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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 636/82

of 16 March 1982

establishing economic outward processing arrangements applicable to certain textile and clothing products reimported into the Community after working or processing in certain third countries

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the arrangements for importations into the Community in the textile and clothing sector from certain third countries include specific measures applicable to products resulting from outward processing operations;

Whereas, in the absence of Community rules setting out the conditions which must be fulfilled by products intended to benefit from the said specific measures, these conditions are at present governed by varying provisions peculiar to certain Member States or even non-existent in other Member States;

Whereas it is, in consequence, necessary to establish Community arrangements laying down these conditions, uniformly applicable in all the Member States and replacing the existing national arrangements;

Whereas Council Directive 76/119/EEC of 18 December 1975 on the harmonization of provisions laid down by law, regulation or administrative action in respect of outward processing [1] provides for the granting, subject to certain conditions, of a more favourable tariff treatment to products reimported after processing outside the Community; whereas that Directive does not, however, establish rules for outward processing traffic from the point of view of commercial policy;

Whereas the policy followed by the Community is intended in particular to enable the textile and clothing industry to adapt to the conditions of international competition; whereas these new outward processing arrangements must fit in with efforts to increase the competitiveness of Community industry and must therefore not only be reserved for that industry but also be granted only to undertakings which make in the Community products at the same stage of manufacture as those which are intended to be reimported after outward processing, without prejudice however to the rights of persons who do not fulfil the conditions of this Regulation to whom derogations may be granted up to the total quantities imported under specific arrangements during one of the two years preceding the entry into force of this Regulation, for products which are not different in character and use;

Whereas the quantities of products reimported into the Community by each manufacturer should not exceed a set level which takes account not only of the quantities available under the import arrangement established with regard to the product and third country concerned, but also of an objective of the manufacturer to maintain production within the Community of articles at the same stage of manufacture;

Whereas provision should be made that the goods temporarily exported under these arrangements must be of Community origin;

Whereas the benefit of these arrangements, which imply a guarantee that products may be reimported following outward processing operations, must be accorded within the framework of specific measures of commercial policy reserved for outward processing traffic;

Whereas it is necessary to ensure the uniform application of the new arrangements and, to that end, to establish a Community procedure for their administration,

[1] OJ No L 24, 30. 1. 1976, p. 58.

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the conditions for the application of economic outward processing arrangements (hereinafter referred to as 'the arrangements') to textile products and clothing listed in Chapters 50 to 62 of the Common Customs Tariff and resulting from outward processing operations.

2. For the purposes of this Regulation 'outward processing operations' (hereinafter referred to as 'processing operations') means the operations which consist in the processing in a third country of goods temporarily exported from the Community for subsequent reimportation in the form of compensating products.

3. The provisions of this Regulation apply to textile products and clothing resulting from processing operations in a third country whenever there are arrangements on import limits or surveillance with regard to imports of textile products and clothing from the said third country and whenever there are specific measures applicable to products resulting from a processing operation in the case of those products and that third country.

4. For the purposes of this Regulation:

(a) 'compensating products' means products resulting from the use of goods which have undergone the processing operations referred to in Article 2 (2) (d);

(b) 'goods' means goods exported from the customs territory of the Community to a third country to undergo these processing operations.

Article 2

1. The benefit of the arrangements shall be accorded only to natural or legal persons established within the Community.

2. Any person referred to in paragraph 1 applying to benefit under the arrangements must fulfil the following conditions:

(a) that person must manufacture for his own account, in his or her factory situated in the Community, products which are similar to and at the same stage of manufacture as the compensating products in respect of which the application for the arrangements is made;

(b) that person may have compensating products manufactured, in a third country, by means of processing operations within the limits of annual quantities fixed by the competent authorities of the Member State where the application is made, and subject to the conditions laid down in Article 3;

(c) the goods which that person exports temporarily for processing operations must be in free circulation within the meaning of Article 9 (2) of the Treaty and of Community origin within the meaning of Regulation (EEC) No 802/68 [1] and its implementing regulations. Derogations from the provisions of this subparagraph may be granted by Member States' authorities only in respect of goods of which Community production is insufficient. Such derogations may not be granted in respect of more than 14 % of the total value of the goods [2] in respect of which the benefit of the arrangements was granted in the Member State concerned during the previous year.

The Member State shall communicate quarterly to the Commission the main aspects of the derogations thus granted, *viz.* the nature, origin and quantities of the goods in question originating outside the Community. The Commission shall communicate this information to the other Member State with a view to an examination by the Committee referred to in Article 12;

(d) the processing operations to be carried out in third countries must not be more extensive than those stipulated for each product in the Annex. The processing operations to be carried out may, however, be less extensive than those stipulated for each product in the Annex.

3. Member States may derogate from the provisions of paragraph 2 (a) in respect of persons not fulfilling the conditions laid down in that paragraph.

Such derogations shall apply only to the amount of the total quantities imported under specific arrangements of the type defined in Article 1 (3) during one of the two years preceding the entry into force of this Regulation, and to products not different in kind or purpose.

Where, following the entry into force of this Regulation, a specific arrangement of a type defined in Article 1 (3) is established for the first time with regard to a country, and replaces for certain quantities the non-specific import limitation arrangement previously applicable to such quantities without, however, giving rise to an overall increase in the import possibilities as a result of the cumulative application of the two arrangements, similar derogations may be applied up to the limit of the quantities of products resulting from processing operations which were previously imported under the non-specific import limitation arrangement.

[1] OJ No L 148, 28. 6. 1968, p. 1.

[2] 'Total value of the goods' means:
— in the case of the goods imported beforehand, their value for customs purposes as defined by Regulation (EEC) No 1224/80 (OJ No L 134, 31. 5. 1980, p. 1);
— in all other cases, the ex-factory price.

The derogations referred to in the preceding subparagraphs shall apply with priority to those persons who have previously benefited from the specific arrangements referred to above. However, where those persons do not use the total quantities to which they are entitled, the remainder of such quantities may be accorded to other persons.

Cases of the application of this paragraph shall be communicated to the Commission, which shall forward them to Member States with a view to annual examination by the Committee referred to in Article 12.

Article 3

The competent authorities of each Member State shall distribute between the beneficiaries of the arrangements referred to in Article 2 the annual quantities of compensating products whose reimportation the Member State concerned is allowed to authorize under the specific import arrangements referred to in Article 1 (3).

Without prejudice to Article 2 (3), this distribution shall be made whilst ensuring that the objective of maintaining the industrial activity of the beneficiary in the Community, as laid down in Article 2 (2) (a), is respected both as regards the nature of the products and their quantities expressed in physical units or added value.

Article 4

1. The competent authorities of the Member State into which the compensating products are to be reimported shall issue a prior authorization to those applicants who meet the conditions laid down in this Regulation.

2. The prior authorization may be issued either globally once per year for all the quantity allocated to the applicant under Article 2 (2) (b) or progressively during the course of the year by successive partial deductions from the quantity allocated until it has been exhausted.

3. The applicant shall submit to the competent authorities the contract concluded with the undertaking responsible for carrying out the processing operations for his account in the third country, or any evidence considered by the said authorities to be equivalent thereto.

Article 5

1. Prior authorization shall be granted only where it is possible for the competent authorities to identify temporarily exported goods in the reimported compensating products.

2. The competent authorities may refuse entitlement under the scheme where they find that they are unable to obtain all the necessary guarantees to enable them to exercise effective control over the observance of the provisions of Article 2.

3. The prior authorization shall lay down the conditions under which the processing operation is to take place; these shall include:

— the quantities of goods to be exported and of products to be reimported, calculated by reference to the rate of yield fixed in the light of the technical data relating to the processing operation or operations to be carried out, if the data have been established or, if not, the data available in the Community for operations of the same kind,

— the procedures for identifying the temporarily exported goods in the compensating products,

— the time limit for reimportation depending upon the time necessary to carry out the processing operation or operations.

4. In administering the granting of authorizations the competent authorities shall take into account the level of employment in the factory or factories of the applicant.

Article 6

The prior authorization issued by the competent authorities shall be submitted to the customs office concerned at the time of temporary exportation for the purposes of accomplishing the customs formalities.

Article 7

Member States shall provide the Commission with statistical information relating to prior authorizations issued each month before the 10th of the following month.

If the Commission so requests the Member States shall notify it of any refusal of prior authorization together with the reasons, relative to the conditions in this Regulation, why such authorization was withheld.

Article 8

1. Without prejudice to the following paragraphs, and provided the conditions laid down in the authorization are complied with and the other customs formalities normally required at the time of importation are observed, the reimportation of the compensating products may not be refused by the Member State that issued the prior authorization for those products.

2. Such products may not be reimported into a Member State other than that in which the prior authorization was issued.

3. When the compensating products are reimported into the Community the person declaring them shall submit to the competent authorities, without prejudice to any other Community rules governing trade with the third country concerned, the prior authorization together with proof that the processing operation has in fact been performed in the third country stated in the prior authorization.

Article 9

The competent authorities of the Member State concerned may, where it is justified by the circumstances :

— grant an extension of the time limit originally fixed for reimportation,

— allow the compensating products to be reimported in several consignments ; where this is done, a note shall be made on the prior authorization as and when each consignment arrives.

The competent authorities of the Member State concerned may also allow the reimportation of the compensating products even if not all the processing operations provided for in the prior authorization have been performed.

Article 10

Member States shall communicate to the Commission figures relating to all reimportations carried out on their territory within the framework of this Regulation. The Commission shall communicate this information to the Member States.

Article 11

The arrangements provided for in this Regulation shall replace all other economic outward processing arrangements currently applied by the Member States in respect of the products referred to in Article 1.

Council Directive 76/119/EEC, as well as provisions taken for its application, shall not be affected.

Article 12

1. A committee on economic outward processing arrangements for textiles (hereinafter called 'the Committee') shall be set up and shall consist of representatives of the Member States, with a representative of the Commission acting as chairman.

The Committee shall draw up its own rules of procedure.

2. The Committee may examine all questions relating to the application of this Regulation referred to it by its chairman either on his own initiative or at the request of a representative of a Member State.

3. The provisions required for the application of this Regulation shall be adopted in accordance with the procedure laid down below :

(a) The representative of the Commission shall submit to the Committee a draft of the provisions to be adopted.

The Committee shall deliver an opinion on the draft within a time limit set by the chairman having regard to the urgency of the matter. Decisions shall be taken by a majority of 45 votes, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty. The chairman shall not vote.

(b) (i) If the proposed provisions are in accordance with the opinion of the Committee, they shall be adopted in a Commission Regulation.

(ii) If the proposed provisions are not in accordance with the opinion of the Committee or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal with regard to the provisions to be adopted. The Council shall act by a qualified majority.

(iii) If, within one month of the proposal being submitted to it, the Council has not acted, the proposed provisions shall be adopted by the Commisssion.

Article 13

This Regulation shall enter into force on 1 September 1982.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 March 1982.

For the Council

The President

P. de KEERSMAEKER

ANNEX

List of maximum processing levels referred to in Article 2 (2) (d)

Compensating products by categories (1)	Maximum processing level
Categories	*Operation*
4, 5, 6, 7, 8, 10, 11, 12, 13, 14 A, 14 B, 15 A, 15 B, 16, 17, 18, 21, 24, 25, 26, 27, 28, 29, 30 A, 30 B, 31, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 87, 91	Processing from woven or knitted fabrics (2)

(1) Categories refer to those listed in Annex I to Council Regulation (EEC) No 3059/78 (OJ No L 365, 27. 12. 1978).

(2) However, the operation whereby fully fashioned knitwear is obtained from yarn may also count as a processing operation within the meaning of this Regulation, provided that the temporary exports of yarn authorized for this purpose by a Member State in any year do not exceed 7 % by weight of the total temporary exports authorized by that Member State in the previous year under specific arrangements of the type referred to in Article 1 (3).

Member States shall inform the Commission of the prior authorizations issued under these provisions indicating the quantities of compensating products to which the authorizations refer. The Commission shall forward this information to the other Member States with a view to an annual examination within the Committee referred to in Article 12.