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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(74) 417 final

Brussels, 4 April 1974

Proposal for a
Council Regulation

on the customs treatment applicable to goods returned
to the customs territory of the Community

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

Common Customs Tariff duties are applicable in principle to all goods coming from third countries which are imported for free circulation in the customs territory of the Community. The same is true of charges having an equivalent effect which may be raised on certain goods, as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy, or under trade systems defined either in Regulation N° 170/67/EEC (ovalbumin and lactalbumin), or in Regulation (EEC) N° 1059/69 (goods resulting from the processing of agricultural products).

For there to be any derogation from this principle it is essential for a Community act to be made in conformity with the provisions of the Treaty establishing the European Economic Community. Should such derogation be required to be laid down autonomously, the appropriate provisions, depending on the nature of the goods, are Articles 28, 43 or 435 of the aforesaid Treaty.

Derogation from the application of Common Customs Tariff duties and other import charges referred to above, appears to be completely justified when goods coming from third countries, which are entered for free circulation, are Community goods which were originally exported from the customs territory of the Community but which, for various reasons, are returned to be latter. In such cases, there is a straight forward reintegration into the economy of the Community of goods which, complying with the conditions of Articles 9 and 10 of the Treaty, moved freely there prior to their exportation.

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It is also the case that goods which were originally exported from the customs territory of the Community under inward processing arrangements, which generally contain a high proportion of Community products, (and which do not in consequence comply with the conditions of Articles 9 and 10 of the Treaty), may equally be accorded on element of exemption to avoid charges on the Community products which they contain. For this purpose, bearing in mind the similarity of the two situations, reference must be made to the provisions of the Council Directive of 4 March 1969 on the harmonisation of provisions laid down by law, regulation or administrative action in respect of inward processing, which lay down the conditions under which compensating products which result from an inward processing operation may be entered for free circulation in the Community. Thus, there is no risk of the provisions of this arrangement being misapplied in any way.

Over and above this case, goods which do not, or no longer, fulfill the requisite conditions for free movement within the Community, at the time of their exportation from the customs territory of the Community, must normally be excluded from any measures of exemption. This is particularly the case with agricultural products or goods which result from their being processed, which, when exported, are subject to refunds or other amounts being granted within the framework of the common agricultural policy.

However, in order to reduce the strictness of the application of such a principle in certain circumstances, it should also be possible,

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while excluding any attempts at speculation, to allow duty free admission in a similar way when these goods are returned to the economy of the Community, subject to the condition that amounts granted at the time of exportation are repaid. Such a facility must be restricted to cases where it can be established that the returns of goods to the Community is due to circumstances beyond the control of the exporter.

In all instances where total or partial exemption may be accorded to goods returned to the Community, it is obvious that, since the customs territory of the Community is a single unit, this exemption must be granted even where the said goods are entered for free circulation in a Member State other than that from which they were exported. It is thus desirable that provision should be made for measures necessary to allow the person concerned to produce evidence to the competent authorities of the Member State where the returned goods are declared for free circulation, to show that the goods are the self-same which were originally exported from the customs territory of the Community, and that they fulfill the conditions to enjoy exemption.

These conditions are laid down in this proposal for a Regulation. However, although they are themselves quite precise, the provisions of this proposal for a Regulation nevertheless require a certain number of supplementary measures in order to ensure their uniform application throughout the Community. In particular, a Community document must be drawn up to facilitate the identification of goods should they be brought back into a Member State other than that from which they were originally exported.

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For this purpose, provision has been made, as far as may be necessary, to resort to the Customs General Procedures Committee, the setting up of which was proposed by the Commission in its proposal for a Council Regulation on the importation free of Common Customs Tariff duties of educational, scientific or cultural materials (1).

In common with Community provisions which have a bearing on the levying of customs duties and agricultural levies within the meaning of Article 2 (a) and (b) of the Council Decision of 21 April 1970 on the Replacement of Financial Contributions from Member States by the Communities own Resources (2), the introduction of rules which are applicable uniformly throughout the whole of the Community to goods which are returned thereto, has helped to facilitate the control of the own resources raised.

This proposal, based in particular on Articles 43 and 235 of the EEC Treaty, requires the Opinion of the European Parliament. It would also be desirable to obtain the Opinion of the Economic and Social Committee.

(1) O.J. N° C 14 of 15.2.74, p. 35

(2) O.J. N° L 94 of 28.4.1970, p. 19

Proposal for a Council Regulation on the
customs treatment applicable to goods returned
to the customs territory of the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 28, 43 and 235 thereof,

Having regard to the proposal from the Commission ;

Having regard to the Opinion of the European Parliament ;

Having regard to the Opinion of the Economic and Social Committee ;

Whereas, save where special derogations are decided in accordance with
the provisions of the Treaty, the duties in the Common Customs Tariff are
applicable to all goods imported into the customs territory of the Community;
whereas the same applies with regard to any charges having equivalent effect
which may be chargeable on certain goods, as well as agricultural levies
and other import charges provided for either under the common agricultural
policy, or under Regulation N° 170/67/EEC of the Council of 27 June 1967,
on the common system of trade for ovalbumin and lactalbumin and repealing
Regulation N° 48/67/EEC (1), amended by Regulation (EEC) N° 1081/71 (2),
or further, under Regulation (EEC) N° 1059/69 of the Council of 28 May
1969 laying down the trade arrangements applicable to certain goods

(1) O.J. N° 130 of 28.6.1967, p. 2596

(2) O.J. N° L 116 of 28.5.1971, p. 9

resulting from the processing of agricultural products (1), as last amended by Regulation (EEC) N° 1491/73 (2) ;

Whereas certain goods which are imported into the customs territory of the Community to be entered for free circulation therein have previously been exported from such territory ;

Whereas where, at the time of their exportation, such goods were covered by one of the situations defined in Articles 9 and 10 (1) of the Treaty, and where such exportation was not carried out under outward processing arrangements, they may be reintroduced into the Community economy free of customs duties, charges having equivalent effect, agricultural levies or other charges applicable to them ;

Whereas, in view of the generally high proportion of Community products contained in goods produced under inward processing arrangements, provision can be made for a similar exemption in respect of goods which, after being exported from the customs territory of the Community under such arrangements, are returned to it to be entered for free circulation; whereas provision must however be made in such cases to ensure compliance with the provisions of the Council Directive of 4 March 1969 on the harmonisation of provision laid by law, regulation or administrative action in respect of inward processing (3), which lays down the conditions under which compensating products resulting from an inward processing operation may be entered for free circulation in the Community; whereas, therefore, partial exemption is normally accorded in respect of the goods in question ;

(1) O.J. N° L 141 of 12.6.1969, p. 1

(2) O.J. N° L 151 of 7.6.1973, p. 1

(3) O.J. N° L 58 of 8.3.1969, p. 1

Whereas, in order to prevent any speculation, exemption must be refused where goods returned to the customs territory of the Community are goods which have been the subject of customs formalities at exportation in order to grant refunds or other amounts due at exportation within the framework of the Common Agricultural Policy; whereas derogation from this principle may however be allowed, subject to all measures having been taken in order to avoid incorrect payment, where evidence is furnished to the competent authorities that it is on account of circumstances beyond the control of the exporter that the goods are returned to the customs territory of the Community ;

Whereas, in as much as the returned goods have been the subject, at the time of their exportation from the customs territory of the Community, of a levy or any other amount imposed at exportation within the framework of the Common Agricultural Policy or under the systems of trade defined in Regulation N° 170/67/EEC and in Regulation (EEC) N° 1059/69, admission of these goods under return arrangements must entail repayment of amounts collected under these terms;

Whereas returned goods should be admitted to the customs territory of the Community wholly or partly free of duty only on condition that they are the actual goods which were originally exported and, have not undergone any treatment while outside the Community other than that necessary to maintain them in good condition, subject to any exceptions duly substantiated ;

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Whereas the granting of total or partial exemption must be subject to the production of proof that the goods declared for free circulation satisfy the conditions therefor ; whereas such proof could be made easier for the person concerned by enabling him to obtain, at the time when the goods are exported, a document containing the necessary information to enable the goods to be identified in the event of their being returned to the customs territory of the Community; whereas, in the absence of such document, the customs office where the export formalities in respect of the goods are completed should be required to communicate all information in their possession to the customs office where the goods are returned and entered for free circulation;

Whereas, to avoid abuses of the arrangements for returned goods, it should be required that, save in exceptional circumstances, the goods should be returned to the customs territory of the Community by or at the instance of the person who exported them, and that the goods should be returned within a period of three years from the date of their exportation ;

Whereas it should be possible for goods returned to the customs territory of the Community to be so returned to a Member State other than that from which they were exported in accordance with the conditions laid down above; whereas for this to be possible, however, it would be necessary that, as between the Member States concerned, there were no customs duties or charges having equivalent effect or amounts to be charged under the common agricultural policy or under the trade systems defined in Regulation N° 170/67/EEC and in Regulation (EEC) N° 1059/69; whereas, therefore, in all cases where such charges are applicable in trade between Member States, the

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provisions of this Regulation should be applied only in respect of goods which are returned for free circulation in the Member State from which they were originally exported ;

Whereas it must be ensured that the provisions of this Regulation are applied in a uniform manner and for this purpose provision should be made for a Community procedure under which detailed rules for its application can be adopted within a reasonable time; whereas the Customs General Procedures Committee set up by Council Regulation (EEC) N° of on the importation free of Common Customs Tariff duties of goods of an educational, scientific or cultural nature (1) should be used as a means of organizing close and efficient cooperation between the Member States and the Commission in this field,

HAS ADOPTED THIS REGULATION :

Article 1

1. This Regulation lays down the tariff treatment to be applied to goods returned to the territory of the Community.
2. For the purposes of paragraph 1 :
 - a) Returned goods means, save as otherwise provided in Article 2, goods which, having been exported outside the customs territory of the Community, are returned to such territory to be entered for free circulation, provided that, when they were exported, such goods :

(1) O.J. N° L

- satisfied the conditions laid down in Articles 9 and 10 of the Treaty ;

or

- were compensating products resulting from inward processing operations ;

- b) Tariff treatment means the treatment applicable with regard to customs duties and charges having equivalent effect and the treatment applicable with regard to agricultural levies and other import charges which, by virtue of provisions adopted under the common agricultural policy or under the trade systems defined in Regulation N° 170/67/EEC and in Regulation (EEC) N° 1059/69, are chargeable on agricultural products and certain goods processed therefrom.

Article 2

1. The following shall not be considered to be returned goods :
- a) goods originally exported from the customs territory of the Community under outward processing arrangements ;
- b) goods which, at the time of their exportation from the customs territory of the Community, have been the subject of customs export formalities in order to grant refunds or other amounts due at exportation within the framework of the common agricultural policy.

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2. By way of derogation from the provisions of paragraph 1 (b), subject to it being established that the amounts granted have been repaid, or that all measures have been taken by departments concerned for such sums to be withheld, goods referred to in the said provisions may still be considered as returned goods which :

- a) are unable to be entered for home use in the country to which they were sent on account of regulations in force in that country ;
- b) are returned by the consignee as being defective or not in accordance with the provisions of the contract relating to them ;
- c) are reimported into the customs territory of the Community by reason of any other circumstances beyond the control of the exporter, coming within the procedure referred to in Article 13.

It must be proved to the satisfaction of the competent authorities as referred to in Article 10 that the goods come within one of the cases provided for in this paragraph.

3. The provisions of this Regulation shall only apply to goods which satisfy the conditions laid down by paragraph 2 if they are entered for free circulation in a Member State in which, if they had been directly imported from the Member State in which the customs formalities in respect of their exportation out of the customs territory of the Community were completed, no compensatory amount of any kind would have been levied or granted in respect of such importation.

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Article 3

1. Where, at the time when they were exported from the customs territory of the Community, the returned goods satisfied the condition laid down by Articles 9 and 10 of the Treaty establishing the EEC, they may be entered for free circulation free of the customs duties, charges having equivalent effect, agricultural levies or other charges referred to in Article 1 (2) (b) chargeable thereon.

2. Where, prior to their exportation from the customs territory of the Community, the returned goods had been imported for free circulation under preferential tariff treatment accorded on the basis that the goods were to be used for a specific purpose, exemption from duty under paragraph 1 shall apply only if they are to be re-imported for the same purpose.

Where the purpose of the goods in question is no longer the same, the amount of customs duties, charges having equivalent effect, agricultural levies or other charges referred to in Article 1 (2) (b) chargeable thereon shall be reduced by the amount levied on the goods when they were first imported for free circulation, unless such latter amount is greater.

Article 4

Where returned goods were first exported from the customs territory of the Community after completion of inward processing arrangements, they shall be entered for free circulation in accordance with the provisions of the Council Directive of 4 March 1969 on the harmonisation of provisions laid down by law, regulation or administrative action in respect of inward processing. The customs duties, charges having equivalent effect, agricultural

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levies or other charges referred to in Article 1 (2) (b) to be levied on such goods shall be those which would have been chargeable if the said goods had been entered for free circulation, in accordance with the provisions of the said Directive, at the time when the formalities in respect of their exportation out of the customs territory of the Community were completed.

Article 5

Where, at the time of their exportation from the customs territory of the Community, returned goods have been the subject of a levy or any other amount applicable at exportation within the framework of the common agricultural policy or under trade systems defined in Regulation N° 170/67/EEC and in Regulation (EEC) N° 1059/69, entry for free circulation of these goods gives the right to repayment of amounts levied under these terms.

Article 6

The provisions of Article 3, 4 and 5 shall apply even where the returned goods are only part of the goods previously exported from the customs territory of the Community.

The provisions of Article 3 shall also apply where the returned goods consist of components or spare parts recognisable as belonging to a machine, instrument or apparatus previously exported out of the customs territory of the Community, otherwise than under completion of inward processing arrangements.

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Article 7

Articles 3, 4 and 5 shall not apply in respect of goods which have received treatment other than that necessary to maintain them in good condition.

Those Articles shall nevertheless apply to returned goods having received treatment other than that necessary to maintain them in good condition, where such goods, after being exported from the customs territory of the Community, proved to be defective or unsuitable for their intended use, provided that either :

- the goods have undergone such treatment solely with a view to being repaired or restored to good condition,
- or their unsuitability for their intended use became apparent only after such treatment had commenced.

Where returned goods have undergone treatment permitted under the previous sub-paragraph, and such treatment would have rendered them liable to customs duties, charges having equivalent effect, agricultural levies or other charges referred to in Article 1 (2) (b) if they had been placed under outward processing arrangements, the rules in force for charging duty under the said arrangements shall apply.

.../...

Article 8

To qualify as returned goods within the meaning of this Regulation, goods concerned must be entered for free circulation in the customs territory of the Community within three years from the date of their exportation. However, this time limit may be exceeded if it is deemed necessary in order to take account of exceptional circumstances.

Article 9

The provisions of this Regulation shall apply to returned goods only where they are returned to the customs territory of the Community by or at the instance of the original exporter. However, where the circumstances warrant it, the competent authorities may permit derogations from this rule.

Article 10

1. The competent authorities of the Member State where the returned goods are entered for free circulation shall be responsible for according to such goods the treatment provided for in this Regulation.
2. Persons who apply for such treatment to be accorded shall supply evidence to the competent authorities of all matters of fact on which the eligibility of the goods for such treatment depends. Proof must be given, in particular, that the goods entered for free circulation are those which were exported.

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Article 11

On application by the person concerned the competent authorities shall, on completion of the customs formalities on exportation, issue a document containing such information as shall be necessary to identify the goods in the event of their being returned to the customs territory of the Community.

Provision may be made for this document to replace all other customs documents required for the completion of export formalities for the goods in question.

Article 12

The competent authorities at the customs office at which the goods are exported from the customs territory of the Community shall, on request, communicate to the customs authorities of the customs office where they are entered for free circulation, all information necessary to enable the latter to determine whether the goods satisfy the conditions required in order to bring them within the provisions of this Regulation.

Article 13

The provisions necessary for the application of Articles 2 (2), 4, 5, 7, 9, 10, 11 and 12 of this Regulation shall be adopted in accordance with the procedure laid down in Article 8 of Regulation (EEC) N°

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Article 14

This Regulation shall enter into force on

However, until 1 July 1977, its application shall be subject to the following conditions :

- a) as regards the Community as originally constituted, returned goods must have been originally exported from one of the original Member States ;
- b) as regards each of the new Member States, the returned goods must have been originally exported from the Member State in question.

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

Done at Brussels,

For the Council,

The President