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COUNCIL REGULATION (EC) No 3036/94

of 8 December 1994

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

(OJ L 322, 15.12.1994, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 135, 6.6.1996, p. 35 (3036/94)

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COUNCIL REGULATION (EC) No 3036/94

of 8 December 1994

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas the import arrangements in the Community for the textile and clothing sectors as regards certain third countries contain specific measures applicable to products resulting from outward processing operations;

Whereas Regulation (EEC) No 636/82 [1] created economic outward processing arrangements applicable to certain textile and clothing products reimported into the Community after working or processing in certain third countries;

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 creation of the Internal Market in 1993 entails an area without frontiers in which, in particular, the free movement of goods will be ensured; whereas this entails, *inter alia,* the abolition of controls at internal frontiers and the elimination of disparities as regards import arrangements, as well as the option of reimporting compensating products into a Member State other than that in which the prior authorization was granted;

Whereas trade in textile and clothing products should be in line with the functioning of the said Internal Market, in particular as regards the application of the economic outward processing arrangements for textiles;

Whereas the earlier regional outward processing quotas have been replaced as from 1 January 1993 by a system of Community quotas not allocated between Member States;

Whereas the competent authorities of Member States should continue to issue prior authorizations to applicants wanting to make use of outward processing, but, in doing so, should communicate to the Commission the quantities requested, in order to verify whether those quantities are available within the total limits established at Community level;

Whereas quantities should be allocated by maximum tranches and the applications for a new tranche should be possible only when the previously allocated tranche has been utilized by at least 50 %;

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[1] OJ No L 76, 20. 3. 1982, p. 1. Regulation as amended by the Act of Accession of Spain and Portugal.

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Whereas the criteria and conditions which Member State operators must observe in order to qualify under these arrangements are not at present applied uniformly throughout the Community;

Whereas, therefore, the rules for implementation of these criteria and conditions have to be harmonized in order to allow access to outward processing under conditions common to the whole Community, especially in respect of the definition of 'beneficiary', of the term 'similar products', the priority for manufacturers maintaining an important production within the Community and the derogation from the rules concerning the origin of the product exported for outward processing;

Whereas the allocation of product quantities to each applicant should take account not only of the quantities available under the import arrangements established with regard to the particular product and third country concerned, but also of the bona fide status of the beneficiary as manufacturer and the efforts of the manufacturer to maintain production and employment within the Community of articles at the same stage of manufacture, while at the same time not reducing the quantities made available to, and used by, past beneficiaries;

Whereas, in keeping with the objectives of this Regulation, it is appropriate that the product quantities allocated should be reviewed at the end of each year in which available quantities for newcomers do not prove sufficient;

Whereas for the purpose of ensuring an efficient and impartial management of the system, the distribution of outward processing quantities which have not been set aside to meet the applications of persons with past performance allocation should be effected on a first-come, first-served basis;

Whereas, in view of Protocol No 1 on Textiles and Clothing Products to the Europe Agreements and the Interim Agreements concluded between the Community and the Czech Republic, the Skovak Republic, Poland, Hungary, Bulgaria and Romania, it is appropriate that the scope of the application of the Regulation be extended to certain liberalized categories of products originating in those countries;

Whereas it is necessary that the list of products to which this Regulation applies should be in conformity with the present classification of textile products (categories) based on the combined Nomenclature;

Whereas this Regulation should not affect reimportations into the Community of products after their working or processing in third countries pursuant to prior authorizations issued before the date of its application;

Whereas an efficient Community administration of the outward processing arrangements requires close cooperation between the Member States and the Commission,

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 63 of the Combined Nomenclature and resulting from outward processing operations.

2. For the purpose of this Regulation 'outward processing operations' (hereinafter referred to as 'processing operations') shall mean 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. Without prejudice to Article 11 (3), the provisions of this Regulation shall 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

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

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

(c) 'total value of the goods' shall mean:

— in the case of the goods imported beforehand, their value for customs purposes as defined by ►C1 Council Regulation (EC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (1) and by its implementing Regulations ◄,

— in all other cases, the ex-factory price;

(d) 'competent authority' shall mean the authority in a Member State which is competent to apply the provisions laid down in this Regulation, in particular the granting of prior authorizations;

(e) 'similar products' are defined as products falling within the same category or within the same group of categories as is listed in Annex I, which may be modified in accordance with the procedure laid down in Article 12.

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, in the Community, products which are similar to and at the same stage of manufacturing as the compensating products in respect of which the application for the arrangement is made, and

— perform in his own factory, within the Community, the main production processes on those products, at least sewing and assembly, or knitting in the case of fully fashioned garments obtained from yarn.

In determining the eligibility of an application under this provision, the competent authorities shall not take into account the design or manufacture of models or samples;

(b) that person may have compensating products manufactured, in a third country, by means of processing within the quantities allocated 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 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (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 for which a prior authorization is requested or in respect of which the benefit of the arrangement was granted

(1) OJ No L 302, 19. 10. 1992, p. 1.

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to the beneficiary during the previous year. In exceptional and economically justified cases the competent authorities, on the basis of a decision taken in accordance with the procedure laid down in Article 12, may agree to a higher percentage of derogation.

Past beneficiaries who benefited in 1994 from a percentage higher than 14 % may continue to do so for the same quantities for a period of three years on the basis of a list to be established by the Commission. Thereafter, such exceptions may be renewed on the basis of a decision taken in accordance with the procedure laid down in Article 12.

The Member State shall communicate quarterly to the Commission the main aspects of the derogations thus granted, namely, the nature, origin and quantities of the goods in question originating outside the Community. The Commission shall communicate this information to the other Member States 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 Annex II. The processing operations to be carried out may, however, be less extensive than those stipulated for each product in Annex II.

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 Regulation (EEC) No 636/82, 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.

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.

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

1. The annual quantities of compensating products whose reimportation may be authorized under the specific import arrangements referred to in Article 1 (3) shall be established at Community level.

2. The competent authorities shall distribute the annual quantities referred to in paragraph 1 amongst the potential beneficiaries as defined in Article 2 on the basis of their applications presented in conformity with Article 4 (2) and only upon confirmation by the Commission that there are still quantities available within the overall Community quota for the entire category and the third country concerned.

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

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4. Each past beneficiary shall be allocated for each category and third country an amount equal to the overall quantity for which he carried out OPT either in 1993 or 1994 for that category and that country.

Beneficiaries shall become eligible for additional allocations for the same category and for the same country in accordance with paragraph 5 only when they have used the quantities mentioned in the previous subparagraph as laid down in the fourth subparagraph of paragraph 5.

In addition, a past beneficiary who chooses not to use the quantities reserved to him under the first subparagraph in respect of a specific category and third country shall become eligible to apply for an equivalent quantity in another category and third country, in accordance with the first come, first served rule referred to in the first subparagraph of paragraph 5. The quantities for which a renunciation has been made shall immediately be added to the quantities to be allocated ►C1 under paragraph 5. ◄

On the accession of a country to the Community, these provisions shall apply to the economic operators of that country who have carried out outward processing operations in one of the two years preceding the accession up to the level of the quantities so carried out.

5. The quantities of compensating products which have not been set aside to fulfil the applications made under paragraph 4 shall be distributed by the Commission on the basis of the notifications received by the Member States and in the chronological order in which these notifications have been received (first come, first served basis).

Allocations shall only be granted to those manufacturers who can prove that in the preceding year they maintained production in the Community. Each of these manufacturers may apply for a total quantity of compensating products with a value of the processing carried out in third countries no higher than 50 % of the value of his Community production.

The value of the Community production of the applicants concerned shall be determined on the basis of all products listed in Annex II that have been manufactured within the Community.

The allocation will be made by maximum amounts per application for each category and for each third country concerned. If a new application is submitted, additional amounts for the same category and for the same third country may only be allocated by the competent authorities to a particular applicant when the amount previously authorized for that applicant has been actually utilized by at least 50 % or at least quantities of goods corresponding to 80 % of the previously authorized amount have been exported.

Each of the manufacturers who has been authorized to carry out outward processing operations under this paragraph over the preceding year shall have quantities of compensating products allocated to him under paragraph 4. Where a manufacturer's Community production has declined due to outward processing operations carried out in the preceding year, these past performance quantities shall be reduced proportionately.

The quantities for each category and each third country which have been allocated shall correspond to the amount of compensating products reimported by the manufacturer during the period referred to in the previous subparagraph.

6. Where beneficiaries do not use the total quantities for which they have received prior authorizations under this Article, the unused quantities shall be re-credited to the Community quota and thereby be made available in accordance with the procedure referred to in paragraph 5.

The applicant shall return, within 15 days of the expiry period, all prior authorizations, unused or partly used, to the competent authorities who delivered that authorization.

For the application of this paragraph, ‘unused quantities’ shall be considered to be those quantities for which prior authorizations have

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been issued but not used within a time limit of six months or nine months in case of extension of the original time limit by the competent authorities (i.e. the temporary export formalities for the entire quantity of raw material indicated in the prior authorization have not been completed). The competent authorities shall indicate to the Commission as quickly as possible the amounts of any unused quantities to be re-credited to the Community quota.

7. At the end of any calendar year in which the available quantities of compensating products prove to be insufficient in relation to applications made under paragraph 5, an examination shall be made, in accordance with the procedure set out in Article 12, as to the extent and the way in which allocations have to be reviewed.

8. Provisions relating to the application of this Article shall be adopted in accordance with the procedures laid down in Article 12.

Article 4

1. The competent authorities shall only issue a prior authorization to those applicants who meet the conditions laid down in this Regulation.

2. 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.

3. The competent authorities of the Member States shall notify the Commission before 15 January each year of the total quantities, per category and third country, which are allocated to beneficiaries under Article 3 (4) during that quota year.

4. From 15 January of each year, requests for prior authorization may be notified to the Commission by the competent authorities and prior authorizations may be issued.

The competent authorities of the Member States, before issuing prior authorizations, shall notify the Commission of the amounts of the requests that they have received. By return, the Commission shall notify its confirmation that the requested amount(s) of quantities are available for reimportation in the chronological order in which the notifications of the Member States have been received (first come, first served basis).

Normally, such notifications shall be communicated electronically within the integrated network set up for this purpose, unless for imperative resons it is necessary to use other means of communication temporarily.

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 operations are 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.

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4. Where the competent authorities establish that the level of employment in the applicant's firm has been significantly reduced due to outward processing operations carried out in any one year, those competent authorities shall similarly reduce the quantities which can be requested under this Regulation by that applicant in the following year.

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

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

Article 8

1. Without prejudice to paragraph 2 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.

2. 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 may, where it is justified by the circumstances:

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

— alllow 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 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

1. 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.

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2. This Regulation shall apply without prejudice to Articles 149 to 159 (outward processing arrangements) of Regulation (EEC) No 2913/92.

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3. For the application of the provisions of Article 2 (3) of Protocol No 1 on Textiles and Clothing Products to the Europe Agreements and the Interim Agreements between the Community and the Czech Republic, the Slovak Republic, Hungary, Poland, Romania and Bulgaria respectively, the products which are listed in Annex II and

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which originate in those countries in accordance with Protocol No 4 on origin to the Europe Agreements with the Community, do not need to be subject to the arrangements or the specific measures referred to in Article 1 (3) or the annual limits referred to in Article 2 (2) (b). Prior authorizations for those categories of products shall be issued by the competent authorities after notification to the Commission of the quantities requested, and provided that the conditions of the Regulation are fulfilled.

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 measures to be adopted. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. ►C1 The opinion shall be delivered by the majority provided for in Article 148 (2) of the Treaty for the adoption of decisions which the Council is called upon to take on a proposal from the Commission, the votes of the representatives of the Member States being weighted as provided for in Article 148 (2) of the Treaty. ◄ The Chairman shall not vote.

(b) (i) The Commission shall adopt the intended measures when they are in accordance with the Committee's opinion.

(ii) Where the intended measures are not in accordance with the opinion of the Committee, or in the absence of any opinion, the Commission shall forthwith submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

(iii) If, on the expiry of one month from the date on which the matter was referred to it, the Council has not adopted any measures, the Commission shall adopt the proposed measures and apply them immediately.

Article 13

This Regulation shall not affect the reimportation into the Community of products after working or processing in third countries on the basis of prior authorizations issued before the entry into force of this Regulation.

Regulation (EEC) No 636/82 shall be repealed with effect from 31 December 1994.

Article 14

This Regulation shall enter into force on 1 January 1995. Article 11 (3) shall apply from 1 January 1994.

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

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ANNEX I

Groups of categories referred to ►C1 in Article 1 (4) (e) ◄

Similar products at the same stage of manufacture are defined as products falling within the same category or within the same group of categories as listed below:

Group 1 (outerwear)

Categories 4, 5, 6, 7, 8, 14, 15, 16, 17, 21, 26, 27, 28, 29, 68, 73, 74, 75, 76, 77, 78, 83, 156, 157, 159, 161.

Group 2 (underwear)

Categories 4, 5, 12, 13, 18, 24, 26, 28, 31, 68, 69, 70, 72, 73, 78, 83, 86, 157, 161.

Group 3 (other products)

Categories 10, 12, 68, 70, 72, 78, 83, 85, 87, 91.

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ANNEX II

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, 12, 13, 14, 15, 16, 17, 18, 21, 24, 26, 27, 28, 29, 31, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 83, 85, 86, 87, 91, 156, 157, 159, 161	Processing from woven or knitted fabrics (2)

(1) Categories refer to those listed in Annex I to Regulation (EEC) No 3030/93 of 12 October 1993 (OJ No L 275, 8. 11. 1993, p. 1) and any amendments thereof.

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

The Commission shall ensure that the limit of 7 % as provided for above will not be exceeded at Community level.

To this end, the provisions of Article 4 shall apply.