

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

GERMAN UNIFICATION - CONTROL MEASURES

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Introduction

The Council Regulation and the Council Directive⁽¹⁾ authorising the Commission to apply interim measures in advance of the completion of the legislative process regarding the proposed transitional measures require the Commission to present to Parliament and Council a report detailing measures undertaken :

- to verify and enforce the application of Community law,
- to assure the full receipt of the Community's own resources and the proper management of Community expenditure.

The present communication examines measures foreseen to supervise and control :

- goods produced in the former GDR,
- goods imported to the former GDR from certain third countries without payment of duty
- agricultural products originating in or imported into the former GDR.
- full receipt of the Community's own resources and the proper management of Community expenditure,

(1) Council Regulation (EEC) n° 2684/90 of 17.9.90 (OJ L 263)
Council Directive of 17.9.90 (OJ L266)

1. GOODS PRODUCED IN THE FORMER GDR AND NOT CONFORMING TO EC TECHNICAL REGULATIONS

1. The nature of the problem

The transitional measures permit manufacture of certain goods below standards set by EC technical regulations. The use of such goods is restricted to ex-GDR territory and production is limited in time to end 1992 (1995 in the case of pharmaceuticals). There is concern about such goods being delivered from the former GDR to other parts of the Federal Republic of Germany or other Member States.

The problem of control of such products allowed on the former GDR market under derogation from community rules cannot be analysed outside the context of the area of validity of the derogations themselves (for imported goods see section II). For East-German production the area of validity of the derogations is limited by industrial sector (pharmaceuticals, cosmetics, tobacco, textiles, crystal glass, 70 cl bottles, mobile telephones and certain foodstuffs, chemicals and building machines). The derogations only cover "total" directives which make it illegal to market goods which do not conform.

2. Measures currently in force in Member States to control non-conform products

Member States are obliged to withdraw non-conform goods from the market and all currently valid control measures remain fully applicable. Member States customarily resort to controls according to the nature of the goods and marketing methods. This is also the case subsequent to German unification where traditional methods of control are foreseen. Technical controls take place :

- at the place of production (foodstuffs and some pharmaceuticals),
- at the place of authorisation (for some pharmaceutical products, or telephones for example),
- in the marketplace (identification by labelling).

In the area of dangerous products the Commission's committee of senior officials appointed to supervise the rules and regulations involved in the rapid information system⁽¹⁾ for dangerous substances comes into play. This system allows a Member State to notify the Commission of dangerous products including those not conforming to Community standards, thus permitting onward notification of other Member States.

3. Controls applicable in Germany

In the German case, the controls applicable throughout the Community are effected as follows :

- a. The law on the safety of equipment provides for control measures to monitor compliance with harmonized technical safety requirements. Controls are carried out by the Trade Supervisory Office which is the subordinate authority at Land level.

In addition, monitoring within companies is undertaken by technical inspectors belonging to accident insurance institutions under the State insurance law.

- b. Under the regulation on dangerous substances their use is also subject to control by the Trade Supervisory Offices of the Länder.
- c. Trade in foodstuffs is controlled in accordance with the Federal Law on Foodstuffs. There is a complete system of controls at manufacturer and trade level. These are carried out by the Foodstuffs Supervisory Offices in the Länder. This ensures that foodstuffs manufactured and marketed comply with legal requirements and, by extension, with EC requirements.
- d. Trade in cosmetic products in Germany is subject to the same control rules as apply to foodstuffs.
- e. Controls on meat and meat products are carried out by the responsible Veterinary Control Departments in the Länder. Where these products are placed on the market as foodstuffs they are subject in addition to foodstuffs controls (cf c).

(1) (Council Decision 89/45/EEC as modified by Decision 90/352/EEC)

f. Compliance with rules relating to the marking of textiles and crystal glass is undertaken by the subsidiary administrative authorities in the Länder (as a rule Trade Supervisory Offices or administrative offices).

In addition to these generally applicable control methods, the Commission's proposal includes a general Community control provision and a requirement for specific measures to be taken by Germany.

General control is to be effected on the basis of yearly reports to be provided by Germany on the use made of the derogations and on the applicable control measures.

The Commission is prepared to strengthen this arrangement by the addition of a clause allowing member States to give notice to the Commission in case of difficulties.

In addition, Germany is to take specific measures to prevent and sanction exports of non-conform products from the former GDR territory to Member States of the Community. The German government has introduced a regulation requiring non-conform products to stay in the former territory of the GDR. In case of infringement a fine of up to 10.000 DM is payable. This is accompanied by seizure of the goods.

II. GOODS IMPORTED TO THE FORMER GDR FROM CERTAIN THIRD COUNTRIES WITHOUT PAYMENT OF DUTY

1. Definition of imported goods concerned

In respect of the principle of Vertrauensschutz, certain goods can be imported tariff-free from CMEA countries in Eastern Europe and Yugoslavia. A list of treaties covering such goods is found in the annexes to the transitional tariff measures (the International agreements of the former GDR). (COM (90)400 p. 19)

Goods capable of entry to Community markets duty free under the Generalised System of Preferences (PHARE countries to which Roumania is to be added in due course) do not need to be put under end-use control since they are in free circulation throughout the Community.

A detailed list of the goods concerned will be published by the German authorities in "Das Aussenwirtschaftsblatt". The maximum quantities and values in these agreements are indicative and do not constitute legal obligations, unless confirmed by commercial contracts.

On origin, article 2 of the proposed Council regulation states that "To determine the origin of the goods referred to in Article 1, Council Regulation (EEC) N° 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods, shall be applicable".

2. Measures to control maximum quantities

With respect to all imported goods (conforming and non-conforming) there is the question of how to supervise the maximum quantities and the fact that they are consumed or processed in the former DDR. Here, in the event of non-respect of the maximums, there is the possibility either :

- to reimpose duties
- to take safeguard measures.

To ensure that the benefit of duty preference is restricted to products covered by the treaties and to the quantities foreseen therein, the Federal Government has authorised a Central Office to issue licences. These licences are a condition for the duty free import of European CMEA goods onto the territory of the former GDR. The Central Office is a sub-office of the Federal Economic Institute in Eschborn, with headquarters in Berlin.

The Central Office is in possession of all relevant agreements with CMEA countries concerning exemption from duty and can guarantee an efficient, comprehensive and traceable issue of licences. Licences will only be issued in accordance with the limits on amounts and values laid down in the agreements.

The Central Office will keep exact records concerning the licences issued and individual licences will be subject to the proviso that the goods may only be used on the territory of the former GDR.

3. Measures to ensure that duty preference is restricted to imports to the territory of the former GDR

As far as imports from European CMEA and Yugoslavia free of duty are concerned, the control system known as end-use relief is applicable. This is a relief of import duty on certain goods subject to their being used for a particular purpose (e.g. incorporation into an aircraft or ship).

The end-use relief scheme normally relates to specific types of goods and end-use is considered to be completed when the goods are processed in a particular way. In the German case end-use is either final consumption or processing conferring Community origin.

Legislation in this area is found in a series of specific Commission regulations relating to specific goods (e.g. petroleum products, ships, certain tobacco items, etc.) which determine the conditions under which goods may receive end-use relief. In the absence of specific provisions the general end-use regulation (Commission Regulation (EEC) N° 4142/87) applies to imports of all goods under the end-use relief scheme. Both the general and specific end-use regulations are published in OJ N° 387 of 31.12.1987. Regulation 4142/87 will be applied according to footnote (a) to Article 1(2) of the proposed legislation for transitional tariff measures.

The system of control under end-use relief (See Article 3 of Regulation (EEC) N° 4142/87), is based on the requirement for authorisation from the competent authorities in the Member State (normally the Customs authorities) prior to importation. In essence (whether for conform or non-conform goods), to obtain such authorisation the importer must undertake to comply with the conditions laid down in para 6 of Article 3, i.e. :

- a) put the goods to the prescribed end-use ;
- b) pay the amount of uncollected import duties if the goods are not put to the prescribed end-use ;
- c) keep records so as to enable the competent authorities to carry out any checks which they consider necessary to ensure that the goods are put to the prescribed end-use, and to preserve such records for such period as is required under the relevant provisions in force ;
- d) permit inspection of the records provided for in subparagraph (c);
- e) submit to any other measure of control which the competent authorities may deem appropriate to check the actual use of the goods and provide any information required for that purpose.

The trader is, therefore, obliged to put such imported goods to their end-use and the competent authorities perform the necessary checks (both of the goods themselves and the accounts) to ensure that the goods are actually put to the prescribed use.

Measures are foreseen for the case of infringements (See article 4 of Regulation (EEC) N° 4142/87). In addition to the normal customs penalties, non-compliance with the end-use requirements can be sanctioned by the revoking of the authorisation granted to the importer. In practice, this means that the importer cannot continue to import goods under the end-use relief scheme. Further, the proposed regulation (Vol. II, p. 16) makes provision (art. 3) for Member States to request that the Commission reimpose the normal duty rates in cases of substantial injury to Community producers.

In addition to control on the "user" in the former GDR, there is the possibility (until end 1992) of controls both in the FRG at delivery to other Member States and in the Member States on transit and at final importation. If necessary a Member State doubting the correctness of the

origin of certain goods exported from a re-unified Germany could request the German customs administration to check whether the goods were correctly entered or were in fact "end-use" goods falsely declared.

In order to determine the proper end-use of the goods subject to this system the Customs Authority, in accordance with Article 3 of Commission Regulation (EEC) No 4142/87 on the keeping of special records, will subject companies operating on former GDR territory and which import goods from CMEA countries free of duty, to increased checks. If the companies are unable to provide proof of the proper end-use of the goods subject to favourable treatment then the corresponding customs duties will be levied. In case of infringement a fine of up to 10.000 DM is payable. This is accompanied by seizure of the goods.

4. Measures to ensure the respect of EC technical regulations

For imported products, the area of validity of the derogation from EC technical regulations is conditional on two requirements according to art. 1.3 of the proposed Council directive concerning the internal market (Vol. II, p. 31 et seq) :

- a. a specific decision by the German government ,
- b. the justification of the derogation under Art. 1, §3 of the proposed directive.

Once imported, goods are treated in the same way as goods produced in the former GDR (see section I above).

There is also the question of imported goods destined for processing, whereafter (theoretically) they may conform or not conform to the regulations. If they are conform, there is, of course, no problem. If they are not conform, the measures described in section I are applicable.

III. CONTROL AND SUPERVISION OF AGRICULTURAL PRODUCTS ORIGINATING IN OR IMPORTED INTO THE TERRITORY OF THE FORMER GERMAN DEMOCRATIC REPUBLIC.

1. End Use System for Imported products

The End Use System is also applicable for agricultural products imported from third countries under preferential schemes. The Federal Republic of Germany has prepared a national regulation in close orientation to Regulation 4142/87 (end-use) providing for the applicability of the end-use system for all such products.

2. Veterinary, phytosanitary and quality standards

Veterinary Sector.

Only minor modifications have been accepted in this area. One derogation from Community standards is of specific interest as far as control questions are concerned. On a late request from Germany a provisional measure was foreseen permitting East-German slaughterhouses not to meet the requirements for a licence according to Community standards as laid down in Council Directive 71/118/EEC.

However, no control problem exists, since each product has to bear a specific mark referring to the East German slaughterhouse. The mark is different from the mark attributed by licenced slaughterhouses. The national supervision authorities can therefore easily identify chicken slaughtered in East German slaughterhouses not complying with EC-standards, should an attempt be made to market them outside former GDR territory.

Animal feedingstuffs

Germany will be authorised to maintain former GDR regulations permitting the use of a limited number of additives in animal feedingstuffs (Directive 70/524/EEC) as well as the use of protein products obtained from yeasts of the *Candida* Genus cultured on n-alkann

(directive 82/471/EEC). It may also admit derogations from the labelling provisions for the above mentioned additives and yeasts of Candida Genus as well as for compound and straight feedingstuffs (directives 70/524/EEC, 77/101/EEC, 79/373/EEC, 82/471/EEC).

In any case, Germany must ensure the limitation of the marketing of the products concerned to former GDR territory. Effective control can generally be ensured by the national supervision authorities. The producer, the additives and in many cases the ingredients have to be indicated on the labelling. Derogation and origin can therefore easily be identified.

A problem exists for the yeasts of the Candida Genus used in the production of compound feedingstuffs. Germany has to take specific action as far as the labelling of compound feedingstuffs on yeasts from Candida Genus is concerned.

Plant propagating material

Germany will be authorised to allow a number of derogations from the marketing conditions laid down in the Community directives both for imports from third countries and for production on former GDR territory. In these cases Germany must ensure that such material may not be introduced into other parts of the Community.

There is no control problem, however, since products not complying with Community standards cannot be "EEC"-certified. They consequently cannot bear a reference to "EEC rules and standards" and must be labelled differently. Such products would be easily identifiable if an attempt were made to market them outside the ex-GDR territory.

Plant health legislation

Two derogations are foreseen:

- on a German request a derogation may be accepted by the Commission and after consultation of the Member States in order to fulfill possible contractual obligations of the former GDR concerning the imports of products which do not meet the requirements of Council Directive 77/93/EEC (harmful organisms).
- Furthermore Germany will be authorised to allow derogations from Council Directive 88/362/EEC (pesticides).

In both cases Germany has to ensure that the products concerned remain on former GDR territory.

The correct application of derogation from Council Directive 77/93/EEC can be assured, since a plant health certificate is needed for intra-Community trade in plants indicating the origin of the product. It may not be issued for plants which do not meet Community standards. Furthermore, Article 14 of Council Directive 77/93/EEC (safeguard clause) permits the establishment of more specific control mechanisms in order to protect the Common Market in an appropriate way.

The situation is different in respect of Council Directive 88/362/EEC. Here, control has to be effected by national authorities, who regularly take samples of products before their transformation. In order to ensure the obligation to restrict trade in products from the former GDR territory not complying with Community standards to that region, Germany must effect intensive controls on trade flows.

IV. FULL RECEIPT OF THE COMMUNITY'S OWN RESOURCES AND THE PROPER MANAGEMENT OF COMMUNITY EXPENDITURE

The Community's own resources legislation is fully applicable from October 3rd. This implies that inspection visits as established in Council Regulations 1552/89 (articles 17, 18 and 19) and 1553/89 (articles 10, 11, 12 and 13) will be carried out by the Commission.

If the imported goods subject to the preferential regime do not comply with the conditions established by the Commission's decision, the relevant custom duties are due.

The control system set up by the German authorities as described above will guarantee the follow up of goods imported under the transitional derogations regime. The Commission can be associated in these controls and can carry out autonomous controls.

The Commission paid an information visit to the authorities of the former GDR on September 17, 18 and 19. The Ministry of Finance, the General Directorate for Customs and Excise and the Central Customs Office in Berlin were visited.

The Commission was able to verify that measures have been taken to ensure that :

- a) Import permits are issued by a Central Office,
- b) Centralization allows the management of quotas and the follow-up of imported goods,
- c) import permits are to be recorded on a special registry that will enable a thorough follow up of goods within the end-use relief scheme,
- d) German customs have taken the necessary measures to apply Commission Regulation (EEC) n° 4142/87.
- e) A system of fines has been introduced by the German authorities.

On the expenditure side, normal Community controls, in particular of agricultural expenditure, will apply.

Management of agricultural expenditure

The existing control measures for agricultural expenditure as for all other expenditures will be applied.

Commission Services together with the German authorities have started the necessary coordination of control measures in the ex-DDR. It is important to know that the expenditure in this field is managed by existing German services like the BALM and Federal Custom Services.

Stocks of agricultural products held by the Intervention agency of the former GDR on the day of unification will be taken over by the Community at the world market price.

Private stocks of "sensitive" agricultural products, for which Intervention measures exist and which exceed the normal carry-over stock, must be disposed of by Germany at its own expense. An inventory of all stocks will be established without delay and under the assistance of the Commission shortly after German unification. At a later date a separate decision will be necessary for every market organisation as to which stock can be regarded as normal. When Germany asks for export refunds by the Community the Commission will accept the request only for exports of "normal" stocks.

CONCLUSIONS

The Commission considers that existing Community and national controls are adequate for the monitoring and implementation of the proposed Community provisions introducing transitional measures for certain non-member countries.

It also considers that the stricter controls and penalties planned by the German authorities should prevent deflection of trade and ensure compliance with the proposed preferential arrangements.

The Commission for its part will be involved in controls via the usual administrative cooperation process and may also carry out independent checks.

It notes that the control of goods under the Generalized System of Preferences, which applies to most of the third countries concerned, poses no special problems.

We should remember that industry and agriculture in the former territory of the GDR are undergoing profound structural changes.

This means that far fewer sub-standard goods will be produced, particularly as consumers in the ex-GDR are becoming more demanding in terms of quality. The same will apply to imports of sub-standard products from European CMEA countries.