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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