COMMISSION IMPLEMENTING REGULATION (EU) 2016/534

of 31 March 2016

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'), which is set out in Annex I to that Regulation.

(2) Dairy produce of Chapter 4 includes dairy permeates, which are milk products characterised by a high content of lactose and obtained by removing milk fats and milk proteins from milk, whey, cream and/or sweet buttermilk, and/or from similar raw material by ultrafiltration or other processing techniques.

(3) Divergent views exist as regards the classification of whey and milk permeates under the subheadings of heading 0404. In the interest of legal certainty, it is therefore necessary to clarify the scope of subheadings 0404 10 and 0404 90 relating to such products.

(4) The distinction between 'whey permeate' and 'milk permeate' can be made by the detection or non-detection of substances that are associated with whey production. That criterion should therefore be used, along with an organoleptic criterion, for the purposes of distinguishing between whey and milk permeates.

(5) Subheading 0404 10 should include 'whey permeate' which is a product with generally a slightly sour smell, obtained though ultrafiltration of whey or mixtures of natural whey constituents. Classification of dairy permeates under that subheading should be conditional on the presence of substances associated with whey production (e.g. lactic acid, lactates and glycomacropeptides) in that product.

(6) Subheading 0404 90 should include 'milk permeate' which is a product obtained though ultrafiltration of milk, with generally a milky smell. Classification of dairy permeates under that subheading should be conditional on the quantitatively limited level or the absence of substances associated with whey production in that product.

(7) The reference method for the detection of lactic acid and lactates (ISO 8069:2005 method) is provided for in Part A of Annex I to Commission Regulation (EC) No 273/2008 [2] and the reference method to detect rennet whey (i.e. the presence of caseinomacropeptides such as glycomacropeptides) is laid down in Annex XII to that Regulation. Those methods should also be used for the correct classification of the products concerned by this Regulation.

(8) In order to ensure correct classification of the products concerned, new Additional notes should therefore be added to Chapter 4 of Part Two of the Combined Nomenclature to ensure its uniform interpretation throughout the Union.

(9) Regulation (EEC) No 2658/87 should therefore be amended accordingly.

(10) The Customs Code Committee has not issued an opinion within the time limit set by its Chair,

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

[2] Commission Regulation (EC) No 273/2008 of 5 March 2008 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards methods for the analysis and quality evaluation of milk and milk products (OJ L 88, 29.3.2008, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

In Chapter 4 of Part Two of the Combined Nomenclature set out in Annex I to Regulation (EEC) No 2658/87, the following Additional notes 3 and 4 are added:

'3. Dairy produce of Chapter 4 includes dairy permeates, which are milk products characterised by a high content of lactose and obtained by removing milk fats and milk proteins from milk, whey, cream and/or sweet buttermilk, and/or from similar raw material by ultrafiltration or other processing techniques.

4. For the purposes of subheadings 0404 10 and 0404 90 the following applies:

Milk permeate and whey permeate can be analytically distinguished by the presence of substances (e.g. lactic acid, lactates and glycomacropeptides) which are associated with whey production.

Subheading 0404 10 includes "whey permeate" which is a product with generally a slightly sour smell, obtained from whey or mixtures of natural whey constituents by ultrafiltration or other processing techniques.

The presence of substances associated with whey production (e.g. lactic acid, lactates and glycomacropeptides) is a condition for the classification of whey permeates into that subheading.

Subheading 0404 90 includes "milk permeate" which is a product with generally a milky smell obtained from milk by ultrafiltration or other processing techniques. The quantitatively limited level or absence of lactic acid and lactates (max. 0,1 % by weight, in milk permeates in powder form, or max. 0,015 % by weight in milk permeates in liquid form) as well as the absence of glycomacropeptides, are the conditions for the classification of milk permeates into subheading 0404 90.

The method to be used for the detection of lactates shall be the ISO 8069:2005 method and the method to detect rennet whey (i.e. the presence of caseinomacropeptides such as glycomacropeptides) shall be the method set out in Annex XII to Commission Regulation (EC) No 273/2008 (*).

(*) Commission Regulation (EC) No 273/2008 of 5 March 2008 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards methods for the analysis and quality evaluation of milk and milk products (OJ L 88, 29.3.2008, p. 1).'

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, 31 March 2016.

For the Commission,
On behalf of the President,
Stephen QUEST
Director-General for Taxation and Customs Union