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(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 881/2003

of 21 May 2003

amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([1]), as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council ([2]), and in particular Article 247 thereof,

Whereas:

(1) Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004 ([3]) incorporates the 'Everything But Arms' principle laid down in Council Regulation (EC) No 2820/98 of 21 December 1998 applying a multiannual scheme of generalised tariff preferences for the period 1 July 1999 to 31 December 2001 ([4]), as amended by Regulation (EC) No 416/2001 ([5]), so as to extend duty-free access without any quantitative restrictions to products originating in the least developed countries.

(2) In order to ensure that such access benefits only the least developed countries and to avoid diversions of trade through certain of those countries in the framework of regional cumulation of origin, certain minimal, low value-added operations in the rice and sugar sectors that currently suffice to confer the status of originating product for the purposes of the scheme of generalised tariff preferences in accordance with Article 70 of Commission Regulation (EEC) No 2454/93 ([6]), as last amended by Regulation (EC) No 444/2002 ([7]), should no longer be considered as sufficient working or processing to confer the status of originating product.

(3) Consequently, the list set out in Article 70 of Regulation (EEC) No 2454/93 of operations considered as insufficient working or processing should be amended accordingly. Moreover, in the interests of consistency, the same amendments should be made to Article 101 of that Regulation, which concerns the countries or territories to which preferential tariff measures adopted unilaterally by the Community apply.

(4) The amendments to the harmonised system nomenclature entered into effect on 1 January 2002. The list of working or processing required to be carried out on non-originating products to confer originating status should be updated to take account of those changes, as should its introductory notes. Certain corrections are also required. In the interests of clarity, those texts should be republished in their entirety.

(5) The Andean Community and the Central American Common Market, which, pursuant to Article 72 of Regulation (EEC) No 2454/93, have benefited separately from regional cumulation of origin within the framework of the generalised system of preferences, have requested that, in order to foster industrial development in those regions, they be allowed to benefit jointly from the regional cumulation provisions. They have formed a common secretariat for this purpose, the Andean Community – Central American Common Market and Panama Permanent Joint Committee on Origin. All the countries of this new group have met the requirements of Article 72b of Regulation (EEC) No 2454/93, in particular as regards the submission of undertakings to comply with the rules in force and to provide the necessary administrative cooperation. It should therefore be made possible for that group to benefit from the regional cumulation provisions.

(6) Proofs of origin issued under the arrangements previously applicable for the Andean Community and the Central American Common Market should continue to be accepted within the limits of their validity.

([1]) OJ L 302, 19.10.1992, p. 1.
([2]) OJ L 311, 12.12.2000, p. 17.
([3]) OJ L 346, 31.12.2001, p. 1
([4]) OJ L 357, 30.12.1998, p. 1.
([5]) OJ L 60, 1.3.2001, p. 43.
([6]) OJ L 253, 11.10.1993, p. 1.
([7]) OJ L 68, 12.3.2002, p. 11.

(7) In order to avoid confusion, given that entitlement to regional cumulation does not always coincide with membership of regional groups, the names of regional groups should no longer be used to indicate the countries which may benefit from regional cumulation.

(8) The opportunity should be taken to make a correction in Article 76 of Regulation (EEC) No 2454/93.

(9) The time-limits for the production of a document showing that goods covered by an incomplete declaration qualify for a reduced or zero rate of import duty should be made more flexible.

(10) The management system for tariff quotas provides, as a measure to reduce the administrative burden and costs at importation and to promote uniformity of treatment, that certain tariff quotas are to be considered as critical. Experience with the system has demonstrated that the criteria used in determining the critical status can be further relaxed without a risk for the Community's own resources.

(11) The system of surveillance of preferential imports has proved to be suitable also for the surveillance of non-preferential imports and should therefore be extended to those imports.

(12) The state of implementation of the computerised transit system no longer justifies allowing traders to use the loading list as the descriptive part of transit declarations lodged by means of a data processing technique. That possibility should therefore be removed.

(13) It is appropriate to introduce provisions designed to develop, supplement and, where necessary, update the existing rules so that the provisions resulting from the recent reform of the Community/common transit procedure, and in particular those concerning termination of the operation, alternative proof and the enquiry procedure, can be used in conjunction with the TIR procedure.

(14) Regulation (EEC) No 2454/93 should also be aligned with the TIR Convention.

(15) With a view to improving the effectiveness and transparency of the procedure, provision should be made for the recovery procedure also to apply when the TIR carnet is used.

(16) The maximum amount that the guaranteeing associations in the Community are required to pay when they incur liability should be expressed in euro and set at EUR 60 000 per TIR carnet.

(17) In order to uphold the financial interests of the Community and of its Member States, provision should be made for a non-discharge notification, issued validly within a year by the competent customs administration to a guaranteeing association established in the Community, to be legally enforceable against other guaranteeing associations established in the Community if it transpires that they are liable under the first or second indent of Article 215(1) of Regulation (EEC) No 2913/92, hereinafter 'the Code'.

(18) Although there is no change inthe rules laid down for the ATA procedure, the relevant provisions should be adapted in consequence of the amendment of the TIR rules.

(19) In accordance with Article 551(3) of Regulation (EEC) No 2454/93, for the purposes of determining the customs value of processed products declared for free circulation, the declarant may choose the customs value of the import goods plus the processing costs. In order to ensure that the import duties are levied in a uniform manner, the notion of processing costs should be clarified.

(20) Article 841 of that Regulation should be amended in order to allow the formalities for re-exportation to be carried out at the office of exit where goods are moved by ATA carnet under the temporary importation arrangements.

(21) Pursuant to Article 222(2) of the Code, it is appropriate, in cases where a customs debt is incurred by the removal of goods from customs supervision and there is more than one debtor, to lay down the conditions in which the obligation of certain debtors to pay duty is to be suspended. The duration of the suspension should be limited to one year but it should be possible to extend it in particular where debtors who are not benefiting from the suspension have contested the customs debt before the competent judicial authorities.

(22) Article 890 of Regulation (EEC) No 2454/93 provides that duties are to be repaid or remitted on imports eligible for Community treatment or preferential tariff treatment where a customs debt has been incurred as a result of release for free circulation of the goods and where the importer can produce a post-clearance document showing entitlement to such treatments at the time of the release for free circulation. That possibility should be extended to cases where a document showing entitlement to a favourable tariff treatment by reason of the nature of goods is produced after clearance. Indeed, the obligation to pay duty in such cases, where no deception or obvious negligence is involved, is

disproportionate to the need for protection which the Common Customs Tariff is intended to provide.

(23) To avoid problems with interpretation, Article 900(2) and (3) of Regulation (EEC) No 2454/93 should be re-drafted. The new version should also be adapted to the current economic climate of vigorous competition. Accordingly, Article 900(2) should not automatically require the re-export of goods entitled to repayment or remission under Article 900(1) and should permit the goods to be destroyed or to be placed under the Community external transit procedure or the customs warehousing procedure or in a free zone or free warehouse, instead of being re-exported.

(24) Annex 25 to Regulation (EEC) No 2454/93, laying down the percentages of air transport costs to be included in the customs value, should be simplified and adjusted to take account of the enlarged customs territory of the Community following the accession of the new Member States.

(25) Annex 38 to Regulation (EEC) No 2454/93 contains in box 36 of the Single Administrative Document (SAD) the codes for the Tariff arrangements under which products are placed for free circulation.

(26) In the interests of clarity, it is necessary to add a specific code to be used for the temporary suspension on goods destined for civil aircraft and in respect of which an airworthiness certificate has been issued.

(27) Annex 67 to Regulation (EEC) No 2454/93 should be adapted to reflect the amendments to Annex 70.

(28) Annex 70 to Regulation (EEC) No 2454/93 should be amended in order to allow the use of an existing system for communication of information concerning processed agricultural products. Furthermore, the benefits resulting from the simplification of the 'Information system – processing procedures (ISPP)' should be extended to those products. Finally, a specific economic reason code should be introduced for applications for inward processing authorisation involving non-sensitive goods.

(29) It is desirable to simplify the use of the customs procedure 'processing under customs control' in the case of import goods which are processed into products which may benefit from the autonomous suspension of import duties on certain weapons and military equipment.

(30) Regulation (EEC) No 2454/93 should therefore be amended accordingly.

(31) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is amended as follows:

(1) In Article 70, paragraph 1 is replaced by the following:

'1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 69 are satisfied:

(a) preserving operations to ensure that the products remain in good condition during transport and storage;

(b) breaking-up and assembly of packages;

(c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles;

(e) simple painting and polishing operations;

(f) husking, partial or total milling, polishing and glazing of cereals and rice;

(g) operations to colour sugar or form sugar lumps; partial or total milling of sugar;

(h) peeling, stoning and shelling, of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) sifting, screening, sorting, classifying, grading, matching; (including the making-up of sets of articles);

(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the conditions laid down in this section to enable them to be considered as originating in a beneficiary country or in the Community;

(n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(o) a combination of two or more of the operations specified in points (a) to (n);

(p) slaughter of animals.'

(2) In Article 72, paragraphs 3 and 4 are replaced by the following:

'3. Regional cumulation shall apply to three separate regional groups of beneficiary countries benefiting from the generalised system of preferences:

(a) Group I: Brunei-Darussalam, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam;

(b) Group II: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Venezuela;

(c) Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka.

4. The expression 'regional group' shall be taken to mean Group I, Group II or Group III, as the case may be.'

(3) In Article 72b(1)(b), the second and third subparagraphs are replaced by the following:

'This undertaking shall be transmitted to the Commission through the following Secretariats, as the case may be:

(i) Group I: the General Secretariat of the Association of South-East Asian Nations (ASEAN);

(ii) Group II: the Andean Community — Central American Common Market and Panama Permanent Joint Committee on Origin (Comité Conjunto Permanente de Origen Comunidad Andina – Mercado Común Centroamericano y Panamá);

(iii) Group III: the Secretariat of the South Asian Association for Regional Cooperation (SAARC).'

(4) In Article 76(4), the second sentence is replaced by the following:

'It shall be decided on in accordance with the committee procedure.'

(5) In Article 101, paragraph 1 is replaced by the following:

'1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 100 are satisfied:

(a) preserving operations to ensure that the products remain in good condition during transport and storage;

(b) breaking-up and assembly of packages;

(c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles;

(e) simple painting and polishing operations;

(f) husking, partial or total milling, polishing and glazing of cereals and rice;

(g) operations to colour sugar or form sugar lumps; partial or total milling of sugar;

(h) peeling, stoning and shelling, of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) sifting, screening, sorting, classifying, grading, matching; (including the making-up of sets of articles);

(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the conditions laid down in this section to enable them to be considered as originating in a beneficiary country or territory or in the Community;

(n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(o) a combination of two or more of the operations specified in points (a) to (n);

(p) slaughter of animals.'

(6) In Article 256(1), the second subparagraph is replaced by the following:

'In the case of a document required for the application of a reduced or zero rate of import duty, where the customs authorities have good reason to believe that the goods covered by the incomplete declaration may qualify for such reduced or zero rate of duty, a period longer than that provided for in the first subparagraph may, at the declarant's request, be granted for the production of the document, if justified in the circumstances. That period may not exceed four months from the date of acceptance of the declaration. It cannot be extended.'

(7) Article 308c is replaced by the following:

'*Article 308c*

1. A tariff quota shall be considered as critical as soon as 75 % of the initial volume has been used, or at the discretion of the competent authorities.

2. By way of derogation from paragraph 1, a tariff quota shall be considered from the date of its opening as critical in any of the following cases:

(a) it is opened for less than three months;

(b) tariff quotas having the same product coverage and origin and an equivalent quota period as the tariff quota in question (equivalent tariff quotas) have not been opened in the previous two years;

(c) an equivalent tariff quota opened in the previous two years had been exhausted on or before the last day of the third month of its quota period or had a higher initial volume than the tariff quota in question.

3. A tariff quota whose sole purpose is the application, under the rules of the WTO, of either a safeguard measure or a retaliatory measure shall be considered as critical as soon as 75 % of the initial volume has been used irrespective of whether or not equivalent tariff quotas were opened in the previous two years.'

(8) In Part II, Title I, Chapter 3, the title of Section 2 is replaced by the following:

'**Surveillance of imports**'

(9) In Article 308d, paragraphs 1 and 2 are replaced by the following:

'1. Where Community surveillance of imports is to be made, the Member States shall provide surveillance reports to the Commission at least once each month containing details of the quantities of products put into free circulation. At the Commission's request, Member States shall confine this data to imports with the benefit of preferential tariff arrangements.

2. The surveillance reports of the Member States shall indicate the quantities put into free circulation since the first day of the period concerned.'

(10) In Article 353, paragraph 2 is deleted.

(11) In Article 358, paragraph 2 is replaced by the following:

'2. Where appropriate, the transit accompanying document shall be supplemented by a list of items corresponding to the specimen and notes in Annex 45b. This list shall form an integral part of the transit accompanying document.'

(12) In Part II, Title II, the title of Chapter 9 is replaced by the following:

'***Transport under the TIR or ATA procedure***'.

(13) In Article 451, paragraph 1 is replaced by the following:

'1. Where goods are transported from one point in the customs territory of the Community to another under the procedure for the international transport of goods under cover of TIR carnets (TIR Convention) or under cover of ATA carnets (ATA Convention), the customs territory of the Community shall, for the purposes of the rules governing the use of the TIR or ATA carnets for such transport, be considered to form a single territory.'

(14) In Article 453(2), 'Articles 314 to 324' is replaced by 'Articles 314b to 324f'.

(15) After Article 453, the following text is inserted:

'Section 2

The TIR procedure'.

(16) Articles 454 and 455 are replaced by the following:

'*Article 454*

The provisions of this section apply to the transport of goods under cover of TIR carnets where import duties or other charges within the Community are involved.

Article 455

1. The customs authorities of the Member State of destination or exit shall return the appropriate part of Voucher No 2 of the TIR carnet to the customs authorities of the Member State of entry or departure without delay and at most within one month of the date when the TIR operation was terminated.