COMMISSION IMPLEMENTING REGULATION (EU) No 366/2014

of 7 April 2014

amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

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) Regulation (EEC) No 2658/87 established a nomenclature of goods, hereinafter referred to as the 'Combined Nomenclature' or 'CN', which is set out in Annex I to that Regulation.

(2) In the interest of legal certainty, it is necessary to clarify the scope of subheading 1302 20, Chapter 17 and heading 2101 of Part Two of the Combined Nomenclature as regards mixtures of sugar of Chapter 17 with small amounts of other substances.

(3) As pectic substances of subheading 1302 20 can be standardised by the addition of sugar in order to ensure a constant activity in the use, it is necessary to determine the maximum amount of sugar which can be added if the product is to retain its character as a pectic substance. A mixture consisting of 90 % sugar and 10 % pectic substances does not have the character of sugar and should be classified in Chapter 13. However, products containing more than 90 % of sugar have the character of sugar and should therefore be classified in Chapter 17. Consequently, a new Additional note to Chapter 13 is needed to reflect that fact.

(4) It is also necessary to include a corresponding new Additional note to Chapter 17 to ensure that mixtures of sugar with small amounts of other substances remain classified in that Chapter in so far as the mixture has retained the character of sugar.

(5) With regard to preparations with the basis of coffee, tea or maté or extracts, essences and concentrates thereof with a high sugar content, the Court of Justice of the European Union ruled that Commission Regulation (EC) No 306/2001 [2], which classified two products consisting of mainly 90,1 % sugar and 2,5 % tea extract and 58,1 % sugar (94 % calculated on the dry matter) and 2,2 % tea, respectively, under CN code 2101 20 92, is applicable by analogy to two mixtures intended for the production of beverages with a basis of tea, both composed of 64 % granulated sugar (about 97 % calculated on the dry matter) and 1,9 % extract of tea and water [3].

(6) However, in preparations with a basis of coffee, tea or maté or extracts, essences and concentrates thereof with a sugar content of 97 % or more, calculated on the dry matter, the character of the product is no longer determined by coffee, tea or maté or extracts, essences and concentrates thereof. Those preparations should be excluded from classification under heading 2101. A new Additional note to Chapter 21 is therefore needed to clarify the classification of those products.

(7) In order to ensure uniform interpretation of the Combined Nomenclature throughout the Union with regard to mixtures of sugar with small amounts of other substances, new Additional notes to Chapters 13, 17 and 21 should be created.

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

[2] Commission Regulation (EC) No 306/2001 of 12 February 2001 concerning the classification of certain goods in the Combined Nomenclature (OJ L 44, 15.2.2001, p. 25).

[3] Judgment of 4 March 2004 in Case C-130/02, Krings (ECR 2004, p. I-2121).

(8) Annex I to Regulation (EEC) No 2658/87 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Part Two of the Combined Nomenclature set out in Annex I to Regulation (EEC) No 2658/87 is amended as follows:

(1) In Chapter 13 the following Additional note 1 is inserted:

'1. Mixtures of pectic substances and sugar with a sugar content exceeding 90 % by weight, calculated on the dry matter, are excluded from classification under subheading 1302 20 and are in principle to be classified in Chapter 17, as the character of the product is deemed to be determined by the sugar.';

(2) In Chapter 17 the following Additional note 8 is added:

'8. Throughout the Combined Nomenclature, mixtures of sugar with small amounts of other substances are classified in Chapter 17 unless they have the character of a preparation classified elsewhere.';

(3) In Chapter 21 the following Additional note 6 is added:

'6. Preparations with a basis of coffee, tea or maté or extracts, essences and concentrates thereof with a sugar content of 97 % or more by weight, calculated on the dry matter, are excluded from classification under heading 2101 and are in principle to be classified in Chapter 17. The character of those products is no longer deemed to be determined by coffee, tea or maté or extracts, essences and concentrates thereof.'.

Article 2

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 April 2014.

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