COMMISSION REGULATION (EEC) No 3796/90

of 21 December 1990

laying down provisions for the implementation of Council Regulation (EEC) No 1715/90 on the information provided by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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 [1], and in particular Article 17 (2) thereof,

Whereas implementing provisions should be adopted laying down the procedure to be followed during the period when binding tariff information issued by the customs authorities is binding only in the Member State of issue, pending adoption by the Commission of a Regulation setting a date when tariff information binding in the Member States will bind the administrations of the other Member States as well;

Whereas Article 4 (1) of Regulation (EEC) No 1715/90 provides that applications for binding tariff information must be made in writing to the customs authority of the Member State in which the information is to be used;

Whereas Article 5 of Regulation (EEC) No 1715/90 specifies the particulars to be included in such applications;

Whereas Article 7 of Regulation (EEC) No 1715/90 provides that information supplied confidentially must not be divulged by the customs authority;

Whereas it is appropriate to specify the particulars that the application must contain in order to allow the competent customs authority to reach a decision with full knowledge of the facts; whereas it is necessary to provide for provisions intended to protect confidential information;

Whereas Article 8 of Regulation (EEC) No 1715/90 provides that binding tariff information must be notified to the applicant as soon as possible in writing, and specifies the particulars to be included;

Whereas it is desirable to prescribe the use of a form for the provision of binding tariff information and to adopt an appropriate specimen form; whereas the type of form to be used by the customs authority should be specified and a time limit set for replies;

Whereas Article 9 of Regulation (EEC) No 1715/90 provides that a copy of the notification of binding tariff information must be communicated to the Commission, and that where a Member State so requests the Commission must inform it of notifications received concerning specific goods or groups of goods; whereas certain additional information is necessary for the management of the system, notably the indication of the keywords describing the goods; whereas it is therefore appropriate to provide that this additional information is also transmitted to the Commission;

Whereas it is appropriate to ensure that for the same goods Member States issue only binding tariff information with the same tariff classification; whereas for this purpose it is necessary to identify binding tariff information which appears to provide for different classification of the same goods; whereas it is appropriate to determine the correct classification of these goods and to amend binding tariff information where it does not conform to this classification; whereas to this end provision should be made for the rapid transmission of binding tariff information to the Commission and the Member States;

Whereas Article 13, Article 14 and Article 16 of Regulation (EEC) No 1715/90 lay down the cases where binding tariff information ceases to be valid as well as the cases where under certain conditions the holder can continue for a certain period of time to invoke binding tariff information which has ceased to be valid; whereas there is a need to adopt provisions whereby the holder of such binding tariff information can benefit from the possibility of invoking it although it is no longer valid;

Whereas Article 15 of Regulation (EEC) No 1715/90 provides that upon adoption of one of the Regulations or one of the tariff measures referred to in Article 13 or in Article 14 (1) (a), (b) or (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 act or measure in question;

Whereas in the interest of clarity and efficiency it is desirable to set a date from which binding tariff information issued by the Member States' administrations must be in conformity with the measures in question; whereas the Commission should notify the Member States' administrations of the deadline as soon as possible;

Whereas Article 18 of Regulation (EEC) No 1715/90 provides that binding tariff information supplied nationally shall cease to be valid from 1 January 1997; whereas it would be appropriate to lay down a simple procedure for the conversion of such information into binding tariff information within the meaning of this Regulation, where the interested party so requests;

[1] OJ No L 160, 26. 6. 1990, p. 1.

Whereas the provisions of the Regulation are in conformity with the opinion of the Nomenclature Committee ;

HAS ADOPTED THIS REGULATION :

Article 1

1. This Regulation lays down provisions for the implementation of Regulation (EEC) No 1715/90, hereinafter referred to as the basic Regulation, with the exception of Articles 3 (2) and 4 (2).

2. For the purposes of this Regulations :

(a) 'binding tariff information' means tariff information as defined in Article 3 (1) of the basic Regulation, provided by customs authorities ;

(b) 'customs nomenclature' means nomenclatures of goods as defined in Article 1 (2) (a) of the basic Regulation ;

(c) 'applicant' means a person, as defined in Article 1 (2) (b) of the basic Regulation, who has applied to the customs authority for binding tariff information ;

(d) 'customs authority' means any authority responsible for applying customs legislation, as defined in Article 1 (2) (c) of the basic Regulation.

TITLE I

PROVISIONS RELATING TO APPLICATIONS FOR BINDING TARIFF INFORMATION

Article 2

1. An application for binding tariff information shall refer to only one type of goods. It must be made in writing and must contain the following information :

(a) the applicant's name and address ;

(b) where the application is submitted by a natural or person acting on behalf of another person, the name and address of that other person ;

(c) the customs nomenclature in which the goods are to be classified in accordance with Article 5 (3) of the basic Regulation ;

(d) a detailed description of the goods enabling them to be identified and classified in the customs nomenclature ;

(e) the composition of the goods and methods of analysis used to determine this, where the classification depends on it ;

(f) indicate if any samples, photographs, plans, catalogues or other documents are available which may assist the customs authority in determining the correct classification of the goods in the customs nomenclature ;

(g) any knowledge on the part of the applicant of the issue of earlier binding tariff information in the Community in respect of the same or like goods ;

(h) the agreement to supply a translation of any document in the official language (or one of the official languages) of the Member State concerned if requested by the customs authorities ;

(i) whether any of the particulars supplied are to be treated as confidential ;

(j) the classification envisaged by the applicant ;

(k) acceptance that the information supplied may be stored on a database of the Commission of the European Communities and be used for the purposes of the basic Regulation.

2. Where the customs authority finds that the application does not contain all the particulars it requires to give an informed opinion, it shall ask the applicant to supply the missing information.

3. The list of customs authorities designated by the Member States to receive applications for binding tariff information furnished by Member States to the Commission shall be published in the C series of the *Official Journal of the European Communities.*

TITLE II

COMMUNICATION OF BINDING TARIFF INFORMATION TO THE APPLICANT AND THE COMMISSION

Article 3

1. Binding tariff information must be communicated to the applicant in writing as soon as possible. If it has not been possible to communicate binding tariff information to the applicant within three months of acceptance of the application, the customs authority shall contact the applicant to explain the reason for the delay and indicate when it expects to be able to communicate the information.

2. Binding tariff information shall be notified by means of the form which is contained at page 1 of the Annex of this Regulation. The notification shall indicate what particulars are considered as having been supplied on a confidential basis.

Article 4

1. A copy of the binding tariff information communicated to the applicant as well as the details concerning the customs authority responsible for additional information, the reference of the binding tariff information, the language in which it is issued in addition to the key words describing the goods are to be transmitted in accordance with the form which is contained at pages 1 and 2 of the Annex of this Regulation without delay by the customs authority of the Member State to the Commission. These transmission shall be effected using electronic means as soon as possible.

2. Where a Member State so requests the Commission shall send it without delay a copy of the binding tariff information and other relevant information. Such transmission shall be effected using electronic means as soon as possible.

TITLE III

PROVISIONS APPLYING IN THE EVENT OF INCONSISTENCIES IN EXISTING BINDING TARIFF INFORMATION

Article 5

Where the Commission finds that different binding tariff information exists in respect of the same goods it shall consult the customs authorities of the Member States concerned and adopt, if necessary, a measure to ensure the uniform application of the customs nomenclature using the procedure provided for in Article 10 of Council Regulation (EEC) No 2658/87 [1].

TITLE IV

PROVISIONS APPLYING IN THE EVENT OF EXPIRY OF BINDING TARIFF INFORMATION

Article 6

1. When a holder of binding tariff information which has ceased to be valid for the reasons referred to in the first paragraph of Article 13 and Articles 14 (1) and (2) and 16 of the basic Regulation wishes to make use of the possibility of invoking such information during a certain period pursuant to the second paragraph of Article 13 (2), Article 14 (3) and the second paragraph of Article 16 of the basic Regulation, he is to notify the customs service providing, as necessary, the supporting documents to enable a check to be made that the conditions provided for in the basic Regulation have been satisfied.

2. In the exceptional case where the Commission, in accordance with the provisions of Article 14 (5) of the basic Regulation adopts a measure derogating from the provisions of paragraph 3 of the same Article or the conditions referred to at paragraph 1 concerning the possibility of continuing to invoke a binding tariff information have not been fulfilled the customs authority shall notify the holder in writing.

Article 7

1. For the purposes of implementing Article 15 of the basic Regulation the operative dates shall be :

— for the measures referred to in Article 13, first indent of the basic Regulation, the date from which the Regulations apply,

— for the measures referred to in Article 13 ,second indent of the basic Regulation, the date of their publication in the L series of the *Official Journal of the European Communities.*

— for the measures referred to in Article 14 (1) (a) of the basic Regulation, the date of their publication in the C series of the *Official Journal of the European Communities,*

— for the measures referred to in Article 14 (1) (b) of the basic Regulation, the date of their publication in the C series of the *Official Journal of the European Communities,*

— for the acts referred to in Article 14 (1) (c) of the basic Regulation, the date on which the Judgment was delivered.

2. The Commission shall notify the Member States' administrations as soon as possible of the date on which a measure or a judgment referred to in this Article is adopted.

TITLE V

FINAL PROVISIONS

Article 8

1. Binding tariff information supplied nationally before this Regulation is applied may be converted by the customs administrations at the interest party's request into binding tariff information within the meaning of the basic Regulation.

2. In that event Articles 3 and 4 of this Regulation shall apply.

Article 9

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, with the exception of Article 3 (2) and Article 4, which shall apply from 1 March 1991.

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

Done at Brussels, 21 December 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

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

ANNEX

EUROPEAN COMMUNITIES — BINDING TARIFF INFORMATION **BTI**

1. Competent customs authority:

2. BTI reference:

3. Holder (name and address): confidential

4. Date of start of validity:

Important notice

Without prejudice to the provisions of Articles 11 (3), 13, 14 and 16 of Council Regulation (EEC) No 1715/90, this BTI remains valid for six years as from the date of start of validity

The information supplied will be stored on a database of the Commission of the European Communities for the purposes of the application of the abovementioned Regulation

5. Date and reference of the application:

6. Classification of the goods in the customs nomenclature:

7. Description of the goods:

8. Commercial denomination and additional information: confidential

9. Justification of the classification of the goods:

10. This BTI has been issued on the basis of the following material provided by the applicant:

Descriptions ☐ Brochures ☐ Photos ☐ Samples ☐ Other ☐

Place: Signature: Stamp:

Date:

11. Competent customs authority to be contacted for additional information
(name, full address, telephone, telefax):

12. BTI reference:

13. Language:

DA | DE | EL | EN | ES | FR | IT | NL | PT

14. Key words: