

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 3 May 1983

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

(83/231/EEC)

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 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing ⁽¹⁾, as last amended by the 1979 Act of Accession, and in particular Articles 24 and 28 thereof,

Having regard to the proposal from the Commission,

Whereas in accordance with Article 24 of Directive 69/73/EEC the competent authorities may, by virtue of an exception to the principle of compensation for identical goods, when the circumstances so justify, consider as compensating products those products resulting from the processing of goods of the same quality and having the same technical characteristics as those of imported goods;

Whereas Directive 75/349/EEC ⁽²⁾ laid down certain provisions necessary for the application of Articles 24 and 25 of Directive 69/73/EEC; whereas 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 the import goods;

Whereas reliable and uniform application in the Community of Articles 24 and 25 of Directive 69/73/EEC would be ensured by fixing, at Community level, criteria allowing the competent authorities to establish with sufficient security the identity of the commercial quality and of the technical characteristics between compensating products and imported goods;

Whereas the commercial quality and technical characteristics of different varieties of common wheats are determined by different factors and notably by the specific weight of the grains, their humidity, their colour, their physical structure and their chemical composition, their percentage of germ, gluten, ash and proteins and the percentage of impurities which they contain; whereas these factors exert a decisive influence on commercial transactions concerning common wheats, as well as on the treatments to which they must be submitted before milling; whereas because of this fact, every quantity of common wheat is traded, stocked and used separately and account is taken of characteristics appropriate to each quality in order to obtain the product required;

Whereas the values of the aforementioned factors are extremely variable from one common wheat to another; whereas these variations are of undeniable importance for the correct and uniform application, to the goods in question, of the equivalent compensation system which is provided for by Directives 69/73/EEC and 75/349/EEC;

Whereas in order to allow the equivalent compensation system to operate as between two common wheats, where the circumstances so justify, the competent authorities may not base this only on the identity

⁽¹⁾ OJ No L 58, 8. 3. 1969, p. 1.

⁽²⁾ OJ No L 156, 18. 6. 1975, p. 25.

of the tariff subheading of the wheats in question but must of necessity take account of the variations of the factors specified above ;

Whereas by reasons of the multiplicity, diversity and variability of the said factors, the means do not yet exist for reaching any conclusion as to the identity of the commercial quality and technical characteristics of common wheat by the application of criteria guaranteeing the reliable and uniform application of the provisions of Directives 69/73/EEC and 75/349/EEC regarding equivalent compensation ; whereas experience no longer allows, at the present time, determination of whether these criteria may be reached ; whereas as a stronger reason, it is no longer possible to translate, at Community level, similar criteria into legal rules ;

Whereas under these conditions, the competent authorities could not authorize equivalent compensation for the common wheats in question, taking account only of the identity of the tariff subheading and not appreciating the identity of the commercial quality and of the technical characteristics ; whereas even to the extent that such an appreciation was made on the basis of laboratory analyses, the results of such analyses were not of a nature guaranteeing the uniform application of the provisions in question ;

Whereas it is therefore the occasion to examine in some detail the applicability of the equivalent compensation system between common wheats harvested in the Community and common wheats harvested in third countries in order to research the possibilities of enacting, at Community level, rules permitting the reliable and uniform application of this system ;

Whereas the situation described above arises equally in respect of durum wheats ;

Whereas it is advisable at this time to specify that the common wheats and durum wheats harvested in the Community may not, in the present circumstances, be considered as compensation goods in the sense of the first indent of Article 2 (1) of Directive 75/349/EEC ;

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 :

Article 1

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

'3. Until the adoption of new provisions, the common wheats falling within subheading 10.01 B I of the Common Customs Tariff harvested in the Community, as well as durum wheats proper to subheading 10.01 B II of the Common Customs Tariff harvested in the Community may not be considered, in the sense of the first subparagraph of paragraph 2, as compensation goods of imported wheat falling within the same subheadings of the Common Customs Tariff and harvested in a third country.'

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 they make 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, 3 May 1983.

For the Council

The President

H.-W. LAUTENSCHLAGER