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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 41 final

Brussels, 1 February 1983

Proposal for a
COUNCIL DIRECTIVE

amending Commission Directive 75/349/EEC on detailed rules
concerning equivalent compensation and prior exportation
under inward processing arrangements

(submitted to the Council by the Commission)

COM(83) 41 final

EXPLANATORY MEMORANDUM

1. Council Directive 69/73/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing¹ is designed to make optimum provisions for the exportation of goods obtained from the working or processing of non-Community raw materials or semi-finished products without harming the essential interests of Community producers. The arrangements are designed to allow Community exporters the same competitive conditions that are enjoyed by non-Community exporters, and to enable them to compete with Community products.

Thus, where the unavailability or high cost of certain raw materials or semi-finished goods in the Community could constitute a severe handicap to export-oriented Community processing industries, the Directive offers a solution by allowing firms to import temporarily and work or process in the Community free of customs duties, charges having equivalent effect or agricultural levies products, provided those products are re-exported from the customs territory of the Community after working or processing in the form of "compensating products". The justification for the exemption is that there is no cause to levy what are essentially economic import duties since the non-Community goods actually used in processing do not finally enter into the Community economic channels.

2. The requirement to ensure in every case that the actual goods temporarily imported are re-exported as compensating products might have posed problems for some Community processors, in that firms would have had for example to keep the imported goods physically

¹ OJ L 58, 08.03.1969, p. 1.

separate from Community goods used in the same manufacturing operations, with separate stocks and production lines for each. The requirement to operate such a system regardless of sound business or stock management considerations would have pushed up costs, which in turn would have been passed on in the prices of the compensating export products, thus cancelling out the intended benefits of the system.

In order to avoid imposing such an administrative burden, Article 24 of Directive 69/73/EEC provides that where the circumstances so warrant, the competent authorities may, by way of derogation from the general rule (that the goods imported should be re-exported), treat as compensating products ones derived from processing of goods of the same kind and quality and having the same technical characteristics as those of the imported goods. Thus only where the goods are identical are processing firms exempt from the requirement to keep separate stocks and accounting systems. The eventual integration of non-Community goods into Community economic channels without payment of import duties has no economic significance, since the identical goods have been withdrawn from those channels to be exported in the form of compensating products.

3. Again with a view to taking account of the facts of life in business and industry, Article 25 of Directive 69/73/EEC provides that in cases coming within Article 24 and where the circumstances so warrant, products treated as compensating products may, under conditions determined by the compensating authorities, be exported prior to the import of goods covered by inward processing arrangements.
4. Commission Directive 75/349/EEC¹ laid down the implementing rules for Articles 24 and 25 of the basic Directive. For ease of reference the system described in Article 24 was baptised "equivalent compensation".

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¹OJ L 156, 18.06.1975, p. 25.

However, it should be emphasized that the implementing directive did not - and could not - change the scope of Article 24 of the basic directive. What it did was to enlarge on the criteria already established by stipulating that "compensation goods" (goods substituted for those which have been or are to be imported) must fall within the same tariff heading, be of the same commercial quality and possess the same technical characteristics as the import goods. (Article 2(2) of Directive 75/349/EEC).

Additionally, in order to underline the highly specific nature of the "equivalent compensation" system, and to make it clear that it was only to be used to allow rational stock management, not to get an extra tariff advantage Article 4 of the implementing directive stipulates that use of the system will not be authorized where it would lead to an unjustified advantage in terms of relief from customs duties, charges having equivalent effect, agricultural levies and other charges laid down within the framework of the common agricultural policy or of a specific system applicable under Article 235 of the Treaty to certain goods which result from processing of agricultural products. Article 6 further indicates that use of equivalent compensation may be regarded as justified when the kind and/or condition of compensating products does not allow a distinction to be made as to whether they have been derived from import goods or from compensation goods, a matter which is to be assessed as soon as the products are obtained, and in any case before any blending with other products.

5. Notwithstanding these rules, a number of Member States have authorized the inward processing of wheat, using the equivalent compensation system, for considerable quantities of US or Canadian quality durum wheat, which has been substituted for Community wheat of a different quality, and for common wheat, including the US "Hard Winter" type, which has been substituted for different qualities of Community wheat. According to the statistics, 1,308,818 tonnes of durum wheat was imported into the Community in 1981/82, and 922,842 tonnes (70.5%) of that came in under the inward processing arrangements.

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The figures for common wheat show a rise in the quantity coming in under inward processing from 223,000 tonnes in 1979/80 to 726,000 tonnes in 1980/81.

6. Use of the equivalent compensation system is clearly unjustified in these cases, as the various types of Community durum wheat or common wheat used in obtaining the exported compensating products are not of the same commercial quality and do not have the same technical characteristics as the imported third country wheat. Consequently, the different qualities are not used interchangeably in the processing. As further confirmation of the differences between them, Community and non-Community qualities traded in the Community are not sold on the same terms.

The flouting of Community customs legislation has considerably interfered with the proper operation of the common agricultural policy in this sector.

7. The Commission could not turn a blind eye to such a breach of Community customs law. As soon as it became aware of the scale on which these practices were being carried on, it reminded the Member States, in two telexes, dated 25 November and 12 December 1982, of the correct interpretation of Article 24 of the basic directive and Article 2(2) of Directive 75/349/EEC, and pointed out that it was against Community law to authorize the use of equivalent compensation for Community and non-Community durum and common wheat.

8. On 20 December, no satisfactory assurance having been received that the rules would finally be properly applied, and given a request from two Member States that the illegal practices be stopped and (b) the prospect of continuing uncertainty for Community authorities and users of the system due to the ambivalence of certain Member States' positions, the Commission representative submitted to the Committee on Customs Processing Arrangements, under Article 28 of Directive 69/73/EEC, a draft directive amending Commission

Directive 75/349/EEC of 26 May 1975 on detailed rules concerning equivalent compensation and prior exportation under inward processing arrangements. The Committee voted on the draft (submitted as SUD/1444/82 - Rev. 1 dated 13 December 1982 - RPA No 1208) at the same meeting, on 20 December.

The Committee failed to return an opinion, as it could not muster a qualified majority (Italy, the Netherlands and the United Kingdom were against the draft and the other Member States in favour), so the Commission will have to initiate stage two of the Committee procedure.

There were three^{basic} reasons for the three Member States voting against the proposal : firstly, they felt that further investigation might reveal types of Community wheat identical to certain non-Community types; secondly, they felt that a special implementing directive was needed, rather than an amendment to Directive 75/349/EEC; and thirdly, they did not regard origin as an adequate criterion. The Commission's position, based on the evidence of commercial transactions to date, is that no common or durum wheat imported free of duty under the inward processing arrangements so far has been of the same commercial quality or had the same technical characteristics as the Community common or durum wheat varieties normally used in processing operations in the Community. This finding is sufficient justification to adopt the directive ;

if it can be shown later on that identical qualities do exist, and this affects the practical operation of exporting firms, the matter can be dealt with promptly by the Committee procedure. As regards the use of the origin criterion, the Commission would point out that its purpose is not to determine quality, but it provides the customs authorities with an easy means of identifying non-Community wheat.

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In the light of the foregoing, the Commission accordingly submits to the Council under Article 28(3)(b) of Council Directive 69/73/EEC of 4 March 1969, the annexed proposal for a directive.

Proposal for a
COUNCIL DIRECTIVE
amending Commission Directive 75/349/EEC
on detailed rules concerning equivalent compensation and
prior exportation under inward processing arrangements

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic
Community,

Having regard to Council Directive 69/73/EEC of 4 March 1969
the harmonization of provisions laid down by law, regulation or
administrative action in respect of inward processing⁽¹⁾, as last amended
by the Act of Accession of Greece, and in particular Articles
24 and 28 thereof;

Having regard to the proposal from the Commission;

Whereas in accordance with the provisions of Article 24 of Directive
69/73/EEC the competent authorities may, where the circumstances so
warrant, notwithstanding Article 2(3) of the same Directive, treat as
compensating products, products derived from processing of goods of the
same kind and quality and having the same technical characteristics as
those of the imported goods;

(1) OJ No L 58, 8.3.1969, p. 1

Whereas Directive 75/349/EEC⁽²⁾ has laid down certain provisions necessary for the application of Articles 24 and 25 of Directive 69/73/EEC and under these provisions the compensation goods must fall within the same tariff subheading, be of the same commercial quality and possess the same technical characteristics as import goods;

Whereas, experience has shown that Community common wheats are not of the same commercial quality and do not possess the same technical characteristics as third country common wheats; whereas the same situation applies in respect of durum wheats; whereas, for this reason, products derived from processing of Community wheats cannot be considered as compensating products within the meaning of Article 24 of Directive 69/73/EEC;

Whereas the said provisions have not been applied uniformly throughout the Community in respect of common and durum wheats; whereas steps should therefore be taken to define them in order to ensure that they are correctly and uniformly applied;

Whereas in the absence of an opinion from the Committee on Customs Processing Arrangements the Commission has been unable to adopt the provisions envisaged on this subject pursuant to the procedure laid down in Article 28(3)(a) of Directive 69/73/EEC,

HAS ADOPTED THIS DIRECTIVE:

(2) OJ No L 156, 18.6.1975, p. 25

Article 1

The following paragraph is hereby added to Article 2 of Directive 75/349/EEC:

"3. For the purposes of application of paragraph 2:

- a) common wheats of Community origin falling under subheading 10.01 B I of the Common Customs Tariff are not of the same commercial quality and do not possess the same technical characteristics as common wheats of third country origin falling under the same subheading of the Common Customs Tariff;

- b) durum wheats of Community origin falling under subheading 10.01 B II of the Common Customs Tariff are not of the same commercial quality and do not possess the same technical characteristics as durum wheats of third country origin falling under the same subheading of the Common Customs Tariff."

Article 2

Member States shall lay down the measures necessary to comply with this Directive not later than 1 June 1983.

The Member States shall immediately notify the Commission of the provisions it makes for implementing this Directive.

The Commission shall communicate the information to the other Member States.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President