

ANNEX:

Information on the problem of customs exemptions for
invalids and invalid organisations in the light of
harmonisation with European legislation in this field

INFORMATION ON THE PROBLEM OF CUSTOMS EXEMPTIONS FOR INVALIDS AND INVALID ORGANISATIONS IN THE LIGHT OF HARMONISATION WITH EUROPEAN LEGISLATION IN THIS FIELD

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1. Introduction

At present, the area of customs exemptions remains one of the sub-areas of the customs system which will be subject to detailed harmonisation with European legislation only on the second revision of the customs legislation, expected in 2001/2002. Viewed generally, the scope of customs exemptions in certain segments in Slovenia is wider than in the European Union, so the next revision of customs regulations will have to ensure restriction of the right to customs exemptions. One such area where the right to customs exemptions in Slovenia is broader than in the European Union is the area of customs exemptions for invalids and invalid organisations.

During preparation of negotiating positions for the 25 work area - Customs Union - the question arose as to whether Slovenia should request a transitional period for the introduction of European legislation in the area of customs exemptions for invalids and invalid organisations or not. The data collected on imports for their needs in 1996 to 1998 show that this is primarily a social or political issue rather than an economic problem.

The purpose of this information is to present the differences between the Slovenian and the European legal order in this area, and to present the economic aspects of the problem and proposed resolutions to prevent the onset of problems when the customs legislation changes.

2. European arrangement of the area of customs exemptions for invalids and invalid organisations

The European Union governs the area of customs exemptions in a special decree dating from 1983 which is directly applicable in all member states. This is supplemented by some implementational decrees which do not however apply to the area under consideration. A new decree on customs exemptions has been in preparation for a number of years, but member states have been blocking some new solutions, as a result of which it is impossible to predict when, or even if, it will be introduced.

Customs exemptions are governed separately for blind and partially sighted persons and for other (mentally or physically) handicapped persons.

A. Exemptions for the blind and partially sighted persons

All products listed in annex 3 are free from customs duty, regardless of the importer. This mainly covers products intended for education for the blind, or for their progress in scientific or cultural fields (print and photographic materials).

A stricter regime applies to products listed in annex 4 of the Decree. Again, these are products intended for education for the blind, or for their progress in scientific or cultural fields, but further conditions must be met. Only those products imported by the blind for their own needs, or by organisations which are involved in the education of the blind or which otherwise provide for them, are exempt from customs duty. Organisations require a certificate from a responsible body of an EU member state. This group covers computers, audio equipment and the like.

B. Exemptions for other handicapped persons

Exemptions apply only to products designed specially for the education of invalid persons, or for their employment and social development. Exemptions apply only in instances when the products are imported by invalid persons for their own needs or are imported by organisations which are involved in the education of the blind or which otherwise provide for them (which must be certified by a responsible body of an EU member state).

Exemptions from the previous paragraph apply only in instances when equivalent products are not produced in the EU. Exceptions to this rule are possible only after a special procedure at the European Commission and the Customs Codex Commission (CCC). In any event, article 74 allows for customs exemptions for imports of equivalent products when they are gifts to invalids or invalid organisations without commercial intent.

C. Other relevant provisions relating to exemptions for invalids and invalid organisations

The general provisions (articles 75 - 78 of the decree) which govern the problem of customs exemptions to the benefit of invalid persons must be taken into consideration in all exemptions discussed in sections A and B. This concerns the responsibilities of EU

member states with regard to the acquisition of invalid status. Also governed in detail is the question of the transfer of items which were exempted from customs duties to other persons, and the notification responsibilities of invalids and invalid organisations in the event of such transactions (e.g. in rental, sale, etc.) or possible liability to pay import duties.

It must be particularly stressed that invalid organisations may also claim customs exemptions pursuant to the provisions which apply to charitable and humanitarian organisations (Articles 65 - 69 of the decree). Generally speaking, exemptions primarily apply to products which organisations import (or receive free of charge) with the intention of distributing them free of charge to persons in need. Further restrictions of such exemptions are governed in detail.

3. Slovenian legislation in the area of customs exemptions for invalids and invalid organisations

In Slovenia, customs exemptions for the needs of invalids and invalid organisations are governed by the customs law and the decree on exercising the right to customs exemptions. In accordance with these regulations:

Invalid persons exercise the right to customs exemptions for specific equipment or technical aids which are directly required for life and work, and for spare parts for such equipment (clause 8 of article 161 of the customs law); equipment and aids for which customs exemptions may be exercised are listed in a special annex separately for individual groups of invalids; personal motor vehicles may be treated as equipment or an aid for special categories of invalids;

Category I or II invalids exercise customs exemptions for equipment to perform professional activities for which they are trained, but only if the equipment is not produced in Slovenia (clause 6 of article 162 of the customs law);

Invalid organisations exercise customs exemptions for specific equipment or technical aids and their spare parts, regardless of whether they require them for their own needs or to meet the needs of their members (clause 10 of article 162 of the customs law). Goods which may be subject to this exemption are defined in a special annex of the decree; motor vehicles may be imported without payment of customs duties for special categories of invalids. Invalid organisations which may exercise this customs exemption are exhaustively listed in the decree.

A copy of the relevant provisions of the decree on exercising the right to customs exemptions and the relevant annexes is given in annex 2 of this information.

4. Economic outline of the consequences of harmonisation of Slovenian legislation with European legislation in the area of customs exemptions for invalids and invalid organisations

The following three elements must be taken into consideration in assessing the economic consequences of restricting the right to customs exemptions:

- a. regional orientation of imports: the data from annex 3 shows that most of the goods, both for the needs of invalid organisations and for the needs of invalids, were imported from the European Union. When Slovenia becomes a full member of the European Union, the problem of customs exemptions will only concern those goods for the needs of invalids which are imported from third countries.
- b. implementing signed free trade agreements and those agreements to which Slovenia will accede due to its membership of the EU: under free trade agreements already signed, the expiry of the transitional periods will see customs duties withdrawn on goods from the signatory countries. This withdrawal of customs duties also applies to goods for the needs of invalids, so no special customs exemptions need be introduced for imports of goods from these countries. Again in this case, the problem of customs exemptions will only apply to those goods imported from countries with which Slovenia still has no free trade agreement, as well as to those goods which, because of their manufacturing characteristics, cannot have an origin from one of the countries with which Slovenia has signed such an agreement.
- c. types of goods for which customs exemptions on imports are requested: data for 1996, 1997 and 1998 shows that invalids mostly claimed customs exemptions on imports of personal motor vehicles, with fewer claims on other types of goods. Equally, the data shows that, between 1996 and 1998, invalids failed to take advantage of the possibility of customs exemptions for equipment to perform activities.

5. Possible solutions

All of the aspects described indicate that restricting the rights of invalids to customs exemptions on Slovenia's entry into the EU will not have serious economic consequences for the position of invalids and invalid organisations, although the problem of restricting rights may prove to be a very serious political problem.

The problem may be approached in two ways:

1. request a transitional period in negotiations with the EU in the area of customs exemptions for invalids and invalid organisations, using this period to push to raise the level of rights to customs exemptions for invalids and invalid organisations within the framework of the responsible institutions of the EU. The chances of Slovenia significantly influencing the formulation of the decree on customs exemptions are relatively small, so this approach does not represent a final solution to the problem, it merely postpones a decision. It is also important in negotiations that we do not refer to an economic evaluation of the problem, but we can present it as a political and social issue;
2. to accept the responsibility within the context of negotiations with the EU that, on the date of entry into the EU, we will introduce the European legal order and, without exception, respect the European decree on customs exemptions, while up to full membership we will, in line with our national responsibilities, prepare a new

system to provide help to invalids and their organisations. The programme should be prepared by the start of 2001, when we anticipate the start of the procedure for the second content revision of customs regulations, which will also have to include a revision of customs exemptions. In preparing the programme, the programme of direct help to families with multiple children, which was prepared in connection with the introduction of value added tax, could be used as an example.

6. Proposed resolutions

1. At its ... session on ..., the Government of the Republic of Slovenia discussed the Information on the problem of customs exemptions for invalids and invalid organisations in the light of harmonisation with European legislation in this field, and adopted it.
2. The Government of the Republic of Slovenia determined that the continued harmonisation of Slovenian customs legislation with European legislation in the area of customs exemptions requires the preparation by 2001 of proposed amendments to customs legislation along the lines of restricting the right to customs exemptions, wherein one of the most sensitive areas is customs exemptions for invalids and invalid organisations.
3. The Government of the Republic of Slovenia assesses that a sustainable solution in the area of help to invalid persons and their organisations cannot be sought in the continued preservation of various customs exemptions, since it is a non-transparent and frequently also unfair system. The Government therefore feels that it would be inappropriate to place this question in the pre-accession negotiations with the European Union.
4. The Government of the Republic of Slovenia instructed the responsible ministries to prepare by no later than 2001 a suitable legal basis for the introduction of a system of direct help to invalids, which would replace the current form of direct assistance in the form of customs exemptions. Activities relating to the implementation of this resolution are coordinated by the Ministry of Labour, the Family and Social Affairs.