COMMISSION OF THE EUROPEAN COMMUNITIES

COM (78) 746 final

Brussels, 11 January 1979

RECOMMENDATION FOR A COUNCIL DECISION authorizing the Commission to negotiate with the EFTA countries in the form of an exchange of letters a simplification and harmonization of the cumulation of origin system, the elimination of outdated transitional provisions concerning origin and the extension of the powers of the Joint Committees to make alterations to the Protocols No 3 annexed to the Agreements between the European Economic Community and the EFTA countries

(Submitted to the Council by the Commission)

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EXPLANATORY NOTE

I. CUMULATION

1. The present EFTA cumulation system

1.1. The purpose of the cumulation system in Protocol No 3 is to exempt EEC and EFTA materials from the requirement of substantial working or processing which is otherwise valid for all imported materials. Thus it provides an incentive to use materials from the partner countries to the agreements.

1.2. The present cumulation systems in Protocol No 3 are of two distinct types, one, provided for in Art.1 (hereinafter referred to as bilateral cumulation), is used when only two countries are involved (the Community being treated as only one country) and, the other, provided for in Art. 2 and 3, being used when three of more countries are concerned (hereinafter referred to as diagonal cumulation), all the countries referred to being partners to one of the free trade agreements and therefore in the free trade zone.

1.3. Bilateral cumulation works by exempting materials originating in Country A from the requirement of sufficient working and processing in Country B when they are used for further processing in Country B into products to be exported to Country A. Originating materials from any other country in the free trade zone are subject to the same processing requirements as materials from third countries.

1.4. Diagonal cumulation is really two distinct systems, one for goods with specific rules (change of tariff heading rule and specific processing rules in lists A and B) and another for goods with percentage rules.

In the first case materials originating in any country (A) in the zone can be used in another country in the zone (B) for further processing into products to be exported to any other country in the zone (C,D, E etc.) without being subject to sufficient working and processing provided that only materials originating in one of the countries of the zone are used in the further processing (subject to a 5% tolerance rule qualified by the stipulation that the additions of this 5% non-originating goods would not have caused origin to have been lost if they had been added in the first country of the zone).

In the case of percentage rules materials originating in any country (A) in the zone can be used in another country in the zone (B) for further processing into products to be exported to any other country in the zone (C,D,E etc.) without being subject to sufficient working and processing provided that non-originating materials used in the further processing in country B are only incorporated to the extent allowed for by applying the percentage rule(s) to the ex-works price of the finished product reduced by the value of the originating materials used. The originating materials are thus kept 'neutral' when calculating if the finished product has acquired origin.

1.5. It should be stressed that bilateral and diagonal cumulation are separate systems and cannot be applied at the same time. Therefore for any one product any one exporter has theoretically 8 different cumulation possibilities to consider e.g. a different bilateral cumulation for each of the partner countries and diagonal cumulation.

1.6. The basic weaknesses in the present system are, firstly its complexity which discourages exporters, especially smaller and medium sized ones, from using it at all, and secondly the different 'quality' of the origin obtained e.g. cumulative origin valid in one trading relationship is not necessarily valid for exports to other trade partners in the zone. Furthermore because of its complexity it is costly to control and administrate.

2. The purpose of cumulation

As stated above the economic and commercial reason for having a cumulation system in the EFTA Agreements is to create a free trade 'zone' based on the 7 Free Trade Agreements and the EFTA Convention where the use of materials and components from partner countries instead of the use of those from third countries is favoured. But it is evident from paragraph 1 above that the complexity of the present system defeats this object. This is especially serious for the Community which is the dominant supplier of materials, parts and components within the 'zone'.

3. Basic objectives to be attained by any simplification

The Commission feels that the following basic objectives can be stated:

1. Any system must be simple to understand and apply.
2. It must be a uniform system that makes no distinction between bilateral and multilateral trade.
3. It must represent an incentive to buy components from each other.
4. It should not depart fundamentally in its economic effects from the present system.

It should be emphasized that the system should be simple not only to facilitate its use by traders but also to make the control of the whole origin system by customs administrations easier and more effective. This aspect should be kept in mind when considering any provisions in the system which tends to make its administration more complex.

4. Commission ideas

In the opinion of the Commission a system based upon the notion that cumulation should be limited to originating materials fulfils without further conditions the objectives listed above. Consequently the Commission suggests the use of a simple multilateral cumulation system based upon the notion that materials, parts and components originating in one of the partner countries to the various agreements may be taken into account for the purpose of cumulation and without any special restrictions going beyond the origin rules for any products.

5. Other ideas

5.1. The EFTA countries proposed in 1975 as a part of their so-called "global proposals" the introduction of "integral" or "full" cumulation which treats the free trade zone consisting of 16 countries as one area for the purpose of applying the origin rules. Thus there is no provision that intermediary products (materials) should be originating. The Commission cannot accept this proposal.

The main objective against the introduction of such a system (which exists in certain other preferential agreements of the Community) being that it does not fulfil objective 3.4 above, namely that it should not depart fundamentally from the present system with regard to its economic effects. Furthermore certain administrative difficulties follow from such a system because of the need to report all processing which might assist in obtaining origin for finished products.

5.2. One Member State has suggested a system which to a large extent is identical to the Commission's suggestion is so far as it is based upon the basic notion in the present system that only materials originating in one of the partners to the Agreements should be taken into account for the purpose of cumulation. Nevertheless there is a marginal difference because this Member State wants to maintain the difference in the treatment of products subject to percentage rules which exist in the present system.

Thus materials originating in the country of export and of destination should be counted as 100% originating for the purpose of calculating if the finished product has acquired origin while materials originating in other partners are kept "neutral" (outside) the calculation.

The very serious drawback of such a system is that it maintains 7 different cumulation systems and complexity is the main difficulty in the present system.

5.3. The justifications for maintaining such a very complex system is that a system allowing 100% counting of origin tends to be over-liberal in that it permits originating partially-processed goods to pass between two partners to the Agreements without limit, acquiring an increasing and unjustifiable amount of non-originating content at each stage of processing by this "ping-pong" traffic.

5.4. Based on the experience acquired since the Agreements came into force in 1973 the Commission is convinced that no risk which can justify special and complicated provisions in the system, exists because the rules contested above (the counting of originating materials as 100% originating) has been applied since 1973 in the Community and the individual EFTA countries, in bilateral trade between the Community and each EFTA country and between the EFTA countries in their bilateral trade.

It is furthermore known that cumulation in bilateral trade is far more important than the so-called diagonal cumulation which is the only part of the system where the restrictions apply. Even then in five years of operation of the present origin system not a single case has come to light where it has been claimed that the counting of originating materials as 100% originating has led to abuses.

5.5. The reason why the risk of allowing too high non-originating content through the use of originating materials counted as 100% originating has never materialized is probably that origin considerations are only one of a series of factors industry has to take into account when planning how to manufacture a product. Market requirements, technical specifications, quality, prices etc., have equal importance and establishment of a manufacturing operation based more or less exclusively of origin considerations is neither practically possible nor an option which is economically worthwhile.

5.6. In fact the main beneficiary of a new unified and simple cumulation system will probably be the Community as supplier of parts and components to be incorporated into products traded among the EFTA countries where until now only the diagonal cumulation system has been applicable as the Community is the dominant supplier of materials, parts and components in the most important sector (machinery, transport and electrical equipment) where percentage rules apply.

6. Conclusions

In the view of the Commission the conclusion to be drawn must be that it is not justified to include into the cumulation system any special restrictions concerning percentage rule products.

The best solution is a simple multilateral cumulation system based upon the notion that materials, parts and components originating in one of the partner countries to the various agreements may be taken into account for the purpose of cumulation and without any special restrictions going beyond the origin rules for any products.

This system has the advantage of being the most simple,treating materials originating in the country of export and destination as well as in the other countries of the zone alike and providing the maximum incentive to use each others materials, parts and components, this being of special interest to the Community as by far the most important supplier of materials, parts and components.

This proposal would also have the advantage of maintaining within the cumulation system the basic principle of separate, but linked, Agreements, because only materials originating in one of the partners to one of the Agreements are entitled to be used in the cumulation system.

The Annex contains a draft which the Commission would take as the basis for negotiations for Articles 1,2,3 and 9,(2),(3) and (4).

II. Elimination of outdated Articles

The Commission furthermore suggests that some Articles which are out of date should be deleted to avoid misunderstandings among users. These Articles are the following:

Article 18

This Article states that the rules enter into force on 1 April 1973.

Article 21

This Article deals with goods in transit on that date.

Article 24 (2)

This paragraph requires the added value added in different parts of the Community or the EFTA countries to be shown on the EUR 1 movement certificates when appropriate. There is no longer any need for this.

Article 25 (4)

This paragraph allows the adoption of transitional provisions so that duty can be levied on that part of a product that is not entitled to a full reduction of the duties in force as that part of the product if sent direct would not have been entitled to a full reduction. This provision is no longer needed.

III. Extension of the powers of the Joint Committee

The powers of the Joint Committees to change the Protocol No 3 are at present limited to changes in administrative arrangements and the rules of origin proper - that is Lists A and B. This restriction is not to be found in any later Agreements and is unnecessary and a hindrance to useful modification taking into account the experience acquired in applying present provisions.

ANNEX

Article 1

1. For the purposes of implementing the Agreement the following products shall be considered to be products originating in the Community if they also satisfy Article 3 of this Protocol ;

a) products wholly produced in the Community within the meaning of Article 4 of this Protocol ;

b) products incorporating materials which have not been wholly produced in the Community within the meaning of Article 4 of this Protocol, provided that

i) such materials have undergone sufficient working or processing in the Community within the meaning of Article 5 of this Protocol, or

ii) such materials originate in Sweden within the meaning of this Protocol or in Austira, Finland, Iceland, Norway, Portugal or Switzerland in application of the Protocols or the Annex on origin in force in trade between these six countries or trade between them and the Community or Sweden, insofar as the rules in these Protocols or that Annex are identical to those in this Protocol.

c) products which are considered as having Community origin by virtue of Article 3 of any of the Protocols or the Annex mentioned in b (ii) above.

2. For the purposes of implementing the Agreement the following products shall be considered to be products originating in Sweden if they also satisfy Article 3 of this Protocol ;

a) products wholly produced in Sweden within the meaning of Article 4 of this Protocol ;

b) products incorporating materials which have not been wholly produced in Sweden within the meaning of Article 4 of this Protocol provided that

.../...

i) such materials have undergone sufficient working or processing in Sweden within the meaning of Article 5 of this Protocol, or

ii) such materials originate, in the Community within the meaning of this Protocol or in Austria, Finland, Iceland, Norway, Portugal or Switzerland in application of the Protocols or the Annex on origin in force in trade between these six countries or trade between them and Sweden or the Community, insofar as the rules in these Protocols or that Annex are identical to those in this Protocol.

c) products which are considered as having Swedish origin by virtue of Article 3 of any of the Protocols or the Annex mentioned in b (ii) above.

Article 2

The products in List C shall be temporarily excluded from the scope of this Protocol.

Article 3

1. A product obtained in the Community under the conditions of Article 1(1)(b)(ii) shall be regarded as originating in the Community if the

i) ex-works price of the products obtained (less internal taxes refunded or refundable on exportation)

less

ii) the customs value at the time of importation of the total of all the materials incorporated originating in Sweden or the countries mentioned in Article 1(1)(b)(ii) or (2)(b)(ii),

is higher than the value either taken in total or taken individually of the materials of (ii) above originating in any of those countries.

If this is not the case the product obtained shall be regarded as originating in the country in which the value of the materials of (ii) above is the highest.

2. A product obtained in Sweden under the conditions of Article 1(2)(b)(ii) shall be regarded as originating in Sweden if the

i) ex-works price of the products obtained (less internal taxes refunded or refundable on exportation)

less

ii) the customs value at the time of importation of the total of all the materials incorporated originating in the Community or in the countries mentioned in Article 1(1)(b)(ii) or (2)(b)(ii),

is higher than the value either taken in total or taken individually of the materials of (ii) above originating in any of those countries.

If this is not the case the products obtained shall be regarded as originating in the country in which the value of the materials of (ii) above is the highest.

Article 5

1. For the purpose of implementing Article 1(1)(b)(i) and (2)(b)(i) the following shall be considered as sufficient working or processing ;

a) working or processing as a result of which the goods obtained receive a classification under a tariff heading other than that covering each of the materials worked or processed, except, however, working or processing specified in List A, where the special provisions of that List apply;

b) working or processing specified in List B.

"Sections", "Chapters" and "tariff headings" shall mean Sections, Chapters and tariff headings in the Customs Cooperation Council Nomenclature for the Classification of Goods in Customs Tariffs.

2. When, for a given product obtained, a percentage rule limits in List A and in List B the value of the materials and parts which can be used, the total value of these materials and parts, whether or not they have changed tariff heading in the course of the working, processing or assembly within the limits and under the conditions laid down in each of those two lists, may not exceed, in relation to the value of the product obtained, the value corresponding either to the common rate, if the rates are identical in both lists, or to the higher of the two if they are different.

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3. For the purpose of implementing Article 1(1)(b)(i) and (2)(b)(i) the following shall still be considered as insufficient working or processing to confer the status of originating product, whether or not there is a change of tariff heading:

a) operations to ensure the preservation of merchandise in good condition during transport and storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts and like operations);

b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making up of sets of articles), washing, painting, cutting up;

c) (i) changes of packing and breaking up and assembly of consignments;
(ii) simple placing in bottles, flasks, bags, cases, boxes, fixing on cards or boards, etc., and all other simple packing operations;

d) affixing marks, labels or other like distinguishing signs on products or their packaging;

e) simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the conditions laid down in this Protocol to enable them to be considered as originating either in the Community or in Sweden;

f) simple assembly of parts of articles to constitute a complete article;

...../...

g) a combination of two or more operations specified in subparagraphs (a) to (f);

h) slaughter of animals.

Article 6

Paragraph (1) change reference in last line from "Article 2 and 3" to "Article 8(5)".

Paragraph (2) delete

Article 9

Paragraph (2) :

"The customs authorities of the Member States of the Community or Sweden shall, subject to the conditions of paragraphs (3) and (4) below, issue EUR 1 certificates if the goods to be exported can be considered as goods originating in the Community, Sweden, Austria, Finland, Iceland, Norway, Portugal or Switzerland within the meaning of this Protocol or any Protocol or Annex containing origin rules identical to those in this Protocol annexed to the Agreements between the Community or Sweden and Austria, Finland, Iceland, Norway, Portugal or Switzerland or between each of these six countries themselves."

Paragraph (3) :

"where Article 1(1)(b)(ii) or (2)(b)(ii) has been applied or where goods are re-exported in the same state an EUR 2 certificate can be issued by the customs authorities of any of the countries concerned only where the goods have either been held before their re-exportation in the same state or undergone working or processing upon presentation of the EUR 1 certificates issued previously."

Paragraph (4):

"An EUR.1 certificate may be issued only where it can serve as the documentary evidence required for the purpose of implementing the preferential treatment provided for in this Agreement or in the Agreements referred to in paragraph 2 above.

The date of issue of the EUR.1 certificate must be indicated in the box on the EUR.1 certificate reserved for customs authorities."

Article 10

Paragraph (6) lines 2 and 3 delete the words:
"the second sub-paragraph of".

Article 13

Paragraph (6) (b) lines 4 and 5 delete the words :
"the second sub-paragraph of".

Article 15

Paragraph (1) line 3 reference to Article 2 should be changed to Article 1.

Article 16

Paragraph (1) lines 5 and 6 delete ", including those issued under Article 9(3) of this Protocol,".

Article 18

Delete

Article 21

Delete

Article 22

Reference to Article 2 in lines 6 and 11 should be changed to Article 9(3).

Article 23

Paragraph (1) penultimate line reference to Article 2 should be changed to Article 1.

Article 24

Paragraph (2) delete

Article 25

Paragraph (1)(a) last line reference to Article 2 should now be to Article 1.

Paragraph (1)(b)(2) penultimate line reference to Article 2 should now be to Article 1.

Paragraph (4) delete

Article 27

1. For the purpose of implementing Article 1(2)(b)(ii) of this Protocol, any product originating in Austria, Finland, Iceland, Norway, Portugal or Switzerland shall be treated as non-originating product during the period or periods in which Sweden applies the rate of duty applicable to third countries or any corresponding safeguard measure to that product in respect of the said country under the provisions governing trade between Sweden and these countries.

2. For the purpose of implementing Article 1(1)(b)(ii) of this Protocol, any product originating in Austria, Finland, Iceland, Norway, Portugal or Switzerland shall be treated as a non-originating product during the period or periods in which the Community applies the rate of duty applicable to third countries under the Agreement concluded by the Community with that country.

Article 28

The Joint Committee may decide to amend the provisions of this Protocol. It shall, in particular, be authorized to take any measures necessary to adapt them to the particular requirements of specific goods or certain forms of transport.

Explanatory Notes

New order.

2 - Articles 1 and 3; line 2 reference to "Article 2" should be to"Article 1".

4 - Articles 1 and 3

6 - Articles 3 and 6

3 - Article 5 - delete present text and replace by:

"Where the product obtained appears in List A, the rule concerned consititutes a criterion additional to that of change of tariff heading for any non-originating part used."

Lists A, B and C

Column 1 heading should be deleted in all cases and replaced by "CCCN heading No.".

Recommendation for a Council Decision authorizing the Commission to negotiate with the EFTA countries in the form of an exchange of letters a simplification and harmonization of the cumulation of origin system, the elimination of outdated transitional provisions concerning origin and the extension of the powers of the Joint Committees to make alterations to the Protocols No 3 annexed to the Agreements between the European Economic Community and the EFTA 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 recommendation from the Commission,

Whereas it is necessary to modify the rules of origin in respect of the cumulation of origin system in the Protocols No 3 annexed to the Agreements between the European Economic Community and Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland in order to simplify and rationalize the rules;

Whereas certain provisions in these Protocols dealing with the entry into force of the rules of origin and the transitional period up to 1 July 1977 should now be deleted;

Whereas it is desirable to grant the Joint Committees powers to change any provision concerning the rules of origin contained in these Protocols,

HAS DECIDED AS FOLLOWS :

Sole Article

The Commission is hereby authorized to negotiate identical agreements in the form of an exchange of letters with the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Portugese Republic, the Kingdom of Sweden and the Swiss Confederation. It shall conduct these negotiations in consultation with the Special Committee provided for in Article 113 and in accordance with the directives contained in the Annex hereto.

Done at Brussels

For the Council

President

ANNEX

CUMULATION

1. The cumulation system in force shall be replaced by one which combines administrative simplicity and identical treatment of products irrespective of their destination in the FTAs and the particular country of origin of the originating parts used in further working or processing.

2. The new cumulation system shall not result in any originating product, which at present achieves originating status by virtue of the cumulation rules present in force, losing that status.

3. The new cumulation system shall be based on the existing principle that only products originating in the FTAs can be taken into consideration for cumulation, while any non-originating components will have to fulfil the normal conditions as laid down in Article 5 of each of the EEC-EFTA Agreements.

OUTDATED PROVISIONS

4. All provisions concerning the entry into force of the rules of origin and transitional provisions that are no longer relevant shall be deleted.

JOINT COMMITTEE

5. Article 28 of the Protocols No 3 shall be amended so as to give the Joint Committees the power to make any amendments.