

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 276 final

Brussels, 10 July 1989

Proposal for a  
COUNCIL REGULATION (EEC)  
on the temporary import of containers

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(presented by the Commission)

## EXPLANATORY MEMORANDUM

1. The Council adopted Regulation (EEC) No 2096/87 of 13 July 1987 on the temporary importation of containers on the legal basis of Articles 28 and 235 of the EEC Treaty, whereas the Commission proposal had referred exclusively to Article 113. The Commission brought an action before the Court of Justice for the annulment of this Regulation.
2. In its judgment of 2 February 1989 (case 275/87) the Court annulled Council Regulation 2096/87 because Council adopted this Regulation on the joint legal basis of Articles 28 and 235 instead of Article 28 and/or Article 113. The effects of the said Regulation remain in force, however, until the entry into force of the measures to be taken by the Council in order to carry out the judgment.
3. The annulment of the Regulation means that it legally disappears (although its effects are temporarily retained) and the Council must therefore adopt a new Regulation to recreate the necessary conditions for the application of the customs procedure concerned.
4. The text of the new Regulation is identical to that of the annulled Regulation (except for Articles 16 and 17).

## CONCLUSIONS

The Commission proposes that the Council carry out the judgment of the Court of 2 February 1989 (case 275/87) in accordance with the attached proposal for a Regulation.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,  
and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Council Regulation (EEC) No 2096/87 of 13 July 1987 on the temporary importation of containers (1) was annulled by the judgment of the Court of 2 February 1989 in case 275/87 (2); whereas, under the terms of the judgment, the effects of the said Regulation remain until the entry into force of the measures to be taken by the Council in order to carry out the judgment; whereas the reason for the annulment of the said Regulation was that it had been adopted by the Council on the legal basis of Article 235; whereas the said Regulation, which falls within the context of the Commercial Policy, should have been adopted on the basis of Article 113 of the Treaty;

Whereas Community legislation should cover temporary import of containers which do not satisfy the conditions laid down in Articles 9 and 10 of the Treaty; whereas the Member States are contracting parties to the Customs Convention on Containers, done at Geneva on 18 May 1956 or to the Customs Convention on Containers, done at Geneva on 2 December 1972; whereas these Conventions have an effect on the common customs legislation; whereas it is necessary having regard to the specific requirements of the customs union, to lay down Community provisions; whereas these provisions constitute an essential instrument of the Commercial Policy of the Community;

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(1) OJ No L 196, 17.7.1987, p. 4.

(2) OJ No C 66, 16.3.1989, p. 4.

Whereas, in order to ensure uniform implementation of this Regulation, it is necessary to make provision for a Community procedure whereby the relevant implementing provisions may be adopted; whereas close and effective cooperation in this field between the Member States and the Commission should be organized through the Committee for Customs Procedures with Economic Impact established by Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements (1),

HAS ADOPTED THIS REGULATION:

#### Article 1

Under temporary import arrangements containers, whether or not loaded with goods, which do not satisfy the conditions laid down in Articles 9 and 10 of the Treaty and which are intended to be subsequently re-exported outside the customs territory of the Community, may be used within that territory in accordance with the conditions laid down in this Regulation, with total relief from import duties and with no prohibition or restriction on import.

#### Article 2

For the purposes of this Regulation:

(a) 'container' shall mean an article of transport equipment (lift-van, movable tank, demountable body or other similar structure):

- fully or partially enclosed to constitute a compartment intended for containing goods,
- of a permanent character and accordingly strong enough to be suitable for repeated use,
- specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading,

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(1) OJ No L 188, 20.7.1985, p. 1.

- designed for ready handling, particularly when being transferred from one mode of transport to another,
- designed to be easy to fill and to empty, and having an internal volume of one cubic metre or more.

Platform flats shall be treated as containers.

Moreover, exceptions may be authorized in accordance with the procedure laid down in Article 15. In accordance with the procedure, the definition of containers may be supplemented to take account of technical developments.

The term 'container' shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. The term 'container' shall not include vehicles, accessories or spare parts of vehicles, or packaging;

- (b) 'import duties' shall mean the duties defined in Article 1(2) of Council Regulation (EEC) No 3599/82 (1);
- (c) 'customs authority' shall mean any authority competent to apply customs rules, even if that authority is not part of the customs administration;
- (d) 'internal traffic' shall mean the carriage of goods loaded in the customs territory of the Community for subsequent unloading in that territory.

### Article 3

1. The temporary import of containers approved for transport under customs seal or simply bearing marks shall be authorized without any formalities as soon as they are brought into the customs territory of the Community on behalf of their owners, their operators or the representatives of either of those.

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(1) OJ No L 376, 31.12.1982, p. 1.

2. Containers other than those referred to in paragraph 1 shall be admitted for temporary import if this is authorized by the customs authority of the Member State in which the placing of the said containers under such arrangements is requested.

#### Article 4

The rules concerning recognition of approval for the transport under customs seal of containers admitted for temporary import shall be determined in accordance with the procedure laid down in Article 15.

#### Article 5

Containers placed under temporary import arrangements may remain in the customs territory of the Community for a maximum period of 12 months. However, where particular circumstances so warrant, this period may be extended in order to permit their authorized use.

#### Article 6

The conditions concerning the placing of the containers referred to in Article 3(2) and the goods referred to in Article 10 under temporary import arrangements shall be determined in accordance with the procedure laid down in Article 15.

#### Article 7

The cases where and conditions under which the placing of the containers referred to in Article 3(2) and the goods referred to in Article 10 under temporary import arrangements is subject to the provision of a security shall be determined in accordance with the procedure laid down in Article 15.

#### Article 8

The customs authority shall take any supervision or control measures necessary to ensure that this Regulation is implemented correctly by the person benefiting from the arrangements or by the user of the container.

Containers placed under temporary import arrangements may be used in internal traffic before being re-exported from the customs territory of the Community. However, the containers may be used only once during each stay in a Member State for transporting goods which are loaded within the territory of that Member State and are intended to be unloaded within the territory of the same Member State, where the containers would otherwise have to make a journey unladen within the said Member State.

#### Article 10

The customs authority shall admit for temporary import any spare parts, accessories and normal equipment for containers which are imported separately from the containers for which they are intended.

#### Article 11

1. Temporary import arrangements shall be finally discharged when the container placed under them is exported outside the customs territory of the Community or placed with a view to subsequent export:
  - in a free zone,
  - under warehouse arrangements, or
  - under inward processing arrangements with the system of suspension.
  
2. In exceptional cases the customs authorities may finally discharge the temporary import arrangements by allowing the container to be:
  - released for free circulation,
  - placed under arrangements for processing under customs control,
  - destroyed under the supervision of the customs authority (waste and scrap resulting from this destruction may itself be re-exported outside the customs territory of the Community or be dealt with in one of the other ways for which provision is made in this Article),
  - abandoned to the Exchequer where national regulations provide for this possibility.

Final discharge of the arrangements under the conditions referred to in the first subparagraph may take place either directly or after placing in a free zone or under one of the arrangements referred to in paragraph 1.

3. Defective parts and spare parts removed from containers as a result of repair or maintenance must be dealt with in one of the ways provided for in paragraphs 1 and 2.

#### Article 12

The provisions of this Regulation shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property.

#### Article 13

Until such time as Community provisions are established in the field in question, this Regulation shall not affect the application by the Member States of reliefs in respect of armed forces stationed in the customs territory of a Member State in accordance with Article 136 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (1).

#### Article 14

The Committee for Customs Procedures with Economic Impact may examine any matter concerning the application of this Regulation raised by its chairman either on his own initiative or at the request of the representative of a Member State.

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(1) OJ No L 105, 23.4.1983, p. 1.



Article 15

The provisions necessary for the implementation of this Regulation shall be adopted in accordance with the procedure provided for in Article 31 of Regulation (EEC) No 1999/85.

Article 16

All references to Regulation (EEC) No 2096/87 shall be construed as referring to the present Regulation.

Article 17

This Regulation shall enter into force on

It shall apply six months after the entry into force of the implementing provisions to be adopted in accordance with the procedure laid down in Article 15.

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

Done at Brussels,

For the Council

Commission of the European Communities

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