

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 324 final

Brussels, 4 July 1989

Proposal for a
COUNCIL REGULATION (EEC)
amending Regulation (EEC) No 2658/87 on the tariff and statistical
nomenclature and on the Common Customs Tariff

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The purpose of the attached draft proposal for a Regulation is to amend the legal basis of Regulation No 2658/87 in order to take account of the judicial practice of the Court and, in particular, of the judgment of the Court in Case 275/87 (temporary admission of containers).
2. In case 288/87, pending before the Court, the Commission requested that Council Regulation (EEC) 2658/87 (Combined Nomenclature) be declared void due to the fact that the Council, at the time of its adoption, inserted an incorrect legal base in Article 235.
3. In its judgment relating to Case 275/87 the Court conclusively confirmed the Commission's position in respect of the scope of Article 113 EEC in relation to the customs domain. Following this decision the Council has declared its willingness to delete the legal base of Article 235 from Regulation 2658/87 and hence enable the Commission to discontinue its action before the Court. To do this a Commission proposal is necessary. The attached draft proposal for a regulation has therefore been proposed in order to make the necessary amendments.
4. The draft regulation covered by this Explanatory Memorandum is based, amongst others, on Article 43 of the Treaty and consultation of the European Parliament should be required.

Nevertheless, given the content of the enclosed change and the fact that this does not in any way alter the text submitted at that time to the Parliament and that the proposal only re-establishes the status quo prior to the Council's decision to insert Article 235, it could be envisaged, with the agreement of the Parliament, not to proceed with the consultation in this instance.

CONCLUSIONS

5. To rectify the situation it is proposed that the provisions be adopted as soon as possible.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 28, 43 and 113 thereof,

Having regard to the proposal from the Commission,

Whereas in the light of the recent decision of the Court on the scope of Articles 28 and 113 of the Treaty it appears that Council Regulation (EEC) No 2658/87¹ was adopted on an erroneous legal base since the Council added to the legal bases proposed by the Commission (Articles 28, 43 and 113 of the Treaty) Article 235 of the Treaty, requiring a different decision-making procedure; whereas the Commission consequently referred the matter to the Court of Justice for proceedings for annulment of the said Regulation;

Whereas in order that the Commission may withdraw its action and to prevent the act in question being declared void, the reference to Article 235 of the Treaty as a legal base for Regulation (EEC) No 2658/87 should be deleted,

HAS ADOPTED THIS REGULATION:

Article 1

The first citation in Regulation (EEC) No 2658/87 is hereby replaced by the following:

"Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 28, 43 and 113 thereof,".

¹OJ No L 256, 7.9.1987, p. 1.

Article 2

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

It shall apply with effect from 10 September 1987.

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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