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COUNCIL DIRECTIVE

of 4 March 1969

on the harmonisation of provisions laid down by law, regulation or administrative action in respect of inward processing

(69/73/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 155 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament[1];

Having regard to the Opinion of the Economic and Social Committee[2];

Whereas the Community is based upon a customs union;

Whereas the establishment of the customs union is governed in the main by Chapter 1 of Title I of Part Two of the Treaty; whereas that Chapter contains a series of specific provisions dealing in particular with the elimination of customs duties between Member States, the establishment and progressive introduction of a Common Customs Tariff and the autonomous alteration or suspension of the duties therein; whereas, while Article 27 provides that Member States shall, before the end of the first stage and in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action in respect of customs matters, that Article does not empower the institutions of the Community to make binding provisions in that field; whereas, however, a thorough examination undertaken jointly with Member States has shown the need in certain fields for decision, by binding acts of the Community, upon measures essential for the introduction of customs legislation, which will ensure uniform application of the Common Customs Tariff;

Whereas, in all Member States, there are provisions laid down by law, regulation or administrative action enabling persons established therein to undertake, without incurring liability for payment of customs duties, of charges having equivalent effect or of agricultural levies, processing work on imported goods which do not satisfy the conditions contained in Articles 9 and 10 of the Treaty, where such goods are intended for export wholly or partly in the form of compensating products;

Whereas certain Member States authorise inward processing traffic, either generally or in individual cases, only after prior survey of the interests of national producers of like or similar goods; whereas other Member States confine themselves to investigating whether the technical conditions under which the proposed processing operations are to take place permit of supervision by the customs authorities to ensure collection of customs duties, charges having equivalent effect and agricultural levies in cases where the compensating products are not exported;

Whereas inward processing traffic directly affects the establishment and operation of the common market; whereas the creation of the customs union involves elimination of the differences existing in this connection, and the discontinuance of such traffic in respect of goods imported into the Community for processing in one Member State in order to be marketed in another Member State;

Whereas common rules applicable to goods of every kind and origin must be laid down in the Member States in respect of inward processing;

Whereas it is important to ensure the uniform application of such common rules and provide for this purpose a Community procedure whereby implementing provisions for those rules may be adopted within a suitable period of time; whereas it is necessary to set up a committee to organise close and effective collaboration in this field between Member States and the Commission;

[1] OJ No C 66, 2.7.1968, p. 12.
[2] OJ No C 75, 29.7.1968, p. 10.

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive determines the rules which must be incorporated in the provisions laid down by law, regulation or administrative action in Member States in respect of inward processing arrangements.

Article 2

1. Inward processing arrangements means the customs arrangements whereby imported goods which do not satisfy the conditions contained in Articles 9 and 10 of the Treaty may be processed without giving rise to liability for payment of customs duties, of charges having equivalent effect or of agricultural levies, where such goods are intended for export outside the customs territory of the Community wholly or partly in the form of compensating products as defined in paragraph 3.

2. Under the terms of this Directive, inward processing arrangements shall apply to goods of whatever kind or origin.

3. Compensating products means products produced by one or more of the following processes:

(a) working of goods, including fitting or assembling them or adjusting them to other goods;

(b) processing of goods;

(c) repair of goods, including restoring them to their original condition and putting them in order;

(d) use of agents such as catalysts, accelerators or retarders of chemical reactions which, being employed in the course of production, disappear entirely or partially when so employed and are thereafter not distinguishable in the goods produced. This subparagraph shall not apply to use of sources of energy, lubricants, equipment or tools.

4. Where paragraph 3 (d) applies, the total or partial disappearance of such agents shall be treated as exportation of compensating products if the goods produced are exported.

Article 3

1. Exemption from customs duties, charges having equivalent effect and agricultural levies shall be granted in accordance with one of the following methods:

(a) the goods shall be subject to a customs procedure under which the payment of customs duties, charges having equivalent effect and agricultural levies is suspended throughout the period for which the goods remain in the customs territory of the Community;

(b) the amount of the customs duties, charges having equivalent effect and agricultural levies applicable to the imported goods shall be deposited, and reimbursement of such duties, charges and levies shall be made on exportation of the compensating products obtained therefrom.

2. The choice of procedure shall be left to the authorities of the Member State in whose territory the proposed processing is to be carried out. (Such authorities are hereinafter called the 'competent authorities'.)

3. Where paragraph 1 (a) of this Article applies, the competent authorities may require security to be given in such form and of such amount as they shall determine.

Article 4

1. The benefit of inward processing arrangements shall be granted only to natural and legal persons established within the Community.

2. The competent authorities shall grant the benefit of these arrangements upon application either automatically in pursuance of provisions having general application or by general or special authorisation.

3. The benefit of the arrangements shall not be granted if it is impossible to identify the imported goods as having been incorporated in the compensating products or, where Article 24 applies, if it is impossible to ascertain whether the conditions contained in that Article have been fulfilled.

Article 5

1. The competent authorities may grant authorisations in all cases where inward processing arrangements would contribute towards providing the most favourable conditions for the export of goods resulting from such processing without conflicting with essential interests of producers within the Community.

2. Operations which contribute towards providing the most favourable conditions for exportation while not conflicting with essential interests of producers within the Community are those operations which are to be effected under inward processing arrangements in relation respectively to goods;

(a) to be processed in performance of a contract to make up work from materials supplied, entered into with a person established in a third country; or

(b) which are not available within the Community because they are not produced there or are produced there but not in sufficient quantities, or because suppliers within the Community are not able to make them available to the user within a suitable time; or

(c) the use of which is requisite in order to ensure that the provisions concerning the protection of industrial and commercial property are observed; or

(d) the use of which is requisite by reason of the fact that those available in the Community cannot be used because, in the light of the particular requirements specified by purchasers of compensating products, they do not have the desired qualities.

3. The competent authorities may also grant authorisations upon being satisfied that goods of similar quality available in the Community cannot be used because their cost is such as to make their proposed commercial use economically impossible.

4. If so requested by the competent authorities, the applicant shall, in manner determined by them, supply the information in his possession to substantiate the existence of the circumstances referred to in paragraphs 2 and 3 of this Article.

Article 6

1. Authorisations granting the benefit of the inward processing arrangements in cases other than those specified in Article 5 (2) and (3) shall be valid for a period not exceeding nine months. The competent authorities shall inform the Commission before the tenth day of each month of the factors which led to the grant of authorisations during the previous month. The Commission shall inform the Member States thereof.

2. Member States may within six weeks of the date on which the information was notified to them by the Commission indicate the cases which appear to them not to comply with the provisions of Article 5 (1), stating the reasons for their opinion.

3. Comments put forward pursuant to paragraph 2 shall be investigated by the Committee provided for in Article 26.

4. If, two months before the end of the nine months period specified in paragraph 1, the Council has not adopted provisions in the matter pursuant to the provisions of Article 29, the competent authorities may, at the request of the party concerned, extend the period of validity of the authorisation.

Article 7

1. Member States shall, at regular intervals, inform the Commission of the factors which led to the grant of authorisations pursuant to Article 5 (2) (b) or (d) or Article 5 (3). This shall apply only in respect of processing operations of sufficient economic importance as to warrant investigation at Community level.

2. Member States shall notify the Commission of applications which they have rejected and which relate to economically significant processing operations.

3. The Commission shall inform the Member States thereof.

Article 8

1. Member States shall communicate to the Commission the provisions having general application referred to in Article 4 (2) and any amendments of those provisions.

2. The Commission shall inform the Member States thereof.

Article 9

The authorisation shall specify the conditions under which processing is to take place, and in particular:

(a) the exemption procedure applicable under Article 3 (1);

(b) the period within which the imported goods are to be dealt with in manner specified in Article 13;

(c) the rate of yield or the method whereby that rate is fixed, as the case may be.

Article 10

The holder of the authorisation shall submit to any measures of inspection or supervision prescribed by the competent authorities.

Article 11

The competent authorities shall fix the rate of yield of the processing by reference to the actual

conditions under which it is effected. The nature, quantity and quality of the various compensating products shall be specified upon fixing that rate.

Article 12

Standard rates of yield which are to be applied to all undertakings engaged in a particular type of processing may, in accordance with the procedure provided for in Article 28, be fixed on the basis of data previously ascertained, where circumstances so warrant and, in particular, as regards processing customarily carried out under clearly defined technical conditions in relation to goods of substantially uniform characteristics resulting in the production of compensating products of uniform quality.

Article 13

Processing under inward processing arrangements shall be considered as completed when, in accordance with the terms of the authorisation, the compensating products are either exported outside the customs territory of the Community or placed in bonded warehouse, in a free zone or under the Community transit procedure (external procedure) with a view to their being subsequently exported.

Article 14

The competent authorities may allow compensating products which are:

(a) placed in bonded warehouse or free zone in the country where the processing or the most recent stage of processing was carried out, or placed under the Community transit procedure (external procedure), to be put on the market in accordance with the provisions of Article 16, if the circumstances so warrant and the duties, charges having equivalent effect or agricultural levies due were ascertained at the time of their entry into bonded warehouse or free zone or at the time of their being placed under the Community transit procedure (external procedure);

(b) placed in bonded warehouse or free zone or placed under the Community transit procedure (external procedure) to be put on the market exceptionally, upon payment of customs duties, charges having equivalent effect or agricultural levies applicable on the date on which they were put on the market, if the amount thereof is at least equal to the amount which would have been charged pursuant to Article 16.

Article 15

1. Where circumstances so warrant and, in particular, in the case of undertakings engaged in continuous production both for the Community market and for external markets, the competent authorities may allow:

(a) compensating products either to be put on the market or to be destroyed;

(b) goods covered by inward processing arrangements to be:

— put on the market or destroyed; or

— dealt with in one of the ways specified in Article 13; or

— put on the market in the conditions prescribed by Article 14; irrespective of whether the goods in question are in the same condition as when they were imported (hereinafter called 'goods in the unaltered state') or have not been processed so extensively as was provided for in the authorisation (hereinafter called 'intermediate products').

2. With regard to processing carried out in the course of continuous production of goods intended both for the Community market and for external markets, the conditions in which the resulting products shall be put on the market shall be determined in accordance with the procedure provided for in Article 28, in particular as regards the maximum quantity that may be put on the market and the payment of any outstanding arrears of interest due.

Article 16

Where goods are put on the market in accordance with the conditions provided for in Article 15 (1) (a) or the first indent of Article 15 (1) (b), the customs duties, charges having equivalent effect or agricultural levies to be charged in respect of compensating products, intermediate products or goods in the unaltered state, shall be those appropriate to the imported goods according to the rate or amount applicable on the date of acceptance of the relevant customs document by the competent authorities and on the basis of the value for customs purposes and other items of charge ascertained or accepted as applicable on that date, without prejudice to any outstanding arrears of interest due.

Article 17

Where part only of the compensating products or of the intermediate products are authorised to be put on

the market, the customs duties, charges having equivalent effect or agricultural levies chargeable under Article 16 shall be calculated:

(a) where only one kind of product is derived from the processing, by reference to the quantity of the product put on the market in proportion to the total quantity of the product made;

(b) where several kinds of product are derived from the processing,

— if it is possible to ascertain the quantity of goods referred to in Article 2 (1) used in each of the various products in the course of their production, by reference to that quantity in proportion to the total quantity of the goods imported;

— otherwise, by reference to the value of each of the various products put on the market in proportion to the total value, assessed as at the same date, of all the goods produced.

Article 18

1. The Council, acting by a qualified majority on a proposal from the Commission, shall prepare a list of compensating products and of intermediate products which when put on the market shall, by way of derogation from the provisions of Articles 16 and 17, be subject to application of customs duties, charges having equivalent effect or agricultural levies appropriate to them and not to those appropriate to imported goods.

2. Where, by virtue of the application of paragraph 1, compensating products or intermediate products are put on the market under exemption from customs duties, charges having equivalent effect or agricultural levies, the value thereof shall be treated as nil for purposes of application of the second indent of Article 17 (b).

Article 19

1. Destruction authorised in accordance with the provisions of Article 15 shall be effected under customs supervision

2. Where destruction deprives compensating products, intermediate products and goods in the unaltered state of all value, no customs duties, charges having equivalent effect or agricultural levies shall be charged.

Otherwise, in so far as products emerging from the destruction are put on the market, the provisions of Articles 16, 17 and 18 shall apply.

3. Destruction due to fortuitous occurences or to *force majeure* and recognised as such by the competent authorities shall be treated as authorised destruction.

Article 20

1. Where, at the time of a supervisory check, the holder of an authorisation is unable to produce to the competent authorities goods which should still be covered by inward processing arrangements in the form of goods in the unaltered state or of intermediate or compensating products, the customs duties, charges having equivalent effect or agricultural levies relating to the missing goods shall be charged, without prejudice to any outstanding arrears of interest due.

2. Paragraph 1 of this Article shall also apply, notwithstanding production of the goods, where the period referred to in Article 9 has expired and the competent authorities do not require them to be re-exported from the customs territory of the Community.

Article 21

The competent authorities may allow ownership of compensating products, intermediate products or goods in the unaltered state to be transferred to a third person subject to his assuming liability for the obligations of the holder of the authorisation.

Article 22

All or part of the compensating products, intermediate products or goods in the unaltered state may be temporarily exported for the purpose of further processing in a third country, if the competent authorities so authorise, subject to the limitations and conditions fixed by the provisions relating to outward processing traffic.

Upon re-importation into the Community, the products derived from such further processing shall, where appropriate, again be covered by inward processing arrangements, in accordance with the terms of exemption fixed prior to the temporary exportation.

Article 23

1. Where all or part of the re-imported products, following their temporary exportation, are put on the market under an authorisation given pursuant to Article 15, this shall give rise to the charging of:

(a) on the one hand, customs duties, charges having equivalent effect and agricultural levies relating

to the compensating products, intermediate products or goods in the unaltered state referred to in Article 22 (1), calculated in accordance with the provisions of Articles 16, 17 and 18;

(b) on the other hand, customs duties, charges having equivalent effect and agricultural levies relating to products re-imported after processing outside the customs territory of the Community, by applying the provisions relating to outward processing traffic.

2. Products which, after their re-importation following temporary exportation, are again covered by inward processing arrangements may be authorised to be put on the market on the same conditions.

Article 24

Where the circumstances so warrant, the competent authorities may, by way of derogation from Article 2 (3), treat as compensating products, products derived from processing of goods of the same kind and quality and having the same technical characteristics as those of the imported goods.

Article 25

In cases coming within Article 24 and where the circumstances so warrant, products treated as compensating products may, under conditions determined by the competent authorities, be exported prior to the import of goods covered by inward processing arrangements. Any such proposed export shall be treated in the same way as an export within the meaning of Article 2 (1).

Article 26

1. A Committee on Inward Processing (hereinafter called the 'Committee') is hereby set up; it shall be composed of representatives of the Member States; a representative of the Commission shall be Chairman.

2. The Committee shall adopt its own rules of procedure.

Article 27

The Committee may examine any matter concerning the application of this Directive raised by its Chairman either on his own initiative or at the request of the representative of a Member State.

Article 28

1. The provisions required for applying Article 2 (3) and (4), Articles 9, 10, 12, 13 and 14, 15 (2), 16 and 17, 19 (3), 21, 22, 24 and 25 shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3 of this Article.

2. The representative of the Commission shall submit to the Committee a draft of the provisions to be adopted. The Committee shall deliver its Opinion on the draft within a time limit set by the Chairman having regard to the urgency of the matter. Opinions shall be delivered by a majority of twelve votes, the votes of the Member States being weighted as provided in Article 148 (2) of the Treaty. The Chairman shall not vote.

3. (a) The Commission shall adopt the provisions envisaged where they are in accordance with the Opinion of the Committee.

(b) Where the provisions envisaged are not in accordance with the Opinion of the Committee, or if no Opinion is delivered, the Commission shall without delay propose to the Council the provisions to be adopted. The Council shall act by a qualified majority.

(c) If within three months of the proposal being submitted to it, the Council has not acted, the proposed provisions shall be adopted by the Commission.

Article 29

The provisions required for the application of Articles 5 and 6 shall be adopted by the Council acting on a qualified majority on a proposal from the Commission.

Article 30

Member States shall lay down such provisions of law, regulation or administrative action as may be necessary to enable the competent authorities to apply the measures provided for in the provisions adopted in pursuance of Articles 28 and 29 with effect from the date of their implementation as fixed by those provisions.

Article 31

1. Member States shall communicate to the Commission statistical information relating to the whole of the processing operations carried out in their territory with effect from 1 October 1969. The Commission shall inform Member States accordingly.

2. The information provided, as required by paragraph 1, shall be comprehensive. It shall comprise two statements. The first statement, using Common Customs Tariff heading numbers, shall specify the quantity and value for customs purposes of goods imported under inward processing arrangements, after deduction of such quantities as have been put on the market or have been destroyed under customs supervision as provided for in this Directive. The second statement, using Common Customs Tariff heading numbers, shall specify the quantity and value of compensating products exported from the customs territory of the Community.

Information whose disclosure might prejudice industrial or commercial secrets may be given in a separate statement.

Article 32

The information and communications provided for in this Directive, other than those referred to in Article 36, shall be treated as confidential.

Article 33

Authorisations issued before 1 October 1969 shall remain valid for the period in respect of which they were issued but for not more than one year from the said date.

Article 34

The Member States shall bring into force, not later than 1 October 1969, the measures required to comply with this Directive.

Article 35

In so far as the provisions to be adopted pursuant to Articles 12, 15 (2) and 18 have not yet been put into effect, the corresponding provisions laid down by law, regulation or administrative action in Member States shall remain applicable unless repealed by such States.

Article 36

Each Member State shall notify the Commission of the provisions it is making in implementation of this Directive.

The Commission shall communicate the information to the other Member States.

Article 37

This Directive is addressed to the Member States.

Done at Brussels, 4 March 1969.

For the Council

The President

G. THORN