COMMISSION REGULATION (EC) No 938/98

of 4 May 1998

amending Regulation (EC) No 2931/95 amending Regulation (EEC) No 804/68 and other regulations as a result of the amendment of the Combined Nomenclature for certain milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 234/79 of 5 February 1979 on the procedure for adjusting the Common Customs Tariff nomenclature used for agricultural products [1], as amended by Regulation (EEC) No 3209/89 [2], and in particular Article 2(1) thereof,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [3], as last amended by Regulation (EC) No 1587/96 [4], and in particular Articles 13(3) and 17(14) thereof,

Whereas Commission Regulation (EC) No 2448/95 of 10 October 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [5] amends the codes of certain milk products from 1 January 1996;

Whereas Commission Regulation (EC) No 2931/95 [6], as amended by Regulation (EC) No 1812/97 [7], amends the regulations regarding milk and milk products affected by the amendment of the CN code subheadings, including Regulation (EEC) No 804/68;

Whereas Article 17(1) of Regulation (EEC) No 804/68, read in conjunction with the Annex thereto before its amendment by Regulation (EC) No 2931/95, as interpreted by the Court of Justice of the European Communities in Case C-334/95, authorises the grant of export refunds on milk products contained both in preparations with a basis of coffee and in preparations with a basis of extracts, essences and concentrates of coffee; whereas this interpretation of the Court was not taken into account when the Annex to Regulation (EEC) No 804/68 was amended by Regulation (EC) No 2931/95; whereas, in order to bring Regulation (EC) No 2931/95 into line with this interpretation, the relevant code and the code for preparations with a basis of extracts, essences of tea or maté, for which the same approach should have been followed, should be entered in the Annex to Regulation (EEC) No 804/68; whereas, in order to avoid any break in the application of the Court's interpretation, the amendments should apply from 1 January 1996;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The seventh indent of Article 1(4) of Regulation (EC) No 2931/95 is hereby replaced by the following:

'— the information relating to CN codes ex 2101 10 and 2101 20 is replaced by the following:

CN code	Description
"ex 2101	Extracts, essences and concentrates of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof:
2101 12 92	– – – Preparations with a basis of these extracts, essences or concentrates of coffee
2101 12 98	– – – Other
	– – Preparations:
2101 20 92	– – – With a basis of extracts, essences or concentrates of tea or maté
2101 20 98	– – – Other"

[1] OJ L 34, 9. 2. 1979, p. 2.
[2] OJ L 312, 27. 10. 1989, p. 5.
[3] OJ L 148, 28. 6. 1968, p. 13.
[4] OJ L 206, 16. 8. 1996, p. 21.
[5] OJ L 259, 30. 10. 1995, p. 1.
[6] OJ L 307, 20. 12. 1995, p. 10.
[7] OJ L 257, 20. 9. 1997, p. 5.

Article 2

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

It shall apply with effect from 1 January 1996.

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

Done at Brussels, 4 May 1998.

For the Commission

Franz FISCHLER

Member of the Commission