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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2473/86

of 24 July 1986

on outward processing relief arrangements and the standard exchange system

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 ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, under the international division of labour, many Community undertakings have recourse to outward processing arrangements, that is the export of goods with a view to their subsequent re-import after processing, working or repair; whereas recourse to these arrangements is justified for economic or technical reasons;

Whereas, in the event of Community goods being exported for repair purposes, including restoring them to their original condition and putting them in order, many Community undertakings have recourse to the standard exchange system, in other words the importation of goods to replace Community goods, in the condition in which such Community goods would be if they had been repaired as intended; whereas recourse to this system is justified for economic or technical reasons;

Whereas the aforementioned system is currently covered by the standard exchange arrangements; whereas those arrangements may be regarded as a variant of the outward processing relief arrangement; whereas it is therefore advisable to incorporate the provisions concerning standard exchange arrangements in this Regulation;

Whereas it is necessary to set up a system to provide partial or total relief from import duties applicable to compensating products on goods replacing such products

in order to avoid the taxation of goods exported from the Community for processing;

Whereas this relief, if it concerned certain taxes other than customs duties and agricultural levies, might not be compatible with the common agricultural policy or with specific arrangements applicable to certain goods resulting from the processing of agricultural products, or with the objectives sought by the adoption of taxes of a particular type; whereas it is therefore important to provide that the total or partial relief applicable under outward processing relief arrangements may not affect these taxes; whereas the Commission should be instructed to draw up a list of the said taxes, which may be very different in nature;

Whereas the use of outward processing relief arrangements must be refused by customs authorities where the essential interests of Community processors are likely to be seriously affected;

Whereas agricultural products or goods resulting from the processing of agricultural products must be excluded from the scope of the standard exchange system since, by their very nature, they can hardly be repaired; whereas, furthermore, the standard exchange system is not compatible with the common agricultural policy or with the specific arrangements applicable to certain goods resulting from the processing of agricultural products;

Whereas outward processing relief arrangements are governed at Community level by Council Directive 76/119/EEC of 18 December 1975 on the harmonization of provisions laid down by law, regulation or administrative action in respect of outward processing ⁽⁴⁾, as last amended by Directive 81/952/EEC ⁽⁵⁾;

Whereas the standard exchange arrangements are governed at Community level by Council Directive 78/1018/EEC of 27 November 1978 on the harmonization of provisions laid down by law, regulation or administrative action in respect of standard exchange of goods exported for repair ⁽⁶⁾;

⁽¹⁾ OJ No C 153, 11. 6. 1983, p. 6, and OJ No C 203, 29. 7. 1983, p. 16.

⁽²⁾ OJ No C 46, 20. 2. 1983, p. 113, and OJ No C 307, 14. 11. 1983, p. 102.

⁽³⁾ OJ No C 57, 29. 2. 1984, p. 3.

⁽⁴⁾ OJ No L 24, 30. 1. 1976, p. 58.

⁽⁵⁾ OJ No L 347, 3. 12. 1981, p. 32.

⁽⁶⁾ OJ No L 349, 13. 12. 1978, p. 33.

Whereas the importance of the outward processing relief arrangements and the standard exchange arrangements in the customs union requires their more uniform application in the Community; whereas provision should therefore be made for, on the one hand, an instrument which is directly applicable in the Member States and, on the other hand, a Community procedure enabling the detailed arrangements for implementation to be adopted, the whole offering greater legal certainty for the individual;

Whereas it is advisable to organize close and effective collaboration between the Member States and the Commission in this area within the framework of the Committee for Customs Procedures with Economic Impact, set up by Article 30 of Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements⁽¹⁾;

Whereas outward processing relief arrangements constitute an essential instrument of the Community's commercial policy,

HAS ADOPTED THIS REGULATION:

TITLE I

General principles

Article 1

1. This Regulation lays down the rules governing outward processing relief arrangements and the standard exchange system.

2. Outward processing relief arrangements shall, under the conditions laid down by this Regulation and without prejudice to the specific provisions applicable to the standard exchange system laid down in Title IV nor to Article 22 of Regulation (EEC) No 1999/85, allow Community goods to be temporarily exported from the customs territory of the Community in order to undergo processing operations, and the compensating products resulting from these operations to be released for free circulation in the customs territory of the Community with total or partial relief from import duties.

3. For the purposes of this Regulation:

(a) 'temporarily exported goods' means goods placed under outward processing relief arrangements;

(b) 'Community goods' means goods:

— entirely obtained in the customs territory of the Community, without the addition of goods from

third countries or territories which are not part of the customs territory of the Community,

— from countries or territories not forming part of the customs territory of the Community which have been released for free circulation in a Member State,

— obtained in the customs territory of the Community either from the goods referred to exclusively in the second indent or from the goods referred to in the first and second indents;

(c) 'person' means:

— a natural person,

— a legal person, or

— where this possibility is provided for in the rules in force, an association of persons recognized as having legal capacity but lacking the legal status of a legal person;

(d) 'holder of the authorization' means a person to whom an outward processing authorization has been issued;

(e) 'processing operations' means:

— the working of goods, including fitting or assembling them or adapting them to other goods,

— the processing of goods,

— the repair of goods, including restoring them to their original condition and putting them in order;

(f) 'compensating products' means all products resulting from processing operations;

(g) 'import duties' means not only customs duties and charges having equivalent effect but also agricultural levies and other import charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products;

(h) 'customs authority' means any authority competent to apply customs rules, even if that authority is not part of the customs administration;

(i) 'rate of yield' means the quantity or percentage of compensating products obtained from the processing of a fixed quantity of temporarily exported goods;

(j) 'standard exchange system' means the system provided for in Title IV.

Article 2

1. Outward processing relief arrangements shall not be open to Community goods:

— whose export gives rise to a refund or remission of import duties,

— which, prior to export, were released for free circulation wholly free of import duties by virtue of their use for particular purposes, for as long as the conditions for granting relief continue to apply,

⁽¹⁾ OJ No L 188, 20. 7. 1985, p. 1.

— whose export gives rise to export refunds or other amounts introduced under the common agricultural policy or in respect of which a financial advantage other than these refunds or other amounts is granted under the common agricultural policy because of the export of these goods.

2. However, exemptions from the second indent of paragraph 1 may be determined in accordance with the procedure laid down in Article 31 (2) and (3) of Regulation (EEC) No 1999/85.

Article 3

1. By way of derogation from Article 4 (2), Article 10 (1) and Article 11, use of the outward processing relief arrangements may be granted to goods of Community origin, within the meaning of Regulation (EEC) No 802/68⁽¹⁾, when the processing operation consists of the incorporation of such goods into goods obtained outside the Community and imported as compensating products, to the extent that use of the arrangements helps to promote the sale of the export goods without causing damage to the essential interests of Community producers of products identical or similar to the imported compensating products.

2. Cases in which paragraph 1 may be applied, and appropriate conditions, shall be determined in accordance with the procedure laid down in Article 31 (2) and (3) of Regulation (EEC) No 1999/85.

TITLE II

Issue of the authorization

Article 4

1. The use of outward processing relief arrangements shall be conditional on the issue, by the customs authority of the Member State in which the goods for temporary export are located, of an outward processing authorization, hereinafter referred to as 'authorization'.

2. The authorization shall be issued at the request of the person who arranges for the processing operations to be carried out. This person shall supply, with his application, the information required for issue of the authorization.

3. The authorization may cover one or more processing operations as the case may be.

4. By way of derogation from paragraph 1, cases in which use of the arrangements may be granted without issue of an authorization prior to the export of goods, and appropriate conditions, shall be determined in accordance with the procedure laid down in Article 31 (2) and (3) of Regulation (EEC) No 1999/85.

Article 5

1. The authorization shall be granted only:
- (a) to persons established in the Community;
 - (b) to persons who offer every guarantee which the customs authority considers necessary;

(c) where it is possible to establish that the compensating products have been manufactured from the temporarily exported goods.

2. Cases in which derogations from paragraph 1 (c) may apply, and the conditions subject to which those derogations apply, shall be determined in accordance with the procedure laid down in Article 31 (2) and (3) of Regulation (EEC) No 1999/85.

Article 6

Authorization shall not be granted where the use of outward processing relief arrangements is liable seriously to damage the essential interests of Community processors (economic conditions).

Article 7

1. The conditions under which the outward processing relief arrangements are used shall be set out in the authorization.

2. The holder of the authorization is required to notify the customs authority of all factors arising after the issue of the authorization which are likely to influence its continuation or contents.

3. Where the circumstances under which the authorization was issued are found to have changed, the customs authority shall amend the authorization accordingly.

Article 8

Cases where the authorization is to be revoked and cases where it is decided that it is null and void, as well as the consequences deriving therefrom, shall be determined in accordance with the procedure laid down in Article 31 (2) and (3) of Regulation (EEC) No 1999/85.

TITLE III

Functioning of the outward processing relief arrangements

Article 9

The conditions for the placing of goods under the outward processing relief arrangements shall be determined in accordance with the procedure laid down in Article 31 (2) and (3) of Regulation (EEC) No 1999/85.

Article 10

1. Subject to Article 12, the use of the outward processing relief arrangements shall be granted only for compensating products declared for release for free circulation by the holder of the authorization or on his behalf.

2. The customs authority shall fix the time limit within which the compensating products must be re-imported into the customs territory of the Community. It may extend this limit on submission of a duly substantiated request by the holder of the authorization.

⁽¹⁾ OJ No L 148, 26. 6. 1968, p. 1.

3. The customs authority shall fix either the rate of yield of the operation, or where necessary, the method of determining such rate.

Article 11

Where ownership of the temporarily exported goods or compensating products is transferred, the customs authority shall allow the outward processing relief arrangements to continue on condition that the compensating products are declared for free circulation by the holder of the authorization or on his behalf.

Article 12

The compensating products may be declared for free circulation under the outward processing relief arrangements by another person established in the Community provided he has obtained the consent of the holder of the authorization and provided the conditions of the authorization are fulfilled.

Article 13

1. The total or partial relief from import duties provided for in Article 1 (2) shall be effected by deducting from the amount of import duties applicable to the compensating products released for free circulation the amount of import duties that would be applicable to the temporarily exported goods if they were imported into the customs territory of the Community from the country in which they underwent the processing operation or last such operation.

2. The amount to be deducted pursuant to paragraph 1 shall be calculated on the basis of the quantity and nature of those goods on the date of acceptance of the declaration of their being placed under outward processing relief arrangements and on the basis of the other details of taxation applicable to them on the date of acceptance of the declaration of release for free circulation of the compensating products.

The value of the temporarily exported goods shall be that taken into consideration for those goods in accordance with Article 8 (1) (b) (i) of Council Regulation (EEC) No 1224/80⁽¹⁾, as last amended by Regulation (EEC) No 1055/85⁽²⁾ when determining the customs value of the compensating products or, if the value cannot be determined in this way, the difference between the customs value of the compensating products and the processing costs determined by reasonable means.

However,

— certain charges determined in accordance with the procedure laid down in Article 31 (2) and (3) of Regulation (EEC) No 1999/85 shall not be taken into account in the calculation of the amount to be deducted;

— where, before being placed under outward processing relief arrangements, the temporarily exported goods were released for free circulation at a reduced rate by virtue of their use for particular purposes, for as long as the conditions for granting the reduced rate continue to apply, the amount to be deducted shall be the amount of import duties actually levied when the goods were released for free circulation.

3. Where temporarily exported goods could qualify on release for free circulation for a reduced or zero rate of duty by virtue of a particular end use, that rate shall be taken into account provided that the goods underwent operations consistent with such an end use in the country where the processing operation or last such operation took place.

4. Where compensating products qualify for preferential tariff treatment because Community provisions provide for such arrangements with regard to the country in which the goods were obtained and where those arrangements exist for goods of the same tariff classification as the temporarily exported goods, the rate of import duty to be taken into account in establishing the amount to be deducted pursuant to paragraph 1 shall be that which would be applicable if the temporarily exported goods fulfilled the conditions under which this preferential treatment may be granted.

5. This Article shall be without prejudice to the application of the provisions adopted or likely to be adopted in the context of trade between the Community and third countries providing for relief from import duties in respect of certain compensating products.

Article 14

1. Where the purpose of the processing operation is the repair of the temporarily exported goods, they shall be released for free circulation totally free of import duties where it is established, to the satisfaction of the customs authority, that the goods were repaired free of charge, either for contractual or legal reasons arising from a guarantee or because of the existence of a manufacturing fault.

2. Paragraph 1 shall not apply where account was taken of the fault at the time the goods were first released for free circulation.

Article 15

Where the purpose of the processing operation is the repair of the temporarily exported goods and where this repair is carried out in return for payment, the partial relief from import duties provided for in Article 1 (2) shall be effected by establishing the amount of the duties applicable on the basis of the details of taxation in respect of compensating products on the date of acceptance of the declaration of release for free circulation of the said products, taking into account as customs value an amount equal to the repair costs, provided that those costs represent the only consideration provided by the holder of the authorization and are not influenced by any links between that holder and the operator.

⁽¹⁾ OJ No L 134, 31. 1. 1980, p. 1.

⁽²⁾ OJ No L 112, 25. 4. 1985, p. 50.

TITLE IV

Standard exchange*Article 16*

1. Under the conditions laid down in this Title applicable in addition to the preceding provisions, the standard exchange system shall permit the replacement of compensating products by imported goods, hereinafter referred to as 'replacements'.

2. The customs authority shall permit recourse to the standard exchange system where the processing operation involves the repair of Community goods other than those subject to the common agricultural policy or to the specific arrangements applicable to certain goods resulting from the processing of agricultural products.

3. The customs authority shall allow replacements, under the conditions it lays down, to be imported before the temporary export goods are exported (prior importation).

The prior importation of a replacement shall require the provision of a security covering the amount of the import duties. The security shall be discharged on payment of the import duties due.

Article 17

1. Replacements must fall within the same subheading of the Common Customs Tariff, be of the same commercial quality and have the same technical characteristics as the export goods if the latter had undergone the repair in question.

2. Where the temporarily exported goods have been used before export, the replacements must also have been used and may not be new products.

The customs authorities may, however, grant derogations from this rule if the replacement has been supplied free of charge either because of a guarantee imposed by contract or by law or because of a manufacturing defect.

Article 18

Standard exchange shall be authorized only where it is possible to check that the conditions laid down in Article 17 are fulfilled.

Article 19

Without prejudice to Article 22, the provisions applicable to compensating products shall also apply to replacements.

Article 20

1. In the case of prior importation, temporarily exported goods must be exported within two months of

the date of acceptance by the customs authority of the declaration of release for free circulation of the replacements.

2. However, where exceptional circumstances so justify, the customs authority may, at the request of the person concerned, extend within reasonable limits the period referred to in paragraph 1.

Article 21

In the case of prior importation and where Article 13 is applied, the amount to be deducted shall be determined on the basis of the details of taxation applicable to the temporarily exported goods on the date of acceptance of the declaration of their being placed under the arrangements.

Article 22

Article 3 and Article 5 (1) (c) and (2) shall not apply in the context of standard exchanges.

TITLE V

Final provisions*Article 23*

The procedures provided for in this Regulation may also be used for the implementation of non-tariff measures of common commercial policy.

Article 24

The Member States and the Commission shall arrange for the exchange of statistics regarding temporarily exported goods and compensating products.

Article 25

The Committee for Customs Procedures with Economic Impact shall exchange information on the factors which have led customs authorities to refuse use of the outward processing relief arrangements on the grounds that the economic conditions were not fulfilled.

Article 26

The Committee for Customs Procedures with Economic Impact may examine any matter concerning the implementation of this Regulation raised by its Chairman either on his own initiative or at the request of the representative of a Member State.

Article 27

The provisions required for the implementation of this Regulation shall be adopted in accordance with the procedure laid down in Article 31 (2) and (3) of Regulation (EEC) No 1999/85.

Article 28

This Regulation shall be without prejudice to the adoption of specific provisions relating to the common agricultural policy, which remain subject to the rules on the introduction of the aforesaid policy.

Article 29

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

It shall apply from 1 January 1988.

2. Directive 76/119/EEC and the Directives adopted for its implementation and Directive 78/1018/EEC shall be repealed with effect from 1 January 1988. References to those Directives are to be construed as references to this Regulation.

3. Authorizations granted under provisions adopted pursuant to Directive 76/119/EEC before 1 January 1988 shall be revoked no later than 31 December 1988 if they cannot be maintained under the provisions of this Regulation.

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

Done at Brussels, 24 July 1986.

For the Council

The President

A. CLARK
