs to be continued. The Commission departments have taken the necessary coordination measures and the current revision of the transit procedure and the customs procedures with economic impact is providing an opportunity for progress.

VI. Reference frame for a modern Community customs code

1. The question whether the Code is capable of meeting present and future challenges is even more important than the qualitative aspects of codification. One of the most important common objectives underlying the Customs 2000 action programme[4] is to guarantee that "Community law is applied in such a way as to achieve equivalent results at every point of Community customs territory" (Article 4).

   The Community Customs Code has a dual role with regard to this programme. Firstly, it is itself part of the body of Community law whose uniform application has to be guaranteed and, being the beneficiary of this requirement, it lies outside the programme measures. Secondly, as noted earlier, the Code in turn is a means to ensure the proper application of that Community law which embodies policies underpinned by the customs union. The updating and possible adaptation of the Code are therefore among the measures requiring to be implemented as part of the Customs 2000 programme. As the programme states, the main aims to be fulfilled by the Code are the homogeneous application of rules and the protection of the financial interests of the Community and economic operators.

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4 Decision 210/97/EC of the European Parliament and of the Council of 19.12.1996, OJ L 33, 4.2.1997, p. 24.

2. The second benchmark for a modern customs code is that it should fulfil the objective of **simplification**. The importance of the idea of simplification and the constant challenge it represents were highlighted in the declaration of the Directors-General of the Member States' customs administrations and of the Commission at Stockholm in May 1996 and the subsequent Council resolution of 25 October the same year. Simplification of customs rules and procedures is also mentioned in the Action Plan for a Single Market (CSE(97) 1 of 4 June 1997) where it is described as being part of the first strategic objective, i.e. to make the legislation more effective.

   However, the scale of the own resources being evaded means that any advance on simplification must inevitably be accompanied by effective control measures appropriate to the potential risks.

3. The Community is currently reacting firmly to two problems which have arisen in the context of the customs union and the policies underpinned by customs instruments. One problem area is **the Community transit procedure,** which organized fraud has undermined and to some extent rendered ineffective. Amendments to the Code Implementing Provisions have already introduced several security features into the procedure but more will follow under the Commission's transit action plan[5].

   The preferential tariff arrangements are the other problem area. They have suffered from lax management including on the part of third countries and irregularities committed on a scale sufficient to give cause for considerable concern, as underlined by the Commission in a recent Communication (COM(97) 402 of 23 July 1997). The Commission clearly stated in this regard that the legitimate question of the "good faith" of importers must not disguise the need to deal with it in the wider political framework in all respects of the preferential tariff arrangements. It is clear that, as in transit, legislation alone will not solve all the problems. The solution will depend also on substantial improvements in the management of the instruments on which the procedures in question are based.

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5 OJ C 176, 10.6.1997, p. 3.

This is why, following a global approach, the Commission has proposed a programme of actions, both at Community level and vis-à-vis third countries, in order to ensure the better application of existing provisions and also to establish a number of operational measures to improve or supplement them. This could have implications *inter alia* for certain aspect of the Customs Code in the future.

4. The legislative and management structures complement each other but each has its own role. Not all the shortcomings which affect the functioning of the customs union or particular policies can be blamed on the Customs Code. It is no longer the only tool we have to deal with such operational problems. The relationship between Code and the Customs 2000 instrument, too, is very important in this respect.

   The following two examples illustrate the point.

   At Member State level the lack of uniformity in certain simplified and computer procedures remains an unfortunate fact. However, it has to be said that the organization and coordination still to be undertaken in this context does not really depend on changes in existing legislation.

   Similarly, the operation of the recovery procedure has been identified as one of the problems affecting the management of the preferential tariff arrangements. The customs authorities of the different Member States often enter duty in the accounts, take preventive measures, late or on an ad hoc basis, showing that they still have a considerable margin of discretion.

   To regulate this problem by trying to restrict the authorities' operational independence by law seems unlikely to achieve the aim. Establishing apparently stricter criteria which will nevertheless always be open to interpretation is a useful way of aligning general behaviour but not of underpinning common action in a given situation. As Article 7 of the "Customs 2000" Decision confirms, the solution lies rather in coordination and hence in the introduction of appropriate machinery based on a cooperative environment that may even include a quasi-hierarchical directional component.

This approach to one specific problem does not do away with the need to adapt the legislative structures of the recovery procedure, particularly by providing better safeguards where deadlines are running up against prescription periods. If appropriate provisions of this type are included in the Community Customs Code they will have a general effect on all debts to be recovered, whether in transit or in connection with preferential and non-preferential imports.

VII. Amendments made earlier and those the Commission is planning to submit to the Council

1. The Community Customs Code has been amended twice since its entry into application in 1994. The **first** set of amendments arose out of the Act of Accession of 1995[6] and relates to the consequent enlargement of the customs territory of the Community.

   The **second** was made in Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996[7] and mainly involved transposing the outcome of the Uruguay Round negotiations on agricultural policy and the rules of origin. Various other adjustments were made, their common feature being that that they tended to make the Code more responsive to traders' needs, either by making the rules more flexible in the Code itself or by allowing for derogations via fine-tuning in the implementing provisions.

2. The current round of amendments set out in the annexed proposal, is also mainly intended to make the Basic Regulation **more flexible**. Another set of proposals relating to the Community transit procedure, which is not part of the annexed text, is likewise intended to produce greater flexibility, or greater transparency in respect of existing *de facto* flexibility, at the level of Community transit implementing provisions.

   One issue the legislator often has to deal with in this context, at both levels of customs legislation, is that the rules governing **customs debt** and the conditions in which it is incurred are found to be too rigid for the circumstances in specific cases, raising the question of proportionality. The legislator's attempt to strike a balance between the interests involved, already a feature of the last set of amendments, therefore continues in the Commission's present proposal.

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6 OJ L 1, 1.1.1995.

7 OJ L 17, 21.1.1997, p. 1.

The provisions recognizing a new type of **free zone** with special supervision rules aim to differentiate the Code's structure without affecting competition between Community traders.

In the field of **customs procedures with economic impact**, the reforms intended to simplify the various arrangements, as with the Community transit procedure, will mostly be at the level of the implementing provisions. As a number of Articles in the Basic Regulation restrict the scope for such reform, the Commission proposes that they be made sufficiently flexible to achieve the aim.

In the second set of amendments to the Code the desire to **simplify customs formalities** already resulted in the legislator allowing derogations from the obligation to notify the re-export of goods. This time the Commission is proposing to introduce greater flexibility into the obligation to present certain accompanying documents together with the customs declaration, so as to remove one obstacle to the computerization of customs clearance procedures. However, the proposal takes into account the need to safeguard the Community's financial interests and maintain the controls this requires.

3. The second objective which requires adaptation of the Community Customs code is that of making the **recovery procedure** more effective. The procedure not only generates revenue for the Community budget but also, and above all, underpins the credibility of rules and policy instruments in the prevention of irregularities. In the second round of amendments the Council did not adopt a Commission proposal aiming to allow extension of the prescription period where an irregularity is suspected and more investigation is required. Parliament agreed that the question of protecting "good faith" in connection with documentary proof of the preferential status of goods imported from third countries had to be clarified first.

   As this was done in the Communication of 23 July 1997 (COM(97) 402), the Commission is now presenting the proposal again. At the same time it is proposing a revision of the relationship between the recovery and appeals procedures. The purpose of the appeals procedure is to protect the trader from recovery of amounts not due but, where an appeal is rejected, it must be possible to recover the amount in such as way as not to discriminate against debtors who have not challenged notices of payment.

4. There is a problem of inequality in the operating conditions in the various Member States for operators involved in foreign trade, due to the way some Member States regulate the possibility of having customs formalities carried out by intermediaries. The current Article 5 of the Code includes a "reservation clause" through which the functioning of the single market is affected and unjustified distortions of competition arise. There is a more detailed analysis of the effects of this provision in the explanatory memorandum (point 1) of the proposal for amendment of the Code in part II of this document. With effect from 1 January 2002, it is proposed to replace the reservation clause by the option to reserve indirect representation alone to customs agents, and to lay down in the implementing provisions Community criteria for a framework for the service of customs declaration.

VIII. Consolidation and recodification of constantly evolving rules

As the last recital of Regulation (EC) No 82/97 notes, in order to ensure that the Customs Code remains easy to use in practice, the Commission has stated its readiness to publish annual updates of the Code, together with its implementing provisions.

The Commission intends to meet this commitment by making available to all users a data base established by the *Office for Official Publications of the European Communities* which contains the texts of the Basic Regulation and the implementing provisions in all Community languages, updated immediately to show the latest amendments. This facility is due to be set up during 1998.

Quite apart from this, the implementing provisions, which are amended at least twice a year, need legislative consolidation. But this cannot begin until some major reforms to the Community transit and economic customs procedures have been completed. It will therefore follow the creation of the data base, which will have brought transparency to this area of Community law.

IX. Conclusions

The Community Customs Code has brought about much more transparency than there was before it was established. It has been taken as a model by many third countries in Europe and even beyond. Its role is to underpin several Community policies and provide a common framework for the operations of the national customs administrations.

In the context of increasing fraud, we must see that the amended Customs Code does its job. Everyone must be vigilant if the Code is not to be misappropriated in favour of particular or illicit interests, and the risk of an increase in economic and/or political tensions is not to be needlessly increased.

The quality objective of codifying (or recasting) the legislation seems to have been achieved for the Basic Regulation but further work is still needed on the implementing provisions. The Customs 2000 action programme and the objective of simplification represent a reference frame for a modern code, whilst the Community's transit action plan and the Communication on the management of the preferential tariff arrangements are also affecting the development of the Code, bearing in mind, however, the distinction to be made between the legislative and management structures.

Whilst the transposition into Community law of the outcome of the Uruguay Round was the factor which dominated the first set of amendments, changes made from now on will concentrate on yet more simplification of the rules, making the Basic Regulation more flexible, improving the recovery procedure and bringing the provisions on customs representation into line with the principle of a single market.

Proposals for amendments to the Basic Regulation are at Annex II.

II

Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)

amending Council Regulation (EEC) No 2913/92
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EXPLANATORY MEMORANDUM

Point 1 (Article 5)

Importers and exporters often delegate the carrying out of customs formalities to intermediaries. It is handled either in conjunction with the organisation of the transport of the goods, or by a specialists who in some Member States have traditionally been a regulated profession.

In principle customs rules allow intermediaries to act in two ways (Article 5 of the Code):

- by direct representation: acting in the name of and on behalf of the principal, who alone is liable for the customs debt,

- by indirect representation: acting in their own name and on behalf of the principal, thus becoming equally liable with the principal as debtor.

Community customs rules should in principle refrain from intervening in the way the activities of intermediaries in this area are organised, but in 1992, by way of a "compromise", the Council included in Article 5 of the Code a "reservation clause" allowing Member States to restrict in their territory the right to make customs declarations to one of the two forms of representation (either direct or indirect), so that the representative must be a customs agent carrying on his business in that country's territory.

If it is credible that some Member States should wish to reserve certain special rights to a sector taking on increased risks (in the case of indirect representation), it has to be said that this logic and balance is no longer respected and this reservation is increasingly dissociated from any financial risk (France and Italy in particular). It instead becomes a means of limiting the supply of the service, without any customs or financial justification.

This is even more clearly demonstrated by the fact that, for a largely identical service, legal changes in some Member States not only free a particular category of declarants from a shared liability, but on the contrary impose this liability on persons outside of this category. The functioning of the internal market is thus affected, the principle of freedom to provide services is restricted and competition is distorted.

This unbalanced situation has unfavourable effects on the economic environment of operators in foreign trade. Indeed, given a growing demand for customs declarations (a consequence of growth in the Community's foreign trade) this splitting of the internal market by the reservation clause, and more particularly the reservation of direct representation, is an unjustified brake on economic activity. The result is a loss of competivity and a tendency to increase the price of the service, to the detriment of SMEs.

Given the above, the Commission proposes to abolish the option the Member States have as regards the choice of the form of representation they can reserve. It therefore proposes to limit the (optional) application of the reservation clause to indirect representation alone. It also provides for the possibility of laying down, in the implementing provisions, Community criteria for a framework for all those providing the service of customs declarant, in order to establish a new balance, in the light of the different experiences. In order to allow professional declarants and other interested economic circles to prepare for this new situation, it is proposed that this amendment should apply from 1 January 2002.

Point 2 (Article 35)

There is no problem regarding the Code's compatibility with the rules on the introduction of the euro or, more particularly, with Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro[8]. As the final decision on the powers of the national banking authorities has not yet been taken, it would seem best to formulate Article 35 very generally and keep the phrase, "the competent authorities".

8 OJ L 162, 19.6.1997, p. 1.

Point 3 (Article 49)

It has to be specified who is responsible for assigning a customs-approved treatment or use to goods in temporary storage so as to be able to determine who the debtor is when a customs debt is incurred under Articles 203 or 204. The concept of the "holder", as already used in Article 51, would seem the most appropriate.

Point 4 (Article 62)

It has emerged that there is an increasing need in the Community for a declarant not to have to present the documents accompanying his declaration to the customs authorities, for instance when the declaration is made electronically. As the present simplified procedures provide only a partial solution to the problem, this proposed amendment introduces the possibility of a derogation, which would be subject to implementing provisions concerning access to the documents for the customs authorities, as well as their retention.

Point 5 (Article 115(4))

The new wording of paragraph 4 also allows the introduction of implementing provisions which will widen the scope for equivalent compensation in inward processing. The present wording mentions only prohibitions and limits.

Points 6 and 11 (Articles 117(c) and 133(e))

As part of the modernization of the procedures for inward processing and processing under customs control, these Articles make provision for drawing up lists of cases and conditions in which the economic conditions are deemed to have been fulfilled. This will make it possible to shorten the time it takes to issue authorizations to use the procedures as well as aligning practice in the Member States. The amendment is in line with the policy of simplification.

Point 7 (Article 118)

As part of the modernisation of the inward processing procedure it is considered desirable to be able to lay down a specific time-limit for all operations effected by a given trader.

Point 8 (Article 124)

This amendment takes account of developments in the agricultural area and allows permission to use the drawback system to be granted in accordance with conditions to be laid down in the implementing provisions.

Point 9 (Article 128)

Where goods are placed under the inward processing procedure (drawback system), there is no justification for regarding their entry for the transit procedure as equivalent to export and therefore as giving entitlement to repayment or remission of duty. Hence the proposed amendment eliminates the possibility of repayment or remission when compensating products or goods in the unaltered state are placed under the transit procedure.

Point 10 (Article 131)

The wording of this Article has been aligned on that of Article 141 to allow greater flexibility in establishing cases and conditions in which the procedure for processing under customs control may be used.

Point 12 (Article 142)

This wording brings Article 142 into line with Article 141 so as to cover all cases where the conditions for granting total relief are not fulfilled. (The current wording is more restrictive for cases of partial relief than for cases of total relief; it requires that, in all cases, the holder of the goods must be established outside the customs territory of the Community). The new wording also allows specification of the circumstances in which the procedure may be used.

Point 13 (Article 144)

The deletion of paragraph 1 of this Article makes it possible not to tax the use in accordance with the rules of goods placed under the temporary importation procedure by applying the general rule laid down in Article 214.

The drafting change to former paragraph 2 - now the sole paragraph - is necessary in the interests of clarity. When goods are placed under the temporary importation procedure with partial relief, part of the duty has already been paid. When they are released for free circulation, or when customs debt is incurred for other reasons, what remains to be paid is the difference between the amount already paid and the amount of the customs debt.

Points 14 and 15 (Articles 152 and 153)

The new wording of Article 152 and the deletion of Article 153 mean that the user is referred to the Implementing Provisions to determine when a charge other than the Article 151 differential taxation is applicable. This simplifies the law and allows greater flexibility. It also opens the way for the possibility of introducing a value-added charge over and above the options currently provided for in Article 153.

Points 16, 17 and 18 (Articles 167(3), 168(1) and 168a)

The conventional definition of "free zones" used by the Code does not appear to meet the foreign trade needs of some Member States. These Member States consider free zones need to be supervised using the same methods as suspensive arrangements, but their inherent benefits must also be retained.

The proposal is to provide for a second type of controls in free zones combining some of the features of traditional free zones with the formalities and supervision methods used in the customs warehousing procedure.

Point 19 (Article 212a)

Article 212a was added when the Code was last amended to allow partial or total exemption from duties in cases where a customs debt is incurred for reasons other than acceptance of a declaration for release for free circulation. Subject to the same conditions, this possibility should also cover cases where a customs debt is incurred for goods which would have been eligible for favourable tariff treatment by reason of nature or end-use, or for differential rates of duty under the outward processing arrangements, if they had been declared for release for free circulation.

Point 20 (Article 215(5))

It is sometimes found in one Member State that a customs debt has been incurred in another Member State (usually under Article 202). Where the amount does not justify the administrative expense of liaison between the Member States in question it should be possible to enter the debt in the accounts and collect it in the Member State which established it; in most cases, the debtor is located there.

(Article 215(6))

The simplified procedures for release for free circulation should be applicable to goods presented in more than one Member State.

If the simplified declaration procedure is used, the customs debt is incurred in the Member State where the simplified declaration (an incomplete declaration or a commercial or administrative document) is accepted.

It would be more logical to regard the debt as being incurred where the supplementary declaration is lodged so a single entry in the accounts can be made, as provided for in the second subparagraph of Article 218(1). The security referred to in that provision could be lodged at the place where the person concerned keeps his main accounts and where the authorization was issued. The relevant customs authorities would then have access to all the information they required to supervise the operation in the most effective manner.

It must also be stressed that the simplifications in customs procedures introduced by this proposal cannot have their full effect as regards import VAT, because Community fiscal rules require taxation at destination.

Further coherence and real simplification in the application of customs and fiscal provisions will only become possible in the framework of the future common system of VAT, based on a single place of taxation.

Point 21 (Article 220(1))

In its proposal for the first major change to the Customs Code in 1995 (COM(95) 335) the Commission included this same proposal. The current wording of Article 220(1) means that subsequent entry of customs duties in the accounts is partly dependent on customs' ability to determine the amount legally due.

Achieving the requisite certainty can often take longer than the period laid down in Article 221(3), especially if post-clearance checks involve enquiries in several Member States and/or third countries with the coordination of the various activities at Community level. In some cases, what has happened is clear, but legal discussions at various levels may delay action against irregularities beyond the three-year limit, so that it comes to nothing. This is hardly compatible with a policy of tackling malpractice. While action may continue if the act gives rise to criminal court proceedings, differences between national statutes of limitations (see second sentence of Article 221(3)) make uniform Community treatment of such cases difficult.

The proposed amendment to Article 220(1) is aimed at clarifying the legal basis for customs administrations so that duties may be entered into the accounts before the exact amount legally due can be determined with full certainty. This will make uniform application of Community legislation more effective (see also point 23).

When the Council discussed the 1995 proposal, delegations expressed the wish that the party concerned should not remain in uncertainty for too long. The proposed second subparagraph reflects that view by limiting this period to three years after the "provisional" entry in the accounts. At the same time, the normal time-bar is limited to two years (see point 22).

Point 22 (Article 221(3))

It is proposed to reduce the time-limit for entry in the accounts to two years after incurrence of the customs debt, in order to maintain a certain balance between legal certainty for the operator and the protection of the Community's financial interests, having regard to the extension of the period for entry in the accounts to three years in cases of reasonable doubt (see point 21).

It is proposed to stop the clock on the time-limit for entry into the accounts in cases where the interested party lodges an appeal, to ensure that the Community's financial interests are not jeopardised by long-drawn-out judicial proceedings.

(Article 221(4))

This paragraph has been added to ensure that debts can be collected when they lapse by virtue of being included in a communication for a time-barred debt, although their own prescription period has not yet expired.

In some Member States national law allows separate notification, but this is not the case everywhere. (See grounds 65 to 71 of the Judgment by the Court of Justice of the European Communities of 14 May 1996 on Joint Cases C-153/94 and C-204/94, the "Seafood" Judgment).

Point 23 (Article 222(2))

The proposal is to add a third and a fourth indent to this provision.

The Transit Action Plan provides for establishing a hierarchy of persons whom the customs authorities can pursue for payment of customs debt incurred where goods placed under the transit procedure are removed from customs supervision. Article 203(3) lists the debtors responsible for this debt and it is now considered desirable to provide that the principal, referred to in the last indent, should only be required to pay the debt when it has proved impossible to recover it from the others.

The recovery procedure established under the Code requires the customs debt to be paid as soon as it has been entered in the accounts and communicated to the debtor. To enable the customs authorities to try first to recover the debt from the other debtors, provision has to be made in the Implementing Provisions for suspending the principal's obligation to pay.

The context for the fourth indent is set out in point 21. The aim is to provide for the possibility of treating the post-clearance entry in the accounts of a customs debt in accordance with the second subparagraph of Article 220(1) as a holding measure so that the amount concerned does not have to be paid immediately by the debtor - i.e. to provide for the possibility of suspending the obligation to pay.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 28, 100a and 113 thereof,

Having regard to the proposal from the Commission[9],

Having regard to the opinion of the Economic and Social Committee[10],

Acting in accordance with the procedure laid down in Article 189b of the Treaty[11],

(1) Whereas Article 253 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[12], as last amended by Regulation (EC) No 82/97 of the European Parliament and of the Council[13], provides that, before 1 January 1998, the Council shall, on the basis of a Commission report, review the Code with a view to making such adaptations as may appear necessary taking into account in particular the achievement of the internal market, and that the report may be accompanied by proposals;

(2) Whereas the partitioning of the internal market due to the reservation of the direct form of customs representation for particular groups established in the Member State concerned has to be brought to an end; whereas it is appropriate to delay the application of this amendment until 1 January 2002, in order to allow the economic circles to adapt to the new situation;

(3) Whereas the powers of the different authorities to establish exchange rates following the introduction of the euro have not yet been decided;

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9 OJ C
10 OJ C
11 OJ C
12 OJ L 302, 19.10.1992, p. 1.
13 OJ L 17, 21.1.1997, p. 1.

(4) Whereas it is necessary to define more clearly who is responsible for assigning a customs-approved treatment or use to goods presented to customs;

(5) Whereas provision should be made for the possibility of customs declarations' not having to be accompanied by certain documents;

(6) Whereas, in order to make it easier to take advantage of the arrangements for inward processing, processing under customs control and temporary importation, the rules should be made more flexible;

(7) Whereas it is preferable to use the committee procedure to establish certain alternative methods of calculating the charges due under the outward processing arrangements;

(8) Whereas in some free zones, where there are economic reasons for doing so, it is appropriate to permit completion of the formalities attaching to the customs warehousing procedure, and the carrying out of customs checks by the customs authorities;

(9) Whereas, in certain circumstances, the benefit of favourable tariff treatment granted by reason of the nature or end-use of goods or of differential charges under the outward processing procedure should also be available where a customs debt is incurred for reasons other than the release of goods into free circulation;

(10) Whereas the provisions relating to the place where a customs debt is incurred should include special rules for particular cases where the sum involved is below a given threshold and cases where simplified procedures for release into free circulation are authorized; whereas the implementing provisions should be established in accordance with the committee procedure, taking into account in particular the possible dissociation of the place where the customs debt is incurred and the place where VAT on importation is incurred;

(11) Whereas in some cases it is not immediately possible to calculate the exact amount legally due, with the result that the prescribed three-year limit could lead to failure of a post-clearance recovery action; whereas in such circumstances the sum probably due should be entered in the accounts in good time; whereas the party concerned should not in any circumstances remain in uncertainty for more than five years in total;

(12) Whereas provision should be made for suspending the obligation to pay a customs debt incurred where goods have been removed from customs supervision and there is more than one debtor, so as to allow customs authorities to initiate recovery proceedings against one particular debtor, giving priority over other debtors;

(13) Whereas the Community's financial interests must be protected against unduly lengthy legal proceedings, and against the total invalidation of a communication where part of the debt is time-barred;

(14) Whereas Regulation (EEC) No 2913/92 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2913/92 is hereby amended as follows:

1. **The second subparagraph of Article 5(2) is replaced by the following:**

"Member States may reserve the right, on their territory, to make customs declarations by indirect representation to customs agents.

Implementing provisions may be laid down in accordance with the Committee procedure, in particular to ensure equitable conditions of access to the two types of representation."

2. **In Article 35, the first paragraph is replaced by the following:**

"Where factors used to determine the customs value of goods are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used shall be that duly published by the competent authorities."

3. **In Article 49(1), the introductory phrase is replaced by the following:**

"1. Where goods are covered by a summary declaration, the person who is the holder of the goods shall complete the formalities necessary for them to be assigned a customs-approved treatment or use within:"

4. The following paragraph is added to Article 62:

"3. Exceptions to the requirement established in paragraph 2 may be laid down in accordance with the committee procedure, in particular where the declaration is made electronically.

However, the right of access without prior warning of the national authorities or, where appropriate, of Community authorities, together with the obligation on the part of the operator to keep the proof for a minimum period shall be guaranteed. Implementing measures shall also be defined in accordance with the committee procedure."

5. Article 115(4) is replaced by the following:

"4. Specific provisions for the application of paragraph 1 may be adopted in accordance with the committee procedure."

6. The following sentence is added to Article 117(c):

"The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the committee procedure."

7. Article 118(4) is replaced by the following:

"4. Specific time-limits may be laid down in accordance with the committee procedure."

8. Article 124 is replaced by the following:

"Article 124

1. The drawback system may be used for all goods, with the exception of those which, at the time when they are declared for free circulation, are subject to quantitative import restrictions or to presentation of an import or export certificate.

2. The drawback system may be used only if no export refund has been set for the compensating products at the time the declaration for release for free circulation of the import goods is accepted.

3. Permission to use the drawback system may be granted only if, at the time when the export declaration for the compensating products is accepted, no export refund or tax has been set for the compensating products.

4. Derogations from paragraphs 1, 2 and 3 may be laid down in accordance with the committee procedure".

9. The second indent of Article 128(1) is replaced by the following:

"- placed, with a view to being subsequently re-exported, under the customs warehousing procedure, the temporary importation procedure or the inward-processing procedure (suspensive arrangement), or in a free zone or free warehouse."

10. Article 131 is replaced by the following:

"Article 131

The cases in which, and the specific conditions upon which, the procedure for processing under customs control may be used shall be determined in accordance with the committee procedure."

11. In point (e) of Article 133, the following sentence is added:

"The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the committee procedure."

12. Article 142 is replaced by the following:

"Article 142

1. Use of the temporary importation procedure with partial relief from import duties shall be granted in respect of goods which are not covered by the provisions adopted in accordance with Article 141 or which are covered by such provisions but do not fulfil all the conditions laid down therein for the grant of temporary importation with total relief.

2. The list of goods in respect of which the temporary importation procedure with partial relief from import duties may not be used, and the conditions subject to which the procedure may be used, shall be determined in accordance with the committee procedure."

13. Article 144 is replaced by the following:

"Article 144

Where a customs debt is incurred under point (a) of Article 201(1), or under Articles 203 or 204, for goods placed under the temporary importation procedure with partial relief from import duties, the amount of that debt shall be equal to the difference between the amount of duties calculated pursuant to Article 214 and that payable pursuant to Article 143."

14. Article 152 is replaced by the following:

"Article 152

By way of derogation from Article 151, the committee procedure may be used to determine the cases in which and the specific conditions upon which goods may be released for free circulation following an outward processing operation either with total relief from import duties, or by taking the cost of the processing operation as the basis for assessment for the purpose of applying the customs tariff of the European Communities."

15. Article 153 is deleted.

16. Article 167 is amended as follows:

(a) In paragraphs 1, 2 and 3, the term "Member States" is replaced by the term "the customs authorities".

(b) The first sentence of paragraph 3 is replaced by the following:

"3. Without prejudice to Article 168a, free zones shall be enclosed."

17. Article 168(1) is replaced by the following:

"1. The perimeter and the entry and exit points of free zones, where they are enclosed, and of free warehouses shall be subject to supervision by the customs authorities. "

18. The following Article is inserted between Article 168 and heading B ("Placing of goods in free zones or free warehouses"):

"Article 168a

1. The customs authorities may designate free zones where customs checks and formalities shall be carried out, and in which the provisions concerning customs debt shall apply, in accordance with the requirements of the customs warehousing procedure.

Articles 170, 176 and 180 shall not apply to the free zones thereby designated.

2. The free zones designated in accordance with paragraph 1 shall not be regarded as free zones within the meaning of Articles 37, 38 and 205.

References to free zones in other sections of the legislation shall not be taken to refer to the free zones governed by this Article. "

19. Article 212a is replaced by the following:

"Article 212a

Where customs legislation provides for favourable tariff treatment for goods by reason of their nature or end-use, or provides exemption or total or partial relief from import or export duties pursuant to Articles 21, 145 or 184 to 187, such exemption or relief shall also apply in cases where a customs debt is incurred pursuant to Articles 202 to 205, 210 or 211, on condition that the behaviour of the declarant involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied."

20. The following paragraphs 5 and 6 are added to Article 215:

"5. If a customs authority finds that a customs debt has been incurred under Article 202 in another Member State, and the amount of the said debt is lower than ECU 5 000, the debt shall be deemed to have been incurred in the Member State where the finding was reached.

6. Where a customs debt is incurred following acceptance of a simplified declaration or some other document for release for free circulation as referred to in points (a) or (b) of Article 76(1), and where the second subparagraph of Article 218(1) is applied, the customs debt shall be deemed to have been incurred in the Member State where the supplementary declaration under Article 76(2) was lodged."

21. The following second and third subparagraphs are added to Article 220(1):

"Where checks carried out by the customs authorities are liable to lead to the detection of a customs debt or an amount of duty higher than that already entered in the accounts, but the authorities are unable to determine the exact amount legally due, the said authorities shall enter in the accounts the amount that may eventually be payable on the goods, allowing enough time for that provisional amount to be communicated to the debtor before the expiry of the period laid down in Article 221(3).

However, entry in the accounts of the amount that may eventually be payable on the goods shall be considered null if the customs authorities prove unable to determine the exact amount legally due, within three years of the date of communication to the debtor of the provisional amount as defined in the second subparagraph."

22. Article 221(3) is amended as follows:

(a) paragraph 3 is replaced by the following:

"3. Communication to the debtor shall not take place after the expiry of a period of two years from the date on which the customs debt was incurred. Calculation of this period shall be suspended from the time an appeal within the meaning of Article 243 is lodged, for the duration of the appeal proceedings."

(b) the following paragraphs 4 and 5 are added:

"4. If it is found that the two-year period referred to in paragraph 3 has expired in respect of part of the customs debt, the communication to the debtor shall remain valid in respect of the remaining amount of the duties to which it pertains.

5. Where the customs authorities have been unable to determine the exact amount legally due as a result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the amount may, upon the conditions set out in the provisions in force, be communicated to the debtor after the expiry of the two-year period referred to in paragraph 3."

23. In Article 222, paragraph 2 is replaced by the following:

"2. The cases and conditions in which the debtor's obligation to pay duty shall be suspended may also be provided for in accordance with the committee procedure:

- where an application for remission of duty is made in accordance with Article 236, 238 or 239,

  or

- where goods are seized with a view to subsequent confiscation in accordance with the second indent of point (c) or with point (d) of Article 233,

or

- where the customs debt was incurred under Article 203 and there is more than one debtor,

or

- in the cases provided for in the second subparagraph of Article 220(1)."

Article 2

This Regulation shall enter into force on 1 January 1999.

Point 1 of Article 1 shall apply from 1 January 2002.

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President