

**2010 No. 795**

**RECOVERY OF TAXES**

**CUSTOMS AND EXCISE**

**The Recovery of Import Duties and Export Duties (Andorra)  
Regulations 2010**

<i>Made</i> - - - -	<i>15th March 2010</i>
<i>Laid before the House of Commons</i>	<i>16th March 2010</i>
<i>Coming into force</i> - -	<i>6th April 2010</i>

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The Treasury, in exercise of the powers conferred by section 134(6) of the Finance Act 2002<sup>(a)</sup>, as extended by section 322(4) of the Finance Act 2004<sup>(b)</sup>, and by paragraph 3(1) of Schedule 39 to the Finance Act 2002, and the Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by paragraph 3(4) of Schedule 39 to the Finance Act 2002<sup>(c)</sup>, make the following Regulations:

## PART 1

### General

#### **Citation and commencement**

1. These Regulations may be cited as the Recovery of Import Duties and Export Duties (Andorra) Regulations 2010 and come into force on 6th April 2010.

#### **Interpretation**

2. In these Regulations—

“applicant authority” means a competent authority designated for the purpose of the Decision by the Principality of Andorra;

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(a) 2002 c. 23.

(b) 2004 c. 12.

(c) Paragraph 3(4) of Schedule 39 to the Finance Act 2002 provides that the power to make regulations under that paragraph shall be exercisable by “the relevant UK authority”. Paragraph 2(2) of that Schedule provides that “the relevant UK authority” means, in relation to matters corresponding to those within the care and management of the Commissioners of Customs and Excise, the Commissioners of Customs and Excise. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

“authorised official” means an official of an applicant authority authorised by that authority to make requests for assistance in accordance with the Decision;

“claim” means a claim concerning import duties or export duties due in consequence of a customs procedure initiated after the entry into force of the Decision;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“contested” means subject to an action brought by an interested party before the competent body of the Principality of Andorra in accordance with the laws in force there and “contesting” shall be construed accordingly;

“corresponding UK claim” means a claim for import or export duties charged in the United Kingdom;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“the Decision” means Decision No. 1/2003 of the EC-Andorra Joint Committee(a);

“instrument permitting enforcement” means—

- (a) any instrument issued by an applicant authority in relation to a claim; or
- (b) a decision on that claim given in favour of that authority by a court or tribunal or other competent body in the Principality of Andorra which permits recovery of that claim or part thereof in the Principality of Andorra;

“the Regulation” means Commission Regulation (EC) No 1179/2008(b);

“request for information” means a request for information made under article 7 of the Decision;

“request for notification” means a request for information made under article 8 of the Decision;

“request for recovery” means a request for recovery made under article 9 of the Decision;

“request for the taking of precautionary measures” means a request made under article 16 of the Decision;

“request for assistance” means a request for information, a request for notification, a request for recovery or a request for the taking of precautionary measures;

the expressions “import duties”, “export duties” and “information of a personal nature” have the meaning given to them by the Decision.

## PART 2

### Requests for Assistance

#### Requests for Information – making the request

3.—(1) A request for information shall—

- (a) be made in writing, in accordance with the specimen set out in the Regulation;
- (b) contain all the particulars required by that specimen; and
- (c) bear the official stamp of the applicant authority and be signed by an authorised official.

(2) A request for information shall relate to—

- (a) the debtor;
- (b) a person liable for settlement of a claim under the law in force in the Principality of Andorra; or
- (c) a third party holding assets belonging to a person mentioned in sub-paragraph (a) or (b).

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(a) OJ No L 253, 07.10.2003, p3.

(b) OJ No L 319, 29.11.2008, p21.

## **Requests for Information – procedure following receipt of the request**

4.—(1) The Commissioners shall—

- (a) acknowledge receipt of a request for information in writing as soon as possible and in any event within seven days of receipt;
- (b) transmit to the applicant authority each item of requested information as and when it is obtained;
- (c) where all or some of the requested information cannot be obtained within a reasonable time, so inform the applicant authority, indicating the reasons; and
- (d) no later than six months from the date of acknowledgement of the request, report to the applicant authority the outcome of the investigations which they have conducted in order to obtain the information requested.

(2) The applicant authority may, upon receipt of the report referred to in sub-paragraph (1)(d), ask the Commissioners to continue their investigations.

(3) The request referred to in paragraph (2) shall be made in writing within two months of receipt of the report and shall be dealt with by the Commissioners in accordance with the provisions applying to the original request.

(4) The Commissioners shall, as soon as possible, give notice to the applicant authority of such additional particulars as may be necessary to execute the request.

(5) The Commissioners shall be under no obligation to execute a request for information until the applicant authority has complied, so far as it is able, with any request made of it under paragraph (4).

## **Refusal of Requests for Information**

5. The Commissioners shall not be obliged to supply information where—

- (a) the request was not made in accordance with these Regulations;
- (b) the Commissioners would not be obliged to obtain the information in question for the purpose of recovering a corresponding UK claim;
- (c) the supply of the requested information would disclose any commercial, industrial or professional secret; or
- (d) disclosure of the information would be liable to prejudice the security or public order of the United Kingdom.

## **Requests for Notification – making the request**

6.—(1) A request for notification shall—

- (a) be made in writing, in duplicate, in accordance with the specimen set out in the Regulation;
- (b) contain all the particulars required by and attach all the attachments stipulated in that specimen;
- (c) bear the official stamp of the applicant authority and be signed by an authorised official; and
- (d) refer to the procedure for contesting the claim or its recovery in accordance with the law in force in the Principality of Andorra, in so far as it is not indicated in the instrument or decision of which notification is requested.

(2) A request for notification shall relate to a natural or legal person who, in accordance with the laws in force in the Principality of Andorra, is entitled to be informed of any instrument or decision which concerns that person.

### **Requests for Notification – procedure following receipt of the request**

7.—(1) The Commissioners shall—

- (a) acknowledge receipt of a request for information in writing not later than seven days after the date of such receipt;
- (b) take the necessary measures to effect notification, as soon as possible, in accordance with the law applicable to notification of similar instruments in that part of the United Kingdom in which notification is given;
- (c) promptly inform the applicant authority of the action taken on its request for notification and, in particular, confirm to the applicant authority, as soon as reasonably practicable, the date on which the instrument was notified to the person concerned by returning a copy of the request form with the relevant certificate completed;
- (d) not question the validity of the instrument.

(2) The Commissioners may request additional information from the applicant authority for the purposes of effecting notification but shall not thereby jeopardise any final date for notification indicated in the request for notification.

(3) For the purposes of this regulation, “instrument” means any document or decision, including those of a judicial nature, which emanates from the Principality of Andorra and which relates to a claim which forms the subject of a request for recovery.

### **Requests for recovery or for the taking of precautionary measures – making the request**

8.—(1) A request for recovery or a request for the taking of precautionary measures shall—

- (a) be made in writing in accordance with the specimen set out in the Regulation;
- (b) contain all the particulars required by and attach all the attachments stipulated in that specimen;
- (c) bear the official stamp of the applicant authority; and
- (d) be signed by an authorised official.

(2) A request for recovery or for the taking of precautionary measures shall relate to a person specified in regulation 3(2).

(3) The amount of the claim that forms the subject of the request shall be stated in UK sterling and in the currency of the Principality of Andorra.

(4) A request for recovery shall specify, in addition to the particulars specified in paragraph (1)—

- (a) the nature and amount of the claim, including the principal sum and costs due, stated in accordance with paragraph (3);
- (b) the date of notification of the instrument to the addressee by the applicant authority or the Commissioners or both; and
- (c) the date from which and the period during which enforcement is possible under the laws in force in the Principality of Andorra.

(5) For the purposes of these Regulations, where the instrument permitting enforcement concerns more than one claim against a person, the claims in question shall be treated as a single claim.

### **Requests for recovery or for the taking of precautionary measures – initial procedure following receipt of the request**

9.—(1) The Commissioners shall, not later than seven days after the date of receipt of a request for recovery or for the taking of precautionary measures—

- (a) acknowledge receipt of the request in writing to the applicant authority;

(b) make a request in writing to the applicant authority to complete the request if it does not contain all the information required under article 10(3) of the Decision.

(2) The Commissioners shall be under no obligation to execute a request for recovery or a request for the taking of precautionary measures until the applicant authority has complied, so far as it is able, with any request made of it under sub-paragraph (1)(b).

(3) As soon as any relevant information relating to the matter which gave rise to the request comes to the knowledge of the applicant authority, it shall forward it to the Commissioners.

(4) Subject to the following provisions of this regulation (and regulation 10), upon receipt of a completed request made in accordance with regulation 8, the Commissioners shall proceed to take the precautionary measures or, as the case may be, recovery action, so requested, in accordance with the laws, regulations and administrative provisions applying to corresponding UK claims.

(5) For the purposes of paragraph (4), the claim in respect of which a request has been made shall be treated as a corresponding UK claim.

(6) The Commissioners shall inform the applicant authority immediately of the action that they have taken on any request for recovery or for the taking of precautionary measures.

### **Requests for recovery or for the taking of precautionary measures – subsequent procedure following receipt of the request**

10.—(1) Where the Commissioners do not, within three months of the date of receipt of a request made in accordance with regulation 8, take the recovery action or precautionary measures requested, they shall, not later than seven days from the end of that period, inform the applicant authority in writing of the reasons for their failure to comply with the time-limit.

(2) No later than the end of each six-month period following the date of acknowledgement of receipt of a request made in accordance with regulation 8, the Commissioners shall inform the applicant authority in writing of the status or outcome of any recovery action or precautionary measures.

(3) Where, within a reasonable time, having regard to the particular case, all or part of the claim cannot be recovered, or precautionary measures cannot be taken, the Commissioners shall so inform the applicant authority, in writing, setting out the reasons why the appropriate action cannot be taken.

(4) The applicant authority may request the Commissioners to resume the recovery action or precautionary measures requested under regulation 8.

(5) But paragraph (4) shall not apply where the Commissioners have received notification that the claim or the instrument permitting its recovery (or both) is contested by an interested party before the competent body of the Principality of Andorra.

(6) A request under paragraph (4)—

(a) must be in writing;

(b) must be made within two months of the date of any notification given in accordance with paragraphs (1) to (3); and

(c) is subject to the provisions of these Regulations which applied to the initial request.

### **Refusal of Requests for recovery or for the taking of precautionary measures**

11. The Commissioners shall not be obliged to comply with a request for recovery or for the taking of precautionary measures if to do so would, because of the situation of the debtor, create serious economic or social difficulties in the United Kingdom, except insofar as the laws, regulations or administrative practices in force in the United Kingdom allow such action for corresponding UK claims.

### **Time to pay and payment by instalments**

12. The Commissioners may, after consultation with the applicant authority—

- (a) allow the debtor time to pay, or
- (b) authorise payment by instalments.

### **Transfer of sums recovered**

13.—(1) Claims shall be recovered in UK sterling.

(2) Subject to paragraph (4), the Commissioners shall transfer in UK sterling to the applicant authority any sum recovered in respect of the request for assistance not later than one month from the date upon which recovery was effected.

(3) For the purposes of this regulation, ‘sum’ shall include any interest, including interest charged in the United Kingdom.

(4) The Commissioners and the applicant authority may agree different arrangements for the transfer of an amount where that amount is 1500 Euros or less or the UK sterling equivalent at the time of the request.

(5) For the purposes of assessing what proportion of a claim has been recovered—

- (a) any amounts collected by the Commissioners in accordance with article 12(2) of the Decision shall be disregarded; and
- (b) any sums recovered shall be converted into UK sterling at the rate prescribed in regulation 18(2).

### **Contested recovery**

14.—(1) Any action contesting the claim or the instrument permitting its enforcement, which is issued in the Principality of Andorra, shall be notified to the Commissioners in writing by the applicant authority immediately after it has been informed of such action.

(2) As soon as the Commissioners have received the notification referred to in paragraph (1), they shall, pending the decision of the body competent in the matter, suspend any recovery action.

(3) Notwithstanding paragraph (2), the applicant authority may require the Commissioners to recover a contested claim, insofar as the laws of the United Kingdom allow.

(4) If the laws of the United Kingdom do not permit the action requested under paragraph (3), the Commissioners shall so notify the applicant authority, promptly and in any event within one month of the receipt of the notification referred to in paragraph (1).

(5) Any proceedings instituted against the Commissioners in consequence of such recovery action, for reimbursement of the sums recovered or for compensation, shall be notified to the applicant authority in writing by the Commissioners immediately after they have been informed of such action.

(6) The Commissioners shall, as far as possible, involve the applicant authority in the procedures for settling the amount to be reimbursed and the compensation due.

(7) The period of limitation or prescription applicable to any issue arising on the recovery of any claim shall be that applicable under the laws in force in the Principality of Andorra.

(8) For the purposes of paragraphs (5) to (7), any step or action taken by the Commissioners in recovery of a claim in pursuance of a request for assistance shall be deemed to have been taken in the Principality of Andorra, where that step or action would, if it had been taken by the applicant authority, have had the effect of suspending or interrupting the period of limitation or prescription in accordance with the laws in force in the Principality of Andorra.

### **Costs of Recovery**

15.—(1) The Commissioners shall be entitled to recover from the person against whom they recover a claim, and retain, any costs linked to recovery which they incur, in accordance with the law of the United Kingdom applying to corresponding UK claims.

(2) Where the applicant authority and the Commissioners agree that recovery—

- (a) poses a specific problem,
- (b) involves a substantial amount in costs, or
- (c) relates to the fight against organised crime,

the applicant authority and the Commissioners may agree reimbursement arrangements specific to the case in question.

(3) The Principality of Andorra shall remain liable to the United Kingdom for any costs and losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the validity of the instrument issued by the applicant authority are concerned.

#### **Notice of cancellation or payment of a claim**

**16.**—(1) The applicant authority shall immediately notify the Commissioners in writing if payment is made in satisfaction of a claim or if a request is cancelled for any reason.

(2) Upon receipt of such notification, the Commissioners shall cease any recovery action or precautionary measures in relation to that claim.

#### **Adjustment of a claim**

**17.**—(1) Where the amount of a claim which is the subject of a request for recovery or for precautionary measures is amended for any reason, the applicant authority shall immediately so inform the Commissioners, and, if necessary, issue a new instrument.

(2) Where the amendment leads to a reduction in the amount of the claim, the Commissioners shall continue the action which they have undertaken with a view to recovery or to the taking of precautionary measures, but that action shall be limited to the amount still outstanding.

(3) If, at the time the Commissioners are informed of the amendment of the amount of the claim, an amount exceeding the amount still outstanding has already been recovered by them, but the transfer procedure referred to in article 18 of Annex I to the Decision has not yet been initiated, they shall repay the amount overpaid to the person entitled thereto.

(4) Where the amendment leads to an increase in the amount of the claim—

- (a) The Commissioners shall not be required to take any steps in relation to the amount of the increase unless the applicant authority makes it the subject of an additional request for recovery or for the taking of precautionary measures;
- (b) the additional request shall, as far as possible, be dealt with by the Commissioners at the same time as the original request; and
- (c) where, in view of the state of progress of the existing recovery procedure, consolidation of the additional request with the original request is not possible, the Commissioners shall be required to comply with the additional request only if it concerns an amount not less than 1500 Euros or the UK sterling equivalent at the time of request.

(5) In order to convert the amended amount of the claim into UK sterling, the applicant authority shall use the exchange rate used in its original request.

#### **Minimum amount on requests for assistance**

**18.**—(1) A request for assistance shall not be entertained if the claim is 1500 Euros or less or the UK sterling equivalent at the time of request.

(2) For the purposes of these Regulations, the rate of exchange shall be the latest selling rate recorded on the most representative exchange market or markets of the Principality of Andorra, on the date on which the request for assistance is signed.

### **Limitation on requests for assistance**

**19.**—(1) The Commissioners shall not be obliged to grant a request for assistance of any kind if the initial request for information, recovery or precautionary measures concerns claims more than five years old.

(2) For the purposes of paragraph (1), the period of five years beings—

- (a) where the claim and instrument are not contested, on the date the instrument permitting the enforcement was established in accordance with the laws, regulations or administrative practices in force in the Principality of Andorra;
- (b) where the claim or the instrument is contested, on the date upon which it is established that the claim or the instrument may no longer be contested.

### **Communication of documents and information**

**20.**—(1) Documents and information sent to the Commissioners pursuant to the Decision shall only be communicated by them to—

- (a) the person mentioned in the request for assistance;
- (b) those persons and authorities responsible for the recovery of the claims, and solely for that purpose; or
- (c) the judicial authorities dealing with matters concerning the recovery of the claims.

(2) Any information obtained pursuant to a request for assistance may only be used for the purposes of mutual assistance in the recovery of the claim to which the request relates.

(3) The Commissioners shall not provide information of a personal nature unless the applicant authority undertakes to provide equivalent safeguards to those that would be applicable to that information in the United Kingdom.

### **Language requirements**

**21.**—(1) Save where the Commissioners agree otherwise, requests for assistance, the instrument permitting enforcement, and any other relevant documents shall be accompanied by a translation into English.

(2) All information and particulars communicated to an applicant authority by the Commissioners in accordance with the Decision shall be conveyed in English or in such other language as is agreed between the Commissioners and the applicant authority.

### **Notice of refusal of requests for assistance**

**22.**—(1) Where the Commissioners refuse a request for assistance, they shall give written notification to the applicant authority of the reasons for their refusal, as soon as the decision is taken and in any event within three months from the date of the acknowledgement of the receipt of the request.

(2) In the case of a refusal of a request for information, the notification shall specify the relevant provisions of article 7 of the Decision.

(3) Such notification shall also be given to the Commission of the European Communities.

### **Withdrawal of requests**

**23.** An applicant authority may in writing at any time withdraw a request made under these Regulations.

## PART 3

### Interest

#### Interest

24.—(1) A claim shall carry interest in respect of the principal and any penalty claimed, at the rate applicable to a corresponding UK claim under section 197 of the Finance Act 1996<sup>(a)</sup>, from the date on which the instrument permitting the enforcement has been directly recognised, accepted, supplemented or replaced in accordance with article 11 of the Decision until the date of payment.

(2) In this regulation, “the date of recognition” means the earlier of—

- (a) the day following the expiry of three months from the date of receipt by the Commissioners of the request for recovery; and
- (b) the date the instrument permitting enforcement of the foreign claim is recognised by the Commissioners as an instrument authorising enforcement of the claim in the United Kingdom.

(3) Interest is payable under this regulation without any deduction of income tax.

(4) For the purposes of this regulation, where—

- (a) any payment is made by cheque to the Commissioners; and
- (b) the cheque is paid on its first presentation to the banker on whom it is drawn;

the payment shall be treated as made on the day on which the cheque was received by the Commissioners.

(5) Interest payable under this regulation shall be notified in writing to the person subject to enforcement action in respect of the claim and may be recovered from that person as a debt due to the Crown.

## PART 4

### Evidence

#### Evidence

25.—(1) An instrument permitting enforcement of a claim recognised by the Commissioners as an instrument authorising enforcement of the claim in the United Kingdom, together with a certificate of an officer of Revenue and Customs that payment of the claim has not been made to that officer, or, to the best of that officer’s knowledge and belief, to any other such officer, or to any person acting on that officer’s behalf or on behalf of another officer, or to the applicant authority, is sufficient evidence that the sum mentioned in the instrument is unpaid and is due to that authority.

(2) A certificate of an officer of Revenue and Customs that interest is payable under regulation 24 (interest) and that payment of the interest has not been made to that officer, or, to the best of that officer’s knowledge and belief, to any other such officer, or to any person acting on that officer’s behalf or on behalf of another such officer, or to the applicant authority, is sufficient evidence that the interest is unpaid and is due to that authority.

(3) For the purposes of this regulation, any document purporting to be such a certificate as is mentioned in paragraphs (1) and (2) is deemed to be such a certificate unless the contrary is proved.

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(a) 1996 c. 8.

(4) The instrument permitting enforcement of the claim shall continue to have effect notwithstanding that it has been supplemented or replaced by an instrument authorising enforcement in the United Kingdom.

(5) Within three months following the date of receipt of the request for recovery, the Commissioners shall endeavour to complete such acceptance, recognition, supplementing or replacement, except in cases where the claim, or the instrument issued in the Principality of Andorra permitting its enforcement is contested, in which case regulation 14 (contested recovery) applies.

(6) They may not be refused if the instrument permitting enforcement is properly drawn up.

(7) Where the Commissioners exceed the time-limit specified in paragraph (5), they shall inform the applicant authority of their reasons for doing so.

## PART 5

### Enforcement in Scotland

#### Enforcement in Scotland

**26.**—(1) For the purposes of enforcement in Scotland, an original, official or certified copy of a decision on a claim by a court, tribunal or other competent body of the Principality of Andorra shall be of the same force and effect as an extract of a decree of the Court of Session for the payment of money bearing a warrant for execution.

(2) For the purposes of paragraph (1), a “decision on a claim” means a decision on a claim which permits recovery of that claim in the Principality of Andorra.

*Tony Cunningham*

*Dave Watts*

15th March 2010

Two of the Lords Commissioners of Her Majesty’s Treasury

*Bernadette Kenny*

*Dave Hartnett*

15th March 2010

Two of the Commissioners for Her Majesty’s Revenue and Customs

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for mutual assistance between Andorra and the United Kingdom for the recovery of import and export duties due. Such provision was formerly under the Recovery of Duties and Taxes etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) (Regulations 2004 S.I. 2004/674, “the MARD Regulations”). The MARD Regulations are currently being amended and, following their amendment, will no longer be adequate for the purposes of mutual assistance between Andorra and the United Kingdom, hence the need to make these separate Regulations.

Regulation 3 lays down rules on how a request for information should be made by the applicant authority.

Regulation 4 lays down the procedure to be followed upon receipt of a request for information.

Regulation 5 defines the circumstances in which a request for information may be refused.

Regulation 6 lays down rules on how a request for notification (of a claim to a person liable to satisfy it) should be made by the applicant authority.

Regulation 7 lays down the procedure to be followed upon receipt of a request for notification.

Regulation 8 lays down rules on how a request for recovery or for the taking of precautionary measures should be made by the applicant authority.

Regulation 9 lays down the initial procedure to be followed upon receipt of a request for recovery or for the taking of precautionary measures.

Regulation 10 lays down the subsequent procedure to be followed upon receipt of a request for recovery or for the taking of precautionary measures.

Regulation 11 defines the circumstances in which a request for recovery or for the taking of precautionary measures may be refused.

Regulation 12 provides that the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") may allow a debtor time to pay or authorise payment by instalments.

Regulation 13 lays down rules on how monies recovered should be transferred to Andorra.

Regulation 14 lays down the procedure to be adopted when a claim is contested in Andorra.

Regulation 15 makes provision for the costs of recovery.

Regulation 16 lays down the procedure to be followed when a claim becomes void for any reason.

Regulation 17 lays down the procedure to be followed when a claim is adjusted.

Regulation 18 provides that a request for recovery shall not be entertained if the amount in issue is equivalent to 1500 euros or less.

Regulation 19 provides that a request for assistance need not be entertained if the initial request is more than five years old.

Regulation 20 lays down procedures for communications between the applicant authority and the Commissioners.

Regulation 21 provides that relevant documents shall be translated into English and that communications between the Commissioners and the applicant authority shall be in English or in such other language as is agreed between them.

Regulation 22 provides that the Commissioners shall give notice of any refusal of a request for assistance and lays down the relevant procedure.

Regulation 23 provides that the applicant authority may at any time withdraw a request for assistance.

Regulation 24 makes provision relating to the charging of interest on foreign claims.

Regulation 25 lays down rules relating to the evidence required for the enforcement of claims.

Regulation 26 makes provision for enforcement in Scotland.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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**2010 No. 795**

**RECOVERY OF TAXES**

**CUSTOMS AND EXCISE**

The Recovery of Import Duties and Export Duties (Andorra)  
Regulations 2010

£5.50