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Subject: Proposal for a Regulation of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95

Delegations will find in the annex a Presidency compromise text on the above proposal. Changes compared to doc. 12348/1/08 REV 1 are indicated in "track changes".

In view of the examination of this document at the meeting of the Working Party on statistics on 1 October 2008, delegations are invited to forward their possible comments to the Presidency (DG75-Eu-Int@insee.fr) and to the Council Secretariat (dgc.statis.intmarkt@consilium.europa.eu) by **25 September 2008 at the latest**.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on Community statistics relating to external trade with non-member countries and repealing
Council Regulation (EC) No 1172/95**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 285(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Central Bank,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) The statistical information on Member States' trade flows with non-member countries is of essential importance for the Community's economic and trade policies and for analysing market developments for individual commodities. The transparency of the statistical system should be improved in order for it to be able to react to the changing administrative environment, and to satisfy new user requirements. Council Regulation (EC) No 1172/95 of 22 May 1995 on the statistics relating to the trading of goods by the Community and its Member States with non-member countries¹ should therefore be replaced by a new Regulation in conformity with the requirements set out in Article 285(2) of the Treaty.

¹ OJ L 118, 25.5.1995, p. 10. Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

- 2) External trade statistics are based on data obtained from customs declarations as provided for in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code², hereinafter referred to as the "Customs Code". Progress in European integration and the resulting changes in customs clearance, including single authorisations for the use of the simplified declaration or the local clearance procedure, as well as centralised clearance, which will emanate from the current process of modernisation of the Customs Code as laid down in Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008³, hereinafter referred to as the 'Modernised Customs Code', make it necessary to adjust the way external trade statistics are compiled, to reconsider the concept of the importing or exporting Member State, and to define more precisely the data source for compiling Community statistics.

(2a) Simplifications of customs formalities and controls under the Modernised Customs Code can lead to non availability of customs declarations. In order to maintain the compilation of external trade statistics complete, measures have to be adopted which assure the provision of statistical data by those operators who are benefiting from the simplification.

- (3) The decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade⁴ will set up an electronic customs systems for the exchange of data contained in customs declarations. In order to record the physical trade flow of goods between Member States and non-member countries and to ensure that data on imports and exports is available in the Member State concerned, arrangements between Customs and statistical authorities are necessary and have to be specified. This includes rules on the exchange of statistical data between Member States' administrations. This data exchange system will benefit as far as possible from the infrastructure established by the Customs authorities.

² OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

³ OJ L 145, 4.6.2008, p. 1.

⁴ OJ L 23, 26.1.2008, p. 21

- (4) In order to allocate EU exports and imports to a given Member State, it is necessary to compile data on the "Member State of ~~final~~-destination", for imports, and the "Member State of actual export", for exports. In the medium term, those Member States should become the importing and the exporting Member State for external trade statistics purposes.
- (5) For the purpose of this Regulation commodities for external trade purposes should be classified in accordance with the "Combined Nomenclature" established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁵, hereinafter referred to as the "Combined Nomenclature".
- (6) To meet the European Central Bank's and the Commission's need for information on the share of the euro in international merchandise trade, the invoicing currency of exports and imports should be reported at an aggregated level.
- (7) For the purposes of trade negotiations and internal market management, the Commission should be provided with detailed information on the tariff treatment of goods imported into the European Union [...].
- (8) External trade statistics provide data for the compilation of balance of payments and national accounts. The characteristics which make it possible to adapt them to Balance of Payments purposes should become part of the mandatory and standard data set.
- (8a) Member States' statistics on customs warehouses and free zones are not subject of harmonised provisions. However, the compilation for national purposes of these statistics remains optional.

⁵ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Council Regulation (EC) No 733/2007 (OJ L 169, 29.6.2007, p. 1).

- (9) Member States should provide Eurostat with annual aggregated data on trade broken down by business characteristics, one of the uses of which is to facilitate analysis of how European companies operate in the context of globalisation. The link between business and trade statistics is established by merging data on the importer and the exporter available on the customs declaration with data requested by Council Regulation (EEC) No 177/2008 of 20 February 2008 establishing a common framework for business registers for statistical purposes and repealing Council Regulation (EEC) No 2186/93 ⁶, hereinafter referred to as "Business Register legislation".
- (10) Council Regulation (EC) No 322/97 of 17 February 1997 ⁷ on Community Statistics provides a reference framework for the provisions laid down in this Regulation. However, the very detailed level of information on trade in goods requires specific confidentiality rules if these statistics are to be relevant.
- (10a) The transmission of data subject to statistical confidentiality is governed by the rules set out in Council Regulation (EC) No 322/97 and in Council Regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities. Measures which are taken in accordance with those Regulations ensure the physical and logical protection of confidential data and ensure that no unlawful disclosure and non-statistical use occur when Community statistics are produced and disseminated.
- (11) In the production and dissemination of Community statistics under this Regulation, the national and Community statistical authorities should take account of the principles set out in the European Statistics Code of Practice, which was adopted by the Statistical Programme Committee on 24 February 2005 and appended to the Commission Recommendation of 25 May 2005 on the independence, integrity and accountability of the national and Community statistical authorities.

⁶ OJ L 61, 5.3.2008, p. 6.

⁷ OJ L 52, 22.2.1997, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (12) Specific provisions need to be formulated until such time as customs legislation changes yield additional data on the customs declaration and until the electronic exchange of customs data is required by Community legislation.
- (13) ~~Considering that the entry into force of Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), and its implementing provisions, could lead to the loss of important statistical information, Member States should be given the possibility of collecting the appropriate data.~~
- (14) Since the objective of this Regulation cannot be achieved by the Member States and can be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is required to achieve this objective.
- (15) The measures necessary for implementing this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999⁸ laying down the procedures for the exercise of implementing powers conferred on the Commission.
- (16) In particular the Commission should be empowered to adapt the list of customs procedures or customs approved treatment or use which determine an export or import for external trade statistics, to adopt different or specific rules for goods or movements which, for methodological reasons, call for specific provisions, to adapt the list of goods and movements excluded from external trade statistics, to specify the data sources other than the customs declaration for records on import and exports of specific goods or movements, to specify the statistical data, including the codes to be used, to establish requirements for data related to specific goods or movements, to establish requirements on the compilation of statistics, to

⁸ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

specify characteristics of samples, establish the reporting period and the level of aggregation for partner countries, commodities and currencies as well as to adapt the deadline for transmitting statistics, content, coverage and revision conditions for statistics already transmitted and to establish the deadline for transmitting statistics on detail trade by business characteristics and statistics on trade broken down by invoicing currency. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes a common framework for the systematic production of Community statistics relating to trade in goods with non-member countries (external trade statistics).

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) "goods" means all movable property, including electricity;
- (b) "statistical territory of the Community" means the customs territory of the Community as defined in the Customs Code with the addition of the island of Heligoland in the territory of the Federal Republic of Germany;

- (c) "national statistical authorities" means the national statistical institutes and other bodies responsible in each Member State for producing Community external trade statistics;
- (d) "Customs authorities" means the "customs authorities" as defined in the Customs Code;
- (e) "customs declaration" means the "customs declaration" as defined in the Customs Code;
- (f) "decision by Customs" means any official act by Customs authorities relating to accepted customs declarations and having legal effect on one or more persons.

Article 3

Scope

1. External trade statistics shall record imports and exports of goods.

An export shall be recorded by Member States ~~when~~where goods leave the statistical territory of the Community according to one of the following customs procedures or customs-approved treatment or use, laid down in the Customs Code:

- (a) exportation;
- (b) outward processing;
- (c) re-exportation following either inward processing or processing under customs control.

An import shall be recorded by Member States ~~when~~where goods enter the statistical territory of the Community according to one of the following customs procedures laid down in the Customs Code:

- (~~da~~) release for free circulation;

(eb) inward processing;

(fc) processing under customs control.

2. The measures designed to amend non-essential elements of this Regulation relating to the adaptation of the list of customs procedures or customs-approved treatment or use referred to in paragraph 1 in order to take into account changes in the Customs Code or provisions deriving from international conventions shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).
3. For methodological reasons, certain goods or movements call for specific provisions ("specific goods or movements"). This concerns industrial plants, vessels and aircraft, sea products, goods delivered to vessels and aircraft, staggered consignments, military goods, goods to or from offshore installations, spacecraft, electricity and gas and waste products.

The measures designed to amend non-essential elements of this Regulation *inter alia* by supplementing it, relating to specific goods and movements and to different or specific provisions applicable to them, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

4. For methodological reasons, certain goods or movements shall be excluded from external trade statistics. This concerns monetary gold and means of payment which are legal tender, goods because of the diplomatic or similar nature of their intended use, goods movements between the importing and exporting Member State and their national armed forces stationed abroad as well as certain goods acquired and disposed of by foreign armed forces, particular goods which are not the subject of a commercial transaction, movements of satellite launchers before their launching, goods for and after repair, goods for or following temporary use, carriers of customised information and downloaded information, oral declarations of commercial goods of commercial nature declared orally to customs as far as their value is which do not exceeding 1 000 EUR or 1 000 exceed the statistical threshold of 1000 EUR in value or 1000 kilograms in net mass is not exceeded (statistical threshold) and all oral declarations of goods of non commercial nature goods.

The measures designed to amend non-essential elements of this Regulation *inter alia* by supplementing it, relating to the exclusion of goods or movements from external trade statistics, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

Article 4

Data source

1. The data source for records on the imports and exports of goods referred to in Article 3(1) shall be the customs declaration, including possible amendments or changes to statistical data resulting from decisions by Customs authorities pertaining to it.

~~Where a simplified procedure as defined in the Customs Code is used and a supplementary declaration is furnished, the data source for records shall be this supplementary declaration.~~

~~**1a.—To offset the loss of information associated with customs declaration exemptions, Members States may conduct monthly statistical data collections, requiring traders to provide the appropriate data. Implementing provisions for determining the transmission of such statistical declarations may be determined in accordance with the procedure referred to in Article 11(3).**~~

~~2.—deleted~~

~~3.—deleted~~

~~For specific goods or movements as referred to in Article 3(3), data sources other than the customs declaration can be used.~~

~~The measures designed to amend non-essential elements of this Regulation *inter alia* by supplementing it, relating to the specification of these other data sources, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).~~

~~3a2. Where further simplifications of customs formalities and controls pursuant to Article 116 of the Modernised Customs Code lead to non availability of records on the imports and exports of goods at customs authorities, the economic operator to whom the simplification was granted shall provides the statistical data defined in Article 5 of this Regulation.~~

~~3. Member States may continue to use other data sources for the compilation of their national statistics ~~than those defined in paragraphs 1 and 3~~ until [...] the date of implementation of a mechanism for mutual data exchange of the relevant data by electronic means is implemented. [...] However, ~~the compilation of Community external trade statistics according to Article 6 should not be based on those other data sources~~ 7 paragraph 2 of this Regulation.~~

~~4. For specific goods or movements as referred to in Article 3(3), data sources other than the customs declaration can be used.~~

~~5. The measures designed to amend non-essential elements of this Regulation *inter alia* by supplementing it, relating to the data collection according to paragraph 2 and paragraph 4, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).~~

Article 5

Statistical data

1. Member States shall obtain the following set of data from records on imports and exports referred to in Article (1).

- (a) the trade flow (import, export);
- (b) the monthly reference period;
- (c) the statistical value of the goods at the national border of the importing or exporting Member States;
- (d) the quantity expressed in net mass and in a supplementary unit when indicated on the customs declaration;
- (e) the trader, being the importer/consignee on import and the exporter/consignor on export;
- (f) the importing or exporting Member States, being the Member State where the customs declaration is lodged and when indicated on the customs declaration:
 - (i) on import, the Member States of ~~final~~ destination;
 - (ii) on export, the Member States of actual export;
- (g) the partner countries, that is on imports, the country of origin and the country of consignment/dispatch, and on export, the country of last known destination;
- (h) the commodity according to the Combined Nomenclature being:
 - (i) on import, the goods code of the Taric subheading;
 - (ii) on export, the goods code of the Combined Nomenclature subheading;
- (i) the customs procedure codes to be used for deriving the statistical procedure;

- (j) the nature of transaction where indicated on the customs declaration;
 - (k) if granted, the tariff treatment on import held by Customs authorities, that is the preferential code [...];
 - (l) the invoicing currency where indicated on the customs declaration;
 - (m) the mode of transport, detailing:
 - (i) the mode of transport at the frontier;
 - (ii) the internal mode of transport;
 - (iii) the container.
2. The measures designed to amend non-essential elements of this Regulation by supplementing it, relating to further specification of the data referred to in paragraph 1, including the codes to be used, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).
3. When not otherwise stated and without prejudice to customs legislation, the data shall be contained in the customs declaration.
4. For "specific goods or movements" as referred to in Article 3(3) and data provided according to Article 4 (2) of this Regulation, limited sets of data may be required.

The measures designed to amend non-essential elements of this Regulation by supplementing it, relating to these limited sets of data, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

Article 6

Compilation of external trade statistics

1. Member States shall compile for each monthly reference period statistics on imports and exports of goods expressed in value and quantity by:
 - (a) commodity;
 - (b) importing/exporting Member States;
 - (c) partner countries;
 - (d) statistical procedure;
 - (e) nature of transaction;
 - (f) tariff treatment, on import;
 - (g) mode of transport.

Implementing provisions for compiling the statistics may be determined by the Commission in accordance with the procedure referred to in Article 11(2).

2. Member States shall compile annual statistics on trade by business characteristics, namely economic activity carried out by the enterprise according to the section or 2-digit level of NACE and size-class measured in terms of number of employees.

The statistics shall be compiled by linking data on business characteristics recorded according to the Business Register legislation with the data recorded according to Article 5(1) on import and export. To this end, ~~national~~ Customs authorities shall provide the relevant traders' identification number to national statistical authorities.

The measures designed to amend non-essential elements of this Regulation by supplementing it, relating to the linking of the data and these statistics to be compiled, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

3. Every two years Member States shall compile statistics on trade broken down by invoicing currency.

Member States shall compile the statistics using a representative sample of records on imports and exports from customs declarations which contain the data on the invoicing currency. If the invoicing currency for exports is not available on the customs declaration, a survey shall be carried out to collect the required data.

The measures designed to amend non-essential elements of this regulation *inter alia* by supplementing it, relating to the characteristics of the sample, the reporting period and the level of aggregation for partner countries, commodities and currencies shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

4. The compilation by Member States of additional statistics for national purposes may be determined when the data are available on the customs declaration.
5. Member States shall not be obliged to compile and transmit to the Commission (Eurostat) external trade statistics on statistical data which, by virtue of the Customs Code or national instructions, are not yet recorded nor can be straightforwardly deduced from other data on the customs declaration lodged at their Customs authorities. The transmission of these statistics is optional for Member States. The following data are concerned.

- (a) the Member State of ~~final~~ destination, on import;
- (b) the Member State of actual export, on export;
- (c) the Nature of Transaction.

Article 7

Data exchange

1. Without delay and at the latest during the month following the month the customs declarations were accepted or were subject to customs decisions pertaining to them, national statistical authorities shall obtain from ~~their national~~ Customs ~~authority~~authorities the records on import and export based on the declarations which are lodged with ~~or furnished to that authority~~those authorities.

The records shall contain at least those statistical data listed in Article 5 which are, according to the Customs Code or national instructions, available on the customs declaration.

2. ~~Member States~~ With effect from the date of implementation of a mechanism for mutual data exchange by electronic means, Customs authorities shall ensure that records on imports and exports ~~which are based on a customs declaration lodged at their national Customs authority~~ are transmitted [...] to the [...] national statistical authority~~ies~~ of the Member State~~(s)~~ which is~~are~~ indicated on the record as:

- (a) the Member State~~(s)~~ of ~~final~~ destination, on import
- (b) the Member State~~(s)~~ of actual export, on export

~~Within a Member State, the data received by the national Customs authority shall be transmitted to the national statistical authority as provided for in Article 7(1)~~ The mechanism for mutual data exchange shall be implemented at the latest when Title 1, Chapter 2, Section 1 of the Modernised Customs Code is applicable.

3. 

~~4.~~ Implementing provisions for determining such transmission shall be determined in accordance with the procedure referred to in Article 11(~~3~~2).

Article 8

Transmission of external trade statistics to the Commission (Eurostat)

1. Member States shall transmit to the Commission (Eurostat) the statistics referred to in Article 6(1) no later than 40 days after the end of each monthly reference period.

Member States shall ensure that the statistics contain information on all imports and exports in the reference period in question, making adjustments where records are not available.

Member States shall transmit updated statistics when statistics already transmitted are subject to revisions.

Member States shall include in the results transmitted to the Commission (Eurostat) any statistical information which is confidential.

The measures designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it, relating to the adaptation of the deadline, content, coverage and revisions shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

2. The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to the deadline for transmitting statistics on trade by business characteristics referred to in Article 6(2) and statistics on trade broken down by invoicing currency referred to in Article 6(3) shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

Member States shall transmit the statistics in electronic form, in accordance with an interchange standard. The practical arrangements for the transmission of the results may be determined in accordance with the procedure referred to in Article 11(2).

Article 9

Quality assessment

1. For the purpose of this Regulation, the following quality assessment dimensions shall apply to the statistics to be transmitted.
 - (a) "relevance" refers to the degree to which statistics meet current and potential needs of the users;
 - (b) "accuracy" refers to the closeness of estimates to the unknown true values;
 - (c) "timeliness" refers to the time lag between the availability of the information and the event or phenomenon it describes;
 - (d) "punctuality" refers to the time lag between the date of release of the data and the target date when it should have been delivered;
 - (e) "accessibility" and "clarity" refer to the conditions and modalities by which users can obtain, use and interpret data;
 - (f) "comparability" refers to the impact of differences in applied statistical concepts and measurement tools and procedures when statistics are compared between geographical areas, sectoral domains or over time;
 - (g) "coherence" refers to the suitability of the data for being reliably combined in different ways and for various uses.

2. Member States shall provide the Commission (Eurostat) with a report on the quality of the statistics transmitted every year.
3. In applying the quality dimensions laid down in paragraph 1 to the statistics covered by this Regulation, the modalities and structure of the quality reports shall be defined in accordance with the procedure referred to in Article 11(2).

The Commission (Eurostat) shall assess the quality of the statistics transmitted.

Article 10

Dissemination of external trade statistics

1. At the Community level, external trade statistics compiled in accordance with Article 6(1) and transmitted by the Member States shall be disseminated by the Commission (Eurostat) by Combined Nomenclature subheading at least.

Only where an importer or exporter so requests shall the national authorities of a given Member State decide whether such statistics of that State which may make it possible to identify the said importer or exporter are to be disseminated or are to be amended in such a way that their dissemination does not prejudice statistical confidentiality.

2. Without prejudice to data dissemination at the national level detailed statistics by Taric subheading, ~~and~~ preferences ~~and quota~~ shall not be disseminated by the Commission (Eurostat) if their disclosure would undermine the protection of the public interest as regards the commercial and agricultural policies of the Community.

~~3. — deleted~~

Article 11

Committee procedure

1. The Commission shall be assisted by a Committee for external trade statistics.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. Where reference is made to this paragraph, Article 5a (1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 12

Repeal

Regulation (EC) No 1172/95 is repealed with effect from 1 January 2010.

It shall continue to apply to data pertaining to reference periods before 1 January 2010.

Article 13

Entry into force

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

It shall apply as from 1 January 2010.

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

Done at Brussels, [...]

For the European Parliament

[...]

The President

For the Council

[...]

The President

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