



Association des Industries de la Chocolaterie,
Biscuiterie et Confiserie de l'UE • Association
of the Chocolate, Biscuit and Confectionery
Industries of the EU

• CAOBISCO
• 1 rue Defacqz - B – 1000 Bruxelles
• Tel: 322/539.18.00
• Fax: 322/539.15.75
• e-mail : caobisco@caobisco.be
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Ref: 504-2008-565

Brussels, 20th May 2008

CAOBISCO DRAFT COMMENTS TO INWARD PROCESSING ARRANGEMENTS

CAOBISCO's main objective is to be able to access its ingredients at a reasonable price, so as to be competitive on the EU market and the world market. As long as prices in the EU are higher than on the world market, CAOBISCO operators need to be compensated since there is a risk to lose competitiveness. So far, refunds have been a tool to re-balance the price differentials (although it represented high costs through administrative burdens for some) and Inward processing certificates, when obtained, allowed operators to access imported raw materials for processing and destined for re-exportation.

Simplifications made to EC Regulation 1043/2005 – a short-term solution

First of all, we would like to welcome the recent amendments made to the Regulation governing the Non-Annex I export refunds regime. The extension of 10 months of the validity of export refunds certificates will assist sugar users with the anticipated ending of Non-Annex I export refunds for sugar in October 2008. This will certainly help CAOBISCO to plan ahead and remain competitive on the world market for another year.

However, CAOBISCO does not accept the fact that export refunds on processed agricultural products are to be eliminated the following year and that this is to be taken for granted: export refunds must remain available ***as long as the EU market price on raw materials is higher than the world market price.*** CAOBISCO will do its utmost to convince the Sugar Management Committee and Member States on this.

CAOBISCO is concerned that the EU preliminary draft budget issued only allocates €70 million refund budget for 2009. We count on the Commission to request for more budget if the applications for the first tranche exceed their expectations (applications commencing 7th of July).

In addition, a solution must be found for small exporters who benefited until now of the "Small Exporters Reserve" (SER) but should not benefit from the 10 months' validity extension. Enough budget for refunds on sugar should be reserved for the whole budget year.

Additional Inward Processing Relief – a medium-term solution

CAOBISCO supports the recent declaration made by DG Enterprise to analyse EC Regulation 1488/2001 and is open to discuss reactivation of the provisions contained in the Regulation, which provided for derogations from IPR for most agricultural products in certain circumstances.

However, we are concerned that the discussions in the different Commission services and in the Customs Code Committee could easily take too much time or worse, result in a failure.

CAOBISCO asks the Commission to speed up decision taking since the industry is facing major obstacle in the everyday usage of IPR and its current procedures, notably, the economic test, which is cumbersome and time-consuming. We have been pressing for simplification of procedures for a long time. The elimination of export refunds on sugar is pressuring time even further. Simplified IPR without economic conditions could be a transitional solution but its application would be needed for the 1st of June 2009 (end date for the validity period of certificates of the first tranche).

Furthermore, the Regulation 1488/2001 would need some amendments:

- Enough time should be given for operators to localise the best possible supplier for him, on the world market (contracts, quality guarantees etc play a role here);
- Inward processing certificates should be valid 1 year from the date of application (and not only 3 months from the date of authorisation);
- The quantities that are made available under this Regulation should be large enough to give an answer to the needs of the EU producers. In the regulation there is a limitation of 5000 tonnes/tranche, this means in total 30 000 tonnes/year. There should not be a limitation in case there are no more export refunds;
- A solution must be found for small and medium-sized exporters, who have no experience with IPR certificates (certificate system, guarantees, administrative procedures, etc.);
- Some operators face difficulties finding a supplier willing to deliver small quantities under IPR conditions;
- SMEs are not able to stock sugar in different silos (IPR- and refund sugar).

Simplification of the Inward Processing implementation rules of the Modernised Customs Code: a long-term solution for all CAOBISCO operators?

Using “simplified” IPR (Regulation 1488/2001) would be another temporary solution. A clear and profound simplification of the IPR procedures would offer more certainty for EU exporters.

However, current IPR rules make it nowadays almost impossible to use IPR for sugar in most EU Member States because of its sensitive character. A threshold of 150 000 EUR per year per applicant (IPR without economic test) is too low to compensate the loss of export refunds.

As regards the current revision of the IPR implementation rules (second working document distributed by DG Taxud in February), CAOBISCO has several comments to make:

- In light of the plans to phase out export refunds and the reform process in some agricultural sectors (e.g. dairy, sugar) we suggest that ***economic conditions be always deemed as fulfilled for products for which export refunds are set at zero*** at the time of an IPR application.
- We recommend that access to IPR be granted ***by default*** for the maximum number of products and that the economic test remains reduced to a minimum, based on risk analysis, purely on economic criteria and on viability of sourcing, and that politicians should be left to decide issues of restricted agricultural markets and the impact on the EU's food export industry in the broader context of CAP reform;
- Article 136.4 (b) of the MCC stipulates that authorisation for inward processing shall only be granted **when Community producers would not be adversely affected** (economic conditions).

The definition of "Community producers would not be adversely affected" (economic conditions) remains vague. We need ***exhaustive clarifications and quantifications of the exact meaning*** of the wording used in the working document. We consider it impossible to evaluate this reform without understanding how the Commission will judge and quantify such "essential interests". We think the Commission should clarify these concepts and that the conditions of this "two step approach" should be formulated in a more precise manner, possibly quantified through a "formula".

- National customs authorities would decide at the end, whether or not to send the case for economic examination to the Commission and Customs Committee.

There are different interpretations and market situations in the EU 25 which makes the decision of the national authorities ***very subjective*** (the influence other stakeholders could have on the launching of an examination, is not to be ignored (e.g. farmers' unions, etc.).

- On the timing procedure: once the application is filed, the **customs authorities can suspend the time for authorisation**, in requesting additional information or sending the case to the Commission.

This measure makes it difficult for operators to understand what the conditions for authorisation are based on (no quantification foreseeable). To sign contracts, operators need to know in advance if there is a chance to use inward processing or not, and whether or not there is a possibility to pass the economic examination.

- On Article 71-07 (CCIP) – Economic Conditions. In the previous draft working paper, under point 2, you could read: *"For goods subject to a commercial or an agricultural policy measure (e.g. sugar), economic conditions should take place for goods intended to be placed under inward processing, which are not covered under paragraph 1 a) ii to xvii or b)".*

The new draft has **replaced subparagraph ii by iii**. The latter used to specify reasons to grant economic conditions for products listed in Annex 73 (sensitive products, amongst others, sugar) identified by one of the following codes:

- 10) Unavailability of the goods produced in the Community:

Let us remind the Commission of the lack of stocks (private storage, etc.) in the Community and the scarcity of for example dairy products or cereals last year. If the EU is not prepared to lower its import tariffs, this condition must remain so as to guarantee supply for exportation of finished products.

- 11) Goods in the Community cannot be used because their price would make the proposed commercial operation economically unviable, in taking into account the cost of price of the processed product on the third country market:

This condition is absolutely vital to the industry since it reflects the competitive disadvantage EU exports of added-value products would have on the world market, if the price differential was not taken into account while granting IPR certificates.

- 12) Goods which do not conform to the expressly stated requirements of the third-country purchaser:

The importer of the finished product would not be able to demand domestic requirements concerning the ingredients used. Consequently it obliges the third country purchaser to comply with EU provisions.

CAOBISCO is strongly against this since it has contractual obligations vis-à-vis its buyers. Furthermore, to retrieve the condition goes against industrial or commercial property rights.

To conclude on this, **CAOBISCO is strongly opposed to the change of Article 71.07 point 2 of CCIP**. It would make it impossible for any operator to escape any economic examination. Subparagraph must be restored by replacing “iii” with “ii” as it was in the previous draft working paper.

- Under Article 71.07 point 5: “*The examination of the economic conditions shall establish **first**, whether it has been sufficiently proven in the view of the Committee that the essential interests of **Community producers** of similar goods are likely to be adversely affected and, if this has been sufficiently proven, **secondly**, which essential interests prevail, the interest of **Community producers or the interests of operators who use or intend to use the processing procedure**”:*

CAOBISCO requests that the priority should be the interests of operators using inward processing and not Community producers, if by that definition producers of agricultural commodities are being targeted. The reason why CAOBISCO operators would use IPR is to remain competitive internationally and nothing else.

- The validity period of IPR certificates for agricultural products has been reduced to 3 years.

CAOBISCO believes that the **validity should remain 5 years**, due to expected price volatility on the agricultural markets and to guarantee exports in case supply does not meet demand.

- In the latest DG TAXUD proposal where the IPR (Inward Processing Regime) has been merged with PCC (Processing under Customs Control):

CAOBISCO particularly disagrees with the proposal to subject these two different procedures to the same rules and economic conditions, since the **IPR and the PCC are based on completely different economic principles** (one is export-orientated, the other import-orientated).

Both should continue to be governed by different dispositions or specifications, especially to maintain the economic principles of the PCC, which is to “**to protect the processing industry in the EU member states**” and to avoid delocalization.

Therefore, we are convinced that also in the new legislation (new Custom Code Implementing Provisions), as in the current legislation, the general conditions for granting PCC have to be specified.

For these reasons, we suggest to maintain, also in the new CCIP, the current rules settled by Reg. CE 993/2001 in the art. 502.3 (“*For the processing under customs control arrangements -*

Chapter 4 - , the examination shall establish whether the use of non-Community sources enables processing activities to be created or maintained in the Community" - Art. 502.3-).

To continue, CAOBISCO also requests that:

- The **equivalence criteria need to be simplified**. We need the flexibility to be able to import a raw material or ingredient into one Member State, produce confectionery products either in that Member State or other Member States and then export finished products from any Member State – as per the intention of an effectively operating single market. In other words, so long as the same quantity of raw material/ingredient is imported as is exported in finished products, it should not matter how it circulates within the single market or what the port of entry and exit is.
- Similarly we need **flexibility on the sequencing of imports and exports**. So long as the same quantity imported as a raw material/ingredient is exported in finished products, it should not matter whether the import occurs before the export or vice versa, provided that the quantities are equivalent.
- Once a recipe is understood, tested and proven to contain x quantity of the material in question, **lab tests should not be required each time**. Financial and quantity audits should be sufficient. While we can accept the occasional lab test check, we see no reason why lab tests should be systematic as they are costly, time-consuming and unnecessary.

For branded factory produced products, the recipes are constant. In the unusual event that recipes are changed the manufacturer should be obliged to inform the authorities. (For export refunds the recipe is used as a basis for checking equivalence, and this system works to the satisfaction of the authorities, so why not for IPR?).

CAOBISCO hopes that the Commission will take these points into consideration when reflecting on the future export competitiveness of our industry as long as the EU market prices of commodities are still higher than world market prices.

Thanks you for your attention.
