

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION BY THE COMMISSION TO THE COUNCIL
AND THE MEMBER STATES
CONCERNING AUTONOMOUS TARIFF SUSPENSIONS

COMMISSION COMMUNICATION TO THE COUNCIL
AND TO THE MEMBER STATES

Subject : AUTONOMOUS SUSPENSION OF CUSTOMS DUTIES

1. Introduction

1.1. The Single European Act amended Article 28 of the Treaty by granting the Commission a power of initiative with regard to the autonomous suspension of customs duties. Suspensions are now approved by the Council acting by a qualified majority on the basis of a Commission proposal whereas, formerly, they required unanimous Council approval and did not involve a proposal.

1.2. This gave rise to an increase in the number of requests being accepted by the Member States, on a case-by-case basis, in the absence of a specific Community policy.

In keeping with this practice, even after the Single Act came into force, the Member States have been adding products other than those proposed by the Commission. This state of affairs has created difficulties between the Commission and the Council when decisions are made on suspensions.

1.3. The aim of the present communication is to define the guiding principles which the Commission intends to follow in drawing up its proposals. Thus, for the sake of clarity and transparency, it is essential that the Council, the Member States and the economic operators be informed of the criteria which the Commission will use in exercising its power of initiative.

1.4. The objective pursued by the Commission in determining these guiding principles, is not to modify Community policy in this sector, but to specify the economic reasoning of the Community with which this policy should comply.

In terms of the Community's international trade, products benefitting from suspension represent a very small proportion of the total trade (in this respect, the uncollected customs duties amount to about 5% of the total of customs duties collected by the Community).

A breakdown of the principal sectors resorting to suspensions, shows that chemical and pharmaceutical products benefit from 60% of the aforesaid amount. The remainder is shared among microelectronics products (20%), agricultural products (10%) and products for the aircraft industry (10%).

- 1.5. The Commission intends to follow the general policy defined in this communication and the corresponding rules, with effect from the second half of 1989.

It would therefore ask the Member States to ensure that the requests for suspension transmitted to it in September 1989 contain already the information required for the implementation of that policy.

2. General observations

2.1. Role of the common customs tariff

- 2.1.1. Article 9 of the EEC-Treaty states that: "The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the adoption of a common customs tariff in relations with third countries".

Since 1968, the Community has applied this common customs tariff as one of a set of measures designed to promote the efficiency and competitive capacity of its industry on an international scale.

- 2.1.2. In addition to promoting industrial development within the Community, the collection of the duties laid down by this tariff is intended to strenghten the Community's industrial production capacity, thereby making it easier for its producers to compete with third country suppliers.

Consequently, except where the Community grants exemptions, the duties laid down in the tariff must be paid in respect of all imported products. Payment of these duties therefore constitutes the normal state of affairs.

2.2. Concept of "tariff suspensions"

- 2.2.1. The suspensions approved on the basis of Article 28 of the Treaty constitute an exception to the normal state of affairs since, for a given period, they permit non-payment of all (total suspension) or some (partial suspension) of the duties applicable to imported goods.

- 2.2.2. In this connection, it should be pointed out that goods imported under the suspension arrangements enjoy freedom of movement throughout the Community; then again, once a suspension is granted, any operator in any Community country is eligible to benefit from it. This means that a suspension granted in response to a request from one Member State could have consequences for all the others, and that the sector should therefore be administered on the basis of close and extensive cooperation between the Member States and the Commission to enable the latter to verify that due account is taken of all Community interests.

2.3. Characteristics of "tariff suspensions"

- 2.3.1. Article 28 of the Treaty covers the autonomous alteration to or suspension of duties in the common customs tariff.

The text of this Article makes it apparent that the legislative authorities had foreseen that it should be possible to make different types of change to the common customs tariff. Consequently, in the case of a change of a lasting nature, an alteration is called for and, in other cases, a suspension is appropriate.

- 2.3.2. It follows from the foregoing that suspensions should be limited in time (six months or one year, with the possibility of prolongation) and that prolongation should not be automatic. Indeed, the systematic prolongation of a suspension would imply the lasting need to supply the Community with certain products at reduced or zero-rates. In this case, the Commission should propose, where appropriate, an alternative solution, such as in the framework of the trade policy (negotiation or amendment to the tariff, for example).

The same applies whenever the Commission recognizes the need for correcting a tariff anomaly.

- 2.3.3. Moreover, since suspensions constitute an exception to the general rule represented by the common customs tariff, they must - like all derogations - be applied in a coherent manner.

- 2.3.4. Lastly, to avoid being discriminatory measures favouring a single operator, suspensions must be open to all enterprises, that is, both to Community beneficiaries and to third-country suppliers. This means that a suspension will not normally be granted in respect of goods covered by an exclusive trading agreement.

2.4. The role of tariff suspensions

- 2.4.1. The Commission considers that customs duties have a particular economic function. Suspensions, which are intended fully or partially to cancel their effects over a given period, may be granted only for specific and valid reasons.

Furthermore, as these duties are regarded as the Community's own resources, the economic reasons given should be assessed in relation to the general interests of the Community.

- 2.4.2. Thus, by allowing enterprises to obtain supplies at a lower cost for a certain period, it becomes possible to stimulate economic activity within the Community, to improve the competitive capacity of its undertakings and, in particular, to enable the latter to reduce consumer prices, create employment and modernize their structures.

These are all factors from which the Community economy ultimately benefits.

It is not possible to provide an exhaustive account of all these situations. It seems preferable to indicate, in addition to cases in which a suspension is justified, instances in which the Commission considers that suspension should not be granted on the grounds that it offers no improvement for the Community economy.

2.5. Products in respect of which a tariff suspension might be granted

- 2.5.1. Ever since their introduction at Community level, the main purpose of suspensions has been to give Community undertakings access to raw materials, semi-finished goods and components that are not available in any of the Member States.

The Commission considers it appropriate to maintain this approach. In exceptional cases, however, suspension arrangements can be adopted in respect of products subject to a greater degree of processing than those mentioned above and can even apply to finished goods. Nonetheless, the importation of components, under suspension, for pure-and-simple assembly by Community industries, must be avoided.

2.6. Those who benefit from tariff suspensions

The main beneficiaries of tariff suspensions are the manufacturing and processing companies.

Special attention will be paid to the interests of small and medium-sized undertakings, although efforts will also be made not to congest the lists of products covered by suspensions with goods subject to an economically-insignificant amount of duty.

2.7. Suspensions currently in force

A statistical investigation is being conducted in respect of existing suspensions, which are to be systematically examined by the Economic Tariff Questions Group, starting with the longest-running requests.

3. General trends

For all of these reasons and with the foundation of the experience gained since 1961, the Commission intends following the line of action as indicated below, in its proposals to the Council.

3.1. The main purpose of tariff suspensions is to enable Community enterprises to use raw materials, semi-finished goods or components without being required to pay all (total suspension) or some (partial suspension) of the duties laid down in the common customs tariff.

Suspensions are proposed after a thorough examination of the economic reasons on which the requests are based and only in so far as they seem likely to benefit the Community economy. The maximum duration of a proposal for suspension is one year, though prolongation is possible.

3.2. In principle, unless the Community interest dictates otherwise, and in deference to international obligations, no suspension will be proposed for the following examples:

- (i) where identical, equivalent or substitute products are manufactured in sufficient quantities within the Community. The same applies in cases where, in the absence of Community production, suspension could result in a distortion of competition between the Member States with regard to the finished products in which the goods in question are to be incorporated, or in products of a related sector;
- (ii) where the goods in question are finished products intended for sale to consumers without further processing;
- (iii) where the goods in question are covered by an exclusive trading agreement which restricts the possibility of Community importers to purchase these products from third-country manufacturers;
- (iv) where the benefits of the suspension are unlikely to be passed on to the Community processors or producers concerned;
- (v) where suspension would entail a conflict with any other Community policy.

3.3. Partial tariff suspensions or tariff quotas may be proposed in exceptional cases where identical, equivalent or substitute products are not manufactured on a sufficient scale within the Community to meet the requirements of all the relevant processing and manufacturing companies.

In this connection, account should be taken, where appropriate, of consequential damage to any new Community production and of any under-utilized manufacturing capacity which could be made available in the Community.

Total or partial suspension may be proposed in respect of customized products, i.e. products ordered from a foreign supplier which meet the purchaser's particular specifications, if the main potential Community suppliers were unable to supply the products in question or to meet the stated requirements as regards deadlines, quantities and technical specifications.

- 3.4. The possibility of granting some degree of suspension in respect of a product that is, or may become, the subject of anti-dumping proceedings will be assessed with reference to the status of that product in the context of all relevant Community policies.
- 3.5. Bearing in mind their nature, tariff suspensions should not be prolonged systematically, as a general rule.
- 3.6. As far as possible, the equivalence of imported and Community products is assessed with reference to objective criteria, due account being taken of the essential physical characteristics of each, their intended function and, in particular, their mode of operation.

Any difference in price between the imported and Community products is not taken into account in this evaluation.

- 3.7. In accordance with the provisions in the Annex hereafter, requests for the suspension of customs duty must be submitted by, or on behalf of, Community processing or manufacturing companies, identified by name which are adequately equipped to use the imported goods in their production processes. Applicants must prove that they have recently made a genuine, though unsuccessful, attempt to obtain the goods in question or equivalent or substitute products from the main potential Community suppliers.

They must also provide the information which will enable the Commission to examine their request on the basis of the criteria laid down in this communication. For practical reasons, requests are not normally considered when the amount of uncollected customs duty in question is estimated to be less than 20 000 ECU per year for the whole of the Community.

ANNEX

Administrative aspects

1. Experience gained in this area suggests that the best way of administering this sector involves the collection of requests in such a way as to ensure that, when approved, suspensions enter into force on either 1 January or 1 July of each year. This grouping facilitates the treatment of these measures within the framework of TARIC (Tariff intégré communautaire/integrated Community tariff) and, consequently, their application by the Member States. To this end, the Commission will make every effort to present its proposals for suspensions to the Council in sufficient time for the relevant Regulations to be published in the Official Journal of the European Communities at least two months in advance of their entry into force.
2. In accordance with the administrative procedures in force in the other customs sectors administered by the Community, and with a view to speeding up the procedures involved, requests for suspension are transmitted to a central office in each of the Member States and sent, on their responsibility, to the relevant Commission department (DG XXI/A/2) as and when they are received from the applicants, though not later than :
 - 15 March in the case of requests for suspensions to enter into force on 1 January of the following year,
 - and
 - 15 September in the case of requests for suspensions to enter into force on 1 July of the following year.
3. Requests for the suspension of customs duty must include, in particular, the following information :
 1. a detailed description of the product in question (including its mode of operation in the case of electronic goods) together, where appropriate, with a description drawn up in accordance with standard customs practice;
 2. the relevant CN code;
 3. the structural formula in the case of chemicals;
 4. the value (in ECU) and quantity of estimated annual imports;
 5. the value (in ECU) and quantity of imports in the preceding year;
 6. the estimated amount (in ECU) of uncollected own resources;
 7. details of the intended use of the imported product, the type of product in which it is to be incorporated and the end use of the latter;

8. particulars relating to the producer, importer and final user;
 9. details of the Community companies approached with a view to the supply of identical, equivalent or substitute products, the results of those approaches and a full explanation of the unsuitability of Community products for the purpose in question. Such approaches must be made before the products covered by the suspension request are ordered and, in the case of customized products, before initial contact is made with the third-country producers concerned;
 10. a declaration by the applicant that the products in question are not subject to purchasing or distribution restrictions (exclusive trading agreement or licence);
 11. details of the potential economic benefits to the Community, for the suspension requested.
4. As far as possible, requests are to be submitted in accordance with the model on pages 4 to 6 hereafter. This model may, however, be modified to take account of special requirements, with particular reference to computer operations.
 5. Requests for suspension are to be accompanied by all the documentation required for a thorough examination of the measures concerned (technical data sheets, explanatory leaflets, sales literature, statistics, etc.).
 6. If any of the items of information mentioned in paragraph 3 is confidential, it may be sent to the Commission under separate cover. Nevertheless, the Chairman of the Economic Tariff Questions Group may communicate this information to another Member State at its express request, provided that all necessary measures are taken to protect its confidentiality.
 7. When it is deemed necessary, the Commission may ask the Member State concerned to provide any additional information, relating to a request for suspension, which it considers indispensable for the preparation of a proposal to the Council.
 8. Requests for suspension will be examined by the Commission, which will consult the Economic Tariff Questions Group in this connection. For each of the two sets of requests mentioned in paragraph 2, this Group will meet under the auspices of the Commission in accordance with requirements and with the nature of the products to be considered.
 9. Objections to a new request must be raised not later than the second meeting of the Economic Tariff Questions Group relating to the period in question. In the case of agricultural products and products intended for use in aircraft, however, such objections must be raised at the first meeting.

10. All objections must be accompanied by a written statement of the grounds on which they are based and must include, in particular, the fullest possible information concerning Community production of the goods in question or of equivalent or substitute products and the names of potential suppliers. A copy of all objections must be sent to the Commission at the same time as to the Member State concerned.
11. The above-mentioned criteria also apply to the prolongation of existing suspensions. Where the Commission considers it necessary, a new request must be duly submitted indicating, in particular, the quantities imported under the existing suspension arrangements and the conditions of purchase. Objections to the prolongation of existing suspensions must be raised not later than the first meeting of the Economic Tariff Questions Group.
12. Given that the requests for suspension are submitted by the Member States concerned, it is the responsibility of the Member States to provide applicants with the fullest possible written statement of the reasons for refusing a request for suspension. This requirement also applies to requests which the Member States decide not to notify to the Commission.
13. Requests for suspension that have not been accepted by the Commission during a given period for proposal to the Council will be reconsidered only in so far as they contain fresh information.

REQUEST FOR TARIFF SUSPENSION
(Member State :)

1. Request submitted by :
 Address :
 Telephone/telex/fax :
2. Product description (in accordance with standard customs practice) :
3. Detailed description of the product including, in the case of electronic products, mode of operation :
4. Combined Nomenclature code :
5. CCT rate :
6. CCT rate requested :
7. Anticipated annual imports :
 - value (in ECU) :
 - quantity (in statistical units) :
8. Current imports (preceding year) :
 - value (in ECU) :
 - quantity (in statistical units) :
9. Period requested :
10. Estimated uncollected customs duties (in ECU) :
11. Intended use of the imported product, type of product in which it is to be incorporated and end-use of the latter :

12. Name and address of producer :

13. Names and addresses of the importer and of the user :

14. Declaration by the applicant that the imported products are not covered by an exclusive trading agreement :

15. a) Names and addresses of Community firms approached with a view to the supply of identical, equivalent or substitute products :

- b) Dates and results of these approaches :

- c) Reasons for the unsuitability of Community products for the purpose in question :

- d) Customized products (yes or no) :
16. Economic benefits of suspension to the Community :

17. Special remarks :

For chemical products :

18. Empirical formula :

19. CUS No (Reference number in European Customs Inventory of Chemicals) :

20. Structural formula :

Enclosures

(date)

NB : If any of the above-mentioned items of information is confidential, it may be sent to the Commission under separate cover.