COMMISSION IMPLEMENTING REGULATION (EU) No 766/2013

of 7 August 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, 7 August 2013.

For the Commission,
On behalf of the President,
Günther OETTINGER
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)
Liquid product based on fermented milk products with added fruit and cereal flakes, consisting of (% by weight): — yoghurt (milk fat content 1,9% by weight) 78,9 — sugar 8,4 — water 7,4 — peach 4,3 — wheat flakes 0,6 — rye flakes 0,3 and small quantities of aroma preparations (flavourings), carotene (colouring agent) and micro-organisms used in food products. The product, put up in a plastic bottle containing 400 g, is intended for direct consumption as a beverage.	2202 90 95	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and by the wording of CN codes 2202, 2202 90 and 2202 90 95. Classification of the product under heading 0403 as liquid yoghurt is excluded because cereal flakes are not substances which may be added to the products of Chapter 4 (see also the Harmonized System (HS) Explanatory Notes to Chapter 4, General, point (I), second paragraph). In addition, cereals do not meet the criteria of the wording of heading 0403 as they cannot be considered to be 'added fruit, nuts or cocoa'. Classification under heading 1901 is also excluded because the product has the characteristics of a beverage of Chapter 22 (see also the HS Explanatory Notes to heading 1901, point (III), second paragraph). As the product is directly consumable as a beverage, it is covered by heading 2202. The product is therefore to be classified under heading 2202 as 'other non-alcoholic beverage'.