

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 259 final

Brussels, 13 July 1993

Proposal for a
COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 636/82 establishing economic outward
processing arrangements applicable to certain textiles and
clothing products reimported into the Community after
working or processing in certain third countries

(presented by the Commission)

EXPLANATORY MEMORANDUM

Council Regulation (EEC) No 636/82 of 16 March 1982⁽¹⁾ created economic outward processing arrangements applicable to certain textiles and clothing products reimported into the Community after working or processing in certain third countries. In the context of the application of these arrangements the annual quantities of compensating products which the beneficiaries of these arrangements have been allowed to reimport, were distributed until the end of 1992 by the competent authorities of each Member State within the limits of the annual quantities of compensating products whose reimportation the Member State concerned was allowed to authorize.

As it has been outlined in the communications of the Commission on the completion of the Internal Market in trade in textile and clothing products (doc. 7006/92), as approved by the Council, the establishment of the Internal Market in 1993 has resulted in the creation of an area without internal frontiers comprising, inter alia, the free movement of goods and the elimination of disparities in import arrangements.

It is therefore necessary to introduce the indispensable modifications to Council Regulation (EEC) No. 636/82 in order to ensure an implementation of the arrangements created by this Regulation at Community level.

In order to achieve this objective, the Commission proposed in January 1993 (COM(93) 10 final) a two-tier approach:

- As a first step, to be introduced by 1 January 1993, the existing national outward processing quotas would be replaced by Community quotas, open to those operators eligible under Council Regulation No 636/82 on a first come, first served basis. The competent authorities in Member States would continue to deliver prior authorizations to applicants. By means of an information system to be established between Member States and the Commission, they have to make sure that the allocated prior authorizations do not exceed the total annual quantities available. It will also be possible to reimport the compensating products in any Member State regardless of which Member State issued the prior authorization.

(1) OJ No L 76, 20.3.1982, p. 1.

- As a second step, to be implemented by the end of 1993 at the latest, the rules for implementation of Council Regulation No 636/82, in particular the admission of beneficiaries, which up to now has not been uniform in the different Member States, would have to be harmonized. Other outstanding issues like the management of the 14% derogation for third countries' fabrics/yarn are also to be addressed.

In the course of the discussion in the 113 Committee of the Commission's proposal for the first step, it appeared that a large majority of Member States was not prepared to adopt the two-tier approach but preferred to proceed with a complete revision of Council Regulation No 636/82 which would encompass all the necessary adaptations in order to ensure an implementation of the arrangements at Community level in accordance with the objectives of the Internal Market.

In order to achieve this objective, the Commission has decided to propose a comprehensive revision of Council Regulation No 636/82 which includes its proposal of January 1993 and addresses in particular the following elements:

- (a) The allocation of quantities available. Under the proposed new system, the allocation for applicants other than operators with past performance rights, would be done on a first come, first served basis, by maximum 'tranches', through the issue of prior authorizations. To this effect an information system will be set up between the Member States and the Commission in order to make sure that the allocated amounts do not exceed the total annual quantities available.
- (b) The concept of beneficiary and the relevant criteria. The criteria for obtaining the benefit of outward processing arrangements are not clearly defined in Council Regulation No 636/82. This has resulted in divergent interpretations and applications in Member States. The present proposal aims at defining more clearly those criteria. At the same time, past performance rights of operators will be preserved. They can, however, be reviewed with regard to those operators who have not been manufacturing in the Community for at least three years, when available quantities for newcomers do not prove sufficient.

- (c) The notion of similar products. Under the existing regulation, operators seeking to obtain a prior authorization must in principle establish that they manufacture similar products. Regulation No 636/82, however, does not contain an operational definition of "similar products". It is therefore proposed to group the different categories of products into three groups of categories and to define similar products as "products falling within the same category or within the same group of categories".

- (d) The link between outward processing and production. The existing link between the benefit of outward processing arrangements and the level of domestic production needs to be more clearly defined. It is proposed, without touching the rights of legitimate past performers, that during the first nine months of each year, prior authorizations would only be granted by Member State authorities to those persons who during the preceding year had maintained a value of production in the Community of at least 50% of their total turnover. During the remaining three months, persons not meeting this condition but who maintain a significant production in the Community would also become eligible for allocation of quantities.

- (e) The 14% derogation. The application by Member States of the derogation which provides that up to 14% of fabrics going into outward processing operations can be of third country origin, if those goods are not sufficiently available within the Community, is not uniform. To eliminate the discrepancies, it is proposed to implement this derogation clause at the level of each individual beneficiary. A higher percentage of derogation would nonetheless be permitted in exceptional and economically justified cases on the basis of a decision taken in accordance with the procedure laid down in Article 12 of the existing Regulation, which governs the applicable rules on the management of the Regulation.

At the same time the proposal covers two issues which need to be addressed:

- (a) a technical adaptation of the list of textile products (categories) to which the Regulation applies in order to take into account modifications in the Combined Nomenclature which occurred since the entry into force of Council Regulation No 636/82;
- (b) inclusion of a provision in order to ensure a uniform application of the tariff exemption accorded to PECO's for reimports of textile/clothing goods after outward processing in those countries.

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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 the import arrangements in the Community for the textile and
clothing sectors as regards certain third countries contain specific
measures applicable to products resulting from outward processing
operations;

Whereas Council Regulation (EEC) No 636/82⁽¹⁾, as amended by the Act of
Accession of Spain and Portugal created economic outward processing
arrangements applicable to certain textile and clothing products reimported
into the Community after working or processing in certain third countries;

Whereas the creation of the Internal Market of 1993 entails an area without
frontiers in which in particular the free movement of goods will be
ensured; whereas this entails, inter alia, the abolition of controls at
internal frontiers and the elimination of disparities as regards import
arrangements, as well as the option of reimporting compensating products
into a Member State other than that in which the prior authorization was
granted;

(1) OJ No L 76, 20.3.1982, p. 1.

Whereas trade in textile and clothing products should be in line with the functioning of the said Internal Market, in particular as regards the application of the economic outward processing arrangements for textiles;

whereas the earlier regional outward processing quotas have been replaced as from 1 January, 1993 by a system of Community quotas not allocated between Member States;

Whereas the competent authorities of Member States should continue to issue prior authorizations to applicants wanting to make use of outward processing, but in doing so should communicate to the Commission the quantities requested in order to verify whether those quantities are available within the total limits established at Community level;

Whereas quantities should be allocated by maximum tranches, and the applications for a new tranche should only be possible when the previously allocated tranche has been utilized by at least 50%;

Whereas the criteria and conditions which Member State operators must observe in order to qualify under these arrangements are not at present applied uniformly throughout the Community;

Whereas, therefore, the rules for implementation of these criteria and conditions have to be harmonized in order to allow access to outward processing under conditions common to the whole Community, especially in respect of the definition "beneficiary", the term of "similar products", the priority for manufacturers maintaining an important production within the Community and the derogation from the rule concerning the origin of the product exported for outward processing;

Whereas the allocation of product quantities to each applicant should take account not only of the quantities available under the import arrangements established with regard to the particular product and third country concerned, but also of the bona fide status of the beneficiary as manufacturer and the efforts of the manufacturer to maintain production and employment within the Community of articles at the same stage of manufacture, while at the same time not reducing the quantities made available to and used by legitimate past beneficiaries;

Whereas in keeping with the objectives of this Regulation it is appropriate that the product quantities allocated to persons who have not manufactured similar products in the Community for more than three years should be reviewed at the end of each year in which available quantities for newcomers do not prove sufficient;

Whereas for the purpose of ensuring an efficient and impartial management of the system, the distribution of outward processing quantities which have not been set aside to meet the applications of persons with past performance rights should be effected on a first-come, first-served basis;

Whereas, in view of Protocol No 1 on Textiles and Clothing products to the Europe Agreements and the Interim Agreements concluded between the Community and the Czech Republic, the Slovak Republic, Poland, Hungary, Bulgaria and Romania, it is appropriate that the scope of the application of the Regulation be extended to certain liberalized categories of products originating in those countries;

Whereas it is necessary that the list of products to which this Regulation applies should be in conformity with the present classification of textile products (categories) based on the Combined Nomenclature;

Whereas the present Regulation should not affect reimportations into the Community of products after their working or processing in third countries pursuant to prior authorizations issued before the date of its application;

Whereas an efficient Community administration of the outward processing arrangements requires close cooperation between the Member States and the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 636/82 is amended as follows:

1. In Article 1(1), the words "50 to 62 of the Common Customs Tariff" are replaced by the words "50 to 63 of the Combined Nomenclature".

2. At the beginning of Article 1(3) the following words are inserted:

"Without prejudice to the third paragraph of Article 11."

3. In Article 1(4) the following subparagraphs are added:

"(c) 'competent authority' means the authority in a Member State which is competent to apply the provisions laid down in the present Regulation, in particular the granting of prior authorizations.

(d) 'similar products' are defined as products falling within the same category or within the same group of categories as is listed in Annex I, which may be modified in accordance with the procedure laid down in Article 12."

4. Article 2(2)(a) is replaced by the following text:

"(a) that person must:

- prove to the competent authority, when applying for his first prior authorization each year, that he has manufactured in the preceding year products which are similar to and at the same stage of manufacture as the compensating products in respect of which the application for the arrangement is made;
- perform, within the Community, the main production processes on those products (cutting, sewing, assembling, or knitting) on his own account, either in his or her own factory, or alternatively, in respect of some but not all of those production processes, in a factory of another manufacturer linked to him by a joint venture, by subcontracting, or by some other form of long-term cooperation contract;
- manufacture in the Community those products for sale on the market."

5. In Article 2(2)(b) the second part of the sentence is replaced by the following text:

"... operations within the quantities allocated by the competent authorities of the Member State where the application is made, and subject to the conditions laid down in Article 3."

6. In Article 2(2)(c) the last sentence of the first subparagraph is replaced by the following text:

"Such derogations may not be granted in respect of more than 14% of the total value of the goods(*) in respect of which the benefit of the arrangement was granted to the beneficiary during the previous year. In exceptional and economically justified cases the competent authorities, on the basis of a decision taken in accordance with the procedure laid down in Article 12, may agree to a higher percentage of derogation.

(*) "Total value of the goods" means:

- in the case of the goods imported beforehand, their value for customs purposes as defined by Regulation (EEC) No 1224/80 (OJ No L 134, 31.5.1980, p. 1);
- in all other cases, the ex-factory price."

7. In Article 2(3), the second sentence of the fourth subparagraph is deleted.

8. Article 3 is replaced by the following text:

"Article 3

1. The Council shall establish at Community level the annual quantities of compensating products whose reimportation may be authorized under the specific import arrangements referred to in Article 1(3).
2. The competent authorities shall distribute the annual quantities referred to in paragraph (1) above amongst the beneficiaries as defined in Article 2.

3. Without prejudice to Article 2(3) or paragraph (5) below, this distribution shall be such as to ensure that the objective of maintaining the industrial activity of the beneficiary in the Community, as laid down in Article 2(2)(a), is respected as regards both the nature of the products and their quantities expressed in physical units or added value.
4. The annual quantities of compensating products shall be distributed among the beneficiaries on the basis of their demands presented in conformity with Article 4(2).

The allocation will be effected by maximum amounts for each category and for each third country concerned. If a new application is submitted, additional amounts for each category and for each third country concerned may be allocated by the competent authorities to a particular beneficiary only when the previously authorized amount for that beneficiary has been actually utilized by at least 50%.

5. Each legitimate beneficiary shall be entitled to an amount equal to the total quantity of compensating products for each category and for each third country concerned for which it carried out outward processing operations in conformity with the provisions of the Regulation, during one of the two calendar years preceding the year of its application. Beneficiaries mentioned in this paragraph become eligible for allocations in accordance with paragraph (6) only when they have fully used their past performance rights.

In addition, a legitimate beneficiary who waives his past performance rights in respect of a specific category and/or country becomes eligible to apply for an equivalent quantity in another category and/or country, in accordance with the first subparagraph of paragraph (6) (general rules for newcomers); the criteria generally to be applied in such cases shall be decided in accordance with the procedure laid down in Article 12.

6. The competent authorities shall allocate on a first-come, first-served basis the quantities of compensating products which have not been temporarily set aside to fulfil the applications made under paragraph (5).

During the first nine months of each year allocations shall be granted to those manufacturers who can prove that in the preceding year they maintained a production value in the Community of at least 50% of their total turnover.

During the remaining three months of each year those manufacturers who can prove that in the preceding year they maintained, in the Community, a significant production of similar products, in relation to the quantities requested, can participate in the distribution of the remaining quota.

7. Where those beneficiaries referred in paragraph (5) do not use the total quantities to which they are entitled, the remainder of such quantities, but in any case not more than 10.5% of each total quantity(*), shall be added to the following year's quantities referred to in paragraph (6).
8. At the end of each year in which available quantities of compensating products prove to be insufficient to satisfy the applications made under paragraph (6) consideration shall be given in accordance with the procedure laid down in Article 12, to the extent to which, and the way in which, allocations to those persons who have not manufactured similar products for at least three years have to be reduced.
9. Provisions relating to the application of this Article shall be adopted in accordance with the procedures laid down in Article 12.

(*) According to Article 4(2) of Annex XXIII of Council Regulation No 4136/86, which expired on 31 December 1992."

9. Article 4(1) is replaced by the following text:

"1. Application of the arrangements contained in this Regulation is subject to the issue of a prior authorization by the competent authorities.

In order to ensure that the allocated prior authorizations do not exceed the total annual quantities of compensating products established at Community level the competent authorities shall issue prior authorizations only upon confirmation by the Commission that there are still quantities available of the total Community quota for the category and the third country concerned, for which the quantities are requested by the persons concerned."

10. Article 4(2) is deleted.

11. Article 5(4) is replaced by the following text:

"4. When granting prior authorizations the competent authorities must be satisfied that the level of employment in the factory or factories of the applicant is not significantly affected."

12. In Article 7, the first paragraph is deleted.

13. In Article 8, the words at the end of paragraph (1) "by the Member State that issued the prior authorization for those products" are deleted.

14. Article 8(2) is deleted.

15. In the first and second paragraphs of Article 9, the words "of the Member State concerned" are deleted.

16. In Article 11, the second paragraph is replaced by the following text:

"Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system(*), as well as any provisions adopted for its application, shall not be affected by those arrangements.

(*)OJ No L 212, 2.8.1986, p. 1."

17. In Article 11 a third paragraph is added, as follows:

"For the application of the provisions of Article 2(3) of Protocol No 1 on Textiles and Clothing Products to the Europe Agreement and the Interim Agreements between the Community and the Czech Republic, the Slovak Republic, Hungary, Poland, Romania and Bulgaria respectively, the products which are listed in Annex 2 and which originate in those countries in accordance with Protocol No 4 on Origin to the Europe Agreements with the Community, do not need to be subject to the arrangements or the specific measures referred to in Article 1(3) or the annual limits referred to in Article 2(2)(b). Prior authorizations for those categories of products shall be issued by the competent authorities after notification to the Commission of the quantities requested, and provided that all other conditions of this Regulation are fulfilled."

18. The attached Appendix 1 becomes Annex 1 to the Regulation.

19. The Annex is replaced by the attached Appendix 2 and becomes Annex 2 to the Regulation; and references made in the Regulation to the Annex become references to Annex 2.

Article 2

The present Regulation shall not affect the reimportation into the Community of products after working or processing in third countries on the basis of prior authorizations issued before the entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the seventh day following its publication in the Official Journal of the European Communities.

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

Done at Brussels,

For the Council
The President

Appendix 1

"ANNEX 1

Groups of categories referred to in Article 1(4)d:

Similar products at the same stage of manufacture are defined as products falling within the same category or within the same group of categories as listed below:

1st group (Outerwear)

categories 4, 5, 6, 7, 8, 14, 15, 16, 17, 21, 26, 27, 28, 29, 73, 74, 75, 76, 77, 78, 83.

2nd group (Underwear)

categories 4, 13, 18, 24, 28, 31, 69, 72, 78, 83, 86.

3rd group (Other products)

categories 10, 12, 68, 70, 72, 78, 83, 85, 87.

Appendix 2

"ANNEX 2

List of maximum processing levels referred to in Article 2(2)(d)

Compensating products by categories(1)

Maximum processing level

Categories

Operation

"4, 5, 6, 7, 8, 10, 12, 13, 14, 15,
16, 17, 18, 21, 24, 26, 27, 28, 29
31, 68, 69, 70, 72, 73, 74, 75, 76, 77,
78, 83, 85, 86, 87, 91."

Processing from woven or
knitted fabrics(2)

"(1) Categories refer to those listed in Annex 1 to Council Regulation
....."

(2) However, the operation whereby fully fashioned knitwear is obtained from yarn may also count as a processing operation within the meaning of this Regulation, provided that the temporary exports of yarn authorized for this purpose in any year do not exceed 7% by weight of the total temporary exports authorized in the Community in the previous year under specific arrangements of the type referred to in Article 1(3).

The Commission shall ensure that the limit of 7% as foreseen above will not be exceeded at the Community level.

To this end the provisions of Article 4, paragraph 1, subparagraph 2, shall apply."

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