COMMISSION IMPLEMENTING REGULATION (EU) No 775/2011

of 2 August 2011

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], and in particular Article 9(1)(a) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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

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

Done at Brussels, 2 August 2011.

For the Commission,
On behalf of the President,
Algirdas ŠEMETA
Member of the Commission

[1] OJ L 256, 7.9.1987, p. 1.

[2] OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
1. Bovine colostrum, in liquid form, defatted and de-caseinated, packaged for retail sale in a 125 ml bottle, having the following nutritional information per 100 ml: — Milk protein 2,5 to 5,5 g — Carbohydrates 3,3 g — Milk fat < 0,5 g The product is a yellow-brown, slightly cloudy liquid. It has a higher immunoglobulin content than natural whey or milk. According to the label the product is for human consumption and is to be taken once a day (1 to 2 tablespoons) on its own or with cold fruit juice. Its area of application is not indicated.	0404 10 48	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and the wording of CN codes 0404, 0404 10 and 0404 10 48. Classification under heading 3001 or 3004 is excluded as the product does not serve a therapeutic or prophylactic use. The technological steps in the processing of the product and its composition are comparable to those of modified whey. Given its characteristics the product is therefore to be classified under heading 0404.
2. Spray-dried, reduced-fat colostrum powder which has not been de-caseinated, packaged for retail sale as 64 g of powder in a plastic screw-top container with the following composition (% by weight): — Milk fat 1,2 — Milk protein at least 50 and typically 65,5 The product has a dry matter content of 93,3 % by weight. The product is a cream-coloured powder that tends to form lumps and has a milky odour. It has a higher immunoglobulin content than natural whey or milk. According to the label the product is for human consumption.	0404 90 21	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and the wording of CN codes 0404, 0404 90 and 0404 90 21. Classification under heading 3001 or 3004 is excluded as the product does not serve a therapeutic or prophylactic use for humans. Classification under heading 0402 is also excluded as the product does not have the typical composition of a natural milk powder. Given its characteristics the product is therefore to be classified under heading 0404.