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THE CONSEQUENCES OF MEMBER STATES FAVOURING HOME PRODUCTION

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The Temptation of Member States Governments

Member States governments will often be tempted to favour home production of excise goods. Occasionally those governments will feel under pressure to "do something to help home industry". The temptation may take many forms. It will not necessarily take the form of a request that local products be taxed at a rate lower than that charged on identical imported products. Instead governments may be tempted to enact control and compliance provisions that favour domestic product; or they may be tempted to apply control and compliance provisions differently by means of special concessions of practical help to home producers alone. The control and compliance provisions that may be used include the selective application of tax avoidance measures and the enactment of special definitions for the control of products taxed at different rates or in different bands. One such provision is the selective prohibition of post duty point dilution.

The result of the favourable application of control and compliance provisions will be an effective rate of duty for home produced products which is lower than the actual rate of duty suffered by similar or competing imported products. The excess duty incurred by importers will amount to unlawful taxation.

Community law establishes a right to repayment of tax levied unlawfully and, in addition, damages.

The unlawful tax is the extra amount of duty that the importer has to pay to put the same volume of similar product on the market.

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Community law does not preclude national rules limiting the right to recover tax levied contrary to the EC Treaty. Such national rules can prescribe the form of repayment claims, set time limits for claims and prevent unjust enrichment.

However, the effect of the defence of unjust enrichment may be limited.

Example of Unlawful Taxation by Control and Compliance Provisions

Until 2001,[2] the United Kingdom government refrained from tackling a tax avoidance practice where UK duty paid cider was diluted to decrease its strength and increase its volume, reducing the effective duty liability on the volume of the finished product. In practice an importer of cider in any closed bottle or container (i.e. in the finished state) could not take advantage of post duty point dilution afforded to the UK cider producer.

It is arguable that the UK system of taxation of cider unlawfully discriminated against importers of cider from other Member States.

The failure of the UK to prohibit the post duty point dilution of cider gave rise to that unlawful fiscal discrimination.

The consequence of the fiscal discrimination was that certain importers of cider were paying tax that was not levied lawfully. *Prima facie* such importers were entitled to claim a repayment of the tax levied unlawfully.

It is also possible to construct a case of unlawful taxation on the basis that UK cider and perry is in competition with some imported table wine. However, that subject is too wide for this article and would require a discussion of the treatment of made wine and the changes following the 2002 Budget speech. In contrast, although the cider example may not have much practical significance, it is relatively simple to follow.

Favouring Home Producers Can Amount to Fiscal Discrimination

Fiscal discrimination is prohibited by Article 90 (ex Article 95) of the EC Treaty.

> "No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that

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2 Finance Act 2002, section 5; The Cider and Perry (Amendment) Regulations 2001.

imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products."

Whether Products are Similar for the Purposes of Fiscal Discrimination

Whether products are similar is a matter for the national court to determine (Cases C-367 and 377/93*Roders* [1995] ECR 2229).

In its judgments of 17 February 1976 in Case 45/75 *REWE* [1976] ECR 181 and of 15 July 1982 in Case 216/81 *Cogis* [1982] ECR 2701, the European Court of Justice ("ECJ") considered that products which exhibit similar characteristics and meet the same needs are similar. The decisive criterion is the possible degree of substitution. The following were held not to be decisive criteria: the raw material of the product, the nature of the product, whether industrial or agricultural, or the method of manufacture, whether by fermentation or by distillation.

Fiscal Discrimination and Control and Compliance Provisions

Compliance and control provisions such as the failure to prohibit post duty point dilution in the cider example may amount to fiscal discrimination.

Fiscal discrimination is not limited to express differential rates of duty. The concept of fiscal discrimination is sufficiently wide to include the whole system of the duty, including its implementing provisions (which include such provisions as the prohibition on post duty point dilution). That is clear from Case C-106/84 *Commission v Denmark* [1986] ECR 833:[3]

> "As the Court recalled in its judgments of 27 February 1980 in Case 168/68 (*Commission v French Republic* [1980] ECR 347), in Case 169/78 (*Commission v Italian Republic* [1980] ECR 385) and in Case 171/78 (*Commission v Kingdom of Denmark* [1980] ECR 447), the aim of Article 95 as a whole is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which result from the application of internal taxation which discriminates against products from other Member States and to guarantee

[3] Author's italics.

> the complete neutrality of internal taxation as regards competition between domestic products and imported products. With regard to the concept of similar products, the first paragraph of Article 95 prohibits more specifically any tax provision whose effect is to impose, *by whatever mechanism*, higher taxation on imported goods than on domestic products.
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> ...
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> Since it is thus established that the products in question are similar products for the purposes of the first paragraph of Article 95, it is necessary to consider the discriminatory nature of the taxation concerned, which, as the Court pointed out in its judgments of 27 February 1980, derives exclusively from the difference in the tax burden borne by the two categories of products, whether it is the result of the rate of tax, the mode of assessment *or other detailed implementing rules*. In this case, it is indisputable that wine made from grapes bears a higher fiscal burden than the same quantity of wine made from other fruit."

That is also clear from the judgment in Cases 142 and 143/80 *Essevi & Salengo* [1981] ECR 1413 at paragraphs 22 and 23:

> "22. To make the grant of a tax exemption or the benefit of a reduced rate of taxation conditional upon the possibility of inspecting production on national territory constitutes, however, a condition which by definition cannot be satisfied by similar products from other Member States. The effect of such a requirement is to preclude in advance those products from qualifying for the tax advantage in question and to confine that advantage to domestic production. It is therefore apparent that such a system of taxation is discriminatory in nature and as such comes within the prohibition laid down by Article 95.
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> 23. The answer to the second part of the questions submitted should therefore be that a *system of taxation of spirits organised in such a way* as to confine exemptions or reduced rates of tax to domestic production alone constitutes discrimination prohibited by Article 95 of the treaty."

Thus, it does not matter by what mechanism the fiscal discrimination takes effect. Implementing rules may be the mechanism. Implementing rules determine the actual tax burden borne by the two categories of products. In the cider example, because of the failure to prohibit post duty point dilution, UK cider did not bear the same tax burden as imported cider.

It is interesting to note that the ECJ has not held that the fiscal discrimination has to be intentional in order to be prohibited.

Fiscal Discrimination Without Express Distinction Between Imported and Domestic Products

What about the fact that, in theory, cider producers in other Member States could have removed high strength product to the UK in bulk and then diluted it duty paid in the UK? Where was the discrimination? In practice, cider is packaged in the other Member States and in reality the discrimination cannot be overcome by the theoretical post duty point dilution of other Member States' product. There are a number of ECJ cases in which there was differential taxation of different products, but no express distinction between imported and domestic products. In these cases, fiscal discrimination was found in the absence of express distinction between imported and domestic products.

The point arose in C-170/78 *Commission v UK* [1980] ECR 417, a decision dated 27 February 1980. In that case the duty rate on beer was found to amount to a fiscal discrimination against wine removed to the UK from other Member States. The fact that a small amount of wine was produced in the UK was disregarded when assessing the commercial reality of the fiscal discrimination. Advocate General Reischl made the point in the fifth question of law of his opinion:

> "5. Further information is, on the other hand, available on the question left open in the interlocutory judgment concerning the tax ratio which the Commission considers appropriate for the two types of beverages. In its opinion the Member States may in accordance with the case-law of the Court of Justice lay down differing tax arrangements even for identical products so long as, in doing so, they are pursuing, on the basis of objective criteria, legitimate objectives of economic or social policy which are compatible with Community law. *If, in the Member States which produce an appreciable quantity of wine,* wine is wholly free of excise duty or subject only to a symbolic rate whilst beer is subject to tax, that is an expression of a legitimate choice of economic policy and does not constitute discrimination within the meaning of Article 95, as both imported wines and imported beers are treated in the same way as the corresponding domestic products. The relationship between the excise duty on wine and excise duty on beer must in the last resort be established by means of harmonisation pursuant to Article 99 of the Treaty. In any event Article 95 does not require the establishment of a ceiling for excise duty on beer in relation to the corresponding duty on wine. *The position is different, however, if in a*

> *Member State there is no appreciable wine production and imported wine is therefore in competition with domestic beer.* In that case the duty on a given volume of imported wine and the corresponding duty on domestic beer may not exceed the ratio resulting from a comparison of the respective alcoholic strengths of the beverages. The ratio between the most popular beer with an alcoholic strength of 3.5 deg to 3.6 deg and the most popular table wine with an alcoholic strength of 10 deg to 12 deg is between 1 : 2.8 and 1 : 3.4.By application of an average alcoholic strength of 3.6 deg for beer and 10 deg for wine, a ratio of 1 : 2.8 is obtained. If that ratio is exceeded, as in this case, there is a presumption that indirect protection is being afforded to domestic beer as against imported wine."

The Court did not expressly endorse the A-G's opinion but proceeded on the basis that the A-G was correct.

The point was also made by A-G P Verloren van Themaat in *Commission v Denmark* [1986] ECR 833, at paragraph 3.2.1(b) and, because of its affirming judgment, must have been accepted by the Court:

> "*In the absence of substantial imports, the lack of an express distinction between imported and domestic liqueur wine is irrelevant.* The fact that 75% of the beverages taxed as spirits and consumed in Denmark are of domestic origin is of no importance either. That proportion is merely a consequence of the tax protection afforded to aquavit which, in view of its fairly low price, is subject only to a low ad valorem duty. The argument to the effect that liqueur wine of the fruit-wine type bears a closer resemblance to liqueur wine of the grape-wine type than to spirits is beside the point, since fruit wine other than cherry liqueur is offered as a substitute for Scotch whisky. As far as the protection of public health is concerned, only the quantity of alcohol that is ingested matters, not the form in which it is consumed."

Unjust Enrichment and the ECJ Authorities

Before considering the defence of unjust enrichment, it is important to recall that, as noted above, the recovery of unlawfully levied taxes is the natural and necessary consequence of the direct effectiveness of Article 90. This was stated in Case 199/82 *San Giorgio* [1983] ECR 3595 which itself was summarised in the following terms by the ECJ in Case C-188/95 *Fantask*:

> "38. It is also settled case law that entitlement to the recovery of sums levied by a Member State in breach of Community law is a consequence of,

> and an adjunct to, the rights conferred on individuals by the Community provisions as interpreted by the Court (see the judgment in *Amministrazione delle Finanze dello Stato v SpA San Giorgio* Case199/82 [1983] ECR 3595 (para 12)). The Member State is therefore in principle required to repay charges levied in breach of Community law (see the judgment in *Societe Comateb v Directeur General des Douanes et Droits Indirects* Joined Cases C-192-218/95 [1997] ECR I-165 (para 20)).
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> 39. Accordingly, while the recovery of such charges may, in the absence of Community rules governing the matter, be sought only under the substantive and procedural conditions laid down by the national law of the Member States, those conditions must nevertheless be no less favourable than those governing similar domestic claims nor render virtually impossible or excessively difficult the exercise of rights conferred by Community law (see e.g. the judgment in *SCS Peterbroeck Van Campenhout & Cie v Belgium* Case C-312/93 [1996] All ER (EC) 242, [1995] ECR I-4599 (para 12))."

The leading ECJ authority on unjust enrichment is *Just v Danish Ministry for Fiscal Affairs*, [1980] ECR 501, a case concerning a system of differential taxation of spirits contrary to the then Article 95. At paragraph 26 of the judgment, the ECJ held:

> "26. It should be specified in this connection that the protection of rights guaranteed in the matter by Community law does not require an order for the recovery of charges improperly made to be granted in conditions which would involve the unjust enrichment of those entitled. There is nothing therefore, from the point of view of Community law, to prevent national courts from taking account in accordance with their national law of the fact that it has been possible for charges unduly levied to be incorporated in the prices of the undertaking liable for the charge and to be passed on to the purchasers. It is equally compatible with the principles of Community law for courts, before which claims for recovery of repayments are brought, to take into consideration, in accordance with their national law, the damage which an importer may have suffered because the effect of the discriminatory or protective tax provisions was to restrict the volume of imports from other Member States."

Relevant to the UK's three-year cap (Customs and Excise Management Act 1979, section 137A(3)),[4] the ECJ in *Just* also held:

> "22. A comparison of the national systems shows that the problem of disputing charges which have been unlawfully claimed or the refunding of charges paid but not owed is settled in the various Member States, and even within a single Member State, in different ways, according to the various kinds of taxes or charges in question. In certain cases objections or claims of this type are subject to specific procedural conditions and time limits under the law with regard both to complaints submitted to the tax authorities and to legal proceedings. It was with a view to the operation of such remedies that, in its judgments in the *REWE* and *Comet* cases of 16 December 1976 (Case 33 and Case 45/76, [1976] ECR 1989 and 2043 respectively) the Court held that it was compatible with Community law to lay down reasonable limitation periods in the interests of legal certainty which protects both the tax-payer and the administration concerned."

In Cases C-142 and 143/80 *Essevi & Salengo* [1981] ECR 143 at paragraph 35 re temporal effect, in a case concerning a system of differential taxation of spirits contrary to the then Article 95, the ECJ held:

> "35. With regard to the argument deduced from the taxes which the respondents in the main action seek to recover have been passed on to the consumers, it is necessary to state that the protection of rights guaranteed in the matter by the community legal order does not require an order for the recovery of charges unduly levied to be granted in conditions which would involve an unjust enrichment of those entitled. There is therefore nothing, from the point of view of Community law, to prevent national courts from taking account in accordance with their national law of the fact that it has been possible for taxes unduly levied to be incorporated in the prices of the undertaking liable for the tax and to be passed on to the purchasers (Judgment of 27th March 1980 in Case 61/79 *Amministrazione Delle Finanze v Denkavit Italiana* [1980] ECR 1205)."

In *Commission v UK* Case C-170/78, [1983] ECR 2265, decision of 12th July 1983 A-G P Verloren van Themaat at the end of paragraph 3.2 of his opinion wrote:

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[4] In its judgment of 11th July 2002 in Case C-62/00 *Marks and Spencer plc v CCE*, the ECJ held that the three-year cap under legislation relating to VAT was unlawful in so far as it applied retrospectively without adequate transitional arrangements. In the earlier national court proceedings, the Court of Appeal stated in its judgment of 14 December 1999 that it had not been suggested that the unjust enrichment defence was incompatible with Community law.

> "Inasmuch as the excess taxation will in fact be passed on to the consumer, the reclaiming of such tax feared by the United Kingdom seems in this case to be ruled out by the exclusion of that possibility in the Court's judgment in Case 68/79, *Just v Danish Ministry for Fiscal Affairs*, [1980] ECR 501."

In order to understand the more recent judgment in Cases C-367 and 377/93 *Roders* [1995] ECR 2229, it is necessary to distinguish between the retroactive effect of an ECJ judgment and the validity of national rules limiting right to repayment. If an ECJ judgment is not given retroactive effect, the consequence is that the tax was lawful until the judgment. In that case there would be no right to claim even *Factortame* damages (see below). This is a different matter from a case where an ECJ judgment interpreting the Treaty is given the usual retroactive effect so that the tax was unlawful from the beginning; yet national rules to limit recovery were also lawful. In *Roders*, the ECJ cited the cases of *Just* and *Essevi and Salengo* with approval and then proceeded to hold:

> "... there are no grounds for limiting in time the effects of the present judgment."

That meant that the tax was unlawful from the beginning, but that national rules limiting recovery could apply.

The ECJ in *Roders* did not deviate from the line taken in *Just* and *Essevi and Salengo*. I regret that we must conclude that the UK is entitled to enact and maintain national rules with respect to unjust enrichment.

In Cases C-192-218/95 *Societe Comateb v Directeur General des Douanes et Droits Indirects* [1997] ECR I-165, [1997] STC 1006, AG Tesauro gave a cogent and well reasoned opinion summarised in paragraph 25 as follows:

> "The fact that the charge levied in breach of Community law has been passed on to the third parties that have purchased goods does not extinguish the right of individuals to reimbursement of the sums unduly levied by the authorities."

I regret that the Court in *Comateb* did not follow the A-G's opinion, save by holding that the authorities have the burden of proving that the unlawful charge has been passed on to third parties. Instead the Court followed *Just* and *Essevi and Salengo*. The ECJ held that a Member State could, on certain conditions, resist repayment of charges levied in breach of Community law on the ground that repayment would unjustly enrich the trader. In the framework of repayment proceedings, a national court could, where domestic law permitted, take account of damage incurred by the

trader by way of loss of business which wholly or partly negated any unjust enrichment on his part. The Court also recognised the right of the trader to bring a separate damages claim subject to the conditions laid down in *Brasserie du Pecheur SA v Germany, R v Secretary of State for Transport, ex p Factortame Ltd* Joined Cases C-46/93 and C-48/93 [1996] All ER (EC) 301, [1996] ECR I-1029 in the competent courts in accordance with the appropriate procedures of national law in order to obtain reparation of the loss caused by the overpaid charges (irrespective of whether those charges had been passed on) (A-G Jacobs at paragraph 79 of his opinion in Case C-188/95 *Fantask* [1988] All ER (EC) 1).

The matter is not hopeless. A-G Tesauro's opinion may one day be upheld by the ECJ. It is surely the case that the Member State has been unjustly enriched by its unlawful taxation more so than the importer. However, at present, the law established by ECJ judgments is that national rules may limit the right to recover tax levied contrary to the EC Treaty.

Unjust Enrichment in the UK

Thus Community law does not preclude national rules limiting the right to recover tax levied contrary to the EC Treaty. Such national rules can prescribe the forms of repayment claims, set time limits for claims and prevent unjust enrichment.

There is national UK legislation for unjust enrichment with respect to repayment of excise duties. The Customs and Excise Management Act 1979 ("CEMA"), section 137A(3) provides the Commissioners with a defence. Section 137A with annotations reads as follows:

> "[(1) Where a person pays to the Commissioners an amount by way of excise duty which is not due to them, the Commissioners are liable to repay that amount.
>
> (2) The Commissioners shall not be required to make any such repayment unless a claim is made to them in such form, and supported by such documentary evidence, as may be prescribed by them by regulations; and regulations under this subsection may make different provision for different cases.
>
> (3) It is a defence to a claim for repayment that the repayment would unjustly enrich the claimant.
>
> (4) The Commissioners shall not be liable, on a claim made under this

> section, to repay any amount paid to them more than three years before the making of the claim.
>
> (5) Except as provided by this section the Commissioners are not liable to repay an amount paid to them by way of excise duty by reason of the fact that it was not due to them.]"[5]

The question arises whether CEMA, section 137A codifies all repayments of excise duty whether arising by mistake, breach of UK law or breach of Community obligation. If a repayment claim may be made outside section 137A, then at least the statutory unjust enrichment and three-year cap provisions of section 137A would not apply. It is still debatable whether common law principles of unjust enrichment might apply.

The main issue turns upon the interpretation of the expression "which is not due to them". Does that expression include amounts which are due under national legislation but are not due under Community law?

The likely answer is "yes" because the provisions read like a code applicable to all repayments.

There is no authority on interpretation of CEMA, section 137A.[6] However, there are VAT cases based on the similar provisions of Value Added Tax Act 1994 section 80, where such repayments were assumed to come within the statute.

CEMA, section 137A was probably intended to be a code relating to the repayment of excise duties. However, because the issue has not been determined conclusively, for tactical reasons, it would be unwise to concede the point in any claim. A claimant could make claim within provisions of regulations under 137A without prejudice to his contention that section 137A does not apply.

Repayment or Damages

The issue arises whether to claim a repayment or damages or both.

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5 Annotations: Added, in relation to payments made on or after 1 December 1995, by Finance Act 1995, s. 20(1), (5). Sub-s (4): substituted by Finance Act 1997, s. 50, Sch 5, paragraph 5(1). See further, in relation to the recovery of excess payment under this section: Finance Act 1997, Sch 5, paras 14, 16-19.

6 Although *British Steel plc v HM Commissioners for Customs & Excise,* Court of Appeal transcript 20 December 1996 is worth reading.

The EC doctrine of unjust enrichment excludes damage. Where a claimant suffers damage, such as loss of profit caused by loss of market share, he does not unjustly benefit from a "repayment of duty" that covers his damage. Thus there is potentially a compensatory element within a repayment claim to which unjust enrichment would not provide a defence.

It should be noted that Finance Act 1997, Schedule 5, paragraph 2, disregard of business losses, may apply, although that paragraph would not be enforced insofar as it was in conflict with Community law.

Damages also include interest incurred because of loss of working capital. This point was decided by the ECJ in Cases C-397 and 410/98 *Hoechst* [2001] All ER (EC) 496.

Independently the claimant has a right to sue for damages under the principle in *Factortame* (see below).

In practice, the damage that is not considered to be unjust enrichment and the *Factortame* damages may equate to the same thing. They may be quantified and proved in the same way, e.g. any loss of profit element ought to be the same.

One might be tempted to distinguish between the two claims on the basis that the repayment claim is capped to three years whereas perhaps six years of *Factortame* damages may be claimed. It is arguable that the quantum of compensation that is repayable (not subject to the unjust enrichment defence) should not be limited to three years. Even though the period of repayment may be three years, the amount of damage that is protected from the defence of unjust enrichment is not capped expressly. Perhaps six years of such damage may be protected from the defence of unjust enrichment.

While this area of law is developing, it might be appropriate to make concurrent repayment and damages claims. However, it would be premature to decide upon the issue in any particular case until evidence of damage, and passing on of charge, had been obtained; and until reimbursement arrangements had been considered. Though it may be beneficial to make both claims for tactical flexibility, there may be no greater sum paid out by HM Customs & Excise unless reimbursement arrangements are made.

There are many issues associated with the assessment of damage. There are issues of proof – both onus and evidence. There is an issue of the size of market share lost – perhaps limited to the size of market share of UK producers that benefit.

In *Kapniki Michailidis v I.K.A.*, the ECJ considered that the onus should not be on the taxpayer to show that he lost sales as a result of the imposition of a higher charge, since the onus is on the State to show that the repayment is unjust.

There is no strategy for importers that fits all possible sets of facts, but these are some of the strategic issues.

Value of the Claim

The first issue is whether the importer has passed on all or any of the cost of the unlawful tax.

The second issue relates to the calculation of the quantum of damage suffered. See above for a note of the heads of damage. A subsidiary question related thereto is the period of loss suffered. *Factortame* damages may be claimed for six years. Why should not the rebate for damage be six years even though the period of the repayment claim is limited to three years?

"The existence of a wholly independent claim for damages, subject to longer time limits than the comparatively short ones prescribed for restitutionary and entitlement claims in many Member States, is consistent with the different nature of the claim. Its basis is not merely the unjust enrichment of the state resulting from simple error in the routine application of technical legislation but a serious violation of individual rights, calling for a reappraisal of the balance between such rights and the collective interest in a measure of legal certainty for the state." (A-G Jacobs at paragraph 83 of his opinion in Case C-188/95 *Fantask* [1988] All ER (EC) 1.)

The matter is not clear. It would appear to be prudent to claim a protected repayment element by reference to six years of damage.

The defence of unjust enrichment will not attach to the full amount of the repayment claim. The importer will be able to pursue such amount of the repayment claim that is not subject to the defence of unjust enrichment. The amount that is not subject to the defence of unjust enrichment is:

Such amount of duty that is not passed on to the customer; and

The amount of damage that can be proved.

The remainder could be the subject of reimbursement arrangements. There is potential for a good public relations event, although such arrangements might be

prohibitively costly to administer.

It is interesting to note that in the case of *Marks & Spencer*,[7] the Commissioners allowed M & S 10% of the repayment claim in respect of damage, which was upheld by the Court of Appeal.

Reimbursement Arrangements

Reimbursement arrangements may be made under Finance Act 1997, Schedule 5 and the Revenue Traders (Accounts and Records) Regulations 1992, regulations 9-16.

In any such arrangements, how far do you have to go down the supply chain? Is it sufficient to reimburse immediate customers, or must you reimburse retail purchasers? It would appear from the words of regulation 10 that you need to arrange to reimburse retail purchasers:

> " ... of persons (consumers) who have for practical purposes borne the cost of the original payment."

In view of the cost of the arrangements, it would be most unwise to proceed unilaterally. Therefore Customs' understanding of the provision would in practice dictate what arrangements are made.

Action with Respect to Current Imports

This paper has hitherto addressed the repayment of duty overpaid in the past; and Customs' defences of unjust enrichment and the three-year cap. Those defences cannot apply to current imports.

Subject to obtaining evidence of similar products or competing products outlined above, importers may declare and tender only the lawful margin of duty apparently due on current imports. Subject to assessment, security pending appeal, and a determination of unlawful taxation, importers will thereby secure a benefit even before the favour granted to home producers is withdrawn.

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7 [1999] STC 205.