

Proposal for a Council Regulation (EEC) amending Regulation (EEC) No 950/68 on the Common Customs Tariff and Regulation (EEC) No 918/83 setting up a Community system of reliefs from customs duty

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(Submitted by the Commission to the Council on 22 September 1986)

(86/C 254/08)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 43 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Section II C of the Preliminary Provisions of the Common Customs Tariff annexed to Council Regulation (EEC) No 950/68 ⁽¹⁾, as last amended by Regulation (EEC) No 3331/85 ⁽²⁾, provides for a flat 10 % *ad valorem* rate of customs duty on goods sent in small consignments to private individuals or contained in traveller's 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' luggage only on the fraction of the value exceeding the amounts admitted free of import duties pursuant to Articles 45 to 49 of Council Regulation (EEC) No 918/83 ⁽³⁾, as amended by Regulation (EEC) No 3822/85 ⁽⁴⁾; whereas, however, as a result of the third indent of Article 29 (2) of Regulation (EEC) No 918/83, the flat 10 % rate 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 drawback of these rules is that they preclude any relief for the consignees of small consignments whose total value exceeds, even barely, 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' luggage should not cause serious administrative difficulties; whereas it is accordingly appropriate to amend both Section II C of the Preliminary Provisions of the Common Customs Tariff 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 10 % rate of customs duty only on the fraction of the value exceeding that amount;

Whereas at this juncture the value beyond which the flat 10 % rate of 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 ⁽⁵⁾; 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 Common Customs Tariff and Title VII of Regulation (EEC) No 918/83;

Whereas Article 1 (3) of Regulation (EEC) No 918/83 provides that the island of Helgoland is to be considered a third country; whereas as a result of the requirements of Council Regulation (EEC) No 2151/84 of 23 July 1984 on the customs territory of the Community ⁽⁶⁾, 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 Helgoland; 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

⁽¹⁾ OJ No L 172, 22. 7. 1968, p. 1.

⁽²⁾ OJ No L 331, 9. 12. 1985, p. 1.

⁽³⁾ OJ No L 105, 23. 4. 1983, p. 1.

⁽⁴⁾ OJ No L 370, 31. 12. 1985, p. 22.

⁽⁵⁾ OJ No C 324, 5. 12. 1984, p. 5.

⁽⁶⁾ OJ No L 197, 27. 7. 1984, p. 1.

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 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 entry into force of Regulation (EEC) No 918/83, it has been established that a certain number of temporary provisions laid down in Article 136 may now be converted into definitive provisions under certain conditions, or limited in time or 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 OECD Council Decision-Recommendation 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 Common Customs Tariff annexed to Regulation (EEC) No 950/68 is hereby replaced by the following:

'C. Flat 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, or

— 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 total value of the goods does not exceed 200 ECU per consignment or per traveller. It shall be charged on the fraction of the value exceeding the limits laid down in Title VII and Title XI of Regulation (EEC) No 918/83 (1) for the duty-free admission of goods in consignments sent from one private individual to another or of goods contained in travellers' personal luggage.

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.

2. Imports 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; the nature or quantity of such goods must not be such as might indicate that they are being imported for commercial reasons,

— consist of goods the total value of which does not exceed 200 ECU, and

— 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 above 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 under Articles 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 laid down for 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, 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.

(¹) OJ No L 105, 23. 4. 1983, p. 1.

Article 2

Regulation (EEC) No 918/83 is hereby replaced by the following:

1. Article 1 (3) is amended as follows:

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

(¹) OJ No L 197, 27. 7. 1984, p. 1.

2. Title VII is 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 Helgoland.

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; the nature or quantity of such goods must not be such as might indicate that they are being imported for commercial reasons,
- consist of goods the total value of which does not exceed 200 ECU,
- 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 the 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 3 grams each), or
 - 10 cigars, or
 - 50 grams of smoking tobacco;
- (b) alcohol and alcoholic beverages:
 - distilled beverages and spirits of an alcoholic strength by volume exceeding 22 % vol; non-denatured ethyl alcohol of 80 % vol 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 % vol; sparkling wines, liquer wines: one litre, or
- still wines: two litres;
- (c) perfume: 50 grams, or
toilet water: 0,25 litre.'
3. 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 3 grams each), or
 - 50 cigars, or
 - 250 grams of smoking tobacco, or
 - a proportional assortment of these different products;
- (b) alcohol and alcoholic beverages:
- distilled beverages and spirits of an alcoholic strength by volume exceeding 22 % vol; non-denatured ethyl alcohol of 80 % vol 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 % vol; sparkling wines, liqueur wines: two litres, and
 - still wines: two litres;
- (c) perfume: 50 grams, and
toilet water: 0,25 litre;
- (d) medicinal products:
the quantity required to meet travellers' personal needs.'
4. Article 47 is replaced by the following:
- 'Article 47*
- The relief referred to in Article 45 shall be granted up to a total value of 100 ECU per traveller to goods other than those listed in Article 46.
- However, Member States may reduce this amount to 50 ECU for travellers under 15 years of age.'
5. The first indent of Article 49 (2) is replaced by the following:
- '— *frontier zone* means, without prejudice to existing conventions in this respect, a zone which, as the crow flies, does not extend more than 15 kilometres from the frontier. The local administrative districts, part of whose territory lies within the zone, may also be considered to be part of this frontier zone;'
6. Article 60 is 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 Title XIVa and Title XIVb are inserted after Article 63:
- '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;
- (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 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 (1), an instrument or apparatus intended for medical research, establishing medical diagnoses or carrying out medical treatment shall be regarded as being currently manufactured in the customs territory of the Community where its delivery period from the time of the order is not, taking account of commercial practices in the manufacturing sector under consideration, appreciably longer than the delivery period for the instrument or apparatus in respect of which relief is applied for, or does not exceed the latter to such an extent that the purpose or use for which the instrument or apparatus was initially intended would be appreciably affected thereby.

Article 63c

The granting of relief shall be conditional on it being established, under the conditions laid down by implementing provisions adopted in accordance with

the procedure laid down in Article 143 (2) and (3), that instruments or apparatus equivalent to those for which duty-free admission is requested are not being currently manufactured in the customs territory of the Community.

Article 63d

1. Instruments and apparatus which have been admitted duty free in accordance with the conditions laid down in Article 63a, 63b and 63c may not be lent, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities.

2. Should an instrument or apparatus be lent, hired out or transferred to an establishment or organization entitled to benefit from relief pursuant to Article 63a, the relief shall continue to be granted provided the establishment or organization uses the instrument or apparatus for purposes which confer the right to such relief.

In other cases, loan, hiring out or transfer shall be subject to prior payment of import duties, at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

Article 63e

1. Establishments or organizations referred to in Article 63a which cease to fulfil the conditions giving entitlement to relief, or which are proposing to use articles admitted duty free for purposes other than those provided for by that Article shall so inform the competent authorities.

2. Instruments or apparatus remaining in the possession of establishments or organizations which cease to fulfil the conditions giving entitlement to relief shall be liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

Instruments or apparatus used by the establishment or organization benefiting from the relief for purposes other than those provided for in Article 63a shall be liable to the relevant import duties at the rate applying on the date on which they are put to another use, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

Title XIVb

Reference substances for the quality control of medical products*Article 63f*

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 to receive such consignments free of duty shall be admitted free of import duties.'

8. The following point (d) is added to Article 86:

'(d) Awards, trophies and souvenirs of a symbolic nature 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 (q) is added to Article 109:

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

10. Article 112 is 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 entering the customs territory of the Community,
- special containers;

(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 trailers) which by its type of construction and 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 of refrigeration systems and other systems with which special vehicles are equipped.

Gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to ancillary 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 of refrigeration systems and other systems with which special containers are equipped.'

11. The following point (g) 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).'

12. 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.'

13. Article 135 is replaced by the following:

'Article 135

The provisions of 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 France of the relief resulting from the Convention of 22 and 23 November 1867 between that country and the Andorra Valleys;
- (c) by the Member States until 31 December 1990 and up to a limit of 210 ECU the relief, if any, in excess of that referred to in Article 47 which they granted on 1 January 1983 to merchant-seamen involved in international travel.'

14. Article 136 is replaced by the following:

Article 136

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 agreement.'

15. Articles 137 and 138 are deleted.

Article 3

The following language versions of Article 11 (2) of Regulation (EEC) No 918/83 are hereby amended as follows:

in English:

'2. Subject to the same conditions, presents customarily given on the occasion of a marriage, which are made to a person fulfilling the conditions laid down in paragraph 1 by 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.'

in Danish:

'2. Under samme forbehold indrømmes der ligeledes fritagelse for importafgifter for gaver, der sædvanligvis gives ved et bryllup, og som af personer, der har deres sædvanlige opholdssted i et tredjeland, foræres en person, der opfylder betingelserne i stk. 1. For at kunne opnå fritagelse må den enkelte gaves værdi dog ikke overstige 1 000 ECU.'

in German:

'2. Unter denselben Voraussetzungen sind von den Eingangsabgaben auch die üblicherweise aus Anlaß einer Eheschließung überreichten Geschenke befreit, die von Personen mit gewöhnlichem Wohnsitz in einem Drittland einer Person gemacht werden, die die Voraussetzungen des Absatzes 1 erfüllt. Die Befreiung ist jedoch davon abhängig, daß der Wert eines jeden Geschenks 1 000 ECU nicht übersteigt.'

in Greek:

'2. Με τις ίδιες επιφυλάξεις, παρέχεται τελωνειακή ατέλεια για τα συνήθη γαμήλια δώρα που δίνονται σε πρόσωπο που συγκεντρώνει τις προϋποθέσεις της παραγράφου 1 από πρόσωπα που έχουν τη συνήθη κατοικία τους σε τρίτη χώρα. Πάντως, η αξία κάθε δώρου για το οποίο παρέχεται ατέλεια δεν μπορεί να υπερβαίνει τα 1 000 ECU.'

in Spanish:

'2. Serán admitidos igualmente con franquicia de derechos de importación, con las mismas reservas, los regalos habitualmente ofrecidos con ocasión de un matrimonio, hechos a una persona que reúna las condiciones previstas en el apartado 1 por personas que tengan su residencia normal en un tercer país. El valor de cada regalo admitido con franquicia no podrá exceder de 1000 ECUS.'

in French:

'2. Sont également admis en franchise de droits à l'importation, sous les mêmes réserves, les cadeaux habituellement offerts à l'occasion d'un mariage, qui sont faits à une personne répondant aux conditions prévues au paragraphe 1 par des personnes ayant leur résidence normale dans un pays tiers. La valeur de chaque cadeau admissible en franchise ne peut toutefois excéder 1 000 Écus.'

in Dutch:

'2. Onder hetzelfde voorbehoud zijn eveneens van rechten bij invoer vrijgesteld de gewoonlijk ter gelegenheid van een huwelijk aangeboden geschenken die door personen die hun normale verblijfplaats in een derde land hebben, worden gedaan aan een persoon die voldoet aan de in lid 1 genoemde voorwaarden. De waarde van elk geschenk dat met vrijstelling van rechten mag worden ingevoerd, mag evenwel niet meer bedragen dan 1 000 Ecu.'

in Portuguese:

'2. Beneficiário igualmente da franquia de direitos de importação, nas mesmas condições, os presentes habitualmente oferecidos por ocasião de um casamento, dados a uma pessoa que se encontre nas condições previstas no nº 1 por pessoas que tenham a sua residência habitual num país terceiro. O valor de cada presente a admitir com franquia não pode, no entanto, exceder 1 000 ECUs.'

Article 4

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

Article 5

This Regulation shall enter into force on 1 March 1987.

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