COUNCIL DIRECTIVE

of 18 December 1975

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

(76/119/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 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 international division of labour requires recourse to outward processing arrangements, that is the exportation of goods and products with a view to their subsequent re-importation after processing, working or repair;

Whereas a certain number of Community undertakings use foreign industries which have the appropriate technical facilities or the exclusive use of a patent for carrying out processing operations;

Whereas the setting up of the customs union is essentially governed by the provisions of Title I, Chapter 1 of the second part of the Treaty;

Whereas the Commission, by its recommendation of 29 November 1961 (3) addressed to Member States, has laid down the principles to be applied, regarding tariff treatment, to products re-imported after temporary exportation;

Whereas the original Member States, pursuant to the above recommendation, have laid down laws, regulations and administrative provisions to permit persons established therein to export temporarily outside the national customs territory, with a view to their subsequent re-importation after processing, working or repair, goods of all kinds and of all origins fulfilling the conditions of Articles 9 (2) and 10 (1) of the Treaty, and of products which are subject to the inward processing arrangements and which, after that processing, must undergo further processing outside the customs territory of the Community; whereas, however, recourse to the said arrangements is had according to national procedures which are significantly different from one Member State to another;

Whereas this Directive may not prevent application of provisions adopted, particularly in the field of commercial policy, to limit the quantities of imports or exports;

Whereas the customs union set up by the Treaty necessitates the laying down of common rules for temporary exportation for outward processing;

Whereas it is necessary to set up a system of reliefs from import duties applicable to processed products in order to avoid, at the time of their re-importation, the taxation of goods exported from the Community for processing;

Whereas, notwithstanding the tariff protection afforded by the system of taxation envisaged, the implementation of the outward processing arrangements may be refused by the Member States from which the goods are temporarily exported where the essential interests of Community processors are likely to be seriously affected;

Whereas Council Directive 69/73/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing (4), in Articles 22 and 23 thereof, envisaged the possibility that all or part of the compensating products, intermediate products or goods in the unaltered state may be temporarily exported with a view to further processing in a third country; whereas it is desirable to provide for the possibility of laying down, within the framework of this Directive, the specific provisions required for the coordination of the inward and outward processing arrangements;

(1) OJ No C 19, 12. 4. 1973, p. 51.
(2) OJ No C 36, 1. 6. 1973, p. 38.
(3) OJ No 3, 17. 1. 1962, p. 79/62.
(4) OJ No L 58, 8. 3. 1969, p. 1.

Whereas it is essential to guarantee the uniform application of these common rules and for that purpose, to provide for a Community procedure which would enable the rules for such application to be laid down within appropriate time limits;

Whereas, during the period of progressive introduction of the Common Customs Tariff by the new Member States, Irish industry will not be able to cope with the reduction of tariff protection resulting from the total or partial exemption provided for in this Directive in respect of trade with third countries and trade within the Community;

Whereas, therefore, provision should be made for Ireland to bring into force the measures required to comply with this Directive not later than 1 July 1977;

Whereas, pursuant to Article 46 of the Act of Accession [1], the provisions of this Directive relating to trade with third countries shall apply under the same conditions to trade within the Community for such time as customs duties are levied in that trade; whereas, accordingly, these provisions shall apply to trade between, on the one hand, the original Member States of the Community and, on the other hand, Denmark, the United Kingdom and — as from 1 July 1977 at the latest — Ireland, and also between Denmark and the United Kingdom and — as from 1 July 1977 at the latest — between each of these countries and Ireland,

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 outward processing arrangements.

Article 2

1. Without prejudice to Article 46 of the Act of Accession, outward processing arrangements means the customs arrangements whereby goods of whatever kind or origin may be temporarily exported outside the customs territory of the Community with a view to their being re-imported in the form of compensating products, as defined in Article 3, wholly or partly free of import duties, after they have undergone one or more processing operations, as defined in Article 3, outside the customs territory of the Community.

Import duties means customs duties and charges having equivalent effect as well as agricultural levies and other import charges laid down within the framework of the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products.

By way of derogation from the first subparagraph, the Directive shall not apply in the new Member States to customs duties of a fiscal nature or the fiscal element of such duties which are retained in those States, in accordance with the provisions of Article 38 (3) and (4) of the Act of Accession.

2. At the time of their temporary exportation the goods referred to in paragraph 1 must meet the conditions of Articles 9 (2) and 10 (1) of the Treaty, without this temporary exportation having given or giving rise to any remission or repayment of import duties or any Community export refund.

3. Outward processing arrangements shall also apply to goods held in the Community under inward processing arrangements in accordance with Articles 22 and 23 of Directive 69/73/EEC.

4. The measures necessary for the application of paragraph 3 shall be adopted in accordance with the procedure referred to in Article 14.

Article 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.

Article 4

1. The benefit of outward processing arrangements shall be granted only to natural or legal persons established within the Community who have the processes referred to in Article 3 carried out.

2. The competent authorities of the Member State from which the goods are to be temporarily exported shall grant, under the conditions referred to in Article 5, the benefit of these arrangements upon application, before the temporary exportation of the goods, by general or special authorization.

[1] OJ No L 73, 27. 3. 1972, p. 14.

3. The benefit of the outward processing arrangements shall be granted only where it is possible for the competent authorities to identify the exported goods as having been incorporated in the compensating products.

4. The competent authorities may withhold the arrangements from persons not providing the guarantee they consider necessary.

Article 5

The authorization shall specify the circumstances and conditions under which outward processing shall take place, and shall specify:

— the rates of yield taking into account the technical data of the operation or operations to be performed, if these have been established or, if not, the data available in the Community for operations of the same kind;

— the arrangements for identifying the exported goods in the compensating products to be re-imported;

— the time limit for reimportation depending upon the time necessary to perform the outward processing operations.

Article 6

1. The benefit of outward processing arrangements shall not be granted by the competent authorities of the Member State from which the goods are to be temporarily exported if this would be likely to cause serious damage to the essential interests of Community processors.

2. The facts which, pursuant to paragraph 1, led the competent authorities to refuse to authorize the arrangements in the course of any month shall be communicated by the Member States to the Commission before the 10th of the following month.

The Commission shall inform the other Member States. Such information shall be regarded as confidential.

Article 7

1. When the compensating products are re-imported into a Member State other than the one from which the corresponding goods were temporarily exported, the authorization granted by the competent authorities of the Member State from which the goods were temporarily exported shall be recognized by the competent authorities of the Member State into which such compensating products are re-imported.

2. The competent authorities of the re-importing Member State shall be empowered to modify, exceptionally and if the circumstances so warrant, the conditions laid down by the authorities of the exporting Member State when such a modification is necessary to allow the reimportation of compensating products under the outward processing arrangements.

3. The details of the administrative cooperation between the administrations of Member States required for the implementation of paragraph 1 shall be decided upon in accordance with the procedure laid down in Article 14.

Article 8

The competent authorities of both the exporting and the re-importing Member States shall be empowered, in particular:

— to grant an extension of the time limit originally specified;

— to allow the compensating products to be re-imported in several consignments;

— where circumstances so warrant and by way of derogation from Article 2 (1), to authorize the total or partial re-importation of goods still in the same condition as when they were temporarily exported (hereinafter called 'goods in the unaltered state'), or not having been processed to the extent provided for in the authorization (hereinafter called 'intermediate products').

Article 9

1. When the ownership of goods temporarily exported under the outward processing arrangements is transferred, the competent authorities shall allow these arrangements to continue provided that the compensating products, or, where Article 8, third indent is applied, either the goods in the unaltered state or the intermediate products are reimported by the holder of the authorization.

Where appropriate, these products or goods may be re-imported by another person provided that he has the consent of the holder of the first authorization and produces evidence of that consent and provided also that such person fulfils the conditions of that authorization.

2. The details of the administrative cooperation between the administrations of Member States

required for the implementation of paragraph 1 shall be decided upon in accordance with the procedure laid down in Article 14.

Article 10

1. Total or partial relief from import duties provided for in Article 2 shall be granted by deducting from the amount of import duties applicable to the re-imported products, according to the rate or amount applicable on the date of acceptance by the competent authorities of the entry for home use, the amount of import duties that would be applicable to the temporarily exported goods if they were imported into the Community from the country in which they underwent the last processing operation.

However, where the temporarily exported goods could, if imported into the Community, have been classified under a tariff subheading stipulating a special rate by virtue of a particular end use which they could have received, then the above rate shall apply to these goods in so far as they were so used in the country where the processing operation took place.

2. Where compensating products or intermediate products qualify for preferential tariff treatment allowed by the Member State of re-importation in relation to the country in which the products have been obtained, the rate of import duties on the basis of which the amount to be deducted under paragraph 1 is to be calculated shall be that applicable if the temporarily exported goods had fulfilled the conditions under which this preferential tariff treatment may be granted.

3. Where a conventional duty exists and its rate is lower than that of the autonomous duty, the rate to be taken into consideration in calculating the customs duties applicable to the temporarily exported goods shall be that of the conventional duty.

4. Where Article 7 (1) applies and as long as import duties are to be charged in the context of trade between the Member State into which the compensating products are re-imported and the Member State from which the goods are temporarily exported, the amount which may be deductible pursuant to paragraphs 1, 2 and 3 shall be reduced by the amount of the import duties which would have been applicable to the temporarily exported goods, had the latter been imported direct from the Member State from which the goods were temporarily exported for processing.

5. Where products are put into inward processing or are put back into inward processing, the date of acceptance of the relevant entry for processing shall be used for the same purpose as the date of acceptance of the entry for home use as used in paragraph 1.

Article 11

For the implementation of Article 10, the amount of import duties applicable to the temporarily exported goods shall be calculated according to the quantity and nature of those goods at the time of exportation, but on the basis of the value and at the rate applicable to them on the date of acceptance, by the competent authorities, of the customs document relating to their re-importation in the form of compensating products.

Article 12

When it has been duly shown that certain goods have been repaired free of charge, either for contractual or legal reasons arising from the guarantee, or because of the existence of a manufacturing fault, the reimportation of the compensating products shall be admitted free of duty.

This rule shall not apply, however, if, at the time when the aforesaid goods were first taken into home use, this defective state was taken into account in determining their value for customs purposes or in applying the Common Customs Tariff.

Article 13

The Inward Processing Committee, set up by Article 26 of Directive 69/73/EEC, and hereinafter called 'the Committee for Customs Processing Arrangements', may examine any matter relating to the application of this Directive which is brought up by its chairman either on his own initiative or at the request of the representative of a Member State.

Article 14

The necessary provisions for implementing Articles 2 (3), 3 to 5 and 7 to 12 shall be adopted according to the procedure laid down in Article 28 (2) and (3) of Directive 69/73/EEC.

Article 15

1. Member States shall communicate to the Commission statistical information relating to all temporary exports and reimports carried out from

and into their territory under the outward processing arrangements as from the first of the month following the implementation of the Directive. The Commission shall pass this information to Member States.

2. The information provided pursuant to paragraph 1, shall be comprehensive. It shall comprise two statements. The first statement, using Common Customs Tariff heading numbers or statistical headings, shall specify the quantity and value of goods temporarily exported under outward processing arrangements.

The second statement, using Common Customs Tariff heading numbers or statistical headings, shall specify the countries where the processing operations took place and the quantity and value for customs purposes of the compensating products re-imported, and shall show whether the goods are being re-imported into the Member State from which they were temporarily exported or re-imported into a Member State other than that from which they were temporarily exported.

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

Article 16

1. Member States shall bring into force the laws, regulations and administrative provisions needed in order to comply with this Directive within six months of its notification.

Ireland, however, shall bring these provisions into force not later than 1 July 1977.

2. Member States shall communicate to the Commission the provisions which they adopt in order to implement this Directive. The Commission shall inform the other Member States thereof.

Article 17

This Directive is addressed to the Member States.

Done at Brussels, 18 December 1975.

For the Council

The President

M. TOROS