

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 483 final

Brussels, 11 September 1981

Proposal for a
COUNCIL REGULATION

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

(submitted to the Council by the Commission)

COM(81) 483 final

Explanatory memorandum

I. Need for Community action concerning the provision by the customs authorities of information which is binding on the administration - objective pursued

Customs rules are not always easy to implement, since they are highly technical. The customs authorities of the Member States are, therefore, frequently confronted with requests for information from traders on the interpretation or practical implementation of such rules. Provision of such information forms part of the normal, everyday relations between the administration and the public.

However, requests for information presented to the customs authorities may take various forms (written or oral) and be submitted to various levels of the administration. The question arises, therefore, of the legal significance that should be ascribed to the information provided, taking into account the procedure followed to obtain such information and the status of the authority providing it.

It is important for traders to know precisely whether and to what extent the position taken by a customs authority when presented with a request for information may subsequently be called into question by that authority or by a higher authority. In other words, traders must know whether the information they are given merely constitutes an opinion which does not commit the authority in any way or whether it is binding on that authority and under what conditions.

An examination of the provisions in force on the subject in the Member States reveals considerable differences between them in this respect.

In some Member States, the information provided by a customs authority, at whatever level in the administrative structure has only the force of an opinion and therefore in no way commits the administration. This position is based on the principle that the law is the same for everybody and its interpretation cannot be the subject of an agreement between the administration and the public.

In other States, however, the information provided by a customs authority is fully binding on the administrations, provided such information was based on accurate data supplied by the person concerned. This position is based on the principle of the legitimate expectation which any member of the public must have in regard to an act of the administration.

In other States again, a distinction is made between information provided in the context of a clearly defined specific procedure (which is binding on the administration) and information provided outside the context of such a procedure (which is not binding).

Even in those Member States in which the law or administrative principles regard information provided by the customs authorities as being binding on them, there are considerable differences in regard to the conditions governing the provision and use of such information and the periods during which it may be relied upon by the recipients thereof.

Thus, the legal guarantees which Community traders enjoy in regard to the correct interpretation of Community customs rules by the authorities responsible for implementing those rules vary considerably, depending on the Member State in which they operate. This situation leads to distortions of treatment which are incompatible with the proper functioning of the customs union.

It is clearly of great benefit for a trader to know, before proceeding with customs formalities, the position taken by the authorities in regard to the interpretation or application of a particular provision which concerns him. The benefit is even greater where the information given is binding on the administration. But it should also be emphasized that the provision of such information can only help the customs services themselves in their daily work. For example, once the competent customs authority has provided information on the classification of goods in the customs nomenclature, the customs offices to which the information is presented need no longer be concerned with determining the classification, and the customs formalities are greatly speeded up. The uniform application of the Common Customs Tariff is also thereby reinforced.

There is, therefore, from every point of view, benefit to be derived in establishing at Community level conditions governing the provision of information on the application of Community customs rules by the authorities responsible for implementing those rules, and in particular the conditions under which such information may bind the administration.

It should also be noted that the Council has already accepted the principle of the provision of information which is binding on the authorities in Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties (1).

Article 5(1) of that regulation states : "No action may be taken by the competent authorities for recovery where the amount of the import duties or export duties subsequently found to be lower than the amount legally due was calculated on the basis of information given by the competent authorities themselves which is binding on them".

(1) OJ No L 197, 3.8.1979, p. 2

This being the case, given the considerable differences between the Member States in regard to the legal effect of information provided by the customs authorities, establishment of Community rules on the provision of information which is binding on the administration in all areas where such information is likely to be requested can not, at present, be envisaged.

The establishment of such general rules would, moreover, require a major reorganization of the customs services in most Member States, which they are not at present in a position to undertake.

The Commission therefore proposes to concentrate its work of harmonization initially on the largest category of requests for information from traders, namely those relating to the classification of goods in the customs nomenclature. Once Community rules have been established in this particular area, which is the most important because it is highly technical, the changes which will inevitably result in the administrative structures and official attitudes in the Member States should make it possible to embark, under satisfactory conditions, on the work necessary for complete harmonization of the rules governing the provision of information in the various fields of Community customs law.

The purpose of this proposal for a regulation is, therefore, twofold :

.../...

- to oblige customs authorities throughout the Community to provide information on the classification of goods in the customs nomenclature which is binding on the administration;
- to standardize the conditions under which Community traders, in whatever Member State they operate, may obtain and use such information.

II. Substance of the proposal

The proposal for a regulation comprises three groups of provisions concerning :

- the procedure to be followed for obtaining information which is binding on the administration;
- the particulars to be included in such information;
- the legal effect of such information.

A. The procedure to be followed for obtaining information which is binding on the administration (Articles 4 to 8)

The proposal for a regulation lays down the procedure which must be followed by everybody who wishes to obtain information on the classification of goods in the customs nomenclature that is binding on the administration, hereinafter referred to as "binding tariff information".

This obligation does not call into question the practice based on the principle of legitimate expectation which obtains in certain Member States. It merely constitutes a requirement which must be satisfied before the information obtained may be relied upon as against the administration. In view of the liability assumed in such situations by the customs authority, it is essential that the authority be given the guarantees necessary to enable it to act on the request for information with full knowledge of the facts; such guarantees would include the requirements that the request be in writing, accompanied by all the necessary particulars, and that the file be submitted to a

specialist authority, together with provision for the Committee on Common Customs Tariff Nomenclature to be consulted.

B. The particulars to be included in information which is binding on the administration (Article 8)

The proposal for a regulation stipulates the particulars to be included in binding tariff information, since it is essential to eliminate any possibility of conflict between the holder of the information and the administration and prevent any misuse of such information which might occur if the applicable rules were too vague.

Binding tariff information may in principle be used in any customs office that is subject to the administration which provided that information. Provision is made, however, for the Member States to restrict the use of such information to operations carried out at the customs offices specified by the person concerned in his application, where they regard this as necessary in order to improve the administration of the system. This provision does not constitute a restriction on the application of the rules, since it is the person requesting the information who indicates at which customs offices he intended to rely upon it. On the contrary, if applied with some flexibility (see the second paragraph of Article 11), this provision will enable the administration to establish permanent links between its central and local services which will facilitate the use of data processing resources.

C. The legal effect of information which is binding on the administration (Articles 9 to 16)

The proposal for a regulation determines with great precision the legal effect of binding tariff information :

- (a) The information may be relied upon only by holder thereof or a person acting on his behalf and must be presented to the customs service at the time of the customs formalities if the person concerned wishes to rely on it.
- (b) The information is binding on the authority only in respect of the classification of the goods in question in the customs nomenclature. This means that the rate of the duties payable on the goods will be the rate corresponding to that classification at the time of completion of the appropriate customs formalities. It is, in fact, at the time of completion of those formalities that import duties and export duties fulfil their purpose of protecting the Community economy or correcting market imbalances. The provision of binding information can under no circumstances, therefore, constitute a guarantee for the person concerned against possible changes in such rates. The same applies to other measures which may be applicable to goods under the tariff heading in question.
- (c) The information applies only to goods which are the subject of customs formalities completed after the information is provided. The purpose of this provision is to eliminate the possibility of calling into question earlier customs operations, in respect of which it is no longer possible to establish without doubt that they concerned goods identical to those covered by the binding tariff information.
- (d) The information can no longer be relied upon after the expiry of a period of six years from the date on which it was supplied. This measure is necessary on the grounds of sound administration (to avoid keeping records of old files which are no longer of any real interest). Where necessary, however, the holder of information which is no longer valid may have new information supplied.

(e) The validity of binding tariff information may lapse as a result of :

- the entry into force of a Community act which modifies the existing legal position; or
- the adoption at Community level of measures interpreting the existing law.

In the first case, information which is not in conformity with the amended law ceases to be binding on the administration on the date of entry into force of the Community act in question.

In the second case, information which is not in conformity with the interpretation of existing law that results from the new measure may still be relied upon by the holder for a period of six months thereafter, where he is able to prove the existence of contracts concluded on the basis of such information prior to the adoption of the measure in question.

III. Present limitations of Community action

Once action is initiated with a view to establishing common rules that oblige the Member States to provide information which is binding on the administration concerning the classification of goods in the customs nomenclature, it would, of course, be desirable to take such action to its logical conclusion so that it resulted in the provision of identical information, regardless of the Member State in which it is provided. This would effectively ensure equality of treatment of traders throughout the Community.

The attainment of this objective is not, however, technically feasible in the present situation. This is because it would require the examination of requests for information on the classification of goods in the customs nomenclature to be coordinated by the Commission, under the auspices of the Committee on Common Customs Tariff Nomenclature, which was set up pursuant to Council Regulation (EEC) No 97/69 of 16 January 1969 on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff (1). However, the Commission's present resources of staff and equipment in the Customs Union Service are not such as to enable it to discharge that responsibility.

It is, therefore, advisable to limit the scope of Community action at present to the harmonization of the conditions governing the provision and use in the Member States of information which is binding on the administration concerning the classification of goods in the customs nomenclature. It should also be noted that, given the continuous and particularly close contacts between the customs officials of the Member States in the Committee on Common Customs Tariff Nomenclature, the information they are asked to provide in their own countries on the classification of goods in the customs nomenclature is identical in most cases. Thus, while the establishment of a centralized system for processing requests for information may appear necessary in the long term in order to eliminate differences of interpretation of the nomenclature (particularly as regards new types of goods), it does not have the same urgency as establishment of the principle of the provision of information in all Member States that is binding on the administration.

Once the Commission has been given the means to enable it to operate a system as efficient and well-suited to commercial requirements as the system now operating in some Member States (through data processing facilities, *inter alia*), it will submit to the Council the necessary proposals for the implementation of such a system.

(1) OJ No L 14, 21.1.1969, p. 1

As stated in point I, the Commission will, in the light of the experience gained from the implementation of the provisions contained in this proposal for a regulation, examine the feasibility of extending the obligation of customs authorities to provide information which is binding on the administration to other fields of customs law.

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Notwithstanding its relatively limited objective, this proposal for a regulation affords considerable benefits. Adoption of the proposal will be an important step forward in the harmonization of customs rules and, in particular, the conditions for the application of those rules. It will put an end to major distortions in the treatment of traders by enabling all traders to obtain and use on the same terms, regardless of the Member State in which they operate, information on the classification of goods in the customs nomenclature.

This proposal for a regulation, which is based on Articles 43 and 235 of the Treaty establishing the European Economic Community and is incorporated in the 1981 programme for the achievement of the customs union (point B.2), calls for consultation of the European Parliament. Given the purpose of the proposal, the Commission feels it is also advisable to obtain the opinion of the Economic and Social Committee.

Proposal

for a

Council Regulation

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 Articles 43 and 235 thereof,

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

Having regard to the opinion of 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;

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;

(1) OJ No
(2) OJ No
(3) OJ No

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 (1);

Whereas, 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 information which is binding on the administration, it appears desirable, however, at the present time, to limit the scope of the Community rules to be adopted 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 Common Customs Tariff 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 concerning the classification of goods in the customs nomenclature to bind the administration; 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;

(1) OJ No L 197, 3.8.1979, p. 1

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 which the information provided ceases to bind the administration before the expiry of that time limit, as a result of the adoption of Community measures amending the existing law or concerning the interpretation of that law;

Whereas this Regulation deals with the conditions for providing and for using, within the customs territory of the Community, information concerning the classification of goods of every kind in the customs nomenclature; whereas the Treaty does not empower ^{the} Community institutions to enact binding provisions on this matter; whereas it therefore seems necessary to base this Regulation also on Article 235 of the Treaty;

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 competent customs authorities of the Member States;

(b) the legal effect of such information;

2. For the purposes of this Regulation, "customs nomenclature" means :

- the Common Customs Tariff nomenclature;

- the nomenclature for ^{products} / subject to the Treaty establishing the European Coal and Steel Community;

- the nomenclatures derived from the Common Customs Tariff which are established by specific rules relating to customs or agriculture.

TITLE I

General Provisions

Article 2

1. Any natural or legal person may apply to the competent customs authorities for tariff information.
2. Tariff information shall be provided to the applicant free of charge. However, expenditure incurred by the competent authority in analysing, or obtaining an expert's report on any samples sent to it and in returning them to the applicant may be charged to the latter.

Article 3

Where the conditions laid down in Articles 4 to 8 are fulfilled, the tariff information provided by the competent customs authorities shall be binding on the administration and shall constitute binding tariff information within the meaning of this Regulation.

TITLE II

Procedure for obtaining binding tariff information

Article 4

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

The competent administration in each Member State shall determine the form and procedure for drawing up the application referred to in the preceding subparagraph and shall designate the authority to which it must be submitted.

2. The competent administration in each Member State may limit the number of goods which may be covered by a single application.

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;
- (b) The particulars, including, where appropriate, the use to which the goods are to be put, which are necessary to enable the competent 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 competent customs authority.

- (c) Where an application for binding tariff information has been submitted in respect of identical goods in another Member State, the references relating to that application together with the classification determined in that Member State, where appropriate.

2. The competent administration in each Member State may also stipulate that applications for binding tariff information shall indicate the customs office or offices at which the customs formalities relating to the goods in question are expected to be carried out.

3. Requests 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 competent customs authority to determine the classification of the goods in the Customs nomenclature.

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

4. Where the applicant wishes to obtain the classification of goods in one of the nomenclatures derived from the Common Customs Tariff which are established by specific rules^{relating} to customs or agriculture, the application for binding information shall make express mention of the nomenclature in question.

Article 6

Where the competent 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 invite the applicant to furnish the missing particulars, indicating that the application cannot be considered as it stands.

Article 7

Where the Member State to whose customs authority an application for binding tariff information is made considers it necessary for the purpose of ensuring uniform interpretation of the Customs Nomenclature under the best conditions, it shall take the measures necessary to submit the matter for examination by the Committee on Common Customs Tariff Nomenclature in accordance with Article 2 of Council Regulation (EEC) No 97/69 of 16 January 1969 on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff. (1)

Article 8

1. Binding tariff information must be notified to the applicant in writing and 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 completion of the customs formalities;
- (c) The levels of certain substances in the goods, where such indication is necessary to enable the goods to be classified in the customs nomenclature, together with the methods 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 rely upon such information, hereinafter referred to as the "holder";
- (f) The date on which the information was supplied.

(1) OJ No L 14, 21.1.1969, p. 1

2. Where the competent administration of the Member State in which the binding tariff information is to be used requires the applicant to indicate the customs office or offices in which he intends to complete the customs formalities relating to the goods in question, those offices must be indicated in the binding tariff information. In the absence of such requirement, the binding tariff information may be used in any customs office of the Member State in which it was supplied which is empowered to complete the customs formalities relating to the goods in question.

TITLE III

Legal effect of binding tariff information

Article 9

1. Binding tariff information may be relied upon only by the holder thereof or by a person acting on his behalf. It must be presented to the customs service at the time of completion of the customs formalities relating to the goods in respect of which the holder intends to rely upon such information.
2. The holder of binding information may rely upon 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.

Article 10

1. Binding tariff information shall be binding on the administration only in respect of the classification of goods in the customs nomenclature. It shall be without prejudice to the rate or amount of import or export duties or other Community provisions which may be applied to the goods in question by virtue of that classification.

2. Binding tariff information shall have effect 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 competent customs authority.

3. Binding tariff information shall be ^{devoid of effect} / where it is established that it was provided on the basis of inaccurate or incomplete data.

Article 11

Where binding tariff information indicates the customs office or offices at which it may be used, it shall be binding on the administration only where the customs formalities relating to the goods in question are completed at one of those offices.

The customs authority which provided the binding tariff information may, however, authorize its use at other customs offices, on condition that prior application therefore is made by the holder.

Article 12

Without prejudice to the provisions of Articles 13 and 14, binding tariff information may not be relied upon 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 the tariff classification of goods,

binding tariff information previously supplied is not in conformity with Community law as thus established, such information shall cease to be binding on the administration ^{from} the date of entry into force of the regulation in question.

Article 14

1. In addition to the cases referred to in Article 13, tariff information shall also cease to be binding on the administration 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 Common Customs Tariff;
- adoption of a Community classification slip;
- agreement reached in the Committee on Common Customs Tariff Nomenclature on the classification of goods, recorded in the minutes of the meeting at which it was reached and notified to the Member States through their Permanent Representations;

or,

(b) the transposition into Community law of the following international tariff measures :

- amendment of the Explanatory Notes to the Customs Cooperation Council Nomenclature;
- a classification opinion of the Customs Cooperation Council.

2. Without prejudice to the provisions of paragraph 3, the date on which the administration ceases to be bound by binding tariff information, pursuant to paragraph 1, shall be the date on which the holder is informed that ^{that information} is not in conformity with one of the tariff measures referred to in paragraph 1.

Holders of binding tariff information shall be informed that the ^{latter} is not in conformity with one of the tariff measures referred to in paragraph 1 :

- in the case of a tariff measure referred to in paragraph 1(a), by a Communication from the Commission published in the Official Journal of the European Communities or, where the administration considers it necessary, by individual notification to the various holders of the binding information affected by the tariff measure adopted;
 - in the case of a tariff measure referred to in paragraph 1(b), at the option of the administration, either by a notice of general application published, where appropriate, in an official national publication or by individual notification to the various holders of the binding tariff information affected by the tariff measure adopted.
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 binding on the administration pursuant to paragraph 1 may continue to be relied on by the holder of the information during the remainder of the period of validity of that licence or certificate.

In other cases, the binding tariff information which ceases to be binding on the ^{administration} pursuant to paragraph 1 may continue to be relied upon 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 to him and prior to the date of adoption of the tariff measure in question,

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

- a binding contract for the purchase of the goods in question from a supplier established in a non-member 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 relied upon for the export of goods :

- a binding contract for the sale of the goods in question to a customer established in a non-member 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 or 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 were already in existence on the date on which the information was provided to the holder under the conditions provided for in paragraph 2 and which are submitted at the time of completion of the customs formalities relating to the goods in question, on condition that such licences or certificates were issued on the basis of the said binding tariff information.

5. Upon the adoption of one of the tariff measures referred to in paragraph 1, ^{the administrations of the} Member States shall ^{is} take the necessary steps to ensure that binding tariff information provided by the competent customs authorities only in conformity with the measure in question.

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

6. In exceptional cases where there is a risk that the working of arrangements set up within the framework of the common agricultural policy may be jeopardized, the decision may be taken, in accordance ⁽¹⁾ with the procedure laid down in Article 36 of Regulation (EEC) No 136/66 and in the corresponding articles of the other regulations on the common organization of ^{the} markets, to derogate from the provisions of paragraph 3.

(1) OJ No 172, 30.9.1966, p. 3025/66

Article 15

Where the competent 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 binding on the authority from the date on which such amendment is notified to the holder.

The provisions of Article 14(3) shall, however, also apply.

Article 16

The provision of binding tariff information shall not preclude the customs service from carrying out, at the time of customs clearance, any inspection or analysis it considers necessary for the purpose of verifying that the goods presented in fact correspond to those in respect of which the information was provided.

TITLE IV

Final provisions

Article 17

Each Member State shall inform the Commission of the measures which it adopts for the purpose of implementing this Regulation.

The Commission shall notify such information to the other Member States.

Article 18

This Regulation shall enter into force on 1 January 1983.

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

Done at Brussels,

For the Council

The President