

Commission communication concerning autonomous tariff suspensions and quotas

(98/C 128/02)

1. Introduction

1.1. By virtue of Article 28 of the EC Treaty ⁽¹⁾ autonomous tariff suspensions and quotas are approved by the Council acting on a qualified majority on the basis of a Commission proposal. In 1989 the Commission, therefore, published a communication ⁽²⁾ defining the guiding principles and procedures to be followed by the Commission in drawing up its proposals to the Council.

1.2. The aim of this communication is to update and replace the previous communication in the light of the results of the Uruguay Round and the adoption of the Information Technology agreement which led to significant changes in the economic environment in the Community. In accordance with the objectives of the 'Customs 2000' action programme comments and ideas forwarded during and following a seminar on the subject in Vienna were hereby taken into account in order to clarify these principles and to simplify the procedures for the operators engaged in foreign trade. Furthermore, the abolition of time limits for the validity of the Council regulations establishing the tariff suspensions and quotas has also been taken into consideration for this update.

1.3. The objective pursued by the Commission in determining these guiding principles is to specify the economic reasoning behind the policy of the Community in this sector.

1.4. The Commission intends to follow the general policy defined in this communication and the corresponding rules for suspensions taking effect in the second half of 1998.

2. General observations

2.1. *Role of the Common Customs Tariff*

2.1.1. Article 9 of the EC Treaty ⁽³⁾ 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 duty rates fixed in this tariff are intended to strengthen the Community's industrial production capacity, thereby making it easier for its producers to compete with third country suppliers.

Consequently, except derogations foreseen in the Community provisions, the duties laid down in this tariff must be paid in respect of all products entered for free circulation. 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 EC Treaty constitute an exception to the normal state of affairs since, during the period of validity of the measure and for an unlimited quantity (suspension) or a limited quantity (quota), they permit the total (total suspension) or partial waiver (partial suspension) of the normal duties applicable to imported goods (anti-dumping duties are not affected by these suspensions).

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; consequently, once a suspension is granted, any operator in any Member State 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 so that the latter can see to it that all Community interests are taken into consideration.

⁽¹⁾ This Article will be replaced by Article 26 when the Amsterdam Treaty enters into force.

⁽²⁾ OJ C 235, 13.9.1989, p. 2.

⁽³⁾ This Article will be replaced by Article 23 when the Amsterdam Treaty enters into force.

2.3. *Characteristics of tariff suspensions*

2.3.1. Article 28 of the EC Treaty refers to alterations or suspensions of duties under the common customs tariff. The text of this Article makes it apparent that the drafters of the Treaty had foreseen that it should be possible to use different means for changing the Common Customs Tariff.

2.3.2. It follows from the above that suspensions will be reviewed regularly with the possibility of deletion on request of a party concerned. In exceptional cases, where a continuation of a suspension implies the lasting need to supply the Community with certain products at reduced or zero rates (e.g. needed quantities of a specific product too small to justify the investments necessary to launch a Community production), the Commission may propose an amendment to the autonomous duty of the Common Customs Tariff.

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, to all Community importers and third country suppliers. This means that a suspension will not 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 the effects of the customs duties 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 these enterprises and, in particular, to enable the latter to create employment, modernise their structures, etc.

2.5. *Products that may benefit from tariff suspensions*

2.5.1. Traditionally, the chief aim of suspensions has been to enable Community enterprises to use raw materials, semi-finished goods or components not available within the Community, with the exception of 'finished' products.

However, since 1989, the economic background has changed with the need to create jobs in the Community and the growing globalisation of trade and the economy which has often led to a relocation of certain mass production processes. The suspensions should therefore take account of these new economic realities. From the Community point of view it is important to ensure that suspensions enable Community firms to maintain full employment and obtain the necessary parts to manufacture sophisticated products with a high added value, even where the activity consists mainly of the assembly of parts.

2.5.2. As Community firms are converting increasingly to assembling products requiring parts that are already highly sophisticated, some of the parts required are used without major modification and can therefore be considered as finished products. Nevertheless tariff suspensions could, in certain cases, be granted for finished products used as components in the final product, provided the added value of such an assembly operation is sufficiently high.

2.5.3. In the case of equipment and material to be used in the production process, a suspension could be considered (although such products are generally finished products) provided they are specific and necessary for the manufacture of clearly identified products and are not jeopardising competing Community enterprises.

2.6. *Those who benefit from tariff suspensions*

Tariff suspensions are destined for firms producing in the Community. Where the use of the product is confined to a particular purpose,

this shall be monitored in accordance with the procedures governing the control of the end use ⁽¹⁾.

Special attention will be paid to the interests of small and medium-sized enterprises, 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 for ECSC products*

The criteria set out in this communication also apply to products falling under the ECSC Treaty. However, the decisions concerning suspensions for those products currently follow different procedures ⁽²⁾.

2.8. *Customs union with Turkey*

For products which are subject to the rules of the Customs Union with Turkey (all goods except agricultural and ECSC products) the same criteria apply since Turkey's rights and obligations in this case are similar to the Member States' ones. However, for the decision-making different procedures exist.

3. **General trends**

For the reasons outlined above, the Commission intends following the line of action as indicated below in its proposals to the Council and the regulations it can adopt.

- 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 the normal 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 insofar as they seem likely to benefit the Community economy.

Due to time constraints the Council regulations granting autonomous tariff suspensions were often published only a few days before their entry into force, thus creating problems for national administrations and economic operators. The Council therefore decided, with the exception of certain fishery products, to adopt pluriannual regulations ⁽³⁾ (i.e. not containing expiry dates) which are partially updated every six months to take account of new requests and technical or economic trends in products and markets.

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

— where identical, equivalent or substitute products are manufactured in sufficient quantities within the Community or by producers in a third country with preferential tariff arrangements ⁽⁴⁾ if they are known to the parties concerned. The same applies in cases where, in the absence of production in the Community or in a third country with preferential tariff arrangements, suspension could result in a distortion of competition between the Community enterprises with regard to the finished products in which the goods in question are to be incorporated, or in products of a related sector,

— where the goods in question are finished products intended for sale to end-consumers without further substantial processing or without forming an integral part of a bigger final product for whose functioning they are necessary,

— where the goods imported are covered by an exclusive trading agreement which restricts the possibility of Community importers to purchase these products from third country manufacturers,

⁽¹⁾ Articles 21 and 82 of Regulation (EEC) No 2913/92 (OJ L 302, 19.10.1992, p. 1) and Articles 291 to 304 of Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p.1).

⁽²⁾ See, for example, Decision 1348/96/ECSC, (OJ L 174, 12.7.1996, p. 11).

⁽³⁾ Regulations (EC) No 3050/95 (OJ L 320, 30.12.1995, p. 1), (EC) No 1255/96 (OJ L 158, 29.6.1996, p. 1) and (EC) No 2505/96 (OJ L 345, 31.12.1996, p. 1).

⁽⁴⁾ This includes all countries for which a duty rate below the Community's conventional rate of duty is applied on imports of the product concerned.

- where the benefits of the suspension are unlikely to be passed on to the Community processors or producers concerned,
- where suspension would entail a conflict with any other Community policy (e.g. other preferential arrangements, an anti-dumping measure, a quantitative or environmental restriction).

3.3. Where there is some Community production or supply from producers known to the parties concerned and located in a third country under preferential tariff arrangements of identical, equivalent or substitute products to the product to be imported but such production is insufficient to meet the requirements of all the relevant processing or manufacturing companies, tariff quotas (limited to the unavailable quantities) or partial tariff suspensions may be granted. Imports of products for which another preferential arrangement is available or which are destined for re-export (e.g. inward processing) are also considered in taking the decision.

The quota application may be presented as such or result from the examination of a suspension request. In this connection, account will be taken, where appropriate, of consequential damage to any new production and of any manufacturing capacity which could be made available in the Community or in a third country with preferential tariff arrangements.

The tariff quotas are allocated according to the first-come first-served principle⁽¹⁾.

3.4. As far as possible, the equivalence of imported and Community products or products imported from a third country with preferential tariff arrangements is assessed with reference to objective criteria, due account being taken of the essential chemical, physical characteristics of each, their intended function and commercial use and, in particular, their mode of operation and their current or future availability on the Community market.

Differences in price between the imported and Community products are not taken into account in the evaluation.

3.5. In accordance with the provisions in the Annexes hereafter, requests for tariff suspensions or quotas should be submitted by the Member States 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 should indicate that they have recently made a genuine, though unsuccessful, attempt to obtain the goods in question or equivalent or substitute products from potential Community suppliers or companies known to them which are located in a third country with preferential tariff arrangements.

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 considered where the amount of uncollected customs duty in question is estimated to be less than ECU 20 000 per year. Enterprises may group together to reach this threshold.

3.6. The provisions of the Annexes which follow may be reviewed in the light of the Customs 2000 programme⁽²⁾, in particular as regards the introduction of automated procedures for the transmission of new requests and of oppositions in partnership with the Member States.

The current balances of tariff quotas are available daily in the Internet on the Europa server (<http://europa.eu.int>) on the World-Wide-Webpage '<http://europa.eu.int/en/comm/dg21/tariff/public/infos/qotwelco.htm>'. The consolidated annexes of the suspensions and quotas regulations, the new requests and the addresses of the Ministries responsible will also be made available on the same server.

⁽¹⁾ See Article 308a of Regulation (EEC) No 2454/93, as amended by Regulation (EC) No 1427/97 (OJ L 196, 24.7.1997, p. 31).

⁽²⁾ OJ L 33, 4.2.1997, p. 24; see Articles 9(4) and 10(2).

ANNEX 1

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, new suspensions and modifications 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 (Tarif intégré des Communautés européennes/Integrated Tariff of the European Communities) 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* in sufficient time in advance of their entry into force. As regards tariff quotas, quantity increases or extensions of validity may in certain circumstances be decided by Commission Regulation outside the periods referred to above⁽¹⁾.

Transmission of request

2. Requests are transmitted to a central office in each of the Member States where they are examined to make sure that the requests fulfil the conditions of this Communication. The Member States decide under their responsibility which requests are sent to the relevant Commission department in DG XXI.

Transmission to the Commission should be made in due time taking into account the time necessary for the completion of the procedure of evaluation and publication of a suspension or a tariff quota. For suspensions, this means

— 15 March for implementation on 1 January of the following year, and

— 15 September for implementation on 1 July of the following year.

3. Suspension requests are examined by the Commission with the aid of the opinion of the Economic Tariff Questions Group. For certain decisions (e.g. increase of tariff quotas during the year), the Member States representatives vote in the framework of the Customs Code Committee — Economic Tariff Questions Section. The Group in question meets, under the Commission's aegis, according to the requirements and nature of the products to be examined.
4. Requests are to be submitted in accordance with the model in Annex 2 (or a corresponding computer format). To speed up the administrative and economic processing of the requests, it is recommended that, where appropriate, along with requests drafted in the language of the applicant, an English, French or German translation be supplied (including the technical data if necessary).
5. The description of the product should be made by using, where appropriate, the names and expressions of the Combined Nomenclature or International Standard Organisation (ISO), International Nonproprietary Name (INN), International Union of Pure and Applied Chemistry (IUPAC) or Colour Index (CI) names. The units should be those of the International System of Units (SI) and the test methods and standards should be internationally recognised.
6. 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, samples, etc.).
7. If any information is confidential, it should 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, but only with the explicit permission of the representative of the Member State responsible for that information and provided that all necessary measures are taken to protect its confidentiality. It goes without saying however that a request will not be taken into

⁽¹⁾ See Articles 6 and 7 of Regulation (EC) No 2505/96 (OJ L 345, 31.12.1996, p. 1).

account if any piece of information essential for scrutiny cannot be supplied for whatever reason (in particular to protect 'company confidential information' such as manufacturing processes, chemical formulae or compositions, etc.).

8. 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 essential for the preparation of a proposal to the Council.

Objections to requests by Member States

9. Objections to a new request must be tabled at the latest during the second meeting of the Economic Tariff Questions Group for the period concerned as set in paragraph 2 above. The Chairman can by means of a written consultation ask for the opinion of the Group. In this case, objections should be submitted within a reasonable time limit indicated by him.
10. Grounds for any objection should be made in writing using the model in Annex 3 (or a corresponding computer format) and include as detailed as possible information on the existence of Community production of the product in question or an equivalent product and the names of producers who may be able to supply such products. This information shall be sent to the Commission at the same time as to all Member States.
11. The criteria set out above also apply to suspensions in force. Where the Commission deems it necessary, it may request the submission of a new request, indicating the quantities imported as part of the suspension already in progress. Objections to the continuation of a tariff suspension should be made at the latest during the first meeting of the Economic Tariff Questions Group for the period concerned or by means of a written consultation on the initiative of the Commission services.

Comments to requests by countries with preferential tariff arrangements

12. To take account of any comment to a new request made by a country with preferential tariff arrangements, it must reach the Commission by 15 June for implementation on 1 January of the following year and by 15 December for implementation on 1 July of the following year at the latest. It shall be made in a form similar to Annex 3 and be accompanied with substantive evidence indicating that the producer in this country is able to supply the product for which a tariff suspension is requested and that such product can get preferential tariff treatment when imported into the Community.
13. Comments made by countries with preferential tariff arrangements to the continuation of a tariff suspension shall reach the Commission by 15 May for implementation on 1 January of the following year and 15 November for implementation on 1 July of the following year at the latest. Form and content of these comments shall be in accordance with the conditions described in paragraph 12 above.
14. Comments made by countries with preferential tariff arrangements to a new request or the continuation of a tariff suspension shall not delay the Commission's decision to propose a new or to maintain or to modify an existing tariff suspension. These comments can only be taken into account where the evidence and information available to the Commission and the Member State allows to conclude without reasonable doubts that they are justified with regard to the aims and principles set out in the Communication.

Rejected requests

15. Requests of suspensions that have not been accepted by the Commission for proposal to the Council may be reconsidered only if they contain new elements which are relevant for the acceptance (e.g. essential complementary information, objection of a Member State withdrawn or likely to be withdrawn shortly).
-

ANNEX 2

REQUEST FOR TARIFF SUSPENSION OR QUOTA

(Member State:)

Part I

1. Combined nomenclature code:

2. Precise product description taking into account customs tariff criteria:

3. Further information including commercial denomination, packaging, mode of operation, intended use of the imported product, type of product in which it is to be incorporated and end-use of that product:

4. Declaration by the interested party that the imported products are not the subject of an exclusive trading agreement (join extra sheet):

5. (a) Name and addresses of firms known in the Community or in a third country with preferential tariff arrangements 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 the products of these firms for the purpose in question:

6. Special remarks (e.g. indication of similar or old suspension or quota, indication on existing binding tariff information . . .):

REQUEST FOR TARIFF SUSPENSION OR QUOTA

(Member State:)

Part II

1. Combined nomenclature code:
2. Request submitted by:
Address:
Telephone/telex/fax:
3. Anticipated annual imports:
— value (in ECU):
— quantity (in statistical units):
4. Current imports (preceding year):
— value (in ECU):
— quantity (in statistical units):
5. Period requested:
6. Applicable duty rate at the time of the request:
7. Estimated uncollected customs duties (in ECU) on an annual basis:
8. Name and address of non-Community producer:
9. Names and addresses of the importer and the user in the Community:

For chemical products:

10. CUS No (Reference number in European Customs Inventory of Chemicals) and CAS No (Chemical Abstracts Service Registry Number):
11. Structural formula:

Annexes (product data sheets, explanatory leaflets, brochures, etc.)

(date)

NB:

If any of the items of information in part I or II is confidential, it may be sent to the Commission under separate cover.

ANNEX 3

OBJECTION TO A REQUEST FOR TARIFF SUSPENSION OR QUOTA

(Member State:)

Request No:

CN code:

Goods:

File No:

- The goods are currently available in the Community.
- The goods will be available in the Community from (date).
- One or more equivalent or substitute products are obtainable within the Community.
- Other

Firms able to supply an identical, equivalent or substitute product

Name of firm:

Person to contact:

Address:

Tel.:

Fax:

E-Mail:

Product trade name:
