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UNICE position on the importance of using customs economic regimes and the future application and measurement of economic conditions (DOC. XXI/1580/1997)

I. Introduction

1. The main purpose of this UNICE position is to consider the issues arising from the Commission's proposals on application of the economic conditions and, in particular, how Articles 501 and 502 in Document 1580/1997 should be implemented in practice. It is complementary to its 12 November 1997 position on the application of the economic conditions for the inward processing regime.
2. In order to put these issues in context, however, it may be helpful to reiterate the problems which the existing economic test creates for Community businesses and the measures which UNICE considers necessary to overcome them.

II. Background

3. Simplification of these regimes and, especially, relaxation of the economic conditions, are long overdue reforms. Not only do the efforts required to satisfy the economic test tie up valuable resources but the uncertainty it introduces make it difficult for companies to plan ahead and quote accurate forward prices for their products.
4. For some time, therefore, the burden of complying with the procedures has made the economic regimes unattractive to many companies, particularly those small and medium-sized enterprises which stand to benefit most from them. As a result, these companies have simply refrained from operating them and forgone the relief. The burden of additional cost which this imposes is all the harder to justify in view of the very small proportion of applications to operate economic regimes which are actually rejected on economic grounds.
5. The inability of companies to take advantage of the economic regimes has particularly serious consequences for the competitiveness of EU exports. Particularly where exporters are under pressure from exchange-rate movements, the availability of relief under the inward processing regime (IPR) can be critical in determining whether an export contract is won or lost. UNICE therefore believes that, since IPR is essentially an instrument of export promotion, there should be a presumption that relief will be allowed in all cases unless the goods have been formally declared to be sensitive following detailed examination of all relevant facts. UNICE is pleased to see that provisions to this effect have been incorporated in the Commission's proposals.
6. Whilst IPR may directly benefit exports, industry considers it no less important to apply similar reforms to outward processing (OPR) and processing under customs control regimes. These regimes contribute to the economic prosperity of the EU by encouraging companies to undertake at least part of the manufacturing process in Europe rather than abroad. Once again, however, if these regimes are to be effective, access to them must be simple, inexpensive and, above all, certain.
7. Despite declining tariffs, there are many industry sectors which will continue to pay significant duties into the new millennium. For these sectors, the key challenge will be to maintain competitiveness and to exploit opportunities in both European and foreign markets. This will

require a flexible approach to the sourcing, manufacture and distribution of goods which will be possible only with the assistance of simple customs procedures and the ability to move materials, components and finished products around the world without incurring unduly harsh financial penalties.

8. But, if the EU is not to lose out to foreign competition, the Commission too must recognise the reality of global sourcing and manufacturing and create a sympathetic regulatory environment in which companies can, without undue difficulty or penalty, import goods for processing and re-export, send goods outside the EU for part of the process or import them for processing before placing them on the Community market. The economic regimes, duly modernised, clearly form an important part of that environment.

III. Application of Articles 501 and 502 in document 1580/1997

9. UNICE warmly welcomes, therefore, the Commission's initiative to modernise customs procedures with economic impact. We are particularly pleased to see its proposals to achieve a better balance between the need, on the one hand, to promote international trade, and especially EU exports, and, on the other hand, to safeguard the interests of Community producers of the goods in question. However, a number of questions have to be answered about the practical implementation of these proposals, including :

- How will the sensitive list be managed ?
- How will an adverse impact on Community producers be identified and assessed ?
- Is there a need for continuous monitoring of trends and, if so, who should be responsible ?

III.1. The sensitive list

10. As already indicated in its 12 November position, UNICE welcomes the introduction of commercial sensitivity as the criterion to determine which products should be subject to prior examination of economic conditions. This will eliminate the cost of satisfying the economic test for the vast majority of goods where there is no adverse economic impact on EU producers. It will also provide certainty that relief will be available on those goods.
11. On the other hand, the inclusion of specific sensitive goods in Annex 71 of document 1580/97 will give reassurance to the suppliers of those goods that no application for relief on competitive products will be granted without a detailed assessment of the economic impact on their business.
12. However, if this approach is to work satisfactorily, a number of conditions must be met :
 - a) It must be possible to add items to, or delete items from, the sensitive list with the minimum of delay consistent with the need to justify such addition or deletion. The items on the list are exceptions to the general rule that no prior examination of economic conditions is required. Therefore, the burden of proving that such items should either be placed on, or should remain on, the list should rest with Community producers of the comparable goods. In the absence of any such proof being provided, the request for inclusion should lapse, or the request for removal should be accepted, within a fixed number of days from the request being made.
 - b) The list of sensitive goods should be reviewed by the Commission to ensure that it is kept to an absolute minimum and, if appropriate, Community producers should be asked to justify the continued listing of any item which appears no longer to be sensitive. Moreover, economic operators wishing to take advantage of the economic procedures should be able formally to request the removal of any item if they can produce prima facie evidence that it is no longer sensitive.

- c) In considering requests for the addition or deletion of sensitive products, the Commission should consult relevant European trade associations representing both applicants for the economic regimes and Community producers.

III.2. Adverse impact on Community producers

13. Article 502.1, as proposed, requires Customs authorities and the Commission to ensure that the essential interests of Community producers are not adversely affected by use of the economic regimes. If strictly applied, this would seem to require the authorities to examine every authorisation after it has been granted, thereby undermining the whole purpose of modernisation of the regimes. UNICE does not, therefore, believe that Article 502.1 should be interpreted as placing on the authorities any obligation to take the initiative in reviewing authorisations which have already been granted.
14. On the contrary, UNICE considers that, consistent with its view as to the management of the list of sensitive goods, the onus should be on the EU producer claiming to be adversely affected by the authorisation to raise a formal objection, supported by appropriate financial and economic evidence.
15. In assessing the validity of any search objection, Customs and the Commission should adopt the principle that the authorisation should stand unless there are good reasons why it should be amended or revoked. UNICE believes that the objections of Community producers must be examined individually and that an authorisation should be reviewed only if the producer in question can demonstrate beyond reasonable doubt that:
- a) it can supply the holder of the authorisation with goods (or processing capabilities) which are:
- in all respects, identical or superior to those to which the authorisation relates;
 - capable of being delivered in the same quantities and to the same timetable; and
 - are available for delivery to the holder of the authorisation on at least the same terms and conditions as, and at a delivery price which is at least comparable to, those offered by the supplier of the goods or processing which are the subject of the authorisation.

III.3. Monitoring the impact of authorisations

16. The proposition that Customs and the Commission are to examine the impact of an authorisation only on the basis of a complaint from one or more Community producers assumes that producers are aware of relevant authorisations. There will be many cases in which the producer will be made aware of the grant of an authorisation by the potential customer to whom the authorisation has been given. However, this presupposes that the producer was in a position to compete for the business in the first place and there will, therefore, be many other cases in which the producer is unaware of both the potential business and the authorisation.
17. It is a matter of debate whether a Community producer is entitled to object to an authorisation which he believes adversely affects his business, even if he was unaware of the opportunity to supply the goods or processing. It could be argued – and with some justification – that, if a potential buyer was either unaware of what he had to offer, or was aware but did not invite him to tender, that represents a commercial failure on the part of the Community producer and that he is not therefore entitled to object to an authorisation.
18. However, if Community producers are to have the right to object to an authorisation of which they were not previously aware, they must clearly have some other source of information about authorisations which have been granted. This is a difficult issue, not least because of the commercially sensitive – and, therefore, confidential – nature of many transactions for which authorisations are granted.

19. Ideally, UNICE believes that the Customs authorities of the Commission should make available to the relevant trade association sufficient information to enable them to monitor trends in the types and values of goods or processing operations for which authorisations are being granted. It would then be up to those trade associations to analyse and evaluate such information and make it available to their members.

IV. Summary and Conclusions

20. The economic customs procedures are an important instrument of the Community's trade policy and are essential if European companies are to confront on equal terms their competitors in the global marketplace.
21. With the dismantling of trade barriers and the dwindling significance of geographical borders, companies are increasingly moving to exploit the benefits of globalisation. The Commission cannot stand aside from or ignore this trend ; it must either create the right conditions for industry to flourish within the European Union or see economic activity go elsewhere with all that this means in terms of jobs and incomes.
22. The real issue at stake in modernisation of these regimes is not whether individual Community producers of components and materials will be at a competitive disadvantage because relief is allowed. Rather, it is whether whole industries producing finished products in the Community will move elsewhere if relief is not allowed – if that happens, the material and component suppliers will, of course, be amongst the principal losers. However, that does not mean that, where Community producers of materials and components are facing genuine economic difficulties, their interests should not be taken into account.
23. UNICE believes that the formula which the Commission is proposing represents a fair and realistic balance between the interests of all concerned. It is concerned, however, that failure to implement the proposals in accordance with the spirit in which they have been prepared could put that balance in jeopardy. This can be avoided only if clear and unambiguous rules are adopted for the management of the list of sensitive products and the practical application of Article 502.1. Furthermore, those rules must be based on the principle that relief should be allowed as a matter of course, except where there are proven, exceptional, reasons to the contrary.
24. UNICE therefore commends to the Commission and the other EU Institutions the principles and detailed conditions outlined in this presentation as it believes that the proposed approach will best serve the overall interests of all economic operators within the European Union. If Community institutions want to deepen the discussion further on the issues raised above, UNICE experts are willing to pursue the dialogue.
