

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 916 final

Brussels, 20 January 1981.

Proposal for a
COUNCIL REGULATION (EEC)
on inward processing relief arrangements

(submitted to the Council by the Commission)

COM(80) 916 final

EXPLANATORY MEMORANDUM

1. In its multiannual programme for the attainment of the customs union (OJ No. C 84, 31.3.1979, p. 2), the Commission undertook to transform into Regulations certain Directives in the field of "economic" customs procedures. The Commission emphasizes in the programme the need to use binding measures in the establishment of Community customs law and therefore declares itself in favour of Regulations since they provide greater legal security than Directives.

2. In its 1980 programme for the attainment of the customs union (OJ No. C 44, 21.2.1980, p. 3), the Commission took from amongst the important customs procedures, the inward processing relief arrangements as the first procedure on which a proposal for a Regulation would be made to the Council in 1980. Proposals for Regulations on other economic customs procedures will be made during 1981.

3. The principles of Council Directive 69/73/EEC of 4 March 1969 on the harmonisation of provisions laid down by law, regulation or administrative action in respect of inward processing (OJ No. L 58, 8.3.1969, p. 1) have been retained in its transformation into a proposal for a Regulation whilst certain aspects have been gone into in more detail and account has been taken in particular of the extent to which the customs union has been attained.

In this latter respect, it should also be noted that Directive 69/73/EEC limited itself to the tariff aspects of the arrangements, that is to say it provided that goods may be processed without giving rise to liability for payment of customs duties. However, in view of the development of commercial policy at Community level, it is clear that provision should be made for these arrangements to be used to process import goods which are subject to commercial policy measures even if they are not liable to import duties. In effect, the supervision and control measures which exist in the field of inward processing are capable of ensuring the uniform implementation of commercial policy measures throughout the Community.

Proposal for
Council Regulation (EEC)

on inward processing relief arrangements

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, under the international division of labour, many Community undertakings use goods from non-member countries to manufacture products for export;

Whereas, in order to promote such exports, it should be possible to treat such use favourably and provide relief from import duties in such cases where certain economic conditions are fulfilled, provided that this does not conflict with the essential interests of producers within the Community;

Whereas this advantage may be obtained under a set of rules which constitute the inward processing relief arrangements;

Whereas it is appropriate to allow undertakings to complete these arrangements by means other than exportation, including, in exceptional cases, release for free circulation where the circumstances so warrant;

Whereas inward processing relief arrangements are governed at Community level by Council Directive 69/73/EEC of 4 March 1969 on the harmonisation of provisions laid down by law, regulation or administrative action in respect of inward processing arrangements (1), as last amended by the Act of Accession of Greece; whereas the provisions of that Directive concern only the non-levying of import duties; whereas there are no Community provisions concerning the implementation of these arrangements in cases provided for by commercial policy measures in respect of goods which are not subject to customs duties; whereas it is necessary to provide for the implementation of inward processing relief arrangements also in such cases;

(1) OJ No. L 55, 8. 3.1969, p. 1

Whereas the importance of these arrangements in the customs union requires their uniform application in the Community; whereas provision should therefore be made for measures which are directly applicable in the Member States and consequently offer the greatest legal security for the individual; whereas it is appropriate in this Regulation to retain the principles of the said Directive;

Whereas these arrangements constitute an essential instrument of Community commercial policy;

Whereas it is necessary to ensure the uniform implementation of this Regulation and to provide for this purpose a Community procedure whereby implementing measures may be adopted; whereas it is necessary, in certain cases and by the same procedure, to exclude completely or partially the use of inward processing relief arrangements; whereas it is necessary to establish a Committee to organise close and effective collaboration in this field between Member States and the Commission,

HAS ADOPTED THIS REGULATION:

TITLE I

General principles

Article 1

1. This Regulation lays down the rules which govern inward processing relief arrangements.
2. Import goods may be placed under inward processing relief arrangements without giving rise to liability for payment of import duties if, after having undergone the processing operations, are to be exported, wholly or partly, outside the customs territory of the Community in the form of compensating products (identical compensation).
Equivalent goods may be placed under these arrangements as a substitute for the import goods (equivalent compensation). In this case, the compensating products may, subject to certain conditions, be exported before the importation of the import goods (prior exportation).
3. Inward processing relief arrangements shall also be used for the processing of import goods subject to commercial policy measures, even if these goods are not liable to customs duties.
4. Inward processing relief arrangements shall also be used so as to allow export duties not to be charged on the compensating products or on the import goods incorporated in the compensating products.
5. Where the objectives of commercial policy measures so require, provisions to rule out totally or partially the use of inward processing relief arrangements shall be adopted in accordance with the procedure provided for in Article 18.

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Article 2

For the purposes of this Regulation:

- a) "import goods" means goods which are not in free circulation;
- b) "equivalent goods" means goods which are of the same kind and quality and have the same technical characteristics as the import goods;
- c) "processing operations" means one or more of the following operations:
 - the working of goods, including fitting or assembling them or adjusting them to other goods;
 - the processing of goods;
 - the repair of goods, including restoring them to their original condition and putting them in order;
 - the use of goods such as catalysts, accelerators or retarders of chemical reactions (auxiliary materials) with other goods so as to allow or facilitate the production of compensating products, even if they are entirely used up in so doing and are not to be found in those products. This indent shall not apply to the use of lubricants, equipment, tools or sources of energy with the exception of fuels used either for testing engines constructed under inward processing relief arrangements or for the detection of faults in engines to be repaired, or testing them after repair, under such arrangements;
- d) "compensating products" means all products resulting from the processing of goods which have undergone all the processing operations provided for in the authorisation referred to in Article 3;
- e) "intermediate products" means all products which have partially undergone the processing operations provided for in the authorisation referred to in Article 3;
- f) "import duties" means customs duties and charges having equivalent effect, and agricultural levies and other import charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products;

- g) "export duties" means customs duties and charges having equivalent effect, and agricultural levies and other export charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products.
- h) "customs duties" means import duties and export duties as defined in f) and g) above.

TITLE II

Conditions for granting authorisation

Article 3

The use of inward processing relief arrangements shall be conditional on the granting of an authorisation on application by the person who will carry out the processing operations or have them carried out, hereinafter referred to as "the operator".

The operator shall supply any information required by the authority which is competent to grant the authorisation and must substantiate the information, in particular with regard to the conditions referred to in Article 5.

2. The authorisation shall be granted by the authority which is competent for the place where the processing operations are to be carried out. The authorisation shall set out the conditions under which the processing must take place.

Where the processing operations must be carried out successively in several Member States, the authorisation shall be granted under the rules to be determined in accordance with the procedure provided for in Article 18.

Article 4

1. The authorisation referred to in Article 3 shall be granted only to operators established in the Community.
2. However, natural persons who are established outside the Community may be granted an authorisation to undertake processing operations of a non-commercial nature.
3. The competent authority may refuse to grant, or may revoke, an authorisation if it is not satisfied that the operator will respect the provisions of this Regulation and for the conditions of the authorisation or if the operator fails to respect those provisions and/or conditions.

Article 5

1. The competent authority shall grant the authorisation referred to in Article 3 in all the cases where the economic conditions required in order that the inward processing relief arrangements may contribute towards providing the most favourable conditions for the export of compensating products are fulfilled without conflicting with the essential interests of Community producers of goods identical or similar to those intended to be processed. Such conditions are hereinafter referred to as "economic conditions".
2. The economic conditions shall be deemed to be fulfilled when goods identical or similar to those which are intended to be processed
 - a) are not produced in the Community; or
 - b) are not produced in the Community in sufficient quantity; or
 - c) cannot be made available to the operator by producers in the Community within a suitable time; or
 - d) are produced in the Community but cannot be used because their price is such as to make the proposed commercial operation economically impracticable; or

quality or characteristics having regard in particular to the expressly stated requirements of the purchaser of the compensating products; or

- f) are produced in the Community but cannot be used since the compensating products must be obtained from import goods in order to ensure that the provisions concerning the protection of industrial and commercial property are observed.
3. The economic conditions shall also be deemed to be fulfilled where the processing operations involve import goods intended for processing in pursuance of a job-processing contract with a person established outside the Community.
 4. The economic conditions shall also be deemed to be fulfilled in the following cases:
 - a) processing operations for the repair of import goods, including restoring them to their original condition or putting them in order;
 - b) processing operations consisting of the usual forms of handling intended to preserve or improve the presentation or the marketable quality of the import goods.
 5. The economic conditions shall also be deemed to be fulfilled where the import goods are of low value in relation to the total value of goods imported or to be imported during a period of twelve months.

Article 6

1. The operator shall provide a security in order to ensure that any customs duties chargeable will be paid.
2. Provisions will be adopted in accordance with the procedure provided for in Article 18 to dispense with the security in those cases where the solvency of the operator is such that it is reasonable to suppose that all the obligations, which the use of inward processing relief arrangements entails, will be fulfilled.

TITLE III

Stages of inward processing relief arrangements

Article 7

1. The operator shall respect the obligations which result from the implementation of this Regulation and, in particular, shall submit to any measures of supervision or control laid down by the competent authority. The operator shall notify the competent authority of anything occurring in the course of the processing operations which may constitute a change in the circumstances under which he was granted authorization under the arrangements.
2. The processing operations shall be carried out on the operator's premises. However, the competent authority may, on application by the operator, permit the processing operations to be carried out on his behalf, wholly or partly, on other premises provided that the customs supervision or control is not thereby jeopardised.

Article 8

1. The authorisation shall specify the time-limit within which the compensating products must be dealt with in one of the ways referred to in Article 9 (1) and (2)(a). The time-limit fixed shall take into account the period required to complete the processing operations and market the compensating products for export.
2. Specific time-limits may be established for certain categories of processing operations in accordance with the procedure provided for in Article 18.
3. The competent authority may, if necessary, extend the time-limits referred to in paragraphs 1 and 2 on submission by the operator of a duly substantiated request.
4. The time-limits fixed shall run from the date when the goods are placed under inward processing relief arrangements.

Article 9

1. Inward processing relief arrangements shall be completed when the compensating products are exported outside the customs territory of the Community.
2. Inward processing relief arrangements shall also be completed when:
 - a) the compensating products are placed under one of the following customs procedures, subject to their subsequent exportation:
 - customs warehousing
 - free zone procedure
 - temporary importation
 - Community transit (external procedure) or one of the international transit procedures within the meaning of Article 7(1) of Regulation (EEC) No. 222/77 concerning Community transit, for as long as the use of the latter procedures is allowed by Community law;
 - b) the compensating products are the subject of another authorisation for inward processing relief;
 - c) the compensating products are transferred by the operator:
 - to a natural or legal person benefiting under a customs procedure which allows the importation of goods free of import duties provided that the transfer takes place within the limits and under the conditions that apply in the case of direct importation of the goods or products in question;
 - to a natural or legal person benefiting from the application of a reduced customs duty or relief from duty on the basis of the end-use of the goods or products, provided that the transfer takes place within the limits and under the conditions that apply in the case of direct importation of the goods and products in question;or else are entered for this customs procedure or end-use by an operator who fulfills the necessary conditions relating thereto;
 - d) the compensating products are released for free circulation;
 - e) the operator proves to the satisfaction of the competent authority that the non-fulfilment of the obligations of the authorisation referred to in Article 3 was due to the compensating products being totally destroyed or irretrievably lost as a result of the actual nature of the products or of unforeseeable circumstances or force majeure;

- f) the compensating products are destroyed with the prior authorisation and under the control of the competent authority.
3. By way of derogation from the obligation to export provided for in Article 1(2) and Article 9(2)(a), the competent authority shall, where the circumstances so warrant, authorise the release for free circulation or the destruction of the compensating products.
 4. Where the circumstances so warrant, the provisions of paragraphs 1 to 3 shall apply to import goods in the unaltered state and to intermediate products.

Article 10

1. The authorisation shall establish, in accordance with the actual circumstances in which the processing operation is carried out, the quantity or percentage of import goods needed to obtain a compensating product, hereinafter referred to as the "yield", or where necessary the means of determining that yield.
2. Standard yields may be fixed in accordance with the procedure provided for in Article 18, on the basis of data previously ascertained, where circumstances so warrant and, in particular, in the case of processing operations customarily carried out under clearly defined technical conditions involving goods of substantially uniform characteristics and resulting in the production of compensating products of uniform quality.

These yields shall be applied to all undertakings engaged in a particular type of inward processing relief operation.

3. The yield shall be adjusted by the competent authorities if the actual circumstances on the basis of which the yield was established change in the course of the processing operations.

Article 11

1. In the case of release for free circulation provided for in Article 9(3), import duties shall be charged on the basis of the taxation elements appropriate to the import goods at the time when the competent authority accepted the document for placing the goods under inward processing relief arrangements, having regard as necessary, to the yield referred to in Article 10.
2. The provisions of paragraph 1 shall also apply where a customs debt is incurred by the non-fulfilment of one of the obligations of the operator.
3. Provisions concerning the calculation of import duties when only part of the compensating or intermediate products is released for free circulation, will be established in accordance with the procedure provided for in Article 18.
4. In the case of release for free circulation referred to in Article 9(3), the competent authority may, on submission of a duly substantiated request, authorise the charging of import duties on the basis of the taxation elements appropriate to the products released for free circulation. In this case, the amount of duties must be at least equal to that which would have been charged pursuant to paragraphs 1 to 3.
5. In the case of the definitive retention in the customs territory of the Community of goods liable to import duties which result from the destruction provided for in Article 9(2)(e) and (f), import duties shall be charged on the basis of the taxation elements appropriate to those goods at the time of their release for free circulation. This paragraph shall apply equally in the case where compensating products placed under one of the procedures referred to in Article 9(2)(a) are destroyed.

Article 12

1. By way of derogation from the provisions of Article 11(1), in the case of release for free circulation of certain compensating or intermediate products to be determined in accordance with the procedure provided for in Article 18, import duties shall be charged on the basis of the taxation elements appropriate to those products.
2. Duties shall be charged in accordance with paragraph 1 only in respect of that part of the products which corresponds proportionally to the part of the other products which have been dealt with in one of the ways referred to in Article 9(1) and (2)(a) and (b).
3. At the request of the operator, the provisions of Article 11(1) shall apply in place of this Article.

Article 13

1. All or part of the compensating products, intermediate products or import goods may be temporarily exported for the purpose of further processing outside the customs territory of the Community, if the competent authority so authorises, subject to the limitations and conditions fixed by the provisions relating to outward processing traffic.

Upon re-importation into the customs territory of the Community, the products derived from such further processing shall, where appropriate, again be covered by inward processing relief arrangements.

2. When the circumstances so warrant, the competent authorities shall authorise the release for free circulation or the destruction of products reimported after temporary exportation. In this case the following shall be charged:
 - a) the import duties relating to the compensating products, intermediate products or import goods referred to in paragraph 1, calculated in accordance with the provisions of Articles 11 and 12; and
 - b) the import duties relating to the products reimported after processing outside the customs territory of the Community by applying the provisions relating to outward processing relief arrangements.

Article 14

1. In order to ensure that Article 5 is applied correctly and uniformly, the Member States shall notify the Commission of the factors which led to the authorisation of inward processing relief arrangements pursuant to Article 5(2)(a) to (e), or to the rejection of applications; this shall apply only in respect of inward processing relief operations which warrant investigation at Community level on the basis of detailed rules to be drawn up in accordance with the procedure provided for in Article 18.

The Commission shall inform the Member States.

These notifications shall be examined by the Committee referred to in Article 16.

2. Where, in respect of an application for inward processing relief operations, the competent authority considers itself unable to determine, on the basis of the information available, whether the economic conditions are satisfied for the Community as a whole, the Member State concerned shall communicate to the Commission those details of the application which concern the economic conditions.

In such a case, the competent authority may, for reasons duly substantiated by the operator, grant an authorisation for inward processing relief arrangements for a limited period and for a reduced quantity of import goods.

The communication referred to above shall be examined by the Committee referred to in Article 16 before the validity of any authorisation granted expires.

3. The Commission shall take any other measures that might assist the competent authority in granting authorisations, in particular to allow them to take account of the economic conditions.

Article 15

1. The Member States and the Commission will exchange statistical information concerning:
 - a) the importation of goods placed under inward processing relief arrangements;
 - b) the release for free circulation of compensating products, intermediate products and import goods in the unaltered state;
 - c) the exportation of compensating products, intermediate products and import goods in the unaltered state.
2. The provisions for implementing paragraph 1 shall be adopted in accordance with the procedure provided for in Article 18.

TITLE IV

Committee procedure

Article 16

1. A Committee for Customs Procedures with Economic Impact hereinafter called the "Committee", is hereby established; it shall be composed of representatives of the Member States; a representative of the Commission shall be Chairman.
2. The Committee shall adopt its own rules of procedure.

Article 17

The Committee may examine any matter concerning the implementation of this Regulation raised by its Chairman either on his own initiative or at the request of the representative of a Member State.

Article 18

1. The provisions required for the implementation of this Regulation shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3 of this Article.
2. The representative of the Commission shall submit to the Committee a draft of the provisions to be adopted. The Committee shall deliver its Opinion on the draft within a time-limit set by the Chairman having regard to the urgency of the matter. Opinions shall be delivered by a majority of 45 votes, the votes of the Member States being weighted as provided in Article 148(2) of the Treaty. The Chairman shall not vote.
3. (a) The Commission shall adopt the provisions envisaged where they are in accordance with the Opinion of the Committee.
(b) Where the provisions envisaged are not in accordance with the Opinion of the Committee, or if no Opinion is delivered, the Commission shall without delay propose to the Council the provisions to be adopted. The Council shall act by a qualified majority.
(c) If within three months of the proposal being submitted to it, the Council has not acted, the proposed provisions shall be adopted by the Commission.

TITLE V

Transitional and final provisions

Article 19

The transitional measures necessary to facilitate the transition from the provisions in force to this Regulation, in particular if the implementation of the new Regulation on the date planned should meet with significant difficulties in respect of certain goods and/or products, shall be adopted in accordance with the procedure provided for in Article 18.

Article 20

1. This Regulation shall enter into force on 1 July 1982, with the exception of Title IV and Article 19 which shall enter into force on 1 January 1982.
2. The provisions of Directive 69/73/EEC and the directives adopted for its implementation shall be repealed with effect from the days on which the provisions of this Regulation enter into force. Any references to these Directives shall be deemed to refer to this Regulation.
3. Authorisations granted pursuant to provisions made to implement Directive 69/73/EEC before this Regulation enters into force shall be revoked no later than one year after its entry into force if they cannot be retained on the basis of this Regulation.

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

Done at Brussels,

For the Council
The President

