COMMISSION REGULATION (EC) No 444/2002

of 11 March 2002

amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code and Regulations (EC) No 2787/2000 and (EC) No 993/2001

(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 European Parliament and Council Regulation (EC) No 2700/2000 [2] (hereinafter: 'the Code'), and in particular Article 247 thereof,

Whereas:

(1) Certain definitions set out in Commission Regulation (EEC) No 2454/93 [3], as last amended by Regulation (EC) No 993/2001 [4], require updating.

(2) Under the common commercial policy it is frequently necessary to amend the list of countries and territories qualifying for autonomous Community tariff preferences and consequently to amend the list in Section 2 of Part I, Title IV, Chapter 2, of Regulation (EEC) No 2454/93.

(3) The heading and wording of Section 2 should therefore be based not on an exhaustive list of those countries and territories, but on a general reference to 'beneficiary countries or territories', since the latter are duly listed in the Council regulations granting the preferences.

(4) In certain circumstances it is possible to have defective goods repaired outside the customs territory of the Community without incurring a customs debt on reimportation.

(5) After release for free circulation, the price agreed between buyer and seller can be subject in certain cases to modification in order to take account of the defective nature of goods.

(6) Consequently, the rules in force should expressly allow a transaction value under Article 29 of the Code to take account of those special circumstances, with appropriate safeguards and subject to the application of reasonable time limits.

(7) The purpose of Article 167(1) of Regulation (EEC) No 2454/93 was to avoid the levying of customs duties on software imported on carrier media. That objective has since been achieved by the Agreement on trade in information technology products (ITA), approved by Council Decision 97/359/EC [5]. Without prejudice to the application of GATT Decision 4.1 of 12 May 1995, it is therefore no longer necessary to provide special implementing provisions for the determination of the customs value of carrier media.

(8) The threshold limit, specified in Article 179(1)(a) of Regulation (EEC) No 2454/93, for presentation of the declaration of particulars relating to customs value (value declaration) should be raised to EUR 10 000 to take into account monetary changes and to simplify import formalities.

(9) Certain adjustments and corrections are required to the provisions on end-use, in particular to clarify them and to align them with the rules for the customs procedures with economic impact.

(10) The provisions on Community transit laid down in Regulation (EEC) No 2454/93 have been the subject of a complete and thorough review that has led to the revision of a substantial part of the provisions. Since then, it has been found that the amended provisions contain certain inadequacies and inaccuracies, which need to be remedied.

(11) For the protection of the financial interests of the other Contracting Parties to the Convention on a common transit procedure, approved by Council Decision 87/415/EEC [6], it should be ensured that an appropriate guarantee is furnished where a transit operation concerning Community goods involves their territory. The guarantee should be calculated as if the goods were non-Community goods.

(12) Where the principal wishes to use the comprehensive guarantee certificate for all goods, the criteria concerning the use of the comprehensive guarantee for goods involving higher risk of fraud should apply to all goods.

(13) In order to ensure the uniform application of the customs rules within the Community, provisions should be inserted concerning the import duties to be charged on import goods which receive a favourable tariff treatment by reason of their end-use. This should be done for clarification reasons. The insertion should have retroactive effect because similar provisions already existed

[1] OJ L 302, 19.10.1992, p. 1.
[2] OJ L 311, 12.12.2000, p. 17.
[3] OJ L 253, 11.10.1993, p. 1.
[4] OJ L 141, 28.5.2001, p. 1.
[5] OJ L 155, 12.6.1997, p. 1.
[6] OJ L 226, 13.8.1987, p. 1.

until 30 June 2001, notably in Article 52 of Commission Regulation (EEC) No 2228/91 [1], which was repealed by Regulation (EEC) No 2454/93, and in Article 585a of Regulation (EEC) No 2454/93, before it was amended by Regulation (EC) No 993/2001.

(14) Article 859 of Regulation (EEC) No 2454/93 contains a list of cases in which no customs debt is incurred, even in one of the situations referred to in Article 204(1)(a) or (b) of the Code.

(15) That list should be adapted so that it covers cases of non-compliance with certain obligations applicable to goods under a Community transit procedure, where those goods are presented intact at the office of destination.

(16) The list should also cover cases of non-compliance with certain rules on transfers, applicable to goods placed under a suspensive procedure or to goods benefiting from a favourable treatment on account of their end-use, where those goods arrive at the specified destination.

(17) Since the amendment of Article 859 is linked to the provisions of Regulation (EC) No 993/2001, which has applied since 1 July 2001, it is appropriate to make that amendment applicable from the same date.

(18) In order to rationalise management of the deadlines for examining applications for waiver of post-clearance entry in the accounts under Article 220(2)(b) of the Code or for repayment or remission of duty under Article 239 thereof, the suspension of the period for examining such applications where the person concerned is consulted in accordance with Articles 872a or 906a of Regulation (EEC) No 2454/93 should be fixed at one month in all cases.

(19) In order to ensure a consistent interpretation of the provisions concerning the designation of the office of destination for the control of the use and/or destination of goods, it is necessary to specify the office at which the goods should be presented for the control of the exit of goods from the customs territory of the Community.

(20) The standard rates of yield should be calculated for certain main compensating products on the basis of the corresponding coefficients set out in Annex E to Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds [2] as last amended by Regulation (EC) No 1563/2001 [3] Corollary changes should be made for certain secondary compensating products.

(21) Annex 111 to Regulation (EEC) No 2454/93 should be amended to take account of the introduction of the single currency from 1 January 2002.

(22) The transitional provisions on the computerised transit system, laid down in Article 4 of Commission Regulation (EC) No 2787/2000 [4] and in Article 2 of Regulation (EC) No 993/2001, should not apply to authorisations granting the status of authorised consignor or authorised consignee in connection with simplifications for certain modes of transport.

(23) Regulation (EEC) No 2454/93 as well as Regulations (EC) No 2787/2000 and (EC) No 993/2001 should therefore be amended accordingly.

(24) 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. Article 1 is amended as follows:

   (a) Point 3 is replaced by the following:

   '3. *Committee means:*

   the Customs Code Committee established by Articles 247a and 248a of the Code;'

   (b) Point 10 is replaced by the following:

   '10. *Treaty means:*

   the Treaty establishing the European Community;'.

2. The heading of Section 2 of Part I, Title IV, Chapter 2, is replaced by the following:

   'Beneficiary countries or territories to which preferential tariff measures adopted unilaterally by the Community for certain countries or territories apply'.

3. The introductory part of Article 98(1) is replaced by the following:

   '1. For the purposes of the provisions concerning preferential tariff measures adopted unilaterally by the Community for certain countries, groups of countries or territories (hereinafter referred to as "beneficiary countries or territories"), with the exception of those referred to in Section 1 of this Chapter and the overseas countries and territories associated with the Community, the following products shall be considered as products originating in a beneficiary country or territory:'.

4. In Articles 98 to 123, 'beneficiary republic' or 'beneficiary republics' are replaced, as appropriate, by 'beneficiary country or territory' or 'beneficiary countries or territories'.

[1] OJ L 210, 31.7.1991, p. 1.
[2] OJ L 177, 15.7.2000, p. 1.
[3] OJ L 208, 1.8.2001, p. 8.
[4] OJ L 330, 27.12.2000, p. 1.

5. The introductory part of Article 110(1) is replaced by the following:

'1. Originating products within the meaning of this section shall be eligible, on importation into the Community, to benefit from the tariff preferences referred to in Article 98, provided that they have been transported direct to the Community within the meaning of Article 107, on submission of an EUR.1 movement certificate issued by the customs or other competent governmental authorities of a beneficiary country or territory, on condition 87 beneficiary country or territory:'.

6. Article 145 is replaced by the following:

'*Article 145*

1. Where goods declared for free circulation are part of a larger quantity of the same goods purchased in one transaction, the price actually paid or payable for the purposes of Article 29(1) of the Code shall be that price represented by the proportion of the total price which the quantity so declared bears to the total quantity purchased.

Apportioning the price actually paid or payable shall also apply in the case of the loss of part of a consignment or when the goods being valued have been damaged before entry into free circulation.

2. After release of the goods for free circulation, an adjustment made by the seller, to the benefit of the buyer, of the price actually paid or payable for the goods may be taken into consideration for the determination of the customs value in accordance with Article 29 of the Code, if it is demonstrated to the satisfaction of the customs authorities that:

(a) the goods were defective at the moment referred to by Article 67 of the Code;

(b) the seller made the adjustment in performance of a warranty obligation provided for in the contract of sale, concluded before release for free circulation of the goods;

(c) the defective nature of the goods has not already been taken into account in the relevant sales contract.

3. The price actually paid or payable for the goods, adjusted in accordance with paragraph 2, may be taken into account only if that adjustment was made within a period of 12 months following the date of acceptance of the declaration for entry to free circulation of the goods.'

7. Chapter 5 of Title V of Part I is deleted.

8. In Article 179(1)(a), the words 'EUR 5 000' are replaced by the words 'EUR 10 000'.

9. In Article 292, the following paragraph 7 is added:

'7. The applicant shall be informed of the decision to issue an authorisation, or of the reasons why the application was rejected, within thirty days of the date on which the application was lodged or of the date on which any outstanding or additional information requested was received by the customs authorities.

That period shall not apply in the case of a single authorisation unless it is issued under paragraph 6.'

10. Article 293 is amended as follows:

(a) Paragraph 3 is amended as follows:

(i) Point (c) is replaced by the following:

'(c) means and methods of identification and of customs supervision, including arrangements for:

— common storage, for which Article 534(2) and (3) shall apply *mutatis mutandis*,

— mixed storage of products subject to end-use supervision falling within Chapters 27 and 29 of the Combined Nomenclature or of such products with crude petroleum oils falling within CN code 2709 00.'

(ii) The following second subparagraph is added:

'Where the goods referred to in the second indent of point (c) of the first subparagraph do not share the same eight-digit CN code, the same commercial quality and the same technical and physical characteristics, mixed storage may be allowed only where the whole mixture is to undergo one of the treatments referred to in Additional Notes 4 and 5 to Chapter 27 of the Combined Nomenclature.'

(b) In paragraph 4, the following second subparagraph is added:

'The period of validity shall not exceed three years from the date on which the authorisation takes effect, except where there are duly substantiated good reasons.'

11. Article 296(2) is amended as follows:

(a) In point (a), the second sentence is deleted.

(b) In point (b), the first subindent of the ninth indent is replaced by the following:

'— the taxation elements of the goods, save where that requirement is waived by the customs authorities,'.

12. In Article 314c(1)(f), the words 'Article 816' are replaced by the words 'Article 812'.

13. In Article 317b, the words 'in Articles 444 and 448' are replaced by the words 'in Articles 445 and 448'.

14. In Article 324e(5), the words 'Article 448(4)' are replaced by the words 'Article 448(5)'.

15. In Article 345(1), the first subparagraph is replaced by the following:

'1. The individual guarantee shall cover the full amount of customs debt liable to be incurred, calculated on the basis of the highest rates applicable to goods of the same kind in the Member State of departure. For the purposes of that calculation, Community goods carried in accordance with the Convention on a common transit procedure shall be treated as non-Community goods.'