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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The purpose of the present draft Council Regulation is to provide, on an autonomous basis, duty free treatment for flat panel displays which are able to display signals from automatic data-processing (ADP) machines with an acceptable level of functionality. This expression refers to flat panel displays which, even though they are not solely or principally used in an ADP system, are able to display signals from ADP machines with a sufficient standard of performance for the user.

Harmonised System (HS) subheading 8528 51 comprises monitors "of a kind solely or principally used in an ADP system of heading 8471". The conventional duty rate for these monitors is "free". Monitors "other than of a kind solely or principally used in an automatic data-processing system of heading 8471" are classified under HS subheading 8528 59. The conventional duty rate for this second type of monitors is "14 %".

In its ruling in case C-376/07 (Kamino), the Court of Justice of the European Union stated that classification of monitors should be made in the light of the characteristics and objective properties of those monitors, both as to the degree to which they are capable of performing a number of functions and as to the standard of performance which they achieve when performing those functions.

The convergence of digital technologies has however led to a situation where it has become very difficult to determine, by reference to mere technical and objective characteristics, whether or not a particular monitor is of a kind solely or principally used in an ADP system of heading 8471. In particular, ensuring the correct and uniform classification of flat panel displays which can display, with an acceptable level of functionality, signals from both ADP systems and other sources (for example, DVD players, video cameras, satellite receivers), has become technically impossible.

Currently, a significant part of the monitors imported to the EU are flat panel displays which can display, with an acceptable level of functionality, signals from both ADP systems and other sources. This in particular applies to the highly professional types which are used in specialised sectors (such as in diagnostics or research). In order to ensure a rational development of production and an expansion of consumption within the territory of the EU and to promote trade between Member States and third countries, it is both in the interest of European consumers and industry to provide duty free treatment for the above-mentioned monitors.

The attached proposal is considered to be a balanced approach taking into account the legal context and the interests of European consumers and industry.

The proposal is in line with the Union's external trade and industry policies.

In the light of the foregoing it is proposed to amend Council Regulation (EEC) No 2658/87 accordingly.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Tariff and Statistical Nomenclature Section of the Customs Code Committee was consulted on 27 September 2012.

The Union Industry was consulted on 13 November 2012.

3. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis of this proposal is Article 31 and 32 of the Treaty on the Functioning of the European Union.

The subsidiarity principle does not apply, as the proposal falls under the exclusive competence of the Union.

The proposal complies with the proportionality principle given that, as foreseen in the Treaty, it promotes trade between Member States and third countries and balances the commercial interest of economic operators (manufacturers in the Union and importers) without changing the EU WTO schedule.

By virtue of Article 31 of the Treaty on the Functioning of the European Union autonomous tariff rate is fixed by the Council acting by qualified majority on the basis of a Commission proposal.

4. BUDGETARY IMPLICATION

Loss of revenue in Traditional Own Resources in the range of 20.5 Million Euros on an annual basis (based on the import statistics of 2011).

Proposal for a

COUNCIL REGULATION

amending Annex I to Regulation (EEC) No 2658/87 on the Tariff and Statistical Nomenclature and on the Common Customs Tariff

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) HS subheading 8528 51 comprises monitors, other than cathode-ray tube (CRT) monitors, of a kind solely or principally used in an automatic data-processing system of heading 8471. Monitors other than of a kind solely or principally used in an automatic data-processing system of heading 8471 are classified under HS subheading 8528 59.
- (2) In accordance with settled case-law of the Court of Justice of the European Union¹, classification of monitors under either HS subheading 8528 51 or 8528 59 has to be based on an overall assessment of the objective characteristics and properties of each particular monitor.
- (3) Due to the convergence of digital technologies it has become very difficult to determine, by reference to mere technical characteristics, whether or not a particular monitor is of a kind solely or principally used in an automatic data-processing system of heading 8471. In particular, ensuring the correct and uniform classification of flat panel displays which can display, with an acceptable level of functionality, signals from both automatic data-processing systems and other sources has become technically impossible.
- (4) In order to ensure a rational development of production and an expansion of consumption within the territory of the Union and to promote trade between Member States and third countries, it is both in the interest of Union consumers and industry to provide for a duty free treatment for the above-mentioned monitors.
- (5) Annex I to Regulation (EEC) No 2658/87 should therefore be amended accordingly,

¹ Case C-376/07 *Kamino* [2009] ECR I-1167.

HAS ADOPTED THIS REGULATION:

Article 1

1. Annex I to Regulation (EEC) No 2658/87 is amended as set out in the Annex to this Regulation.
2. The amendments to the CN subheadings provided for in this Regulation shall be applicable as TARIC subheadings until they are inserted into the Combined Nomenclature in accordance with Article 12 of Regulation (EEC) No 2658/87.

Article 2

This Regulation shall enter into force on 1 June 2013.

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

Done at Brussels,

*For the Council
The President*

ANNEX

In Part Two, Section XVI, Chapter 85 of Annex I to Regulation (EEC) No 2658/87 the rows for CN codes 8528 59, 8528 59 10, 8528 59 40 and 8528 59 80 are replaced by the following:

"8528 59	-- Other:		
	-- -- Flat Panel Displays able to display signals from automatic data-processing machines with an acceptable level of functionality:		
8528 59 20 ⁽¹⁾	---- Monochrome	14 ⁽⁵⁾	p/st
	---- Colour:		
8528 59 31 ⁽²⁾	----- With a screen of the liquid crystal display (LCD) technology	14 ⁽⁵⁾	p/st
8528 59 39 ⁽³⁾	----- Other	14 ⁽⁵⁾	p/st
8528 59 70 ⁽⁴⁾	--- Other	14	p/st.

(1) TARIC code 8528 59 10 20

(2) TARIC code 8528 59 40 91

(3) TARIC code 8528 59 80 91

(4) TARIC codes 8528 59 10 90, 8528 59 40 99 and 8528 59 80 99

(5) Autonomous rate of duty: Free"

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Council Regulation amending Annex I to Council Regulation (EEC) No 2658/87 on the Tariff and Statistical Nomenclature and on the Common Customs Tariff.

1.2. Nature of the proposal/initiative

Provide autonomous exemption from duties for certain industrial products falling under heading 8528 of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the Tariff and Statistical Nomenclature and on the Common Customs Tariff.

1.3. Objective

To provide, on an autonomous basis, duty free treatment for flat panel displays which are able to display signals from automatic data-processing (ADP) machines with an acceptable level of functionality. This expression refers to flat panel displays which, even though they are not solely or principally used in an ADP system, are able to display signals from ADP machines with a sufficient standard of performance for the user.

1.4. Grounds for the proposal/initiative

The convergence of digital technologies has led to a situation where it has become very difficult to determine, by reference to mere technical and objective characteristics, whether or not a particular monitor is of a kind solely or principally used in an ADP system of heading 8471. In particular, ensuring the correct and uniform classification of flat panel displays which can display, with an acceptable level of functionality, signals from both ADP systems and other sources (for example, DVD players, video cameras, satellite receivers), has become technically impossible.

Currently, a significant part of the monitors imported to the EU are flat panel displays which can display, with an acceptable level of functionality, signals from both ADP systems and other sources. This in particular applies to the highly professional types which are used in specialised sectors (such as in diagnostics or research). In order to ensure a rational development of production and an expansion of consumption within the territory of the EU and to promote trade between Member States and third countries, it is both in the interest of European consumers and industry to provide duty free treatment for the above-mentioned monitors.

1.5. Duration and financial impact

Duration: proposal of unlimited duration.

Financial impact: loss of revenue in Traditional Own Resources in the range of 20.5 Million Euros on an annual basis (based on the import statistics of 2011).

1.6. Management method envisaged

Application of the monitoring, control and management provisions of the Union Customs Code.

2. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL

ESTIMATED IMPACT ON REVENUE

- Proposal/initiative has no financial impact on revenue.
- x Proposal/initiative has the following financial impact:
 - x on own resources
 - on miscellaneous revenue

EUR million (to 3 decimal places)

Budget line: revenue	Appropriations available for the ongoing budget year	Impact of the proposal/initiative ²	
		Year N	Year N+1
Article 120	/	<u>8 months x 20.5 MEUR</u> 12 months	20.5 MEUR

The proposal is of unlimited duration.

Specify the method for calculating the impact on revenue.

The calculation of the loss of revenue in Traditional Own Resources is based on the value of imports in the EU during the year 2011 of products under TARIC codes 8528 59 10 90, 8528 59 40 90 and 8528 89 80 90. The figures were provided by Eurostat.

Firstly, the total value of imports of monitors with TARIC codes 8528 59 10 90, 8528 59 40 90 and 8528 89 80 90 during the reference year 2011 was multiplied by the ad valorem duty rate (14%).

Secondly, the amount of the collection costs (25%) has been deducted to obtain the total revenue of Traditional Own Resources for the EU for the year 2011.

The result of this calculation is as follows:

- TARIC code 8528 59 10 90: (€10 891 640 x 14%) x 75% = €1 143 622, 20

- TARIC code 8528 59 40 90: (€233 167 690 x 14%) x 75% = €24 482 607, 45

² As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.

- TARIC code 8528 89 80 90: no trade in 2011

With the adoption of this draft proposal not all products which are classified under these TARIC codes will enjoy duty free treatment. The measure is only applicable to certain monitors ("flat panel displays which are able to display signals from automatic data-processing machines with an acceptable level of functionality").

Taken into account the intended scope of the measure and the nature of the products available on the EU market, it can be estimated that at least 80 % of the products which are currently imported under the mentioned TARIC codes will fall within the scope of this definition.

The estimated total loss of revenue in Traditional Own Resources on an annual basis should therefore be calculated as follows:

$$(\text{€}1\,143\,622,20 + \text{€}24\,482\,607,45) * 80\% = \text{€}20\,500\,983,72$$

For the year in which the proposal will enter into force the financial impact is to be calculated proportionally.

The loss of revenue in Traditional Own Resources shall be compensated by Member States contributions based on the GNI.