STATUTORY INSTRUMENTS

1978 No. 1147

CUSTOMS AND EXCISE

The Anti-Dumping and Countervailing Duties Order 1978

Made - - - -	*2nd August* 1978
Laid before the House of Commons - -	*10th August* 1978
Coming into Operation	*31st August* 1978

The Secretary of State, by virtue of the powers conferred on him by section 6(1) and (2) of the Finance Act 1978(**a**) and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation, operation, application, interpretation

1.—(1) This Order may be cited as the Anti-Dumping and Countervailing Duties Order 1978 and shall come into operation on 31st August 1978.

(2) This Order applies where a duty of customs is charged on goods covered by the ECSC treaty by a definitive order or a provisional order.

(3) In this Order—

"the Act" means the Finance Act 1978;

"the Commission" means the Commission of the European Communities;

"the Commissioners" means the Commissioners of Customs and Excise;

"definitive order" means an order under section 6(1) of the Act which is expressed to be made pursuant to a Recommendation providing for the imposition of a definitive anti-dumping or definitive countervailing duty;

"importer" has the same meaning as in the Customs and Excise Act 1952(**b**);

"the operative period" means the period beginning with the date on which a provisional order comes into operation and ending on the date on which any order revoking the provisional order or suspending the duty thereunder, or any definitive order, comes into operation and if at any time the charge of duty by virtue of such an order ceases to have effect, or the duty is suspended, with respect to some (but not all) of the relevant products, the operative period shall be treated for the purposes of this Order as coming to an end at that time with respect to those products;

"provisional order" means an order under section 6(1) of the Act which is expressed to be made pursuant to a Recommendation providing for the imposition of a provisional anti-dumping or provisional countervailing duty;

"Recommendation" means a Recommendation of the Commission arising under the ECSC treaty;

(**a**) 1978 c. 42. (**b**) 1952 c. 44.

"the relevant products" means the goods, on the importation of which into the United Kingdom duty is charged by a provisional order or definitive order.

(3) The Interpretation Act 1889(a) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Provision of Security in respect of Provisional Duty

2.—(1) During the operative period no duty charged by a provisional order shall be collected, if the following provisions of this Article are complied with, but subject to that, a provisional order shall, as regards the operative period, have the same operation as if the duty were to be collected.

(2) Where any relevant products are entered for home use during the operative period, whether on importation or from warehouse, then, notwithstanding anything in the Customs and Excise Act 1952,—

(*a*) delivery of those products without payment of duty shall not be refused by reason of the charge to duty under the provisional order if the importer gives security to the satisfaction of the Commissioners of an amount so charged by way of provisional duty; and

(*b*) security shall be so given where payment of duty so charged would be required apart from the provisions of paragraph (1) above.

(3) Where security is given by virtue of paragraph (2) above—

(*a*) the customs Acts shall have effect as if the security were one given under section 255 of the Customs and Excise Act 1952 (security for duty not immediately ascertainable);

(*b*) the Commissioners shall not give the importer a notice under subsection (3) of the said section 255 (specifying the amount of the duty which in their opinion is payable in respect of the relevant products) unless a definitive order is made in respect of those products.

Release of Security where Provisional Duty is cancelled

3.—(1) If a provisional order is revoked by a further order which is expressed to be made pursuant to a Recommendation that the duty charged by the provisional order should be cancelled either generally or as respects some only of the relevant products, then, as respects the products in question—

(*a*) any security given by virtue of Article 2 above shall be released as promptly as possible;

(*b*) section 255(3) of the Customs and Excise Act 1952 shall not apply; and

(*c*) no duty shall be collected under the provisional order.

(2) The revocation of the provisional order shall not affect the liability to any penalty, forfeiture or prosecution in respect of things done during the operative period.

Collection of Duty after Definitive Order

4.—(1) The provisions of this Article apply where a definitive order is made pursuant to a Recommendation providing for the definitive collection

(a) 1889 c. 63.

of the amount secured by way of provisional duty in respect of some or all of the relevant products; and in this Article "the affected products" means the products on which the duty is imposed by the definitive order.

(2) Subject to paragraph (3) below and anything to the contrary in the definitive Order, any notice given by the Commissioners under section 255(3) of the Customs and Excise Act 1952 to an importer of the affected products shall specify as the amount of duty payable in respect of such products the whole amount of such duty which has not been collected by reason of Article 2(1) above.

(3) If the definitive order amends the effect of the provisional order so as to reduce the duty chargeable during the operative period on any of the affected products, any notice given by the Commissioners under section 255(3) of the Customs and Excise Act 1952 to an importer of any such affected products shall specify as the amount of duty payable an amount determined by reference to the reduced duty chargeable.

Relief from Duty

5.—(1) The importer of any goods chargeable with any duty under a provisional order or a definitive order, who considers—

(*a*) in the case of an anti-dumping duty that dumping within the meaning of the Recommendation pursuant to which the order is expressed to be made has not taken place or that the margin of dumping is lower than that on which the provisional order or definitive order was based as the case may be or

(*b*) in the case of a countervailing duty that a bounty or subsidy within the meaning of the Recommendation pursuant to which the order is expressed to be made has not been granted or that the margin of the bounty or subsidy is lower than that on which the provisional order or definitive order was based as the case may be,

may within three months of the date on which the goods were entered for home use submit an application to the Secretary of State claiming that any of the duty collected in respect of the goods should be repaid to him or in the case of a provisional order that any security given for the payment of the duty in respect of the goods should be released.

(2) If the Commission decides that the application should be wholly or partly granted, the Commissioners shall as promptly as possible release any security given under Article 2 above, or remit or repay any duty collected, up to the amount notified to them by the Secretary of State.

Michael Meacher,

Parliamentary Under Secretary of State,
Department of Trade.

2nd August 1978.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order implements in UK law the Community obligations of the United Kingdom under Articles 15–19 of Recommendation 77/329/ECSC (O.J.L. 114, 5.5.77, p.6) of the Commission of the European Communities, as amended by Recommendation 3004/77/ECSC (O.J.L. 352, 31.12.77 p.13), on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Coal and Steel Community, in respect of products covered by the ECSC treaty. It does not include obligations relating to the actual imposition of specific duties, which will be imposed by further orders implementing specific Recommendations requiring the imposition of those duties.

Article 2 of the Order provides that where there is an Order imposing a provisional duty the duty will not be collected on importation of the goods into the United Kingdom if the importer gives security of the amount of the duty to the Commissioners of Customs and Excise.

Article 3 provides for the release of the security without collection of any duty, where the provisional Order imposing that duty is revoked by a further Order made to give effect to a Recommendation that the duty charged by the provisional Order should be cancelled.

Article 4 provides for the amount secured by way of provisional duty to be collected in respect of the goods in question where there is an Order imposing a definitive duty, in pursuance of a Recommendation providing for the definitive collection of the duty in respect of all or some of the goods affected by the provisional measures.

Article 5 provides for an application to be made by an importer for duty secured or paid to be repaid in whole or in part where he can show that no dumping has taken place or that the margin of dumping was lower than that on which the Order was based (or that in the case of a countervailing duty no subsidy or bounty was granted or that the margin of the subsidy or bounty was lower than that on which the Order was based).

SI 1978/1147
ISBN 0-11-084147-6

