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(Acts whose publication is obligatory)

**REGULATION (EC) No 82/97 OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

of 19 December 1996

**amending Regulation (EEC) No 2913/92 establishing a Community Customs
Code**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Articles 28, 100a and 113
thereof,

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

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty ⁽³⁾,

(1) Whereas Council Regulation (EEC) No 2913/92 of
12 October 1992 establishing the Community
Customs Code ⁽⁴⁾ stipulates that the customs territory
of the Community does not include the Åland
islands, unless a declaration is made in accordance
with Article 227 (5) of the Treaty; whereas this Regu-
lation should be amended since such a declaration
has been made and the islands in question form an
integral part of the Republic of Finland;

(2) Whereas the Interim Agreement on trade and
customs union between the European Economic
Community and the Republic of San Marino of 27
November 1992 ⁽⁵⁾ defines the territories to which
that Agreement applies; whereas the territory of San
Marino cannot therefore be considered part of the
Community's customs territory;

(3) Whereas measures are needed to ensure that under
no circumstances goods obtained from non-Com-
munity goods placed under a suspensive arrangement
enter the Community economy without import
duties being paid, even if they have acquired
Community origin; whereas the definition of
Community goods must therefore be altered; whereas
such goods must be subject to the same suspensive
arrangement as the goods from which they have
been obtained;

(4) Whereas the Uruguay Round Agreement on agricul-
ture ⁽⁶⁾ will result in the abolition of agricultural
levies;

(5) Whereas the Uruguay Round Agreement on rules of
origin ⁽⁷⁾ requires the contracting parties to issue
assessments of the origin of goods to any person
showing just cause;

(6) Whereas a number of products are subject to import
duties expressed in ecus; whereas such duties
expressed in ecus must be converted more rapidly
into national currencies in order to prevent deflec-
tion of trade;

(7) Whereas, in other cases where customs legislation
expresses amounts in ecus, the conversion of such
amounts into national currencies needs to be made
more flexible;

⁽¹⁾ OJ No C 260, 5. 10. 1995, p. 8, and OJ No C 207, 18. 7.
1996, p. 7.

⁽²⁾ OJ No C 174, 17. 6. 1996, p. 14.

⁽³⁾ European Parliament opinion of 14 February 1996 (OJ No C
65, 4. 3. 1996, p. 68), Council common position of 28 May
1996 (OJ No 248, 26. 8. 1996, p. 1) and European Parliament
Decision of 23 October 1996 (OJ No C 347, 18. 11. 1996).
Council Decision of 26 November 1996.

⁽⁴⁾ OJ No L 302, 19. 10. 1992, p. 1. Regulation as amended by
the 1994 Act of Accession.

⁽⁵⁾ OJ No L 359, 9. 12. 1992, p. 14.

⁽⁶⁾ OJ No L 336, 23. 12. 1994, p. 22.

⁽⁷⁾ OJ No L 336, 23. 12. 1994, p. 144.

- (9) Whereas, by Council Decision 93/329/EEC of 15 March 1993 concerning the conclusion of the Convention on Temporary Admission and accepting its annexes ⁽¹⁾, the Community accepted the Convention on Temporary Admission negotiated within the Customs Cooperation Council and concluded in Istanbul on 26 June 1990; whereas, therefore, the ATA carnet may also be used on the basis of that Convention;
- (10) Whereas, under the inward-processing procedure in the form of the drawback system, the possibility of drawback should in certain cases be extended to goods in the unaltered state; whereas, where import duties have been refunded under the drawback system, subsequent release for free circulation must nevertheless remain possible without special authorization, as is the case under the suspensive arrangement;
- (11) Whereas notice of the re-export of goods previously imported into the Community's customs territory does not seem necessary in all cases;
- (12) Whereas, where Community legislation provides for partial or total exemption from import or export duties, such partial or total exemption must be applicable in all cases, regardless of the circumstances in which the debt is incurred; whereas, in these circumstances, the application of the normal rate of duty does not seem to be an appropriate sanction in the event of a failure to comply with the customs procedure rules;
- (13) Whereas the cases in which the debtor's obligation to pay the duties is suspended should be defined more clearly;
- (14) Whereas a customs debt must be quashed whenever a customs declaration is invalidated; whereas such cases are not limited to those provided for in Article 66 of the Community Customs Code;
- (15) Whereas Article 3 (3) (b) of Council Regulation (EEC) No 2726/90 of 17 September 1990 on Community transit ⁽²⁾ has become redundant;
- (16) Whereas, in order to ensure that the Customs Code remains easy to use in practice, the Commission has stated its readiness to publish annual updates of the Code, together with its implementing provisions,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2913/92 is hereby amended as follows:

⁽¹⁾ OJ No L 130, 27. 5. 1993, p. 1.

⁽²⁾ OJ No L 262, 26. 9. 1990, p. 1.

1. in Article 3:

(a) paragraph 1 shall be amended as follows:

— the fifth indent shall be replaced by the following:

‘— the territory of the French Republic, except the overseas territories and Saint-Pierre and Miquelon and Mayotte,’

— the 13th indent shall be replaced by the following:

‘— the territory of the Republic of Finland;’

(b) paragraph 2 shall be replaced by the following:

‘2. Although situated outside the territory of the French Republic, the territory of the Principality of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (*Official Journal of the French Republic* of 27 September 1963, p. 8679) shall, by virtue of that Convention, also be considered to be part of the customs territory of the Community.’;

2. Article 4 shall be amended as follows:

(a) the final part of point 5 shall be replaced by the following:

‘...; this term covers, *inter alia*, binding information within the meaning of Article 12;’

(b) the first indent of point 7 shall be replaced by the following:

‘— wholly obtained in the customs territory of the Community under the conditions referred to in Article 23 and not incorporating goods imported from countries or territories not forming part of the customs territory of the Community. Goods obtained from goods placed under a suspensive arrangement shall not be deemed to have Community status in cases of special economic importance determined in accordance with the committee procedure.’;

(c) in the second indent of point 10, ‘agricultural levies and other’ shall be deleted;

(d) in the second indent of point 11, ‘agricultural levies and other’ shall be deleted;

3. Article 12 shall be replaced by the following:

‘Article 12

1. The customs authorities shall issue binding tariff information or binding origin information on written request, acting in accordance with the committee procedure.

2. Binding tariff information or binding origin information shall be binding on the customs authorities as against the holder of the information only in respect of the tariff classification or determination of the origin of goods.

Binding tariff information or binding origin information shall be binding on the customs authorities only in respect of goods on which customs formalities are completed after the date on which the information was supplied by them.

In matters of origin, the formalities in question shall be those relating to the application of Articles 22 and 27.

3.4. The holder of such information must be able to prove that:

- for tariff purposes: the goods declared correspond in every respect to those described in the information,
- for origin purposes: the goods concerned and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the information.

4. Binding information shall be valid for a period of six years in the case of tariffs and three years in the case of origin from the date of issue. By way of derogation from Article 8, it shall be annulled where it is based on inaccurate or incomplete information from the applicant.

5. Binding information shall cease to be valid:

(a) in the case of tariff information:

- (i) where a regulation is adopted and the information no longer conforms to the law laid down thereby;
- (ii) where it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 20 (6):

- at Community level, by reason of amendments to the explanatory notes to the combined nomenclature or by a judgment of the Court of Justice of the European Communities,
- at international level, by reason of a classification opinion or an amendment of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the World Customs Organization established in 1952

under the name 'the Customs Cooperation Council';

- (iii) where it is revoked or amended in accordance with Article 9, provided that the revocation or amendment is notified to the holder.

The date on which binding information ceases to be valid for the cases cited in (i) and (ii) shall be the date of publication of the said measures or, in the case of international measures, the date of the Commission communication in the 'C' series of the *Official Journal of the European Communities*,

(b) in the case of origin information:

- (i) where a regulation is adopted or an agreement is concluded by the Community and the information no longer conforms to the law thereby laid down;

(ii) where it is no longer compatible with:

- at Community level, the explanatory notes and opinions adopted for the purposes of interpreting the rules or with a judgment of the Court of Justice of the European Communities,
- at international level, the Agreement on Rules of Origin established in the World Trade Organization (WTO) or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement;

- (iii) where it is revoked or amended in accordance with Article 9, provided that the holder has been informed in advance.

The date on which binding information ceases to be valid for the cases referred to in (i) and (ii) shall be the date indicated when the abovementioned measures are published or, in the case of international measures, the date shown in the Commission communication in the 'C' series of the *Official Journal of the European Communities*.

6. The holder of binding information which ceases to be valid pursuant to paragraph 5 (a) (i) or (ii) or (b) (i) or (ii) may still use that information for a period of six months from the date of publication or notification, provided that he concluded binding contracts for the purchase or sale of the goods in question, on the basis of the binding information, before that measure was adopted. However, in the case of products for which an import, export or advance-fixing certificate is submitted when customs formalities are carried out, the period of six months is replaced by the period of validity of the certificate.

In the case of paragraph 5 (a) (i) and b (i), the Regulation or agreement may lay down a period within which the first subparagraph shall apply.

7. The classification or determination of origin in binding information may be applied, on the conditions laid down in paragraph 6, solely for the purpose of:

- determining import or export duties,
- calculating export refunds and any other amounts granted for imports or exports as part of the common agricultural policy,
- using import, export or advance-fixing certificates which are submitted when formalities are carried out for acceptance of the customs declaration concerning the goods in question, provided that such certificates were issued on the basis of the information concerned.

In addition, in exceptional cases where the smooth operation of the arrangements laid down under the common agricultural policy may be jeopardized, it may be decided to derogate from paragraph 6, in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats (*) and in the corresponding Articles in other regulations on the common organization of markets.

(*) OJ No 172, 30. 9. 1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 3290/94 (OJ No L 349, 31. 12. 1994, p. 105).;

4. Article 18 shall be replaced by the following:

'Article 18

1. The value of the ecu in national currencies to be applied for the purposes of determining the tariff classification of goods and import duties shall be fixed once a month. The rates to be used for this conversion shall be those published in the *Official Journal of the European Communities* on the penultimate working day of the month. Those rates shall apply throughout the following month.

However, where the rate applicable at the start of the month differs by more than 5 % from that published on the penultimate working day before the 15th of that same month, the latter rate shall apply from the 15th until the end of the month in question.

2. The value of the ecu in national currencies to be applied within the framework of customs legislation in cases other than those referred to in paragraph 1 shall be fixed once a year. The rates to be used for this conversion shall be those published in the *Official Journal of the European Communities* on the first working day of October, with effect from 1 January of the following year. If no rate is available for a particular national currency, the rate applicable to that currency shall be that obtaining on the last day for which a rate was published in the *Official Journal of the European Communities*.

3. The customs authorities may round up or down the sum resulting from the conversion into their national currency of an amount expressed in ecus for purposes other than determining the tariff classification of goods or import or export duties.

The rounded-off amount may not differ from the original amount by more than 5 %.

The customs authorities may retain unchanged the national-currency value of an amount expressed in ecus if, at the time of the annual adjustment provided for in paragraph 2, the conversion of that amount, prior to the abovementioned rounding-off, results in a variation of less than 5 % in the national-currency value or a reduction in that value.;

5. in the second indent of point (c) of Article 20 (3), 'agricultural levies and other' shall be deleted;

6. Article 31 (1) shall be amended as follows:

'of 1994' shall be added at the end of the first and second indents;

7. in Article 55, '43' shall be replaced by '42';

8. in point (a) of Article 83, 'in accordance with Article 66' shall be deleted;

9. the following Article shall be inserted:

'Article 87a

In the cases referred to in the second sentence of the first indent of Article 4 (7), any products or goods obtained from goods placed under a suspensive arrangement shall be considered as being placed under the same arrangement.;

10. in point (c) of Article 91 (2), '(ATA Convention)' shall be deleted;

11. Article 112 (3) shall be replaced by the following:

'3. Where import goods are released for free circulation in accordance with Article 76 (1) (c), the nature of the goods, the customs value and the quantity to be taken into account for the purposes of Article 214 shall be those applicable to the goods at the time when they were placed under the customs-warehousing procedure.

The first subparagraph shall apply provided that the rules of assessment relating to those goods were ascertained or accepted at the time when the goods were placed under the customs-warehousing procedure, unless the declarant requests their application at the time when the customs debt is incurred.

The first subparagraph shall apply without prejudice to a post-clearance examination within the meaning of Article 78.'

12. in the third indent of Article 124 (1), 'an agricultural levy or any other' shall be replaced by 'an';

13. Article 128 shall be amended as follows:

(a) paragraphs 1 and 2 shall be replaced by the following:

'1. The holder of the authorization may ask for the import duty to be repaid or remitted where he can establish to the satisfaction of the customs authorities that import goods released for free circulation under the drawback system in the form of compensating products or goods in the unaltered state have been either:

- exported, or
- placed, with a view to being subsequently re-exported, under the transit procedure, the customs-warehousing procedure, the temporary importation procedure or the inward-processing procedure (suspensive arrangement), or in a free zone or free warehouse,

provided that all conditions for use of the procedure have also been fulfilled.

2. For the purposes of being assigned a customs-approved treatment or use referred to in the second indent of paragraph 1, compensating products or goods in the unaltered state shall be considered to be non-Community goods.'

(b) paragraph 4 shall be replaced by the following:

'4. Without prejudice to point (b) of Article 122, where compensating products or goods in the unaltered state placed under a customs procedure or in a free zone or free warehouse in accordance with paragraph 1 are released for free circulation, the amount

of import duties repaid or remitted shall be considered to constitute the amount of the customs debt.'

14. in point (c) of Article 163 (2), '(ATA Convention)' shall be deleted;

15. the first sentence of Article 182 (3) shall be replaced by the following:

'3. Save in cases determined in accordance with the committee procedure, re-exportation or destruction shall be the subject of prior notification of the customs authorities.'

16. the following Article shall be inserted:

Article 212a

Where customs legislation provides for partial or total exemption from import or export duties pursuant to Articles 181 to 187, such partial or total exemption shall also apply in cases where a customs debt is incurred pursuant to Articles 202 to 205, 210 or 211 where the behaviour of the declarant implies neither fraudulent dealing nor manifest negligence and he produces evidence that the other conditions for the application of relief or exemption have been satisfied.'

17. point (b) of the second subparagraph of Article 217 (1) shall be replaced by the following:

'(b) where the amount of duty legally due exceeds that determined on the basis of binding information.'

18. Article 222 (2) shall be replaced by the following:

'2. The cases and conditions in which the debtor's obligation to pay duty shall be suspended may also be provided for in accordance with the committee procedure:

- where an application for remission of duty is made in accordance with Article 236, 238 or 239,
- or
- where goods are seized with a view to subsequent confiscation in accordance with the second indent of point (c) or with point (d) of Article 233.'

19. in the first indent of point (c) of the first paragraph of Article 233, 'in accordance with Article 66' shall be deleted;

20. in the 26th indent of Article 251 (1), 'except for Article 3 (3) (b)' shall be deleted.

Article 2

This Regulation shall enter into force on 1 January 1997.

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

Done at Brussels, 19 December 1996.

For the European Parliament

The President

K. HÄNSCH

For the Council

The President

S. BARRETT
