

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(74) 558 final

Brussels, 25 April 1974

RECOMMENDATION

FOR A

COUNCIL DECISION

on the negotiation of an agreement on a draft
annex to the international Convention for the
simplification and harmonisation of customs
procedures on the procedure for the duty-free
replacement of goods

(submitted to the Council by the Commission)

COM(74) 558 final

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Recommendation

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on the negotiation of an agreement on
a draft Annex to the international
Convention for the simplification and
harmonisation of customs procedures on
the duty-free replacement of goods.

EXPLANATORY NOTE

1. Introduction

1.1 The Customs Cooperation Council (C.C.C.) has prepared a draft international Convention for the simplification and harmonisation of customs procedures. With regard to the Community, this Convention has been made the subject of a Recommendation for a Council Decision (doc. COM (73) 460 final of 28 March 1973, R/977/73 (COMER 156) of 12 April 1973, COM (73) 1.240 final of 25 July 1973; T 72/74 (COMER) (ECO) (JUR) of 13 February 1974 and T/115/74 (COMER) (ECO) (JUR) of 5 March 1974).

The Convention opens the possibility, from the time of its signature, of specifying the annex or the annexes which the contracting parties may undertake to apply (Article 11 (4) of the Convention).

Further, for the purposes of voting when required at the C.C.C., each annex is taken as constituting a separate convention (Article 7 of the Convention).

1.2 The Permanent Technical Committee of the C.C.C. has decided to write into its programme of future work the draft annex on the procedure for exportation with entitlement to fresh supplies of raw materials (doc. 20.169 of the C.C.C. dated 6 December 1973).

The Secretariat of the C.C.C. has invited Member States as well as non-Members and international organisations concerned, to submit any observations and suggestions which they may have on this draft.

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1.3 The Commission examined this draft with representatives of Member States at a meeting of the ad hoc Group of the Committee on Inward Processing with a view to arriving at a common stand, which was, conveyed to the Secretariat of the Customs Cooperation Council (c.f. letter No 1228 of 28 January 1974) within the time limit laid down.

1.4 The working Group of the C.C.C. has examined the said draft annex. The revised text of the draft was adopted at the Permanent Technical Committee's 83rd/84th sessions (c.f. doc. 20.400 of C.C.C. dated 1 March 1974). This draft Annex on the duty-free replacement of goods is annexed to this explanatory note. It is now ready for negotiation at the proper level in the C.C.C..

2. The main features of the draft Annex

The draft Annex is based on the following points:

2.1 In most countries, national legislation contains provisions under which goods used to make products for export are not required to bear duties and taxes.

2.2. The drawback procedure (1) and temporary admission for processing (2) allow a refund of, or conditional relief from, import duties and taxes to be granted in respect of foreign goods used to obtain exported products.

In the case of the procedure for duty-free replacement of goods, the technique employed that of exemption from import duties and taxes. This exemption is granted for goods equivalent in quality and quantity to those which were in free circulation and were processed into products exported from the Customs territory.

2.3 Application of this procedure may be made subject to the condition that the importation of goods equivalent to those incorporated in the products previously exported is regarded by the competent authorities as beneficial to the national economy.

2.4 Products manufactured from goods admitted free of import duties and taxes under this procedure may be put on the home market.

(1) doc. COM(73) 460 final of 28 March 1973; R 977/73 (COMER 156) of 12 April 1973

(2) doc. COM(73) 830 final of 30 May 1973.

3. Scope for Community action in the negotiation of the drafts

- 3.1 The main characteristics of this draft give it perforce a bearing on a Customs procedure which ranks among the principal instruments of commercial policy. Consequently, when this procedure is the subject of an international agreement, it becomes both a tariff and commercial agreement which is part of the common commercial policy, by virtue of Article 113 of the EEC Treaty. The nature of Articles 113 and 114 of the EEC Treaty is such that only the Community has the competence to negotiate and conclude these agreements.
- 3.2 Article 113 paragraph 3 of the EEC Treaty provides that if agreements on which it has a bearing need to be negotiated with third countries, the Commission shall submit its recommendations to the Council which shall authorise the opening of the necessary negotiations.
- 3.3 The negotiation of the draft Annex on the duty-free replacement of goods is not acceptable to the Community. Firstly the customs procedure laid down in this draft goes beyond the scope of the Community's inward process procedure (c.f. Council Directive⁽¹⁾ 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). Indeed the procedure ignores three principles which the Commission considers necessary viz,
- exported goods should be produced by the holder of the authorisation;
 - the re-importation of goods by the authorised person;
 - authorisation should be limited to well-founded need.

Thus its scope by no means corresponds to that of prior exportation in the Council Directive referred to above.

In addition there is in practice a risk that the absence of a link between the person (natural or legal) who on the one hand exports and who processes the necessary raw materials into products for exportation and, on the other hand between the exporter of the compensating products and the importer of the duty-free goods would lead to a sort of "bank" of foreign goods able to profit from this duty-free procedure.

(1) O.J. No L 58 of 8 March 1969, p. 1

The introduction "de facto" of such a bank would mean a kind of "clearing" of general counter-balancing, between exportations and importations the principle consequence of which would be that because of the latitude the procedure could provide, tariff protection would be unjustifiably weakened to an inassessable degree. This consideration is of major importance in industrialised countries.

It is accordingly necessary to register a general reserve in respect of the Annex for negotiation.

4. Conclusion

The Commission recommends that the Council, by virtue of Article 113 of the EEC Treaty, should, having regard to Directive (EEC) No 69/73, authorise it to negotiate the draft annex to the international Convention for the simplification and harmonisation of Customs procedures in respect of the procedure for the duty-free replacement of goods.

5. Timetable Annex (c.f. doc. SEC (73) 4766 of 10 December 1973)

I. Title of the Proposal:

Recommendation for a Council Decision on the negotiation of an Agreement on a draft Annex to the international Convention for the simplification and harmonisation of customs procedures on the duty-free replacement of goods.

II. Is there to be a timetable?

Yes

III. What is the time-table?

Date considered suitable by the Commission:

The Customs Cooperation Council has already started work.

IV. Date required for:

A. Opinion of the European Parliament: none

B. Opinion of the Economic and Social Committee: none

C. Council Decision: before 10 June 1974 (C.C.C. meeting from 10 to 14 June 1974)

Recommendation

for a

Council Decision

on the negotiation of an agreement on a draft annex to the international Convention for the simplification and harmonisation of customs procedures on the procedure for the duty-free replacement of goods.

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 of the Commission;

Whereas the conclusion of an agreement on draft annex to the International Convention for the simplification and harmonisation of customs procedures on the procedure for the duty-free replacement of goods can efficiently contribute to the development of international trade, and in particular international commerce;

Whereas the aforesaid agreement has a bearing on the common customs legislation, in particular in the matter of the Common Customs Tariff; whereas it is necessary to have regard to the proper requirements of a Customs Union; whereas it is agreed that the Community shall participate in the negotiation of this agreement;

HAS DECIDED:

Article 1

The Commission is authorised to conduct negotiations with the Customs Co-operation Council in order to conclude an agreement on a draft annex to the international Convention for the simplification and harmonisation of customs procedures on the procedure for the duty-free replacement of goods.

The Commission shall conduct these negotiations in consultation with the Special Committee, as provided for in Article 113 of the Treaty, which shall assist the Commission in that task.

Done at Brussels

For the Council
The President

E.8 - DRAFT ANNEX CONCERNING
THE DUTY-FREE REPLACEMENT OF GOODS

INTRODUCTION

In most countries, national legislation contains provisions under which goods used to make products for export are not required to bear duties and taxes.

The drawback procedure and temporary admission for processing allow a refund of, or conditional relief from, import duties and taxes to be granted in respect of foreign goods used to obtain exported products.

In the case of the procedure of duty-free replacement of goods, the subject of the present Annex, the technique employed is to grant exemption from import duties and taxes for goods equivalent to those which were in free circulation and were processed into products exported from the Customs territory.

However, application of this procedure may be made subject to the condition that the importation of goods equivalent to those incorporated in the products previously exported is regarded by the competent authorities as beneficial to the national economy.

Products manufactured from goods admitted free of import duties and taxes under this procedure may be put on the home market. Should they be exported, the procedure of duty-free replacement of goods could again become applicable.

DEFINITIONS

For the purposes of this Annex :

- (a) the term "procedure of duty-free replacement of goods" means the Customs procedure which permits the importation, free of import duties and taxes, of goods identical in description, quality and technical characteristics with those which were in free circulation and which were processed into products previously exported outright;
- (b) the term "import duties and taxes" means the Customs duties and all other duties, taxes, fees or other charges which are collected on or in connexion with the importation of goods, but not including fees and charges which are limited in amount to the approximate cost of services rendered;
- (c) the term "person" means both natural and legal persons, unless the context otherwise requires.

PRINCIPLE

1.

Standard

The procedure of duty-free replacement of goods shall be governed by the provisions of this Annex.

FIELD OF APPLICATION

2.

Standard

National legislation shall specify the circumstances in which the procedure of duty-free replacement of goods may be granted and shall lay down the requirements which must be met.

Notes

1. The circumstances in which the procedure of duty-free replacement of goods is allowed may be set out in general terms and/or in detail.

2. The granting of this procedure may be made subject to the condition that the importation of goods equivalent to those incorporated in the products previously exported is regarded by the competent authorities as beneficial to the national economy.

3. The benefit of the procedure may be reserved to persons established in the Customs territory.

3.

Standard

At importation, goods equivalent to those which were in free circulation and which were incorporated in the products previously exported in order to obtain duty-free replacements shall be afforded total exemption from import duties and taxes. Such exemption shall not apply to any import duties and/or taxes repaid or remitted on the exportation of the products.

Notes

1. The exemption from import duties and taxes may be granted in respect of raw materials and semi-manufactured products as well as to parts equivalent to those incorporated, without further manufacture, in the products exported.

2. Goods such as catalysts and accelerators or retarders of chemical reactions which, on being used to obtain products for exportation with entitlement to duty-free replacement of goods, disappear entirely or partially during such use without actually

being contained in the products for export, may be treated as goods used to obtain the said products and granted the same exemption from import duties and taxes. However, this exemption does not normally extend to mere aids to manufacture such as lubricants.

4. Recommended Practice

The benefit of the procedure of duty-free replacement of goods should not be withheld solely on the grounds that the products are exported to a specific country.

5. Standard

National legislation shall specify the categories of persons who may receive an authorization for the duty-free replacement of goods.

Note

The holder of an authorization for the duty-free replacement of goods may be the exporter, the manufacturer or the owner of the exported products.

6. Standard

The benefit of the procedure of duty-free replacement of goods shall be granted where it is possible to determine the presence of the goods in the exported products.

Note

In order to determine the presence of the goods in the exported products the Customs authorities may carry out controls during the manufacturing process or may have recourse to the records kept by the manufacturer of the exported products.

10

EXPORTATION OF PRODUCTS WITH ENTITLEMENT TO DUTY-FREE REPLACEMENT
OF GOODS

(a) Formalities prior to the exportation of the products

7. Standard

National legislation shall specify the circumstances in which prior authority required for application of the procedure of duty-free replacement of goods and the authorities empowered to grant such authority.

8. Recommended Practice

Persons who carry on large-scale and continuous operations involving the procedure of duty-free replacement of goods should be granted a general authority covering such operations.

9. Standard

The description, quality, technical characteristics and quantity of the various goods which were in free circulation and were contained in the products exported with entitlement to duty-free replacement of goods shall be determined by the competent authorities on the basis of the actual conditions under which those products were obtained.

10. Recommended Practice

In determining the quantities of the various goods contained in the products for exportation with entitlement to duty-free replacement of goods, the competent authorities should make allowance for losses and irrecoverable waste deriving from the manufacturing process.

11.

Recommended Practice

Where products to be exported with entitlement to duty-free replacement of goods have reasonably constant characteristics and are obtained under clearly defined technical conditions, the competent authorities should establish standard quantity scales for the various goods contained in the exported products.

(b) Declaration for exportation with entitlement to duty-free replacement of goods

12.

Standard

National legislation shall specify the conditions under which products for exportation with entitlement to duty-free replacement of goods shall be produced at the competent Customs office and a Goods declaration (outwards) shall be lodged.

Note

National legislation may provide that the Goods declaration relating to the exportation of the products must contain the particulars necessary to enable the Customs to determine the quantities of the various goods for which exemption from import duties and taxes will be claimed.

13.

Recommended Practice

Where the competent authorities have not been able to give a ruling on an application to replace goods duty-free, the declarant should be authorized to export the products concerned without delay provided that the conditions prescribed are met and without prejudice to the final decision.

14.

Recommended Practice

The national forms used for the exportation of products with entitlement to duty-free replacement of goods should be harmonized with the Goods declaration (outwards).

(c) Verification of products exported with entitlement to duty-free replacement of goods

15.

Recommended Practice

At the request of the declarant, and for reasons which they deem valid, the Customs authorities should, so far as possible, allow products for exportation with entitlement to duty-free replacement of goods to be verified on private premises, the expenses entailed by such verification being borne by the declarant.

(d) Authorized destinations of products exported with entitlement to duty-free replacement of goods

16.

Recommended Practice

Provision should be made to permit products for exportation with entitlement to duty-free replacement of goods to be placed in free ports or free zones.

17.

Recommended Practice

Provision should be made to permit products for exportation with entitlement to duty-free replacement of goods to be placed in a Customs warehouse with a view to subsequent exportation.

(e) Certification of exportation with entitlement to duty-free replacement of goods.

18.

Standard

Where products have been exported with entitlement to duty-free replacement of goods, the Customs authorities shall issue to the declarant a document establishing his entitlement to import, without payment of import duties and taxes, goods equivalent to those which were in free circulation and which were contained in the products in question.

Note

The document issued to the declarant may consist of a copy, duly certified by the Customs, of the declaration for exportation with entitlement to duty-free replacement of goods, or may be made out on an appropriate form.

IMPORTATION OF GOODS

19.

Standard

National legislation shall specify the conditions under which goods which may be admitted free of import duties and taxes under the duty-free replacement of goods procedure shall be produced at the competent Customs office and a Goods declaration shall be lodged.

Note

National legislation may provide that the Goods declaration must contain the particulars necessary for authorizing exemption from import duties and taxes and that the document(s) issued by the Customs authorities must be produced in support of that declaration.

20. Standard

The competent authorities shall fix with due regard to the commercial circumstances the time limit for the importation of goods which may be admitted free of import duties and taxes.

21. Standard

Provision shall be made to permit goods which may be admitted free of import duties and taxes to be imported through a Customs office other than that through which the products were exported.

22. Standard

Provision shall be made to permit goods which may be admitted free of import duties and taxes to be imported in one or more consignments.

23. Standard

Provision shall be made to permit goods covered by several documents establishing entitlement to import replacement goods duty-free to be imported in one consignment.

24. Standard

Provision shall be made to permit goods which may be admitted free of import duties and taxes to be imported from a country other than that to which the products were exported.

25. Recommended Practice

Provision should be made to permit goods which may be admitted free of import duties and taxes to be imported by a person other than the exporter of the products, subject to compliance with the conditions laid down by the Customs authorities.

26.

Recommended Practice

At the request of the declarant, and for reasons deemed to be valid, the Customs authorities should, as far as possible, allow goods which may be admitted free of import duties and taxes to be verified on private premises, the expenses entailed by such verification being borne by the declarant.

27.

Standard

National legislation shall specify the Customs treatment applicable when products which have been exported under the procedure for duty-free replacement of goods are re-imported.

INFORMATION CONCERNING THE PROCEDURE OF DUTY-FREE REPLACEMENT OF GOODS

28.

Standard

The Customs authorities shall ensure that all relevant information regarding the procedure of duty-free replacement of goods is readily available to any person interested.

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