COMMISSION IMPLEMENTING DECISION (EU) 2019/54

of 9 January 2019

concerning the validity of certain binding tariff information

(notified under document C(2019) 142)

(Only the Polish text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([1]), and in particular Article 34(11) and Art 37(2)(a) thereof,

After consulting the Customs Code Committee,

Whereas:

(1) The decision relating to binding tariff information (BTI) referred to in the Annex contains a tariff classification incompatible with the Combined Nomenclature (CN) set out in Annex I to Council Regulation (EEC) No 2658/87 ([2]). In particular, that BTI is incompatible with the general rules for the interpretation of the CN and the wording of CN code 2833 11 00, read in conjunction with note 1 to chapter 25 of the CN and the wording of CN code 2530 90 00.

(2) Note 1 to chapter 25 of the CN stipulates that the headings of that chapter cover only products which are in the crude state or which have been treated by a limited number of mechanical or physical processes (except crystallisation), but not products which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

(3) The product covered by the BTI referred to in the Annex is identical by its objective characteristics and properties to the product described in WCO HSC classification opinion 2530.90/2 as a 'free flowing white powder containing more than 99,2 % by weight of anhydrous disodium sulphate, obtained only by mechanical collection of thenardite (anhydrous disodium sulphate) formed naturally in the open air on the surface of mirabilite (disodium sulphate decahydrate) which crystallised from natural lake brine due to low temperature in winter. Prior to packing, the product is passed through a sieve with an aperture of 0,65 mm'. In that WCO HSC classification opinion the classification of the product is under subheading 2530 90 of the Harmonized System, which corresponds to subheading 2530 90 00 of the Combined Nomenclature.

(4) That product, mechanically collected, is in the crude state. It is clear from the wording of note 1 to chapter 25 that only crystallisation induced by a man-made process is excluded. In the case of the product at issue, crystallisation takes place naturally without any human intervention. The pumping of the natural lake brine from one pond to another (where the actual crystallisation takes place) cannot be considered as a processing of a raw material within the meaning of note 1 to chapter 25, as it is merely a transport process. Consequently, the tariff classification of the product as set out in the BTI referred to in the Annex is not in accordance with CN code 2530 90 00 notably under the light of WCO HSC classification opinion 2530.90/2.

(5) The Union is, by Council Decision 87/369/EEC ([3]), a contracting party of the International Convention on the Harmonized Commodity Description and Coding System (known as the 'Harmonized System' or 'HS'), drawn up by the Customs Cooperation Council (known as the 'World Customs Organisation' or 'WCO'). The HS Committee (HSC) of the WCO approves WCO HSC classification opinions which in principle are guidance instruments for Union tariff measures.

(6) The HSC approved during its 58th Session in October 2016 a classification opinion classifying a product identical to the product covered by the BTI referred to in the Annex in HS subheading 2530.90 (WCO HSC classification opinion 2530.90/2).

(7) With a view to securing uniformity in the interpretation and application of the Harmonized System on an international level and considering that the decision is in conformity with the wording of HS subheading 2530.90, the Union should apply this WCO HSC classification opinion.

([1]) OJ L 269, 10.10.2013, p. 1.
([2]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).
([3]) Council Decision 87/369/EEC of 7 April 1987 concerning the conclusion of the International Convention on the Harmonized Commodity Description and Coding System and of the Protocol of Amendment thereto (OJ L 198, 20.7.1987, p. 1).

(8) Communication from the Commission in accordance with Article 34(7)(a)(iii) of Regulation (EU) No 952/2013 on decisions relating to binding information issued by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature (information 2017/C 128/01) [4] lists, among others, WCO HSC classification opinion 2530.90/2. Consequently, customs authorities are under the obligation to revoke decisions relating to binding information if they become incompatible with the interpretation of the customs nomenclature as a result of, inter alia, classification opinions adopted by the Customs Cooperation Council.

(9) To ensure a correct and uniform tariff classification of goods, the BTI referred to in the Annex should be revoked. The customs authority which issued the information should therefore revoke it as soon as possible following the notification of the present Decision and notify the Commission to that effect,

HAS ADOPTED THIS DECISION:

Article 1

1. The binding tariff information referred to in column 1 of the table set out in the Annex issued by the customs authority specified in column 2 of that table for the tariff classification specified in column 3 of that table shall be revoked in accordance with paragraph 2.

2. The customs authority specified in column 2 of the table set out in the Annex shall revoke the binding tariff information referred to in column 1 of that table and notify the holder thereof at the earliest possible date and in any case not later than 10 days from the notification of this Decision.

3. When the customs authority revokes binding tariff information and makes the notification pursuant to paragraph 2, it shall notify the Commission thereof.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 9 January 2019.

For the Commission,
On behalf of the President,
Stephen QUEST
Director-General
Directorate-General for Taxation and Customs Union

[4] OJ C 128, 22.4.2017, p. 1.

ANNEX

Binding tariff information — reference no	Customs authority	Tariff classification
1	2	3
PL PL-WIT-2016-00758	Dyrektor Izby Administracji Skarbowej w Warszawie ul. Felińskiego 2 B 01-513 Warszawa [Warsaw, Poland]	2833 11 00