COMMON METHOD FOR CALCULATING COUNTERVAILING CHARGES ON IMPORTS AND EXPORT REBATES

Statement by the European Communities

The present systems of turnover taxes are based on the principle of the country of destination. Consequently, in the context of that tax, the States have to ensure the capacity of domestic products to compete with foreign products in their own territory as well as in the countries to which those products are exported. When the turnover tax system is based on a cumulative multi-stage system, application of this principle implies the operation of two categories of measures: "countervailing charges" on imports and "rebates" on exports.

Article 97 of the Rome Treaty authorizes the member States to use "average rates" for specific products or groups of products for the purposes of such offsetting, but states that those rates must not exceed the maximum level set by Articles 95 and 96, i.e. in practice the burden on like domestic products.

In practice, the establishment of an average rate for a product or group of products must be the result of a two-fold series of investigations:

- determination of the cumulative tax burden resulting from all the commercial transactions involved directly and indirectly in the manufacture of the product concerned;
- weighting of that burden, if necessary, to take account at national level of the differing degrees of integration of undertakings that manufacture the product.

Determination of the cumulative burden implies, first of all, that the cost price of the product must be broken down into the various component elements acquired by the manufacturer for its production. Account must therefore be taken of elements that enter into the product (raw materials, etc.) as well as of those contributing to its manufacture (energy, depreciation ...) and likewise of the proportion of various overhead costs and services that are relevant.

This, however, represents only the tax burden at the final stage of production. How any product - for example, sheet iron except in the case of an integrated industry - attains that form only after a series of processing operations carried out by independent undertakings; mines, iron and steel plants, rolling mills, the tax being levied on the occasion of each transfer of the product. In order to determine the aggregate burden, account must therefore be taken of this succession of tax charges. This research to the origin of the product has further ramifications, because in the case mentioned for example the winning of the iron ore implies investments and other essential goods for the acquisition of which a tax has been paid which is indirectly included in the price of the ore purchased by the steel manufacturer.
The results thus obtained may have to be weighted when, at national level, there are two or more manufacturing circuits for the same product. Indeed the less a circuit is integrated, the more numerous the taxable transfers, hence the higher the aggregate tax burden. A weighting coefficient must then be applied in order to determine an average tax burden, hence an average rate for a rebate or countervailing charge.

This brief outline of the two-fold series of investigations that has to be carried out by States wishing to establish average rates for countervailing charges and rebates gives an idea of the difficulties that they can encounter in evaluating those rates.

Since 1960, when establishing or amending an average offsetting rate, the member States have presented calculations to the Commission of the European Communities, in order to justify the level of the rate. Experience has shown, however, that because of the different methods followed by each in determining the cumulative burden, and in particular their complexity, it was difficult to examine the justifying calculations and therefore sometimes difficult to be assured that the ceiling set by Articles 95 and 97 was being observed.

The common method adopted by the Council of the European Communities on 30 April 1968, is designed to overcome these difficulties. It is within the context of Article 97 of the Treaty, and is designed to ensure that the average rates of countervailing import charges and export rebates do not exceed the limits set by that article. To that end, it establishes a uniform system for calculating the charges and rebates, specifying the conditions in which the various component elements of the cost price of products can be taken into consideration.

From the technical aspect, the common method corresponds in broad outline to that already used by the member States; at the final stage of manufacture the cost of the product is broken down into the various component elements, each of these in turn being broken down. The production process is therefore considered stage by stage.

This kind of breaking down can, however, present disadvantages that can make any method of calculation inapplicable: very rapidly, the retracing back through time multiplies the number of elements to infinity, the evaluation of their amount becomes ever more approximate, and their significance in the amount of the

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1 See annex.
tax burden declines to the point of becoming negligible and uncertain. That is why the common method provides that in calculating the tax burden on a product at the stages preceding the final stage, only certain components (factors and elements) can be taken into consideration.

Because of the fact that the cumulative multi-stage tax system causes the tax burden borne by a product to vary according to the degree of integration of the producing undertaking, the common method provides that, in order to determine the average offsetting rate, the results must in addition be weighted.

Although this method of analysis can in general be applied without any great difficulty, it seemed appropriate, with a view to simplification, to include the possibility of using flat-rate evaluation systems which would yield a substantially identical result.
ANNEX

DIRECTIVE OF THE COUNCIL

of 30 April 1968

establishing a common method for calculating the average rates provided for in Article 97 of the Treaty

Article 1

1. When, in virtue of Article 97 of the Treaty, a member State institutes or modifies an average rate in order to compensate, either at the time of importing or at the time of exporting, the turnover taxes which it applies directly or indirectly to the manufacture of a product or of a group of products, that rate shall be calculated in accordance with the provisions of the present directive and with reference to the real conditions of production.

2. The provisions of the present directive do not apply:

- to the average rates existing at the time of the entry into force of this directive, even if they are used for calculating the previous fiscal charge, in conformity with the provisions of Article 6;

- to the adaptations of the average rates resulting purely and simply from a general modification of the rates of the turnover tax.

Article 2

1. The average fiscal charge applying to a product is equal to the weighted average of the fiscal charges applying to the product in the different representative circuits of its production, established in each circuit in conformity with the provisions of Articles 3 to 6. The weighting shall be carried out in relation to the importance of each circuit in the total production of the product.

2. The average fiscal charge applying to a group of products is equal to the weighted average of the average fiscal charges applying to the representative products of that group. The extent of the group of products determines the number of the representative products to be taken into consideration. For each representative product, the average fiscal charge is calculated in conformity with the provisions of paragraph 1. The weighting is done in relation to the importance of the products represented by each representative product in the total production of the group of products.

Article 3

For the calculation of the fiscal charge applying to a product at the final stage of its production, the fiscal charges applying, at that stage, to all the factors in the cost price can be used.
Article 4

1. For the calculation of the fiscal charge applying to the product at the penultimate stage, use may be made of the charges applying, at that stage, to the raw materials, the semi-finished products and the finished products which enter into the raw materials, the semi-finished products or the finished products which are used in the last stage, and into any other factor or element used in the last stage, if the latter represents, at that stage, at least 3 per cent of the selling price exclusive of tax at the end product.

2. For the calculation of the fiscal charge applying to the product at the other stages, use can be made of the charges applying, at each of those stages, to the raw materials, the semi-finished products and the finished products, which are to enter into the manufacture of a raw material, of a semi-finished product or of a finished product used in the last stage.

Article 5

1. If, for a factor or for an element used at any stage, the fiscal charge at the previous stages is not calculated in conformity with the rules of Article 4, the charge applying to that factor or that element can be increased by a standard charge of 50 per cent.

However, if the amount of the fiscal charge applying to that factor or that element is the result of the application of a special rate, that amount must first, for the purpose of applying the standard charge, be recalculated on the basis of the general rate of the turnover tax. If that special rate covers one or more earlier stages, the charge resulting from the application of that rate cannot be increased by the standard charge.

2. The charge thus calculated for the earlier stages cannot exceed that which would result from the application to that factor or to that element of the provisions of Articles 4 and 6.

Article 6

If, for a factor or an element used at any stage, there already exists an average rate, that rate can be used for calculating the previous fiscal charge applying to that factor or that element, to the extent to which it is in conformity with Article 97. The application of that rate is obligatory, when it is justified in accordance with the calculations submitted to the Commission in conformity with the provisions of Article 10.

Article 7

1. When a member State refrains, in respect of a product or a group of products, from calculating the average fiscal charge in conformity with Articles 2 to 6, that charge can be assessed at a standard rate at an amount corresponding to 100 per cent, 75 per cent, 50 per cent or 30 per cent of the
general rate of the turnover tax, according to whether the factors and the elements of the product or of the group of products to be used in the final stage and subjected to the normal rate or to the rate increased by the turnover tax represent respectively 65 per cent, 50 per cent, 35 per cent or less than 35 per cent of the selling price exclusive of tax of the product or of the group of products.

2. The charge thus assessed cannot exceed the average fiscal charge which would result from the application of the provisions of Articles 2, 3, 4 and 6.

**Article 8**

The average rates are rounded off at the half point above or below according to whether the decimal fraction of the rate obtained amounts to or does not amount to 0.75 or 0.25.

**Article 9**

After consultation of the member States, the Commission, if necessary, shall establish by means of a directive the procedures for the application of Articles 1 to 8.

**Article 10**

1. When a member State envisages the institution or the modification of an average rate, it submits to the Commission the calculation of the average fiscal charge, established in accordance with the provisions of Articles 1 to 8.

2. When the Commission considers that a fiscal charge established at a standard rate in conformity with Article 5 or Article 7 exceeds the limits laid down in paragraph 2 of those Articles, the member State shall submit to the Commission, at the latter's request, the calculation of that charge established in conformity with Articles 2, 3, 4 and 6.

**Article 11**

The member States shall see to it that they communicate to the Commission the text of the essential provisions of municipal law which they adopt subsequently in the field governed by the present directive.

The present directive is addressed to the member States.

Done at Luxembourg, 30 April 1968.