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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1097/98

of 25 May 1998

amending Regulation (EC) No 3448/93 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Whereas Council Regulation (EC) No 3448/93 [3] laid down the trade arrangements applicable to certain goods resulting from the processing of agricultural products;

Whereas following the entry into force of the agreements resulting from the Uruguay Round multilateral negotiations, the Community negotiated various agreements (hereinafter referred to as the 'GATT agreements'); whereas several of those agreements concern agriculture, particularly the Agreement on Agriculture (hereinafter referred to as 'the Agreement'); whereas under the Agreement the Community no longer applies variable levies to imports of agricultural products or variable components; whereas as a result a number of provisions of Regulation (EC) No 3448/93 have to be adapted to this new situation to make their meaning clear; whereas other provisions are now no longer applicable;

Whereas under certain preferential agreements reductions are granted on the agricultural components within the framework of the Community's commercial policy; whereas these reductions are established with reference to the agricultural components applicable to non-preferential trade; whereas these reduced amounts must therefore be converted into national currency at the same rate as applied for conversion of the non-reduced amounts;

Whereas under certain preferential agreements concessions are granted within quota limits relating to both agricultural and non-agricultural protection, or non-agricultural protection is subject to reductions as a consequence of such agreements; whereas it is essential that the management of the non-agricultural part of protection should be subject to the same rules as for the agricultural part;

Whereas, following the amendments made to the various Regulations on the common organisation of the markets in the agriculture sector by Regulation (EC) No 3290/94 [4], refunds for certain agricultural products exported in the form of goods not covered by Annex II to the Treaty may be granted only if they are in line with the commitments entered into by the Community pursuant to Article 228 of the Treaty; whereas the arrangements needed to ensure compliance with such commitments can be adopted under the procedure referred to in Article 16 of Regulation (EC) No 3448/93;

Whereas it is necessary therefore to amend Regulation (EC) No 3448/93,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 3448/93 is hereby amended as follows:

1. in Article 1:

(a) paragraphs 1 and 2 shall be replaced by the following:

'1. This Regulation determines the trade arrangements applicable to certain goods defined in Annex B.

[1] OJ C 105, 11. 4. 1996, p. 8.
[2] OJ C 347, 25. 10. 1996, p. 464.
[3] OJ L 318, 20. 12. 1993, p. 18.
[4] OJ L 349, 31. 12. 1994, p. 105. Regulation as last amended by Regulation (EC) No 1161/97 (OJ L 169, 27. 6. 1997, p. 1).

2. For the purposes of this Regulation:

— "agricultural products" shall mean products covered by Annex II to the Treaty,

— "goods" shall mean products not covered by Annex II to the Treaty and listed in Annex B.';

(b) the following paragraph shall be inserted:

'2a. For the purposes of application of certain preferential agreements:

— "agricultural component" shall mean the part of the charge corresponding to the Community Customs Tariff duties applicable to the agricultural products listed in Annex A or, where appropriate, the duties applicable to agricultural products originating in the countries concerned for the quantities of these agricultural products considered to have been used, as referred to in Article 13,

— "non-agricultural component" shall mean the part of the charge corresponding to the Common Customs Tariff duties, reduced by the agricultural component defined in the first indent,

— "basic products" shall mean certain agricultural products covered by Annex A to this Regulation or assimilated to those products or resulting from their processing, for which the duties published in the Common Customs Tariff serve to determine the agricultural component of the charge applicable to the goods.';

2. in Title I, Chapter I shall be replaced by the following:

'CHAPTER I

Importation

Section I

Trade with non-member countries

Article 2

1. Save where otherwise provided in this Regulation, the Common Customs Tariff duties shall apply to the goods listed in Annex B.

For the goods listed in Table 1 of Annex B, the charge shall consist of an *ad valorem* duty, designated the "fixed component", and a specific amount set in ecus, designated the "agricultural component".

For the goods listed in Table 2 of Annex B, the agricultural component of the charge shall be part of the charge applicable to imports of such goods.

2. Subject to Articles 10 and 10a, the levying of any customs duty or charge having equivalent effect other than the charge provided for in paragraph 1 shall be prohibited.

3. The general rules for interpretation of the Combined Nomenclature and the special rules for application of the Nomenclature shall apply for the purposes of classification of the products covered by this Regulation; the tariff nomenclature resulting from application of this Regulation shall be included in the Common Customs Tariff.

4. The detailed rules for application of this Regulation shall be adopted in accordance with the procedure laid down in Article 16.

Article 3

(Deleted)

Article 4

1. Where the Common Customs Tariff lays down a maximum charge, the charge provided for in Article 2 may not exceed this maximum.

Where the maximum charge referred to in the previous subparagraph may be applied only under specific conditions, these conditions shall be determined in accordance with the procedure laid down in Article 11(1) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (*).

2. Where the maximum charge consists of an *ad valorem* duty plus an additional duty on various kinds of sugar, expressed as sucrose (AD S/Z), or on flour (AD F/M), such additional duty shall be that laid down in the Common Customs Tariff.

(*) OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 2308/97 (OJ L 321, 22.11.1997, p. 1).

Article 5

(Deleted)

Section II

Preferential trade

Article 6

1. The agricultural component applicable in the framework of preferential trade shall be the specific amount fixed in the Common Customs Tariff.

However, where the country or countries concerned satisfy the requirements of Community legislation for processed products, adopt the same basic products as the Community, cover the same goods and use the same coefficients as the Community:

(a) this agricultural component may be determined on the basis of the quantities of basic products actually used if the Community has concluded a customs cooperation agreement covering the establishment of such quantities;

(b) the duty applicable on importation of the basic product may be replaced by an amount established on the basis of the difference between agricultural prices in the Community and those in the country or region concerned, or by an amount offsetting a jointly established price for the region concerned;

(c) where application of point (b) results in amounts with little impact on the goods covered, this arrangement may be replaced by a system of flat rate amounts or rates.

2. The agricultural components, with any reductions, applicable to imports under a preferential agreement shall be converted into national currency by applying the same exchange rate as applicable to non-preferential trade.

3. The *ad valorem* duties corresponding to the agricultural component of the charge for the goods in Table 2 of Annex B may be replaced by another agricultural component where provided for by a preferential agreement.

4. The detailed rules for applying this Article shall be adopted in accordance with the procedure laid down in Article 16.

If necessary, these detailed rules shall cover in particular:

— completion and circulation of the documents necessary for granting these arrangements,

— the measures necessary to avoid diversions of trade,

— the list of basic products.

5. Where methods of analysing the agricultural products used are necessary, the methods specified for the agricultural products in question in the case of refunds on exports to third countries shall be used.

6. The Commission shall publish the charges resulting from application of the agreements referred to in paragraphs 2 and 3.

Article 7

1. Where a preferential agreement provides for the reduction or phasing-out of the non-agricultural part of the charge, this shall be the fixed component in the case of the goods listed in Table 1 of Annex B.

2. Where a preferential agreement provides for a reduction in the agricultural component, whether or not within the limits of a tariff quota, the detailed rules for determining and managing such reduced agricultural components shall be adopted in accordance with the procedure laid down in Article 16, provided the agreement specifies:

— the products eligible for these reductions,

— the quantities of goods or value of any quotas to which these reductions apply or the method of calculating these quantities or values,

— the factors determining the reduction in the agricultural component.

3. The detailed rules necessary for initiating and managing reductions in the non-agricultural components of the charge shall be adopted in accordance with the procedure laid down in Article 16.

4. The Commission shall publish the charges resulting from application of the preferential agreements referred to in paragraphs 1 and 2.';

3. the following Article shall be added after Article 10:

'Article 10a

1. In order to prevent or counteract adverse effects on the Community market which may result from imports of certain goods resulting from the processing of agricultural products, listed in Annex C, importation at the rate of duty provided for in the Common Customs Tariff of one or more of such goods shall be subject to the payment of an additional import duty if the conditions set out in Article 5 of the Agreement have been fulfilled unless the imports are unlikely to disturb the Community market or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional import duty may be imposed shall be those forwarded to the World Trade Organisation by the Community.

The trigger quantities which must be exceeded in order for an additional import duty to be imposed shall be determined, *inter alia*, on the basis of imports into the Community in the three years preceding that in which the adverse effects referred to in paragraph 1 arise or seem likely to arise.

3. The import prices to be taken into consideration when imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment concerned.

4. The detailed implementing rules shall be adopted in accordance with the procedure laid down in Article 16.

These rules shall cover in particular:

(a) the goods to which additional import duties are applied under Article 5 of the Agreement;

(b) the other criteria necessary for application of paragraph 1 in accordance with Article 5 of the Agreement.';

4. in Article 12, paragraph 1 shall be deleted. Paragraph 3 shall be replaced by the following:

'3. The Commission shall adapt this Regulation or Regulations adopted pursuant thereto to any amendments to the Combined Nomenclature.';

5. the text of Article 13 shall be replaced by the following:

'Article 13

1. This Article shall apply to all preferential trade for which determination of the agricultural component of the charge, possibly reduced under the conditions laid down in Article 7, is not based on the actual content referred to in Article 6(1)(a) and/or for which the basic amounts are not based on the price differences referred to in Article 6(1)(b).

2. The characteristics of the basic products and the quantities of the basic products to be taken into account shall be those laid down by Commission Regulation (EC) No 1460/96 (*).

Any amendments to be made to this Regulation shall be adopted in accordance with the procedure laid down in Article 16.

(*) OJ L 187, 26.7.1996, p. 18.';

6. in Article 14, paragraph 1 shall be replaced by the following:

'1. The threshold or thresholds below which the agricultural components established in accordance with Articles 6 and 7 shall be fixed at zero may be laid down in accordance with the procedure laid down in Article 16. The non-application of these agricultural components may be made subject to special conditions, in accordance with the same procedure, in order to avoid creating artificial trade flows';

7. Article 18 shall be replaced by the following:

'Article 18

The measures necessary to adapt this Regulation to amendments made to the Regulations on the common organisation of the market in agricultural products in order to maintain the existing arrangements shall be adopted in accordance with the procedure laid down in Article 16.';

8. in Annex B, the titles under 'Table 1' and 'Table 2' shall be deleted;

9. the Annex to this Regulation is hereby added as Annex C to Regulation (EC) No 3448/93.

Article 2

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

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

Done at Brussels, 25 May 1998.

For the Council

The President

J. CUNNINGHAM

ANNEX

'ANNEX C

CN code	Description of goods
0403 10 51 to 0403 10 99	Yogurt, flavoured or containing added fruit, nuts or cocoa
0403 10 71 to 0403 90 99	Buttermilk, curdled milk and cream, kephir and other fermented or acidified milk containing added fruit, nuts or cocoa
0710 40	Sweetcorn (uncooked or cooked by steaming or boiling in water), frozen
0711 90 30	Sweetcorn provisionally preserved (for example, by sulphur dioxide gas, in brine, sulphur water or in other preservative solutions) but unsuitable in that state for immediate consumption
1517 10 10	Margarine, excluding liquid margarine containing more than 10 % but not more than 15 % by weight of milk fats
1517 90 10	Other edible mixtures or preparations of animal or vegetable fats or oils or fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading No 1516, containing more than 10 % but not more than 15 % by weight of milk fats
1702 50 00	Chemically pure fructose
2005 80 00	Sweet corn *(Zea mays var. saccharata)* prepared or preserved otherwise than by vinegar or acetic acid, not frozen
2905 43 00	Mannitol:
	D-Glucitol (Sorbitol):
	– in aqueous solution:
2905 44 11	– – containing 2 % or less by weight of D-mannitol, calculated on the D-glucitol content
2905 44 19	– – other
	– other:
2905 44 91	– – containing 2 % or less by weight of D-mannitol, calculated on the D-glucitol content
2905 44 99	– – other
3505 10 10	Dextrin
3505 10 92	Other modified starches, excluding esterified or etherified starches, amilomers, cadexomers, crilanomers and eldexomers
	Glues based on starches or on dextrins or other modified starches:
3505 20 10	– containing, by weight, less than 25 % of starches or dextrins or other modified starches
3505 20 30	– containing, by weight, 25 % or more but less than 55 % of starches or dextrins or other modified starches
3505 20 50	– containing, by weight, 55 % or more but less than 80 % of starches or dextrins or other modified starches
3505 20 90	– containing, by weight, 80 % or more of starches or dextrins or other modified starches

CN code	Description of goods
	Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs or other products and preparations (for example, dressings and mordants), of a kind used in the paper, leather or like industries, with a basis of amylaceous substances, not elsewhere specified or included:
3809 10 10	– containing by weight of such substances less than 55 %
3809 10 30	– containing by weight of such substances 55 % or more but less than 70 %
3809 10 50	– containing by weight of such substances 70 % or more but less than 83 %
3809 10 90	– containing by weight of such substances 83 % or more
	Sorbitol other than of CN code 2905 44:
	– in aqueous solution:
3824 60 11	– – containing 2 % or less by weight of D-mannitol, calculated on the D-glucitol content
3824 60 19	– – other
	– other:
3824 60 91	– – containing 2 % or less by weight of D-mannitol, calculated on the D-glucitol content
3824 60 99	– – other'