COUNCIL DECISION

of 7 June 1988

accepting, on behalf of the Community, Annex E.4 to the International Convention on the Simplification and Harmonization of Customs Procedures

(88/356/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 43, 113 and 235 thereof,

Having regard to the proposal from the Commission,

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

Whereas, by Decision 75/199/EEC (2), the Community concluded the International Convention on the Simplification and Harmonization of Customs Procedures;

Whereas the acceptance of the Annexes to the International Convention on the Simplification and Harmonization of Customs Procedures effectively contributes to the development and easing of international trade in goods;

Whereas Annex E.4 concerning drawback may be accepted by the Community;

Whereas acceptance should, however, be accompanied by certain reservations to take account of the specific requirements of the customs union and the stage currently reached in the harmonization of customs legislation,

HAS DECIDED AS FOLLOWS:

Article 1

Annex E.4 to the International Convention on the Simplification and Harmonization of Customs Procedures, concerning drawback, is hereby accepted on behalf of the Community, subject to a reservation of a general nature and a reservation with regard to Standard 5.

The text of Annex E.4, together with the reservations, is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to notify the Secretary-General of the Customs Cooperation Council of the acceptance by the Community, subject to the reservations referred to in Article 1, of the Annex referred to in Article 1.

Done at Luxembourg, 7 June 1988.

For the Council

The President

M. BANGEMANN

(1) OJ No C 167, 27. 6. 1988.
(2) OJ No L 100, 21. 4. 1975, p. 1.

ANNEX E. 4

ANNEX CONCERNING DRAWBACK

INTRODUCTION

When imported materials which have borne import duties and taxes are subjected to manufacturing or processing (or, in certain circumstances, repair) and are then exported, they can often be offered for sale in foreign markets at more competitive prices if the import duties and taxes are refunded at exportation. The drawback procedure provides facilities for such a refund.

Since, however, such refunds may encourage the importation of foreign goods for which equivalents are available from domestic sources, some restriction on the granting of such refund may be considered necessary in respect of particular categories of goods or particular processing or manufacturing operations. The extent to which drawback may be granted will have to be specified as necessary by individual countries.

This Annex covers not only the granting of drawback in cases where the goods have undergone processing, manufacture or repair, but also the possibility of granting drawback in cases where goods have been imported and are subsequently re-exported in the same state. The Annex does not cover, however, repayment made on grounds of equity, for example, when goods are returned to the supplier as being not in accordance with contract. Neither does the Annex cover the repayment on exportation of duties and taxes other than import duties and taxes.

DEFINITIONS

For the purposes of this Annex:

(a) the term 'drawback procedure' means the customs procedure which, when goods are exported, provides for a refund (total or partial) to be made in respect of the import duties and taxes charged on the goods, or on materials contained in them or used up in their production;

(b) the term 'drawback' means the amount of import duties and taxes repaid unter the drawback procedure;

(c) the term 'import duties and taxes' means customs duties and all other duties, taxes, fees or other charges which are collected on or in connection with the importation of goods, but not including fees and charges which are limited in amount to the approximate cost of services rendered.

PRINCIPLE

1. *Standard*

The drawback provisions shall be governed by the provisions of this Annex.

SCOPE

2. *Standard*

National legislation shall specify the cases in which drawback may be claimed and the conditions under which it is paid.

Note 1

The cases where drawback may be claimed may be specified by reference to certain goods or classes of goods or to certain uses of goods. Drawback may also be restricted to certain categories of import duties and taxes or to cases where the goods have undergone processing, manufacture or repair or other authorized uses. Drawback in respect of goods used up in the production of exported goods does not normally extend to mere aids to manufacture, such as lubricants, but may apply to waste or loss resulting from such manufacture.

Note 2

Repayments under the drawback procedure are not granted in cases where import duties and taxes have been, or will be, repaid under other provisions.

3. *Recommended practice*

The drawback procedure should also be applied in cases where the goods or materials which have borne import duties and taxes have been replaced by equivalent goods or materials used in the manufacture or production of exported goods.

CONDITIONS TO BE FULFILLED

4. *Standard*

The interested parties shall maintain records or stock accounts enabling the validity of the claim for drawback to be verified.

5. *Standard*

When it is known or anticipated at the time of importation of the goods for home use that drawback will be claimed, the declarant may be required, in order to facilitate a later claim, to state this intention; however, payment of drawback shall not be withheld solely because such a statement has not been made, nor shall exportation be required because of such a statement.

Note

The customs may require that goods on which drawback is to be claimed be segregated from other goods or be processed or manufactured under customs supervision.

DURATION OF STAY OF THE GOODS IN THE CUSTOMS TERRITORY

6. *Standard*

Where a time limit for the exportation of the goods is fixed beyond which they no longer qualify for drawback, due account shall be taken in fixing such limit of the nature of the process or manufacture to which the goods may be subjected, and of the commercial or other factors involved.

7. *Recommended practice*

Where a time limit for the exportation of the goods is fixed, this should, upon request, be extended if the reasons are deemed by the customs authorities to be valid.

DECLARATION ON EXPORTATION AND CLAIM FOR DRAWBACK

8. *Standard*

A declaration of exportation on drawback accompanied by supporting documents shall be lodged at a competent customs office.

9. *Recommended practice*

At the request of the exporter, and for reasons deemed to be valid, the customs authorities should, so far as possible, allow goods for exportation to be examined on private premises, the expenses entailed by such examination being borne by the exporter.

The customs authorities may themselves require goods for exportation to be produced for examination at private premises.

10. *Recommended practice*

Where the exportation of goods under the drawback procedure is controlled through the exporter's records, production of the goods at exportation should normally be dispensed with.

11. *Standard*

The claim for drawback shall contain (or provide in the accompanying documents) such proof as is required to show that the conditions laid down for the payment of drawback have been fulfilled.

Note

The particulars that may be required by the customs authorities for the payment of drawback include the following:

(a) the claimant;

(b) the initial clearance of the goods for home use (for example, the number and date of the goods declaration for home use);

(c) the import duties and taxes paid;

(d) the nature or tariff description, and the quantity of the goods;

(e) the use, process or manufacture to which the goods have been subjected;

(f) details of exportation.

12. *Recommended practice*

Where a time limit is fixed beyond which claims for drawback will not be accepted, provision should be made for its extension for commercial or other reasons deemed by the customs authorities to be valid.

PAYMENT OF DRAWBACK

13. *Standard*

Drawback shall be paid as soon as possible after the claim has been verified.

14. *Recommended practice*

Drawback should also be paid on deposit of the goods in a customs warehouse on condition that they are to be exported subsequently.

15. *Recommended practice*

The customs authorities should, if so requested, pay drawback periodically, on goods exported during a specified period.

INFORMATION CONCERNING DRAWBACK

16. *Standard*

The customs authorities shall ensure that all relevant information regarding the drawback procedure is readily available to any person interested.

Commentaries and reservations to be entered by the Community in respect of Annex E. 4 to the International Convention on the Simplification and Harmonization of Customs Procedures

1. *General Reservation (general remark)*

Community legislation generally covers the provisions of this Annex. However, in the areas not covered by Community legislation, the Member States enter their own reservations, if necessary.

2. *Standard 5*

The declaration for release for free circulation must contain certain details regarding the use of the inward processing relief arrangements-drawback system. Furthermore, use of this system pre-supposes that an inward processing authorization has been issued or, in certain cases, requested before this release for free circulation.