



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a  
EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)  
amending Council Regulation (EEC) No 2913/92  
establishing the Community Customs Code

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(presented by the Commission)



## EXPLANATORY MEMORANDUM

1. This proposal for the amendment of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code comes two and a half years after the publication of that act. It is based on the experience gathered since application of that Regulation began on 1 January last year (or 1 January 1993 in the case of the export procedure).

Besides the incorporation into Community customs law of certain results of the Uruguay Round (binding information on origin), this proposal contains adjustments to new political dictates, simplification measures and amendments aimed at making the application of customs rules more effective. It proposes the adjustment of certain rules underpinning the collection of duties to the true purpose of the system of customs protection and the filling of a number of gaps detected in the Customs Code since its adoption.

On the basis of Articles 28, 100a and 113 of the EC Treaty, adoption of this proposal falls under the joint decision-making procedure. It updates the first codification of Community law and answers the following needs:

2. Point 1

The proposed amendments are aimed at updating the definition of the Community customs territory, particularly in the light of the Finnish Government's declaration of 8 December 1994 concerning the Åland islands.

3. Points 2(a), 3 and 17

The amendments take account of the fact that the basic rules on binding information (Article 12) no longer concern only tariff information, but information on the origin of goods too. The proposed wording of Article 12 reflects the broadening of the scope of these provisions, without altering the rules currently applicable to binding tariff information.

4. Points 2(b) and 9

Via the reference to Article 23 - subparagraphs 2(f), (g) and (h) of which concern products of fishing and the seabed - the first indent of Article 4(7), which defines "Community goods", in certain cases confers Community status on goods wholly obtained outside Community customs territory. This is an exception to the principle whereby goods obtained outside Community customs territory have to be released for free circulation to gain entry to the Community economy. This automatic incorporation into the Community economy is in line with the intentions of Community legislators.

However, in the case of Article 23(2)(c) (live animals born and raised in the Community), automatic incorporation would be an undesired side-effect in the case of an animal born under suspensive arrangements. The young animal could acquire Community status only by entry for release for free circulation (as could its dam which

had been placed under the external transit, customs warehousing, temporary admission or inward-processing procedures). The present wording of the first indent of Article 4(7) precludes this, hence the proposal to add the restriction.

In the interests of clarity, the amendment in point 9 of the proposal (Article 87a) stipulates that such goods remain subject to the suspensive arrangements.

5. Points 2(c), 5 and 12

See the relevant recital of the proposed regulation.

6. Point 4

For the purposes of calculating the value of the ecu in a national currency, the new Article 18 breaks with the present single system for all customs legislation, instead distinguishing between the application of the customs tariff (paragraph 1) and that of other customs legislation (paragraph 2). The present system based on the annual adjustment of the value of the ecu in national currencies is retained only for non-tariff purposes and simplified by the deletion of the safeguard clause (the current Article 18(2)). In the case of the tariff (the proposed paragraph 1), however, keeping the system of the annual rate would lead to the diversion of considerable volumes of trade.

In order to maintain a single conversion system for all tariff-related purposes (agricultural and non-agricultural products alike), the Commission is proposing - rather than the application of the agricultural conversion rate to that part of the tariff dealing with agriculture - the application of the ecu (budget) rate in all tariff cases by means of a conversion rate fixed on a monthly basis and coupled with a safeguard mechanism (the second subparagraph of paragraph 1).

The proposed paragraph 3 has been designed to provide an overall solution to rounding off sums obtained by the conversion of the ecu into national currencies and the stabilization of such sums in the event of rates changing. This solution will permit the abolition of the sectoral rules governing customs value and duty reliefs (see Article 179(2) of the Code implementing provisions and Article 118 of the proposal for a Council Regulation on reliefs - COM(94) 232 final).

7. Point 6

This updates the reference to the GATT Agreements that came out of the Uruguay Round.

8. Points 8 and 20

See Article 66 deals only with the most common case of invalidation of a customs declaration, but there are others (e.g. Article 250(2) of the implementing provisions). Invalidation should always lead to the extinction of the customs debt. The reference to Article 66 should therefore be deleted.

9. Point 7

The proposed amendment extends the facilities provided for in Article 42, after presentation to customs, to goods that have moved under a transit procedure.

10. Points 10 and 14

See the recital of the proposed Regulation.

11. Point 11

Article 112(3) concerns type D customs warehouses. It has become apparent that Article 25 of Regulation (EEC) No 2503/88 on customs warehouses was incompletely incorporated into the Code in 1992. In its present form, Article 112(3) of the Code goes too far, accepting as it does the application, on release for free circulation, of the rates of duty applicable **when goods are placed under the procedure**, thus enabling goods to escape, for example, anti-dumping duties imposed after goods have been placed under the procedure. Conversely, no provision has been made for the declarant to request the application of the rules of assessment relating to the goods **at the time of release for free circulation**. The new paragraph 3 reintroduces these rules into Community customs legislation.

12. Point 13

Article 128 on the inward-processing procedure - drawback system - is amended to accord goods in the unaltered state the same treatment under the drawback system as they would enjoy under the suspension system.

13. Point 15

The amendment would make it possible to provide in the implementing provisions for any simplification of formalities that may be deemed necessary (e.g. transshipment in a free zone).

14. Points 16, 18 and 19

These amendments are aimed at improving both the consistency of the system for collecting import or export duties and the efficiency of its working.

(a) Article 212a

The provisions on customs relief are designed to derogate from the protective system of the customs tariff of the European Communities in specific situations where non-Community goods are imported into the Community. The granting of favourable treatment may sometimes be linked to specific conditions applicable whenever a customs debt is incurred, but should not depend on how that debt is incurred, be it by release for free circulation (Article 201) or by an irregularity (Articles 202 to 205). The same principle should apply to the incurrance of a customs debt on exportation (Articles 209 to 211).

The Customs Code and the implementing provisions do not deal clearly with this issue.

Where, for example, the driver of a removal lorry entering the Community under the TIR arrangements fails to present the goods to customs, unloading the lorry instead, it would seem fair, in spite of the irregularity committed under Article 203, to accord the relief for the removal goods, provided all other conditions have been satisfied.

A fine, for instance, may be a suitable punishment for the irregularity.

(b) Article 220(1), second subparagraph

In its present form, Article 220(1) makes the subsequent entry in the accounts of customs duties dependent on, among other things, the ability of customs to determine the amount legally due.

Achieving the requisite certainty can often take longer than the period laid down in Article 221(3), especially if post-clearance checks involve enquiries in several Member States and/or non-member countries with the Community coordinating the various activities. There are cases where what has happened is clear. The time taken up by legal discussions at various levels can, however, mean that the action taken against irregularities overruns the three-year limit and comes to nothing. This is not really acceptable from the standpoint of a policy to combat irregularities. Even though action may continue in the event of an act giving rise to criminal court proceedings, the differences between the periods laid down in the national statutes of limitations (see second sentence of Article 221(3)) make it difficult to deal homogeneously with cases at Community level.

The proposed amendment to Article 220(1) is aimed at clarifying the legal basis for customs administrations so that duties may be entered into the accounts before the exact amount legally due can be determined with full certainty. This will make the uniform application of Community legislation more efficient.

In order to avoid undue prejudice to the declarants' legal position, provision will have to be made to ensure that communication of the amount legally due -which naturally remains open to appeal under Article 243 - does not automatically entail immediate payment of that sum (see (c) below).

(c) The proposed Article 222(2) reworks the current provision, amending it in two ways.

First, it completes the measure described in (b) above by including the case of subsequent entry in the accounts among the conditions that may lead to suspension of the debtor's obligation to pay duty.

Secondly, the reference to Article 237 is replaced, in the second indent, by one to Article 236. It makes no sense to cite Article 237 in this context because there is no question of remission here. The second subparagraph of Article 236(1) concerning remission does, however, tie in with the proposed Article 222(2). The number 237 should therefore be replaced by 236.

15. Point 21

With regard to the twenty-sixth indent of Article 251(1), see the penultimate recital of the proposal for a Regulation.

16. Article 2

See the recital of the proposed Regulation.

Proposal for a  
EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)  
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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<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

Whereas Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>(3)</sup>, as amended by the Act of Accession of Austria, Finland and Sweden, stipulates that the customs territory of the Community also includes the Åland islands, provided a declaration is made in accordance with Article 227(5) of the Treaty; whereas the wording of the Code should be made clearer in view of the fact that the abovementioned condition has been satisfied and the islands in question form part of the Republic of Finland;

Whereas the interim Agreement on trade and customs union between the European Economic Community and the Republic of San Marino<sup>(4)</sup> of 27 November 1992 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;

Whereas the Uruguay Round Agreement involves the abolition of agricultural levies;

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

Whereas the Uruguay Round Agreement on rules of origin requires the contracting parties to issue assessments of the origin of goods to any person with a justifiable cause;

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<sup>(1)</sup> OJ No L

<sup>(2)</sup> OJ No L

<sup>(3)</sup> OJ No L 302, 19.10.1992, p. 1.

<sup>(4)</sup> OJ No L 359, 9.12.1992, p. 14.

Whereas a number of products are subject to import duties fixed in ecus; whereas the conversion of such duties into national currencies has to be made faster to prevent the diversion of trade;

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

Whereas in order to prepare for customs formalities, traders have to be able to examine goods not only in the case of direct importation, but also when an external transit procedure comes to an end;

Whereas, by Council Decision 93/329/EEC<sup>(5)</sup> of 15 March 1993, the Community ratified the Convention on Temporary Admission negotiated under the auspices of the Customs Cooperation Council and agreed at Istanbul on 26 June 1990, and approved its annexes; whereas the ATA carnet may henceforth also be used on the basis of that Convention;

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 should nevertheless remain possible without special authorization, as is the case under the suspension system;

Whereas notice of the re-export of goods previously imported into the Community's customs territory is not considered necessary in all cases;

Whereas where Community legislation provides for relief from import or export duties, such relief 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 seems an inappropriate sanction in the event of a failure to comply with the rules;

Whereas in some cases there is a danger that post-clearance recovery proceedings may fall victim to the three-year time-limit because the exact amount legally due cannot yet be determined exactly; whereas it must be possible in such circumstances to enter in the accounts the amount probably due before expiry of the time-limit;

Whereas the cases in which the debtor's obligation to pay the duties is suspended should be defined more clearly;

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;

Whereas Article 3(3)(b) of Council Regulation (EEC) No 2726/90 of 17 September 1990 on Community transit<sup>(6)</sup> has ceased to have any meaning;

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<sup>(5)</sup> OJ No L 130, 27.5.1993, p. 1.

<sup>(6)</sup> OJ No L 262, 26.9.1990, p. 1.

Whereas certain provisions relating to Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing<sup>(7)</sup>, have been included in Commission Regulation (EEC) No 2454/93<sup>(8)</sup>; whereas the provisions of Regulation No 3925/91 duplicate the implementing provisions of the Customs Code and should therefore be deleted,

HAVE ADOPTED THIS REGULATION:

### Article 1

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

1. Article 3 is amended as follows:

(a) Paragraph 1 is amended as follows:

- the fifth indent is replaced by the following:

"- the territory of the French Republic, except the overseas territories and Saint-Pierre and Miquelon and Mayotte,"

- the thirteenth indent is replaced by the following :

"- the territory of the Republic of Finland,"

(b) Paragraph 2 is 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 shall, by virtue of that Convention, be considered to be part of the customs territory of the Community (*Journal Officiel* of 27 September 1963, p. 8679)."

2. Article 4 is amended as follows:

(a) The final part of point 5 is replaced by the following:

".....; this term covers inter alia binding information within the meaning of Article 12."

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<sup>(7)</sup> OJ No L 374, 31.12.1991, p. 4.

<sup>(8)</sup> OJ No L 253, 11.10.1993, p. 1.

(b) The first indent of point 7 is 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, unless the goods are obtained from goods placed under a suspensive arrangement;"

(c) In the second indent of point 10, the words "agricultural levies and other" are deleted;

(d) In the second indent of point 11, the words "agricultural levies and other" are deleted.

3. Article 12 is replaced by the following:

"Article 12

1. The customs authorities shall issue binding tariff or origin information on written request, acting in accordance with the committee procedure.
2. Binding tariff or 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 or origin information shall be binding on the customs authorities only for goods on which customs formalities are completed, in the case of origin in the framework of point (b) of Article 22 and of Article 27, after the date on which it was issued by them.

3. The holder of such information must be able to prove:
  - for tariff purposes: that the goods declared correspond in every respect to those described in the information;
  - for origin purposes: that 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:

- (a) where a regulation is adopted and the information no longer conforms to the law laid down thereby;
- (b) 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 combined nomenclature or 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 Customs Cooperation Council;
- (c) where it is revoked or amended in accordance with Article 9, provided the revocation or amendment is notified to the holder.

The date on which binding information ceases to be valid for the cases cited in (a) and (b) 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:

- (a) where a regulation is adopted, or an agreement is concluded by the Community, and the information no longer conforms to the law laid down thereby;
- (b) where it is no longer compatible,
  - at Community level, with 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, with the Agreement on Rules of Origin established in the WTO or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement;

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

The date on which the binding information ceases to be valid for the cases cited in (a) and (b) 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(b) or (c) or B(b) or (c) 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(a) and B(a), 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, only 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 (EEC) No 136/66/EEC\* and in the corresponding Articles in other regulations on the common organization of markets.

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\* OJ No 172, 30.9.1966, p. 3025/66."

4. Article 18 is 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 fixed 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 sum by more than 5%.

The customs authorities may retain unchanged the national-currency value of a sum fixed in ecus if, at the time of the annual adjustment provided for in paragraph 2, the conversion of that sum, prior to the abovementioned rounding-off, results in a change 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), the words "agricultural levies and other" are deleted.
6. Article 31(1) is amended as follows:
  - (a) the words "of 1994" are added at the end of the first indent;
  - (b) the words "of 1994" are added at the end of the second indent.
7. In Article 55, the figure "43" is replaced by "42".
8. In point (a) of Article 83, the words "in accordance with Article 66" are deleted.

9. The following Article 87a is inserted:

"Article 87a

Any products or goods obtained from goods placed under a suspensive arrangement shall be considered to have been placed under the same arrangement."

10. In point (c) of Article 92(2), the words "(ATA Convention)" are deleted.

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

"3. Where, in accordance with Article 76, import goods are released for free circulation without being presented to customs and before the corresponding declaration is lodged, the type, customs value and quantity to be taken into account for the purposes of Article 214 shall be those applicable when the goods were placed under the customs-warehousing procedure.

The first subparagraph shall apply provided the rules of assessment in question were ascertained or accepted at the time when the goods were placed under the customs-warehousing procedure, unless the declarant requests application of the rules of assessment relating to the goods 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), the words "an agricultural levy or any other" are replaced by "an".

13. Article 128 is amended as follows:

(a) Paragraphs 1 and 2 are 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 Community transit procedure, the customs-warehousing procedure, the temporary importation procedure or the inward-processing procedure (suspension system), or in a free zone or free warehouse,

provided all conditions for use of the procedure have otherwise been satisfied.

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 is 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), the words "(ATA Convention)" are deleted.

15. The following words are inserted at the beginning of Article 182(3):

"Save in cases determined in accordance with the committee procedure, ...."

16. The following Article 212a is inserted:

**"Article 212a**

Where the customs rules provide relief from import or export duties such relief shall also apply in cases where a customs debt is incurred pursuant to Articles 202 to 205, 210 or 211 where the declarant produces evidence that the other conditions for the application of relief have been satisfied."

17. Point (b) of the second subparagraph of Article 217(1) is replaced by the following:

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

18. The following subparagraph is added to Article 220(1):

"Where the checks carried out by the customs authorities are capable of leading to the detection of a customs debt or an amount of duty higher than that already entered in the accounts, without the authorities being able to determine the exact amount legally due, the authorities shall enter in the accounts the amount that may eventually be payable on the goods, allowing enough time for that amount to be communicated to the debtor before the expiry of the period laid down in Article 221(3)."

19. Article 222(2) is replaced by the following:

"2. Provision may be made in accordance with the committee procedure for the debtor's obligation to pay duty to be suspended in certain cases and on certain conditions:

- in the cases provided for in the second indent of Article 220(1),

or

- where an application for remission of duty is lodged in accordance with Articles 236, 238 or 239,

or

- where goods are seized with a view to subsequent confiscation in accordance with the second indent of point (c) of Article 233 or with point (d) of Article 233."

20. In the first indent of point (c) of Article 233, the words "in accordance with Article 66" are deleted.

21. In the twenty-sixth indent of Article 251(1) the words "except for Article 3(3)(b)" are deleted.

#### Article 2

Points 1, 2, 4, 6 and 7 of Article 2 and Articles 3, 4 and 5 of Regulation (EEC) No 3925/91 are deleted.

#### Article 3

This Regulation shall enter into force on 1 July 1996.

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

Done at Brussels,

For the European Parliament  
The President

For the Council  
The President

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