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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3528/89

of 23 November 1989

amending Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 43 and 113 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Whereas, in the light of the recent decision of the Court of Justice on the scope of Articles 28 and 113 of the Treaty, it appears that Regulation (EEC) No 2658/87 (2) was adopted on an erroneous legal basis since the Council added to the legal basis proposed by the Commission, namely Articles 28, 43 and 113 of the Treaty, Article 235 of the Treaty, which calls for a different decision-making procedure; whereas the Commission consequently referred the matter to the Court of Justice for proceedings for annulment of the said Regulation;

Whereas, to enable the Commission to withdraw its action and to prevent the act in question being declared void, the reference to Article 235 of the Treaty as a legal basis for Regulation (EEC) No 2658/87 should be deleted,

HAS ADOPTED THIS REGULATION:

Article 1

The first citation in Regulation (EEC) No 2658/87 is hereby replaced by the following:

'Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 43 and 113 thereof'.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

It shall apply with effect from 10 September 1987.

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

Done at Brussels, 23 November 1989.

For the Council

The President

E. CRESSON

(1) Opinion delivered on 13 October 1989 (not yet published in the Official Journal).
(2) OJ No L 256, 7. 9. 1987, p. 1.