Proposal for a

COUNCIL REGULATION

concerning providing detailed rules for the application of Article 12(2) of the Agreement in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra

(presented by the Commission)
1. Title I of the Agreement in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra of 28 June 1990 establishes a customs union for the products covered by Chapters 25 to 97 of the Harmonised System. Title II defines the arrangements applicable to products not covered by the customs union (Chapters 1 to 24 of the HS). Under these arrangements, which are preferential and non-reciprocal, products which originate in the Principality of Andorra are exempt from import duties when imported into the Community, following the preferential rules of origin laid down in an Appendix, while Community goods only enjoy most-favoured-nation status (Article 12(1)).

2. However, there is one category of Community goods eligible for a preferential tariff rate (60% of the rate applied to products from third countries) when imported into Andorra. Article 12(2) sets a preferential rate for manufactured tobacco products covered by headings HS 24.02 and 24.03 made from raw tobacco which was in free circulation in the Community. The preference granted to Community manufactured tobaccos is thus based not on the Community preferential origin of these products, but on their Community status combined with the fact that they were manufactured within the Community from raw tobacco.

3. These products are not covered by the provisions concerning transit and status which have been adopted by the Joint Committee. No provisions have been laid down concerning the application of Article 12(2), and the result is a state of both legal and practical uncertainty as to the modalities which should govern the granting of the preference and the documentary evidence which has to be presented. There can be no doubt that exporters requesting certificates of origins and T2s/T2Ls with a view to obtaining preferential treatment by the Andorran authorities have been dealt with in a range of different ways. It is therefore urgent to find a solution to this problem.

4. The Commission proposes that the problem should be solved by a Council regulation that would make it possible for the Community customs authorities to issue a certificate for the purposes of applying Article 12(2) to manufactured tobaccos being exported to Andorra. For its part, the Principality of Andorra has agreed to issue a decree laying down that the preferential rate should be granted to holders of the certificate which can be found in Annex I.

5. Given the above, the Commission proposes that the Council should adopt the attached proposal for a regulation as soon as possible.
Proposal for a

COUNCIL REGULATION

concerning providing detailed rules for the application of Article 12(2) of the Agreement in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

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

Having regard to the Agreement in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra,\(^2\) and in particular Article 12(2) thereof;

Whereas:

(1) In accordance with Article 12(2) of the aforementioned Agreement, products covered by heading Nos. 24.02 and 24.03 of the Harmonised System which are manufactured in the Community from raw tobacco and which meet the conditions of Article 3(1) of the aforementioned Agreement are eligible, when imported into the Principality of Andorra, for a preferential rate corresponding to 60% of the rate applied, in the Principality of Andorra, for the same products vis-à-vis third countries;

(2) Detailed rules for the application of Article 12(2) should be laid down in order to ensure uniform interpretation and application of that article,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

The products referred to in Article 12(2) of the Agreement in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra, hereafter referred to as the "Agreement", shall be eligible for the preferential rate when imported into the Principality of Andorra on presentation of the certificate set out at Annex I.

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\(^1\) OJ C …

Article 2

General conditions for issue

1. A certificate shall be issued by the customs authorities of the exporting state on application having been made by the exporter or, under the exporter's responsibility, by his authorised representative. For this purpose, the exporter or his authorised representative shall fill out the certificate, a specimen of which appears in the annex. The certificate shall be completed in one of the languages in which the Agreement is drawn up.

2. A certificate shall be issued by the customs authorities of a Community Member State if the products covered by heading Nos. 24.02 and 24.03 of the Harmonised System are manufactured in the Community from raw tobacco in free circulation in the Community.

3. The issuing customs authorities shall take any steps necessary to verify compliance with the requirements. For this purpose, they shall have the right to call for any evidence and to make any check considered appropriate. The issuing customs authorities shall also ensure that the form is duly completed.

4. The exporter applying for the issue of a certificate shall be prepared to submit at any time, at the request of the customs authorities of the exporting state where the certificate is issued, all appropriate documents proving the necessary working and the Community status of the goods as required by Article 12(2) of the Agreement.

5. The certificate shall be issued by the customs authorities and made available to the exporter as soon as actual exportation has been effected or ensured. The issuing authority shall keep a copy of the certificate.

6. The issuing customs authorities shall give a number to each certificate. Copies shall bear the same number as the respective original.

Article 3

Prohibition of drawback of or exemption from customs duties

1. Raw tobacco in free circulation used in the manufacture of the goods for which a certificate is issued or drawn up in accordance with Article 2 shall not be subject in the Community to drawback of, or exemption from, customs duties of whatever kind.

2. The exporter of products covered by a certificate shall be prepared to submit at any time, at the request of the Community customs authorities concerned, all appropriate documents proving that no drawback has been obtained in respect of the imported raw tobacco used in the manufacture of the products concerned and that all customs duties or charges having equivalent effect applicable to the raw tobacco have actually been paid.
Article 4
Certificates issued retroactively

1. Notwithstanding Article 2(5), a certificate may in exceptional circumstances be issued after exportation of the products to which it relates within a maximum of three months from the date of export.

2. For the purposes of implementing paragraph 1, the exporter shall indicate in his application the place and date of export of the products to which his application relates together with the reasons for his application.

3. Certificates issued retroactively must bear one of the following endorsements in Box 8:

Espedido a posteriori, Udstedt efterfølgende, Nachträglich ausgestellt, Έκδοθέν εκ τῶν υπέρων, Issued retroactively, Delivré a posteriori, Rilasciato a posteriori, Achteraf afgegeven, Emitido a posteriori, Annettu jälkikäteen, Utfärdat i efterhand, emes a posteriori

Article 5
Issue of a duplicate of the certificate

1. In the event of the theft, loss or destruction of a certificate, the exporter may apply to the customs authorities that issued it for a duplicate to be made on the basis of the export documents in their possession.

2. The duplicate shall bear one of the following endorsements in Box 8 of the duplicate:

DUPLICADO, DUPLIKAT, ΑΝΤΙΓΡΑΦΟ, DUPLICATE, DUPLICATA, DUPLICATO, DUPLICAAT, SEGUNDA VIA, KAKSOISKAPPALE, DUPLICAT

3. The duplicate, which shall bear the date of the original certificate, shall take effect on that date.

Article 6
Validity of certificate

1. A certificate shall be valid for four months from the date of issue in the exporting country and must be submitted within the said period to the customs authorities of the importing country.

2. Certificates submitted to the customs authorities of the Principality of Andorra after the final date for presentation specified in paragraph 1 may be accepted for the purpose of applying the preference provided for in Article 12(2) of the Agreement where the failure to submit these documents by the final date set is due to exceptional circumstances or where the products were submitted to them before the said final date.
Article 7
Production of certificate

1. Application of the preferential rate must be requested by the importer at the time when the customs debt is incurred.

2. Certificates shall be submitted to the customs authorities of the Principality of Andorra in support of the customs declaration giving rise to the customs debt. The authorities shall have the right to request a translation of a certificate.

Article 8
Supporting documents

The documents referred to in Article 2(4) intended to establish that the products covered by the certificate are eligible for the preferential rate provided for in Article 12(2) of the Agreement and meet the other conditions of this Regulation may be submitted in the following forms:

a) proof of the Community status of the raw tobacco used, established in accordance with the relevant Community provisions;

b) direct evidence of the processes carried out by the exporter or the supplier to obtain the products concerned, contained for example in his accounts or internal bookkeeping.

Article 9
Preservation of certificates and supporting documents

1. An exporter applying for the issue of a certificate shall keep for at least three years the documents referred to in Article 2(4).

2. The customs authorities of the Principality of Andorra shall keep for at least three years the certificates submitted to them.

Article 10
Mutual assistance

1. The customs authorities of the Member States of the Community shall communicate, via the Commission, specimens of the stamps used in their offices for the issue of certificates and the addresses of the customs authorities responsible for verifying the certificates.

2. In order to ensure the proper application of this Regulation, the customs authorities of the Member States of the Community and Andorra shall mutually assist one another in checking the authenticity and accuracy of the documents and the regularity of the procedures set out in the previous articles.
**Article 11**

**Subsequent verification**

1. The subsequent verification of the certificates shall be carried out at random or whenever the customs authorities of the Principality of Andorra have reasonable doubts as to the authenticity of the documents, the working required and the Community status of the goods concerned or the fulfilment of the other requirements of this Regulation.

2. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the Principality of Andorra shall return the certificate to the customs authorities of the exporting state, where appropriate giving the reasons of form or substance for an inquiry. In support of their request for subsequent verification, they shall provide all the documents or all the information obtained suggesting that the particulars given on the certificate are inaccurate.

3. The verification shall be carried out by the customs authorities of the exporting country. For this purpose they shall have the right to call for any evidence and carry out any inspection of the exporter's accounts or any other check they consider appropriate.

4. The customs authorities requesting the verification shall be informed of the results of the verification as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned fulfil the requirements of Article 12(2).

5. If in cases of reasonable doubt there is no reply within ten months of the date of the verification request or if the reply does not contain sufficient information to determine the authenticity of the document in question, the working required or the Community status of the raw tobacco used, the customs authorities of the Principality of Andorra shall refuse entitlement to the preferences.

**Article 12**

**Penalties**

Penalties shall be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect information for the purpose of obtaining a preferential rate for a product as provided for in Article 12(2) of the Agreement.
Article 13

Final provisions

This Regulation shall enter into force on 1 October 2001.

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

Done at Brussels,

For the Council
The President
ANNEX I

CERTIFICATE FOR THE PURPOSES OF ARTICLE 12/2 EC/ANDORRA CUSTOMS UNION
1. **Exporter** (Name, full address, country)

2. **Closing date for presentation of export**

3. **Consignee** (Name, full address, country)

4. **Invoice(s) No(s)**

5. **Marks, number and kind of packages**

6. **Gross weight (kg)**

7. **Net weight (kg)**

8. **Remarks**

9. **CUSTOMS ENDORSEMENT**

   - **Declaration certified**
   - **Export document**
   - Form ..............................................
   - of .......................................................
   - Customs office : ..............................
   - Issuing country : ..............................
   - Place ..............................................
   - Date ..............................................
   - (Signature)

10. **DECLARATION BY THE EXPORTER**

    - I, the undersigned, declare that the tobacco products of headings 24.02 and/or 24.03 described above have been manufactured entirely from raw tobacco which has been in free circulation in the European Community. The goods described above meet the conditions required for the issue of this certificate.

    - Place ..............................................
    - Date ..............................................
    - (Signature)
11. Request for verification, to:

Verification of the authenticity and accuracy of this certificate is requested.

Place............................................., date..................................

Stamp

(Signature)

12. RESULT OF VERIFICATION

Verification carried out shows that this certificate (1)

- [ ] was issued by the Customs Office indicated and that the information contained therein is accurate
- [ ] does not meet the requirements as to authenticity and accuracy (see remarks appended).

Place............................................., date..................................

Stamp

(Signature)

(1) Insert X in the appropriate box.