

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 698 final

Brussels, 3 November 1982

Proposal for a

COUNCIL REGULATION (EEC)

determining the import duties applicable to fish fillets obtained
on board Community vessels from fish originating in third countries

(submitted to the Council by the Commission)

COM(82) 698 final

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EXPLANATORY MEMORANDUM

Most countries with a maritime coast have in the last few years increased the limits of the area over which they intend to exercise their economic sovereignty to 200 nautical miles from their shores, in order, among other things, to be able to restrict and control the activity of foreign fishing vessels in that area.

At present such vessels may in most cases fish in the exclusive economic zones in question only within the framework of agreements concluded with the coastal states concerned, under which the quotas allocated to each flag are fixed. Some of these coastal states moreover require the vessels of other countries which come to fish in their exclusive economic zones to cooperate with their own fishing vessels. Such cooperation with their own fishing fleet may also be required by countries which allow vessels of another nationality to exploit the quotas allocated to them.

Community fishing vessels have, of course, encountered these new practices and must put up with the disadvantages arising from them, which are made worse by the fact that the vessels engaged in high-sea fishing exploit their own catches. The fish caught are in most cases filleted and frozen on the fishing grounds themselves, either on the fishing vessels or on factory-ships accompanying the fleet.

In the event of joint fishing activities with non-Community vessels, it is in most cases only the latter which do the actual fishing. They trail the nets which, when full of fish, are then hoisted on board the Community vessels. The fish caught in this way cannot be regarded as having been fished by the Community vessels and thus do not have a Community origin. When they are landed in a Community port for release for free circulation, therefore, they are subject to the import duties applicable to fish originating in non-member countries. Since, under the tariff rules, the import duties on goods released for free circulation

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depend on the state in which they are presented to the customs authorities, the duty payable on the fillets obtained from fish caught by cooperative methods is the duty applicable to fillets.

Moreover, the catches which Community vessels are authorized to take under the quotas are not always large enough to enable the processing plants on board the vessels to be used to their full capacity. In order to make such plant profitable, therefore, the vessels are frequently obliged to purchase fish caught by vessels from non-member countries, separately from any joint fishing operations. Where the fillets obtained from those catches are released for free circulation in the Community, they are, of course, subject to import duty under the conditions stated above.

Even though the rates of import duty payable respectively on fish fillets and whole fish are approximately of the same order, the customs value of the fillets, on the basis of which the duty is calculated, is appreciably higher than that of the whole fish.

The fillets obtained on board Community vessels from fish of non-Community origin are thus subject, where they are released for free circulation in the Community, to very high import duties, mainly because of the considerable added value they carry. The high level of the duty charged constitutes an obstacle to the successful marketing of the fillets, whose cost price is actually higher than that of fillets of the same quality imported in an unaltered state from non-member countries or obtained in the customs territory of the Community. The differences in cost price are due to the fact that Community fishermen are better paid and that, where processing firms established in the Community are obliged to use fish from non-member countries, they pay import duty only on the customs value of the whole fish.

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The question whether the processing activities in question can continue on board certain Community vessels is therefore likely to arise in the fairly near future, and yet this continuation is vital to the economy of certain regions of the Community. A solution must therefore be found, in terms of the application of the import duty tariff, to remedy the harmful effects of the recurring necessity for Community vessels to use fish originating in non-member countries for the requirements of their work.

The most equitable solution is to levy the import duty, upon release for free circulation, not on the fish fillets obtained in this way but on the whole fish from which the fillets have been obtained. This measure would abolish the duty now charged on the total added value resulting from the processing carried out on board Community vessels. That is the purpose of this proposal for a Regulation.

Processing operations carried out on board would thus be treated in the same way as similar operations carried out within the Community, and therefore the latter would not be discriminated against. The rate of duty applicable to the fish used would be that in force on the date on which the fillets were entered for release for free circulation, i.e. introduced into the economy, with the adoption, where appropriate, of the reduced or zero rate applicable to fish to be used for filleting. The customs value to be adopted for the calculation of the import duty would be the value the fish would have if they had been transported in the unprocessed state to the port in which the fillets were landed, including the relevant transport costs, which would have to be assessed.

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The conditions to be fulfilled by the vessels in order to be eligible for the provisions of the new Regulation would be the same as those which must be fulfilled by vessels before their catches can be regarded as being of Community origin (cf. Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods (1), Article 4(1)(f)). This would obviate any problems in cases where fillets released for free circulation had been obtained from fish caught by these vessels.

In order to prevent abuses by factory ships which might drop anchor near ports in non-member countries in order to have fish purchased directly in those ports delivered to them for processing on board, provision has been made for this Regulation to apply only to fillets obtained from fish put on board on the high seas, on the fishing grounds themselves. Because of this limitation of its scope, the Regulation could not be invoked as a precedent to justify applications for the charging of identical duty in respect of industrial manufacturing processes (textiles in particular), carried out on board specially equipped vessels, which would be likely to disrupt the market in similar products obtained in the Community.

The supervisory methods would be similar to those now in force to ensure that fish entered for release for free circulation as being of Community origin in fact fulfil the conditions for such treatment (cf. Commission Regulation (EEC) No 137/79 of 19 December 1978 on the institution of a special method of administrative cooperation for applying intra-Community treatment to the fishery catches of vessels of Member States (2)).

Based on Article 235 of the EEC Treaty, this proposal for a Regulation required the opinion of Parliament. In view of its purpose, it would also be advisable to obtain the opinion of the Economic and Social Committee.

(1) OJ L 148, 28.6.1968, p. 1

(2) OJ L 20, 27.1.1979, p. 1

Proposal for a Council Regulation
determining the import duties applicable to fish fillets
obtained on board Community vessels from fish originating
in third countries

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,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas Community vessels fitted out for the filleting of fish are sometimes obliged, owing to the limitations imposed on them concerning the quantities of fish they are authorized to catch, to purchase on the fishing grounds, for their processing requirements, fish originating in third countries;

Whereas, in accordance with Article 7(a) of Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt (3), the amount of the import or export duties payable on goods is determined on the basis of the taxation elements appropriate to the goods at the moment when the customs debt in respect of them is incurred; whereas this provision applies subject to the special provisions adopted under specific customs or agricultural rules;

(1) OJ No C

(2) OJ No C

(3) OJ No L 179, 17.7.1979, p. 31

Whereas, in accordance with Article 3(a) of Directive 79/623/EEC, applied in conjunction with Article 11(1) of Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation, (1) where goods are released for free circulation in the Community the customs debt is incurred at the moment when the relevant entry is accepted; whereas, consequently, the amount of import duties payable on fillets obtained from fish originating in third countries is the amount payable on those fillets on the date of acceptance of the entry of those goods for free circulation;

Whereas, pursuant to those provisions, Common Customs Tariff duties are to be applied to the added value arising from the processing by the crew of the Community vessel of fish originating in third countries;

Whereas, in view of the particular circumstances which lead Community vessels to use fish originating in non-member countries in order to obtain fillets, such charging is not justified from an economic point of view; whereas the necessary special provisions should therefore be adopted to ensure that the import duties levied on the products in question are those which would be payable if the fish originating in third countries were entered for free circulation in the unprocessed state;

Whereas provision should be made for the necessary supervisory and cooperation measures to ensure the correct implementation of this Regulation; whereas the most appropriate procedure for this purpose is that laid down in Article 57 of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit (2);

Whereas the object of this Regulation is to determine the conditions for applying the Common Customs Tariff to fish fillets obtained on board Community vessels from fish originating in third countries in such a way as to obviate the charging of duty on added value arising from the processing of those fish by the crews of the vessels; whereas this Regulation must not, however, increase the quantities of fish originating in third countries which may qualify

(1) OJ No L 205, 13.8.1979, p. 19

(2) OJ No L 38, 9.2.1977, p. 1

for special tariff treatment in the event of their being released for free circulation in the unprocessed state in the Community, possibly by virtue of the fact that they are to be used for a specific purpose; whereas, in view of the aim pursued, the scope of this Regulation should be limited to fish fillets obtained from fish put on board Community vessels on the high seas on the fishing grounds themselves;

Whereas the aim pursued is in conformity with the objectives of the Community; whereas the terms of the Treaty do not expressly empower the Community institutions to adopt the provisions necessary for this purpose; whereas, consequently, it is necessary to base this Regulation on Article 235 of the Treaty,

HAS ADOPTED THIS REGULATION :

Article 1

1. The import duties applicable to fish fillets falling within Common Customs Tariff subheadings 03:01 B II and 03:02 A II which are obtained on board Community vessels from fish originating in third countries shall, in the event of release for free circulation, be determined as follows :

- the rate of import duty applicable shall be that payable, on the date of acceptance by the customs authorities of the entry for release for free circulation, on whole fresh or chilled fish of the species from which the fillets entered for free circulation have been obtained; where the rate applicable to such fish is reduced or zero, whether or not within quantitative limits, that rate shall be applied on the same terms as if the fish had been presented in the unprocessed state at the customs office where the formalities for the release of the goods for free circulation are completed;

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- the customs value to be adopted when determining the amount of import duties payable shall be that of whole fresh or chilled fish of the species from which the fillets entered for free circulation have been obtained, as would be determined pursuant to the provisions on the valuation of goods for customs purposes if the fish were presented in the unprocessed state at the customs office where the formalities for the release of the goods for free circulation are completed.
- 2. Paragraph 1 shall apply only in so far as the fish originating in third countries used to make the fish fillets referred to in that paragraph were put on board Community vessels on the high seas, on the fishing grounds themselves.
- 3. For the purposes of paragraphs 1 and 2, "Community vessels" means vessels registered in a Community Member State and flying the flag of that Member State.

Article 2

Measures for supervision and administrative cooperation necessary for the correct implementation of this Regulation shall be adopted in accordance with the procedure laid down in Article 57(2) of Regulation (EEC) No 222/77.

Article 3

This Regulation shall enter into force on 1 April 1983.

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

Done at Brussels,

For the Council
