

COUNCIL REGULATION (EEC) No 1315/88

of 3 May 1988

amending Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff and Regulation (EEC) No 918/83 setting up a Community system of reliefs from customs duty

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 28 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Section II C of the preliminary provisions of the combined nomenclature annexed to Regulation (EEC) No 2658/87 ⁽⁴⁾, provides for customs duty to be charged at the flat rate of 10 % *ad valorem* on goods sent in small consignments to private individuals or contained in travellers' personal luggage, provided that such importations are not of a commercial nature and that the total value of such goods does not exceed 115 ECU per consignment or per traveller;

Whereas, in accordance with Section II C (3) of the said preliminary provisions, the flat rate 10 % customs duty is charged in respect of goods contained in travellers' personal luggage only on the fraction of the value exceeding the amounts admitted free of import duties pursuant to Article 45 to 49 of Regulation (EEC) No 918/83 ⁽⁵⁾, as amended by Regulation (EEC) No 3822/85 ⁽⁶⁾; whereas, however, as a result of the third indent of Article 29 (2) of Regulation (EEC) No 918/83, the flat of 10 % is charged on all goods in small consignments sent to private individuals where the total value of the said consignments exceeds the amount laid down for their duty-free admission, i.e. 45 ECU;

Whereas the disadvantage of these rules is that they preclude any relief for the consignees of small consignments whose total value exceeds, even by a small margin, the amount of 45 ECU; whereas examination of the situation has revealed that the introduction in this particular context of provisions similar to those applicable to goods contained in travellers' personal luggage should not cause serious administrative difficulties; whereas it is accordingly appropriate to amend both Section II C of the preliminary provisions of the combined nomenclature and Title VII of Regulation (EEC) No 918/83 to permit

relief on the import of small consignments sent to private individuals up to a value of 45 ECU and to charge the flat rate 10 % customs duty only on the fraction of the value exceeding that amount;

Whereas at this juncture the value beyond which the flat rate of 10 % customs duty may be charged on consignments sent to private individuals should be raised from 115 ECU to 200 ECU, as the Commission proposed on 16 November 1984 ⁽⁷⁾; whereas for reasons of legal clarity, all these amendments should be made by means of a complete redrafting of Section II C of the preliminary provisions of the combined nomenclature and Title VII of Regulation (EEC) No 918/83;

Whereas Article 1 (3) of Regulation (EEC) No 918/83 provides that the island of Heligoland is to be considered a third country; whereas as a result of the provisions of Council Regulation (EEC) No 2151/84 of 23 July 1984 on the customs territory of the Community ⁽⁸⁾, as last amended by the Act of Accession of Spain and Portugal, that all territories excluded from the customs territory of the Community are in the same legal position as Heligoland; whereas it is therefore necessary to amend the said Article 1 (3);

Whereas Articles 137 and 138 of Regulation (EEC) No 918/83 lay down the conditions on which, until the establishment of Community provisions in the field in question, Member States may apply special relief granted on imports of instruments and apparatus used in medical research, establishing medical diagnoses or carrying out medical treatment;

Whereas the experience acquired from application of these provisions by one Member State has shown that the duty-free admission of the instruments and apparatus in question, provided that equivalent instruments and apparatus are not being manufactured in the Community cannot have untoward effects on the Community economy; whereas it would, however, make an effective contribution to the detection and treatment of serious diseases which may affect persons residing in the Community; whereas it is advisable to encourage any donations of such instruments or apparatus to medical institutions approved for these purposes by the competent authorities; whereas the optional and temporary provisions laid down by Articles 137 and 138 of Regulation (EEC) No 918/83 in respect of instruments and apparatus used in medical research, establishing medical diagnoses or carrying out medical treatment

⁽¹⁾ OJ No C 254, 11. 10. 1986, p. 7.

⁽²⁾ OJ No C 13, 18. 1. 1988, p. 173.

⁽³⁾ OJ No C 105, 21. 4. 1987, p. 4.

⁽⁴⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽⁵⁾ OJ No L 105, 23. 4. 1983, p. 1.

⁽⁶⁾ OJ No L 370, 31. 12. 1985, p. 22.

⁽⁷⁾ OJ No C 324, 5. 12. 1984, p. 5.

⁽⁸⁾ OJ No L 197, 27. 7. 1984, p. 1.

should be converted into definitive provisions applicable throughout the Community and, to this end, the said Articles should be replaced by a Title XIVa dealing with this particular case of relief;

Whereas Regulation (EEC) No 918/83 should also be supplemented to take account of the work carried out by the World Health Organization by introduction of relief from import duties in respect of the reference substances required for the quality control of medicinal products;

Whereas, on the basis of work carried out within the Committee on Duty Free Arrangements since the entry into force of Regulation (EEC) No 918/83, it has been established that a certain number of temporary provisions foreseen in Article 136 could, under certain conditions, be transformed into definite provisions or limited in time, or be deleted; whereas Articles 133 to 136 should accordingly be amended in order to remove as far as possible any uncertainty as regards their scope and any disparity in application of the Community system of reliefs from customs duty set up by Regulation (EEC) No 918/83;

Whereas it is advisable to take the opportunity arising from these various amendments to Regulation (EEC) No 918/83 to amend certain other provisions so that their application is more consistent with the objectives pursued, or to ensure compliance with provisions adopted within the framework of certain international organizations, notably the Council Decision-Recommendation of the Organization for Economic Cooperation and Development (OECD) adopted on 27 November 1985 concerning policy in the field of international tourism,

HAS ADOPTED THIS REGULATION:

Article 1

Section II C of the preliminary provisions of the combined nomenclature annexed to Regulation (EEC) No 2658/87 is replaced by the following:

'C. Standard rate of duty

1. Customs duty shall be charged at the flat rate of 10 % *ad valorem* on goods:

- contained in consignments sent by one private individual to another,
- contained in travellers' personal luggage,

provided that such importations are not of a commercial nature.

This flat rate 10 % customs duty shall apply provided that the value of the goods subject to import duty does not exceed 200 ECU per consignment or per traveller.

Such flat-rate assessment shall not apply to goods falling within Chapter 24 which are contained in a consignment or in travellers' personal luggage in amounts exceeding those laid down in Article 31 or in Article 46 of Regulation (EEC) No 918/83 (1).

2. Importations shall be treated as not being of a commercial nature if:

- (a) in the case of goods contained in consignments sent by one private individual to another, such consignments:

- are of an occasional nature,
- contain goods exclusively for the personal use of the consignee or his family; which do not by their nature or quantity reflect any commercial interest,
- are sent to the consignee by the consignor free of payment of any kind;

- (b) in the case of goods contained in travellers' personal luggage, they:

- are of an occasional nature, and
- consist exclusively of goods for the personal use of the travellers or their families, or of goods intended as presents; the nature and quantity of such goods must not be such as might indicate that they are being imported for commercial reasons.

3. The flat rate of customs duty shall not apply to goods imported under the conditions set out in paragraphs 1 and 2 if the person entitled has, before the said flat rate is applied to them, requested that they be subject to the customs duties appropriate to them. All the goods making up the consignment shall then be subject to the import duties which are appropriate to them, without prejudice to the duty-free admission provided for pursuant to Articles 29 to 31 and 45 to 49 of Regulation (EEC) No 918/83.

For the purposes of the first subparagraph, import duties shall mean both customs duties and charges having equivalent effect and agricultural levies and other import charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products.

4. Member States may round off the amount in national currencies resulting from the conversion of the sum of 200 ECU.
5. Member States may maintain unchanged the equivalent in national currency of the sum of 200 ECU if, at the time of the annual adjustment provided for in the first paragraph of Article 2 (2) of Regulation (EEC) No 2779/78, as last amended by Regulation (EEC) No 289/84 (2), the conversion of this amount, before the rounding off provided

for in paragraph 4, results in a change of less than 5 % in the equivalent in national currency, or in a reduction thereof.

(¹) OJ No L 105, 23. 4. 1983, p. 1.

(²) OJ No L 33, 4. 2. 1984, p. 2.

Article 2

Regulation (EEC) No 918/83 is hereby amended as follows :

1. Article 1 (3) is replaced by the following :

'3. Save as otherwise provided in this Regulation for the purpose of applying Chapter I, the concept of third countries also includes those parts of Member States' territories excluded from the customs territory of the Community by virtue of Regulation (EEC) No 2151/84 (¹).

(¹) OJ No L 197, 27. 7. 1984, p. 1.'

2. Article 11 (2) is replaced by the following :

'2. Subject to the same conditions, presents customarily given on the occasion of a marriage, which are received by a person fulfilling the conditions laid down in paragraph 1 from persons having their normal place of residence in a third country shall also be admitted free of import duties. The value of each present admitted duty-free may not, however, exceed 1 000 ECU.'

3. Title VII shall be replaced by the following :

TITLE VII

Consignments sent by one private individual to another

Article 29

1. Subject to Articles 30 and 31, goods contained in consignments sent from a third country by a private individual to another private individual, living in the customs territory of the Community shall be admitted free of import duties, provided that such importations are not of a commercial nature.

The relief provided for under this paragraph shall not apply to goods in consignments sent from the island of Heligoland.

2. For the purposes of paragraph 1, imported consignments are "not of a commercial nature" if they :

- are of an occasional nature,
- contain goods exclusively for the personal use of the consignee or his family, which do not by their nature or quantity reflect any commercial intent,
- are sent to the consignee by the consignor free of payment of any kind.

Article 30

The relief referred to in Article 29 (1) shall apply to a value of 45 ECU per consignment, including the value of goods referred to in Article 31.

Where the total value per consignment of two or more items exceeds the amount referred to in the first subparagraph, relief up to that amount shall be granted for such of the items as would, if imported separately, have been granted relief, it being understood that the value of an individual item cannot be split up.

Article 31

The relief referred to in Article 29 (1) shall be limited, per consignment, to the quantities given against each of the goods listed below :

(a) tobacco products :

50 cigarettes, or

25 cigarillos (cigars of a maximum weight of three grams each), or

10 cigars, or

50 grams of smoking tobacco, or

a proportional assortment of these different products ;

(b) alcohols and alcoholic beverages :

— distilled beverages and spirits of an alcoholic strength by volume exceeding 22 % volume ; non-denatured ethyl alcohol of 80 % volume and over : one litre, or

— distilled beverages and spirits, and aperitifs with a wine or alcoholic base, tafia, saké or similar beverages, of an alcoholic strength by volume not exceeding 22 % volume ; sparkling wines, liqueur wines : one litre, or a proportional assortment of these different products and

— still wines : two litres ;

(c) perfumes : 50 grams, or

toilet waters : 0,25 litre.'

4. Article 46 (1) is replaced by the following :

'1. The relief referred to in Article 45 (1) shall, in respect of the goods listed below, apply subject to the following quantitative limits per traveller :

(a) tobacco products :

200 cigarettes, or

100 cigarillos (cigars of a maximum weight of three grams each), or

50 cigars, or

250 grams of smoking tobacco, or

a proportional assortment of these different products ;

(b) alcohols and alcoholic beverages :

- distilled beverages and spirits of an alcoholic strength by volume exceeding 22 % volume ; non-denatured ethyl alcohol of 80 % volume and over : one litre, or
- distilled beverages and spirits, and aperitifs with a wine or alcoholic base, tafia, saké or similar beverages, of an alcoholic strength by volume not exceeding 22 % volume ; sparkling wines, liqueur wines : two litres, or a proportional assortment of these different products and
- still wines : two litres ;

(c) perfumes : 50 grams and

toilet waters : 0,25 litre ;

(d) medicinal products :

the quantity required to meet travellers' personal needs.'

5. The following shall be added to the first indent of Article 49 (2) :

'Member States may grant exemptions therefrom.'

6. Article 60 shall be replaced by the following :

Article 60

1. Relief from import duties shall be granted in respect of :

- (a) animals specially prepared for laboratory use ;
- (b) biological or chemical substances included in a list drawn up in accordance with the procedure laid down in Article 143 (2) and (3), which are imported exclusively for non-commercial purposes.

2. The relief referred to in paragraph 1 shall be limited to animals and biological or chemical substances which are intended for :

- either public establishments principally engaged in education or scientific research and those departments of public establishments which are principally engaged in education or scientific research, or
- private establishments principally engaged in education or scientific research and authorized by the competent authorities of the Member States to receive such articles duty-free.

3. The list referred to in subparagraph 1 (b) may include only biological or chemical substances for which there is no equivalent production in the customs territory of the Community and which, on account of their specificity or degree of purity, are mainly or exclusively suited to scientific research.'

7. The following Titles shall be inserted :

TITLE XIVa

Instruments and apparatus intended for medical research, establishing medical diagnoses or carrying out medical treatment

Article 63a

1. Instruments and apparatus intended for medical research, establishing medical diagnoses or carrying out medical treatment which are donated either by a charitable or philanthropic organization or by a private individual to health authorities, hospital departments or medical research institutions approved by the competent authorities of the Member States to receive such articles duty-free, or which are purchased by such health authorities, hospitals or medical research institutions entirely with funds provided by a charitable or philanthropic organization or with voluntary contributions, shall be admitted free of import duties, always provided that it is established that :

- (a) equivalent instruments and apparatus are not being currently manufactured in the customs territory of the Community ;
- (b) the donation of the instruments or apparatus in question does not conceal any commercial intent on the part of the donor ; and
- (c) the donor is in no way connected with the manufacturer of the instruments or apparatus which are the subject of the duty relief application.

2. The relief shall also apply, on the same conditions, to :

- (a) spare parts, components or accessories specifically for instruments or apparatus, provided that these spare parts, components or accessories are imported at the same time as such instruments and apparatus, or if imported subsequently that they can be identified as being intended for instruments or apparatus previously admitted duty-free ;
- (b) tools to be used for the maintenance, checking, calibration or repair of instruments or apparatus, provided that these tools are imported at the same time as such instruments and apparatus or, if imported subsequently, that they can be identified as being intended for instruments or apparatus previously admitted duty-free.

Article 63b

For the purposes of applying Article 63a, and in particular with regard to the instruments or apparatus and recipient bodies referred to therein, the fourth indent of Article 54 and Articles 55, 57 and 58 shall apply *mutatis mutandis*.

TITLE XIVb

Reference substances for the quality control of medicinal products*Article 63c*

Consignments which contain samples of reference substances approved by the World Health Organization for the quality control of materials used in the manufacture of medicinal products and which are addressed to consignees authorized by the competent authorities of the Member States to receive such consignments free of duty shall be admitted free of import duties.

8. The following point is added to Article 86:

(d) Awards, trophies and souvenirs of a symbolic nature and of limited value intended for distribution free of charge to persons normally resident in third countries at business conferences or similar international events; their nature, unitary value or other features, must not be such as might indicate that they are being imported for commercial reasons.

9. The following point is added to Article 109:

(q) Tax and similar stamps proving payment of charges in third countries.

10. The title of Title XXVII is replaced by the following:

'Fuel and lubricants present in land motor vehicles and special containers.'

11. Articles 112 and 113 are replaced by the following:

'Article 112

1. Subject to the provisions of Articles 113 to 115:

(a) fuel contained in the standard tanks of:

- private and commercial motor vehicles and motor cycles,
 - special containers,
- entering the customs territory of the Community;

(b) fuel contained in portable tanks carried by private motor vehicles and motor cycles, with a maximum of 10 litres per vehicle and without prejudice to national provisions on the holding and transport of fuel;

shall be admitted free of import duties.

2. For the purposes of paragraph 1:

(a) "commercial motor vehicle" means any motorized road vehicle (including tractors with or without trailers) which by its type of construction and its equipment is designed for and capable of transporting, whether for payment or not:

- more than nine persons including the driver,
- goods,
- and any road vehicle for a special purpose other than transport as such;

(b) "private motor vehicle" means any motor vehicle not covered by the definition set out in (a);

(c) "standard tanks" means:

- the tanks permanently fixed by the manufacturer to all motor vehicles of the same type as the vehicle in question and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems.

Gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to the other systems with which the vehicle may be equipped shall also be considered to be standard tanks,

- tanks permanently fixed by the manufacturer to all containers of the same type as the container in question and whose permanent fitting enables fuel to be used directly for the operation, during transport, of refrigeration systems and other systems with which special containers are equipped;

(d) "special container" means any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems, or other systems.

Article 113

As regards the fuel contained in the standard tanks of commercial motor vehicles and special containers, Member States may limit application of the relief to 200 litres per vehicle, per special container and per journey.

12. The second paragraph of Article 132 is replaced by the following:

'Member States may also maintain unamended the exchange value in national currency of the amount determined in ECU if, at the time of the annual adjustment provided for in the first subparagraph of Article 2 (2) of Regulation (EEC) No 2779/78⁽¹⁾, as last amended by Regulation (EEC) No 289/84⁽²⁾, the conversion of this amount, before the rounding off provided for in the previous paragraph leads to an alteration of less than 5% in the exchange value expressed in national currency, or to a reduction thereof.

⁽¹⁾ OJ No L 333, 30. 11. 1978, p. 5.

⁽²⁾ OJ No L 33, 4. 2. 1984, p. 2.

13. The following subparagraph is added to Article 133 (1):

'(g) relief in the context of agreements entered into on the basis of reciprocity with third countries that are Contracting Parties to the Convention on International Civil Aviation (Chicago 1944) for the purpose of implementing Recommended Practices 4.42 and 4.44 in Annex 9 to the Convention (eighth edition, July 1980).'

14. Article 134 (1) is replaced by the following:

'1. Member States shall notify the Commission of the customs provisions contained in international conventions and agreements of the type referred to in Article 133 (1) (b), (c), (d), (e), (f) and (g) and Article 133 (3) concluded after the entry into force of this Regulation.'

15. Articles 135 and 136 are replaced by the following:

Article 135

This Regulation shall not preclude retention:

- (a) by Greece of the special status accorded to Mount Athos as guaranteed by Article 105 of the Greek Constitution;
- (b) by Spain and France, until the entry into force of arrangements governing trade relations between the Community and Andorra, of the relief resulting from the Convention of 13 July 1867

and 22 and 23 November 1867 respectively between those countries and Andorra;

- (c) by the Member States and up to a limit of 210 ECU of the relief, if any, in excess of that referred to in Article 47 which they granted on 1 January 1983 to merchant-navy seamen involved in international travel.

Article 136

1. Until the establishment of Community provisions in the field in question, Member States may grant special relief to armed forces not serving under their flags which are stationed on their territories in pursuance of international agreements.

2. Until the establishment of Community provisions in the field in question, this Regulation shall not preclude the retention by Member States of relief granted to workers returning to their country after having resided for at least six months outside the customs territory of the Community on account of their occupation.'

16. Articles 137 and 138 are deleted.

17. In Articles 1, 4, 22, 45, 52 to 56, 65, 72, 73, 86, 87, 117 and 120 of Regulation (EEC) No 918/83, 'Community' is replaced by 'customs territory of the Community'.

Article 3

This Regulation shall enter into force on 1 January 1989.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 May 1988.

For the Council

The President

M. BANGEMANN