

COMMISSION

COMMISSION DIRECTIVE

of 26 May 1975

on detailed rules concerning equivalent compensation and prior exportation
under inward processing arrangements

(75/349/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community;

Having regard to the Council Directive of 4 March
1969 ⁽¹⁾ on the harmonization of provisions laid down
by law, regulation or administrative action in respect
of inward processing, as last amended by the Act ⁽²⁾,
annexed to the Treaty ⁽³⁾ on the accession of the new
Member States to the European Economic Commu-
nity and the European Atomic Energy Community,
signed at Brussels on 22 January 1972, and in parti-
cular Article 28 thereof;

Whereas by virtue of Article 24 of the said Directive,
where the circumstances so warrant, the competent
authorities may, by way of derogation from Article
2 (3) of this Directive, treat as compensating products,
products derived from processing goods of the same
kind and quality and having the same technical
characteristics as those of the imported goods (system
of equivalent compensation),

Whereas by virtue of Article 25 of the said Directive,
in cases coming within Article 24 of this Directive,
where the circumstances so warrant, products treated
as compensating products may, under conditions deter-
mined by the competent authorities, be exported prior
to the importation of goods covered by inward
processing arrangements, and any such prior exporta-
tion shall be treated in the same way as an export
within the meaning of Article 2 (1) of the said Direc-
tive;

Whereas the operation of the system of equivalent
compensation may vary from one Member State to
another, and in order to avoid such differences
incompatible with the concept of a customs union it
is desirable to lay down certain measures of implemen-
tation for complementary harmonization in this
sphere;

Whereas the measures provided for in this Directive
are in accordance with the Opinion of the Committee
on Inward Processing,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Products obtained from goods which replace
goods which have been or are to be imported under
inward processing arrangements, in so far as they
satisfy the conditions of Article 2 of this Directive,
shall be treated as compensating products within the
meaning of Articles 24 and 25 of the Council Direc-
tive of 4 March 1969 on the harmonization of provi-
sions laid down by law, regulation or administrative
action in respect of inward processing, hereinafter
called 'the basic Directive'.

2. For the purposes of application of this Directive
goods which replace goods which have been or are to
be imported under inward processing arrangements,
shall be called 'compensation goods', and goods which
they replace shall be called 'import goods'.

3. In this Directive:

- 'equivalent compensation' means the system
provided for in Article 24 of the basic Directive;
- 'prior exportation' means the system provided for
in Article 25 of the basic Directive.

Article 2

1. Compensation goods must either:

- fulfil the conditions of Articles 9 and 10 of the
Treaty in the Member State where equivalent
compensation takes place, or
- be taken into the Community under inward
processing arrangements granted by means of an
authorization other than that governing import
goods.

2. Compensation goods must fall within the same
tariff subheading, be of the same commercial quality
and possess the same technical characteristics as
import goods.

⁽¹⁾ OJ No L 58, 9. 3. 1969, p. 1.

⁽²⁾ OJ No L 73, 26. 3. 1972, p. 14.

⁽³⁾ OJ No L 73, 26. 3. 1972, p. 5.

However, the competent authorities may allow compensation goods, in relation to import goods, to be in the category of intermediate products, as defined in Article 15 (1) (b) of the basic Directive, in so far as compensation goods undergo, at the premises of the holder of the authorization under the arrangements, the essential part of the processing operations for which the system was requested.

Article 3

The competent authorities shall allow equivalent compensation or prior exportation either :

- under the inward processing authorization referred to in Article 4 (2) of the basic Directive, or
- on a later application by the holder of the authorization.

Article 4

The competent authorities shall refuse the benefit of equivalent compensation or prior exportation when the use of these would lead to an unjustified advantage in regard to 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 5

1. Compensation goods by their substitution for import goods shall, for customs purposes, take the same status as the latter, in the same way that import goods on substitution shall, for customs purposes, take the same status as compensation goods.

2. The competent authorities shall determine the time when the substitution is considered as having taken place.

3. Processing of compensation goods shall be carried out under the conditions of and in accordance with the criteria laid down in the decision of the competent authorities referred to in Article 3.

Article 6

Without prejudice to the conditions laid down in Articles 2 and 4, equivalent compensation may be considered as justified by the competent authorities 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.

Article 7

The competent authorities may consider that circumstances warrant recourse to prior exportation in particular when :

- (a) there is the risk of being unable to fulfil stipulated terms of delivery because of the time which it would take to import the goods to be processed and, where appropriate, to obtain compensating products ;
- (b) restrictive measures in respect of compensating products are exported from the country of destination ;
- (c) transport problems could arise (transport strike, boycott, etc.) ;
- (d) import goods are consigned to a firm with a limited export volume in relation to its total output ;
- (e) for seasonal reasons import goods can be supplied only during certain periods.

Article 8

When, as in the second indent of Article 3, prior exportation is specifically requested, the person concerned must make application before the exportation of compensating products and establish, to the satisfaction of the competent authorities, the relationship between the exportation and the corresponding importation transaction.

The request shall specify, in particular :

- the nature, quantity and value of the compensating products in respect of which application for anticipated exportation is made,
- the nature, tariff subheading, commercial quality and quantity of the goods to be subsequently imported.

Article 9

1. The competent authorities shall prescribe the time limit within which the importation of import goods corresponding to a prior exportation of compensating products must take place.

2. Subject to particular provisions adopted within the framework of the common agricultural policy this time limit shall :

- be of three months maximum for goods which are subject to a price-regulating mechanism under the provisions of the abovementioned common agricultural policy,

— be fixed case by case for goods referred to in Article 7 (e) in the light of specific needs, without it exceeding a maximum period of three months for goods referred to in the preceding indent.

3. For all other goods the time limit shall also be fixed case by case in the light of specific needs without it exceeding six months. However this time limit may be extended if the holder of an authorization produces a duly justified request acceptable to the competent authorities, provided that the total period shall not exceed 12 months.

4. These time limits shall be calculated from the date of acceptance by the competent authorities of the export documents for compensating products.

Article 10

In cases where compensating products subject to prior exportation would be liable to an agricultural levy or other taxes under the provisions of the common agricultural policy, or under those of a specific system applicable under Article 235 of the Treaty to certain goods which result from processing of agricultural products, if they were not exported at the termination of an inward processing operation, the competent authorities shall take such measures as are necessary to ensure the recovery of this charge, in the event of the importation of import goods not having been carried out within the prescribed time limit.

Article 11

1. Importation of import goods may be carried out only by the holder of the authorization of prior exportation, or on his behalf.

2. The competent authorities may prescribe in the authorization that the export and import transactions must be carried out at the same customs office.

Article 12

The Member States shall bring into force, not later than 1 January 1976, the measures necessary to comply with this Directive.

Article 13

Authorizations issued before the date provided for in Article 12 must be adjusted to the provisions of this Directive with effect from that date.

Article 14

Each Member State shall notify the Commission of the provisions it makes to implement this Directive.

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

Article 15

This Directive is addressed to the Member States.

Done at Brussels, 26 May 1975.

For the Commission

The President

François-Xavier ORTOLI