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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1715/90

of 20 June 1990

on the information provided by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

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

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the conditions under which traders are able to obtain from the customs authorities information on the interpretation or practical application of Community customs rules differ appreciably in the various Member States; whereas the legal effect of such information also varies considerably, depending on the Member State in which it is provided;

Whereas this situation results in considerable distortions of treatment between traders in the Community, depending on the Member State in which they operate; whereas such distortions of treatment are incompatible with the proper functioning of the customs union and also with the achievement of the internal market provided for in Article 8a of the Treaty, since it is necessary to guarantee, as far as possible, equal treatment of traders within that market;

Whereas it appears necessary, in order to ensure a measure of legal certainty for traders when carrying on their activities, to facilitate the work of the customs services themselves and secure more uniform application of Community customs law, to establish rules which oblige customs authorities to provide information which is binding on the administration under certain well defined conditions;

Whereas the Council has already accepted the principle of the provision of information which is binding on the administration in Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (4), as last amended by Regulation (EEC) No 1854/89 (5);

Whereas, however, in view of the scale of structural adjustments which would be required in most of the customs administrations of the Member States by the establishment of rules of general application regarding the provision of binding information, it appears desirable at the present time, to limit the scope of Community rules to information concerning the classification of goods in the customs nomenclature; whereas this is the most important and most useful category of information for traders because of the highly technical nature of the combined nomenclature and the Community nomenclatures derived from it;

Whereas it is necessary to specify precisely the procedure to be followed in order to enable information provided by a customs authority of a Member State concerning the classification of goods in the customs nomenclature to bind the administration of that Member State and, from a date to be determined in an implementing Regulation, the administrations of all Member States; whereas it is also necessary to lay down the conditions governing the use of such information by the holder;

Whereas information provided in accordance with the procedure laid down can bind the administration only in respect of the classification of the goods in question in the customs nomenclature; whereas such information cannot affect the rate of duty or any other measure deriving from that classification which apply at the time of completion of the customs formalities relating to those goods;

Whereas, on grounds of sound administration, it is necessary to establish a time limit after which the information provided can no longer be relied upon by the holder thereof; whereas, however, the time limit laid down must correspond to the realities of international trade; whereas it is also necessary to lay down the conditions under

(1) OJ No C 256, 8. 10. 1981, p. 10; OJ No C 28, 3. 2. 1989, p. 11.
(2) OJ No 81, 22. 3. 1984, p. 7; OJ No C 113, 7. 5. 1990.
(3) OJ No C 64, 15. 3. 1982, p. 13.
(4) OJ No L 197, 3. 8. 1979, p. 1.
(5) OJ No L 186, 30. 6. 1989, p. 1.

which the information provided ceases to be valid before the expiry of that time limit, as a result of the adoption of Community measures amending the existing law;

Whereas it is necessary to lay down provisions concerning the communication to the Commission of all binding tariff information provided by the competent authorities of the Member States and concerning the cooperation between the latter and the Commission;

Whereas uniform application of the common rules laid down by this Regulation must be ensured and to that end a Community procedure must be provided enabling measures implementing these rules to be adopted within appropriate periods,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down:

(a) the conditions under which information concerning the classification of goods in the customs nomenclature, hereinafter referred to as 'tariff information', may be obtained from the customs authorities of the Member States;

(b) the legal effect of such information.

2. For the purposes of this Regulation,

(a) 'customs nomenclature' shall mean:

— the combined nomenclature,

— the Taric nomenclature and any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and which is established by specific Community provisions with a view to the application of tariff or other measures relating to trade in goods;

(b) 'person' shall mean:

— either a natural person,

— or a legal person,

— or, when the possibility is provided for in the rules in force, and association of persons recognized as having legal capacity but lacking the status in law of a legal person;

(c) 'customs authority' shall mean any authority competent to apply customs rules, even if that authority is not part of the customs administration.

TITLE I

General provisions

Article 2

1. Any person may apply to the customs authorities for tariff information. Such an application may be refused where it does not relate to a commercial transaction actually envisaged.

2. Tariff information shall be provided to the applicant free of charge. However, where expenditure is incurred as a result of analysing or obtaining an expert's report on any samples sent to the customs authority and returning them to the applicant, such expenditure may be charged to the latter.

Article 3

1. Where the conditions laid down in Articles 4 to 8 are fulfilled, the tariff information provided by the customs authority shall constitute, within the meaning of this Regulation, binding tariff information in the Member State in which it has been supplied.

2. In accordance with the procedure laid down in Article 10 of Regulation (EEC) No 2658/87 [1], the Commission shall adopt a Regulation determining the date with effect from which the binding tariff information shall become binding on the administrations of all Member States under the same conditions as those laid down by this Regulation with regard to its legal effects in the Member State which furnished it. The Commission shall adopt the functional arrangements as necessary.

TITLE II

Procedure for obtaining binding tariff information

Article 4

1. Applications for binding tariff information shall be made in writing to the customs authority designated by the Member State in which the information is to be used.

2. With effect from the entry into force of the provisions mentioned in Article 3 (2), this application may also be addressed to the customs authority in the Member State in which the applicant is established.

3. An application for binding tariff information shall relate to only one type of goods. The customs authority may refuse applications which clearly seem unwarranted.

Article 5

1. Applications for binding tariff information shall include, *inter alia,* the following particulars:

(a) the name and address of the applicant; where the application is submitted by a natural or legal person acting on behalf of another person, the name and address of the latter shall also be shown on the application;

[1] OJ No L 256, 7. 9. 1987, p. 1.

(b) the particulars, including, where appropriate, the use to which the goods are to be put, which are necessary to enable the customs authority to reach a decision.

Where classification of the goods in the customs nomenclature depends on the level of certain substances in the goods in question, that level and, where appropriate, the methods of analysis used for determining it shall be notified to the customs authority;

(c) where an application for binding tariff information has been submitted by a person in respect of identical goods, that person must specify the references relating to that application and, where appropriate, the classification given.

2. Applications for binding tariff information must, where appropriate, be accompanied by representative samples of the goods or, where samples cannot be taken because of the nature of the goods, by photographs, plans, catalogues and such other technical documents as may assist the customs authority to determine the classification of the goods in the customs nomenclature.

Documents enclosed with the applications shall, where appropriate, be accompanied by a translation into the official language or one of the official languages of the Member State concerned.

3. Where an applicant wishes to obtain the classification of goods in one of the nomenclatures referred to in the second indent of Article 1 (2) (a), the application for binding information shall make express mention of the nomenclature in question.

Article 6

Where the customs authority to which an application for binding tariff information has been submitted considers that the application does not contain all the particulars needed to enable it to reach a decision, it shall request the applicant to furnish the missing particulars, indicating that the application cannot be considered as it stands.

Article 7

Without prejudice to the provisions governing the protection of information in force in the Member States, information supplied confidentially shall not be divulged by customs authorities without the express authorization of the person or authority which supplied it, save where the said customs authorities might do so under the law in force or in the course of legal proceedings.

Article 8

Binding tariff information must be notified to the applicant as soon as possible in writing. It must contain, *inter alia*, the following particulars:

(a) the references relating to the application for information;

(b) a precise description of the goods in question to enable them to be accurately identified at the time of the customs formalities;

(c) the levels of certain substances in the goods, where such indication is necessary to ascertain the classification of the goods in the customs nomenclature, together with the method of analysis on which the information is based;

(d) the classification of the goods in the customs nomenclature;

(e) the name and address of the person entitled to use the information, hereinafter referred to as the 'holder';

(f) the date on which the information was supplied;

(g) where the competent authority considers it appropriate, the reasons for the classification of the goods.

Article 9

1. A copy of the notification of binding tariff information to the applicant must be communicated to the Commission in accordance with the arrangements adopted pursuant to Article 17 (2).

2. Where a Member State so requests, the Commission shall inform it of notifications received concerning specific goods or group of goods.

TITLE III

Legal effect of binding tariff information

Article 10

1. Binding tariff information may be invoked only by the holder thereof, subject to Council Regulation (EEC) No 3632/85 of 12 December 1985 defining the conditions under which a person may be permitted to make a customs declaration [1].

2. Member States may require that the holder, when fulfilling customs formalities, shall notify the customs authority that he is in possession of binding tariff information in respect of the goods being cleared through customs.

3. The holder of binding tariff information may use it in respect of particular goods only where it is established to the satisfaction of the customs service that the goods in question conform in all respects to those described in the information presented.

At the time of customs clearance, the customs service may carry out any check or examination which it deems useful in order to satisfy itself that the goods presented do, in fact, conform to those in respect of which the information has been given.

Article 11

1. Binding tariff information shall be binding on the competent authorities only in respect of the classification of goods in the customs nomenclature.

[1] OJ No L 350, 27. 12. 1985, p. 1.

2. Binding tariff information shall be binding on the administration only in regard to goods in respect of which the customs formalities are completed after the date on which such information is provided by the customs authority.

3. Binding tariff information shall be void where it is established that it was provided on the basis of inaccurate or incomplete data.

Article 12

Without prejudice to Article 13 and 14, binding tariff information may no longer be invoked after a period of six years from the date on which it was provided.

Article 13

Where, as a result of the adoption of:

— a Regulation amending the customs nomenclature, or

— a Regulation determining or affecting the classification of goods in the customs nomenclature,

binding tariff information previously supplied no longer conforms to Community law as thus established, such information shall cease to be valid from the date on which the Regulation in question applies.

Nevertheless, where a Regulation such as that referred to in the second indent above expressly so envisages, binding tariff information may continue to be invoked by the holder thereof during a period fixed by the said Regulation, if the holder has concluded a contract as referred to in Article 14 (3) (a) or (b).

Article 14

1. In addition to the cases referred to in Article 13, binding tariff information shall also cease to be valid where such information is no longer compatible with the interpretation of the customs nomenclature as a result of:

(a) the adoption of any one of the following Community tariff measures:

— amendment of the explanatory notes to the combined nomenclature,

— adoption of a Community classification slip,

— agreement reached in the Nomenclature Committee on the classification of goods, recorded in the minutes of the meeting at which it was reached;

or,

(b) the following international tariff measures:

— amendment of the explanatory notes to the harmonized system nomenclature,

— a classification opinion of the Customs Cooperation Council,

or

(c) a judgment of the Court of Justice of the European Communities.

2. Without prejudice to paragraph 3, the date on which binding tariff information ceases to be valid pursuant to paragraph 1 shall be the date of publication in the 'C' series of the *Official Journal of the European Communities* of the measures or judgment referred to in paragraph 1 (a) and (c), and of a Commission communication regarding the measures referred to in paragraph 1 (b).

3. In the case of products in respect of which an import or export licence or advance-fixing certificate is submitted when the customs formalities are completed, the binding tariff information which ceases to be valid pursuant to paragraph 1 may continue to be invoked by the holder of the informatiuon during the remainder of the period of validity of that licence or certificate.

In other cases, the binding tariff information which ceases to be valid pursuant to paragraph 1 may continue to be invoked by the holder thereof for a period of six months from the date on which he is notified of its non-conformity, as provided in paragraph 2, where it is established to the satisfaction of the customs service that the holder concluded, on the basis of the binding tariff information supplied him and prior to the date of adoption of the tariff measure in question;

(a) where such information is invoked for the import of goods:

— a binding contract for the purchase of the goods in question, from a supplier established in a non-Community country, or,

— a binding contract for the sale of the goods in question, in an unaltered state or after processing, to a customer established in the Community;

(b) where such information is invoked for the export of goods:

— a binding contract for the sale of the goods in question to a customer established in a non-Community country, or,

— a binding contract for the purchase of the goods in question from a supplier established in the Community.

4. The application under the conditions laid down in paragraph 3 of the classification given in the binding tariff information shall have effect only in regard to:

— the determination of the import or export duties,

— the calculation of export refunds and any other amounts granted on imports or exports within the framework of the common agricultural policy, and

— the use of import or export licences or advance fixing certificates which are submitted at the time of completion of the formalities with a view to the acceptance of the customs declaration for the goods in question, on condition that such licences or certificates were issued on the basis of the said binding tariff information.

5. In exceptional cases, where there is a risk that the smooth working of arrangements set up within the framework of the common agricultural policy may be jeopardized, it may be decided, in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC [1] and in the corresponding Articles of the other regulations on the common organization of the markets, to derogate from paragraph 3.

Article 15

Upon adoption of one of the regulations referred to in Article 13, one of the tariff measures referred to in Article 14 (1) (a) and (b) or following a judgment such as that referred to in Article 14 (1) (c), Member States' administrations shall take the necessary steps to ensure that binding tariff information provided by the customs authorities is in conformity with the measure in question.

The preceding paragraph shall apply even where a specific date is laid down for the entry into force of the tariff measure in question.

Article 16

Where the customs authority amends binding tariff information for a reason other than those referred to in Articles 13 and 14 (1), the information originally supplied shall cease to be valid from the date on which such amendment is notified to the holder.

Article 14 (3), (4) and (5) shall, however, also apply.

TITLE IV

Final provisions

Article 17

1. The Nomenclature Committee provided for in Article 7 of Regulation (EEC) No 2658/87 may examine any question concerning application of this Regulation which is raised by its chairman, either on his own initiative or at the request of a Member State.

2. The provisions required for applying this Regulation shall be adopted in accordance with the procedure laid down in Article 10 of Regulation (EEC) No 2658/87.

Article 18

Binding tariff information supplied nationally before 1 January 1991 shall remain valid. If necessary, some of that information shall be communicated to the Commission as provided for in Article 7.

Nevertheless, binding tariff information supplied nationally whose validity goes beyond, by more than six years, 1 January 1991, shall be invalid from the seventh year.

Article 19

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

It shall apply from 1 January 1991.

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

Done at Luxembourg, 20 June 1990.

For the Council

The President

D. J. O'MALLEY

[1] OJ No 172, 30. 9. 1966, p. 3025/66.