COMMISSION IMPLEMENTING REGULATION (EU) No 387/2013

of 23 April 2013

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, 23 April 2013.

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)
A product presented in gelatine capsules, put up for retail sale. Each capsule contains the following ingredients: — powdered bark of cat's claw (*Uncaria tomentosa*) 500 mg — ascorbyl palmitate 57 mg — microcrystalline cellulose 79 mg — rice flour 17 mg — silica 32 mg The product contains approximately 17 % by weight, of starch/glucose. According to the label the product is presented as a food supplement for human consumption.	2106 90 98	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 1(a) to Chapter 30, Additional Note 1 to Chapter 30 and the wording of CN codes 2106, 2106 90 and 2106 90 98. As the concentration of active substance or substances contained in the product is not indicated on the label, the packaging or the accompanying user directions, the requirements of Additional Note 1 to Chapter 30 are not fulfilled. Consequently, classification under heading 3004 as a medicament is excluded. The product is a food preparation presented in the form of capsules. The casing is a factor that, together with the content, determines the use and character of the product (see judgment of the Court of Justice of the European Union in joined cases C-410/08 to C-412/08 Swiss Caps [2009] ECR p.I-11991, paragraphs 29 and 32). The product is therefore to be classified under CN code 2106 90 98 as food preparations not elsewhere specified or included (see also Harmonised System Explanatory Notes to heading 2106, point (16)).