

COMMISSION NOTICE CONCERNING THE REIMBURSEMENT OF ANTI-DUMPING DUTIES

(2002/C 127/06)

This notice sets out the guidelines regarding the application of Article 11(8) of Council Regulation (EC) No 384/96⁽¹⁾ (the 'basic Regulation') on the reimbursement of anti-dumping duties⁽²⁾. These guidelines replace those published in 1986⁽³⁾. In view of the significant amendments to the provisions on refund of anti-dumping duties it has been considered appropriate to publish an updated version of the guidelines. The purpose of the guidelines is to clarify for the different parties involved in a refund procedure the conditions to be fulfilled by an application and give a comprehensive step-by-step explanation of the procedure which may lead to a reimbursement.

1. AIM

The refund procedure is intended to allow for the reimbursement of anti-dumping duties which have already been paid where it is shown that the dumping margin on the basis of which duties were paid has been eliminated or reduced to a level below that of the duty in force.

2. BASIC PRINCIPLES GOVERNING A REFUND PROCEDURE

The main principles which follow intend to provide a quick guide through the refund procedure detailed under 3:

2.1. What are the conditions to be fulfilled?

- (a) Applications for refunds pursuant to Article 11(8) of the basic Regulation based must demonstrate that the dumping margin on the basis of which duties were paid has been reduced or eliminated. In other circumstances, the provisions of Chapter 5 of Title VII of the Community Customs Code concerning the repayment of import duties may apply⁽⁴⁾.

⁽¹⁾ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56, 6.3.1996, p. 1), as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

⁽²⁾ Until the expiry of the ECSC Treaty on 23 July 2002 these guidelines remain applicable, *mutatis mutandis*, to Article 11(8) of Commission Decision No 2277/96/ECSC of 28 November 1996 on protection against dumped imports from countries not members of the European Coal and Steel Community (OJ L 308, 29.11.1996, p. 11), as last amended by Decision No 435/2001/ECSC (OJ L 63, 3.3.2001, p. 14). Requests for refunds received pursuant to Article 11(8) of the above Decision will be governed by the EC Regulation as of 24 July 2002.

⁽³⁾ Commission notice concerning the reimbursement of anti-dumping duties (OJ C 266, 22.10.1986, p. 2).

⁽⁴⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1) as last amended by Regulation (EC) No 2700/2000 (OJ L 311, 12.12.2000, p. 17).

- (b) Applications may only be submitted in respect of transactions for which anti-dumping duties have been fully paid. The lodging by an applicant of a security in accordance with Article 248 of Commission Regulation No (EEC) 2454/93 implementing the Community Customs Code⁽⁵⁾ is not considered equivalent to payment. Therefore applications corresponding to importations for which a security has been lodged cannot be considered to be admissible⁽⁶⁾.

2.2. Who is entitled to apply for a refund?

- (a) Any importer who can demonstrate that he has paid anti-dumping duties either directly or indirectly for a specific importation may apply for a refund.
- (b) Where anti-dumping duties were imposed further to an investigation in which the Commission resorted to a sample of exporting producers to assess dumping pursuant to Article 17 of the basic Regulation, those parties importing a product are not excluded from the refund procedure. This is the case whether or not the importers' exporting producers were part of the original sample.

2.3. How is the revised dumping margin established?

- (a) The investigation will establish a dumping margin in respect of all exports of the product concerned made by the exporting producer in the case in question to all importers in the Community and not only to the importer claiming a refund, during a representative period.
- (b) Consequently, the investigation will cover all models falling under the product definition set out in the Regulation imposing the anti-dumping duties and not only those models imported into the Community by the applicant.
- (c) Unless circumstances have changed, the same methodology as the one applied during the original investigation will be followed.

⁽⁵⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ L 253, 11.10.1993, p. 1).

⁽⁶⁾ When an importer is contesting the validity of applying anti-dumping duty to his transaction(s) (whether or not this action suspends the payment of the duties), or when the national authority has taken a guarantee against potential liability to anti-dumping duty, the importer should nonetheless (if he so wishes) introduce an application for a refund of anti-dumping duties within the six-month time limit together with a request that the Commission suspend the investigation until liability to the duties has been finally established.

2.4. Whose cooperation is required?

Successful completion of a refund application is dependent on both the cooperation of the applicant and that of the exporting producer. The applicant should try to ensure that the exporting producer submits the relevant information to the Commission. This will involve the completion of a questionnaire which may require researching all relevant commercial data for a defined period in the past and accepting an examination to establish the accuracy of such information including an on-spot verification visit. An exporting producer cannot 'partially cooperate' by submitting only selective data. Any such approach would lead the Commission to the conclusion that he was not cooperating and to the rejection of the application.

2.5. How is confidential information protected?

The rules of confidentiality as laid down in Article 19 of the basic Regulation apply to all information received in connection with applications for refunds of anti-dumping duties.

2.6. What are the deadlines?

- (a) Applications pursuant to Article 11(8) of the basic Regulation must be submitted to the competent authorities of the Member State in which the goods were cleared for entry into free circulation within six months of the date of determination of the anti-dumping duties due on those goods.
- (b) The Commission shall normally decide on the refund of any duties within 12 months, and in no circumstances within more than 18 months, from the date on which the Commission received a request for refund which was considered to be duly supported by sufficient evidence.
- (c) Should a refund be granted, Member States authorities will have ninety days from the date of notification of the Commission refund Decision in which to effect payment.

2.7. How much may be refunded?

If the admissibility and merits of the application are established, the refund may amount to:

- a part of the anti-dumping duties paid when the dumping margin has decreased,

or

- all of the anti-dumping duties paid when the dumping margin has been eliminated.

3. PROCEDURE

There are two stages in the procedure for establishing whether anti-dumping duties are refundable:

- lodging of the application,
- investigation of the claim.

3.1. Lodging of the application

3.1.1. Form of the application

The application must be submitted in writing, in an official language of the Community and signed by the applicant or a person empowered to represent the applicant.

The application shall contain:

- (i) a statement claiming a refund and declaring that the dumping margin of the applicant's exporting producer(s) on the basis of which the above duties have been paid has decreased or been eliminated;
- (ii) a declaration stating that the anti-dumping duties for which a refund is sought have been fully paid;
- (iii) an indication of the total amount for which a refund is sought and identification of the specific transactions on which that total is based.

For the convenience of the applicant, a pre-formatted application form is attached to this notice.

To enable the Commission to progress the refund investigation more rapidly, the applicant may enclose in its application any relevant document(s) or supporting evidence which it will be required to submit in accordance with point 3.2.1 below.

3.1.2. Submission of the application

The application must be submitted to the competent authorities of the Member State on whose territory the product concerned by the anti-dumping duties was released for free circulation.

The Member State shall immediately forward the application to the Trade Directorate of the European Commission, B-1049 Brussels. The Commission may subsequently refer to the Member State for verification of receipt of full payment of the anti-dumping duties concerned.

Where appropriate the Commission will inform the parties directly concerned of any application for the reimbursement of anti-dumping duties and will afford those parties an opportunity to comment.

3.1.3. *Time-limits for the submission of an application*

(a) Six-month time-limit

All applications for reimbursement must be introduced to the appropriate Member State within the six-month time-limit ⁽¹⁾ set out in Article 11(8) (second indent) of the basic Regulation.

In meeting the six-month time-limit for the submission of an application, it should be borne in mind that even in cases where a regulation imposing the duty in question is being challenged before the Court of First Instance of the European Communities or the application of the regulation is being challenged before national administrative or judicial bodies, the deadline of six months must be respected.

Depending on each specific case, the six-month time-limit will be counted from:

— the date of entry into force of a Council regulation imposing definitive duties and collecting amounts secured by way of provisional duty,

or

— the date of determination of the definitive anti-dumping duties, i.e. the date of acceptance of the customs declaration by the customs authorities,

or

— where the correct amount of duties is established pursuant to a post-clearance check, the latter date of determination of the duties payable applies.

Any application must meet all of the requirements set in point 3.1.1 above within this six-month time limit.

(b) Date of submission of the application

When forwarding the application to the Commission the Member State must indicate the date of submission of the application, i.e. the date on which the Member State's competent authority has effectively received the application.

For their own benefit applicants should obtain evidence of the receipt of their application at the offices of the appropriate Member State. For instance:

— postal applications can be sent by registered mail accompanied by a form for acknowledgement of receipt,

— the date of receipt of a fax by the Member State's competent authority can be determined by reference to the date indicated on the successful transmission report and the fax journal.

3.1.4. *Recurring applications*

As soon as the applicant is aware that he intends to submit more than one application for reimbursement of anti-dumping duties levied on the product concerned he should notify the Commission. This information is requested in order that the Commission might structure the investigation in the most efficient and effective way.

3.2. **Investigation**

3.2.1. *Evidence requested from the applicant*

The Commission will notify the applicant of the information to be submitted specifying a reasonable period of time within which the requested evidence must be submitted. This will include:

(a) invoice(s) and other documents on which customs procedures were based;

(b) customs documents identifying the import transactions for which a refund is sought showing, specifically, the basis for determining the amount of the duties to be levied (the type, quantity and value of the goods declared and the rate of anti-dumping duties applied) as well as the precise amount of the anti-dumping duties levied;

(c) declarations that:

(i) the duty collected has not been reimbursed by the exporting producer or by any third party, and that no future reimbursement will be made or accepted;

(ii) the prices on which the application is based are genuine;

(iii) there is no compensatory arrangement made before, since or simultaneously with the sale(s) under consideration;

(d) where the applicant is not associated with the exporting producer, and where the relevant information is not immediately available, the application shall contain a statement from the exporting producer that the dumping margin has been reduced or eliminated and that he will provide to the Commission all the relevant supporting data (i.e. information regarding normal values and export prices for a period during which his goods were exported directly or indirectly to the Community and on which the duties have been charged). An appropriate representative period for analysis will be determined later by the Commission (see point 3.2.2 below);

⁽¹⁾ For computation of time-limits in general, see Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ L 124, 8.6.1971, p. 1).

(e) where importers have paid duties on the basis of measures imposed further to an original investigation conducted by reference to a sample of exporting producers pursuant to Article 17 of the basic Regulation, applicants are under no obligation to submit data with reference to the group of exporting producers originally sampled but need only submit the relevant information concerning their own exporting producer(s).

Copies from originals of invoices, customs entry forms etc. must be provided with a declaration of their authenticity from the applicant or his exporting producer as the case may be. In addition, such documents, or the translations thereof, should be in one of the official languages of the Community.

To enable the Commission to progress the refund investigation more rapidly, the applicant may already enclose the above-mentioned evidence in its application submitted to the competent authorities of the relevant Member State. The Commission will then consider whether the application contains all of the information requested from the applicant. If need be, the Commission will notify the applicant of the information still to be submitted and will specify a reasonable period of time within which the requested evidence must be submitted.

3.2.2. Evidence requested from the exporting producer

(a) Representative period

For the purpose of determining the revised dumping margin, the Commission will specify the representative period to be investigated which will normally include the date(s) of invoicing of the transaction(s) for which a reimbursement is sought. This period will normally cover a minimum of six months and include a period prior to the date of invoicing of the first transaction by the exporting producer.

(b) Questionnaires

Pursuant to Article 6(2) of the basic Regulation, the exporting producer(s) who supplied the applicant and, where appropriate, the related importer(s) will be asked to submit information concerning all sales on the Community market, and not only sales to the applicant.

For purposes of confidentiality, the exporting producer may send such information directly to the Commission. The information will be sought by means of a questionnaire to be sent to the applicant's exporting producer(s) (and to any related importer(s) in the Community) with replies due within 37 days of the date of despatch.

When all information and the completed questionnaires, (including replies to any material deficiencies which may have been identified in the reply), have been received by the Commission, the application will only then be considered to be duly supported by evidence.

Parties supplying information should be aware that the Commission may verify any of the information or evidence received.

3.2.3. Analysis of merits

(a) General methodology

The revised dumping margin will be established by comparing for the representative period:

- the normal value(s) for the exported products in question
- and the export price(s),

in accordance with the relevant provisions of Article 2 of the basic Regulation.

Article 11(9) of the basic Regulation provides for the use of 'the same methodology as in the original investigation which led to the duty, with due account being taken of Article 2 (Determination of dumping), and in particular paragraphs 11 and 12 thereof (Use of weighted averages in calculating the dumping margin), and of Article 17 (Sampling)'.

Where the number of exporting producers, types of product or transactions concerned by requests submitted over a period of six months counted from the date of lodging of the first request or twelve months counted from the date of imposition of definitive measures, whichever is the later, is so large that individual examinations would be unduly burdensome and prevent completion of the investigation in good time, the Commission may base the calculation of the revised dumping margin on a sample of the exporting producers, types of product or transactions concerned by the application(s) on the basis of the provisions of Article 17 of the basic Regulation, in particular paragraph 3.

(b) Construction of the export price

Where the export price appears to be unreliable and is thus constructed pursuant to Article 2(9) of the basic Regulation, the Commission shall calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the Community.

(c) Use of review findings

When examining any application for a refund, the Commission may decide at any time to initiate an interim review in accordance with Article 11(3) of the basic Regulation. The procedure regarding the application for refund will be suspended until the review investigation is completed.

The findings of the review investigation may be used to determine the merits of a refund application provided that the date of invoicing of the transactions for which a refund is being claimed fall within the investigation period of the review.

(d) Extrapolation

Notwithstanding point (c) above, for purposes of administrative efficiency, the dumping margin established for any investigation period may be extrapolated for import transactions not covered by that period. However this may only be done under certain specified conditions:

- extrapolation may only be implemented for a period immediately adjacent to a period which has been investigated,
- the maximum period for which an investigation's results might be extrapolated is six months,
- extrapolation may only be applied when the dumping margin has been established on the basis of a completed investigation,
- extrapolation may only be applied to a sum of duties which is relatively small in the context of the entire refund application.

3.2.4. *Non-cooperation*

In cases in which the applicant or the exporting producer:

- supplies false or misleading information,
- or
- refuses access to relevant information or not does not provide it within a reasonable period of time,
- or
- significantly impedes the investigation, including impeding the verification of the information to the extent deemed necessary by the Commission,

the information will be disregarded and use may be made of the facts available pursuant to Article 18 of the basic Regulation.

In such cases, the dumping margin established during the investigation which led to the imposition of the duty for which a reimbursement is claimed will normally be considered to be the best available evidence. It would therefore be considered that the dumping margin had not decreased and the application would be rejected.

3.2.5. *Disclosure*

Once the investigation of the merits of the application is completed importers will receive disclosure of the essential facts and considerations on the basis of which the Commission intends to adopt a decision on the refund application, whereas cooperating exporting producers may only receive information on the treatment of their particular data, notably the resulting calculations of normal value and export prices.

4. **OUTCOME**

4.1. **Excess amount to be repaid**

The excess amount to be reimbursed to the applicant will normally be calculated as the difference between the duty collected and the actual duties due, based on the dumping margin established in the investigation, as an absolute sum.

4.2. **Payment**

The reimbursement should normally be paid within ninety days of the date of the notification of the refund decision.

Whether or not any payment made after 90 days gives rise to the payment of interest remains subject to the national legislation of each Member State.

4.3. **Revocation of a decision to reimburse**

Where it is subsequently found that a decision granting a refund has been adopted on the basis of false or incomplete information provided by the parties interested in the procedure, it will be revoked retroactively. Indeed, the fact that a refund decision has been based on false or incomplete information amounts to the absence of an objective legal basis for this decision, which therefore deprives *ab initio* the importer concerned of the right to obtain a refund and justifies the revocation of the said decision.

As a result of such revocation, the refunded amounts corresponding to the original anti-dumping duties will become subject to collection.

Once the Commission has adopted a decision to revoke a refund, the Member State concerned ensures that this decision is correctly implemented within its territory by recovering the amounts unduly refunded under Article 11(8) of the basic Regulation.

The competent authorities of the Member State concerned, when implementing such a decision, act in accordance with the procedural and substantive rules of their own national law provided that the application of national law does not affect the scope and effectiveness of the Commission decision to revoke its former decision granting a refund.

MODEL

AIDE-MÉMOIRE FOR REFUND APPLICATION

BASIC INFORMATION

Applicant identification	<input type="text"/>
Date of application	<input type="text"/>
Product description	<input type="text"/>
CN code	<input type="text"/>

Date of first transaction	<input type="text"/>
Is this a recurring application?	Yes <input type="checkbox"/> No <input type="checkbox"/>
<u>If yes:</u>	
Number of transactions covered by this application	<input type="text"/>
<u>If no:</u>	
Date of last transaction and total number of transactions	<input type="text"/>

MANDATORY MINIMUM CONTENTS

The undersigned applicant hereby claims for a refund of the following amount:

The undersigned applicant hereby declares that the duties for which he claims a refund have been fully paid.

The undersigned applicant hereby declares that the dumping margin of this exporting producer(s) on the basis of which the above duties have been paid has decreased or been eliminated.

NON-MANDATORY COMPLEMENTARY INFORMATION/DOCUMENTATION (*)

Invoices included	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Customs clearance documents	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Declaration of non-reimbursement by any third party	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Declaration that prices are genuine	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Declaration of no compensatory arrangements	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Normal value for previous six months or statement requesting this information from exporting producer(s)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
or statement from exporting producer(s) offering cooperation	Yes <input type="checkbox"/>	No <input type="checkbox"/>

(*) All documents submitted should be copies of the originals and the applicant or his exporting producer should testify to their authenticity. Furthermore, such documents or translations thereof should be in one of the official languages of the Community.