II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1343

of 18 July 2017

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)(e) thereof,

Whereas:

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

(2) In the interest of legal certainty, it is necessary to clarify the classification of capsules, tablets, pastilles and pills produced from flour, groats, meal, starch or malt extract of heading 1901 or from goods of headings 0401 to 0404 intended for use as food supplements.

(3) In accordance with the judgment of the Court of Justice of the European Union in Joined Cases C-410/08 to C-412/08 [2], edible food preparations intended for use as food supplements, composed principally of vegetable or animal oil with an addition of vitamins and presented in measured dosages (capsules) are to be classified under heading 2106 ('Food preparations not elsewhere specified or included').

(4) In that judgment, the Court of Justice explained that, in the case of the goods concerned, the form of presentation (i.e. in a casing) is a decisive factor which reveals their function as a food supplement, since it determines the dosage of the edible preparations, the way in which they are absorbed and the place where they are supposed to become active. Consequently, both factors (the casing together with the content of a food supplement) determine the use and character of the respective goods.

(5) The Explanatory Notes to the Harmonised System concerning heading 2106 state that this heading includes preparations, often referred to as 'food supplements', and containing added vitamins and sometimes minute quantities of iron compounds which are put up in packagings with indications that they maintain general health or well-being.

(6) Food supplements made of flour, groats, meal, starch or malt extract of heading 1901 or made from goods of headings 0401 to 0404, which are presented in measured doses, such as capsules, tablets, pastilles and pills, are not covered by heading 1901, because the specific form of presentation is indicative of their function as a food supplement. Food supplements are a very specific kind of food preparation only mentioned in the Explanatory Notes of the Harmonised System to heading 2106 and in general presented in measured doses. Consequently, food preparations intended for use as food supplements, presented in measured doses and made from flour, groats, meal, starch or malt extract of heading 1901 or from goods of headings 0401 to 0404 cannot fulfil the requirements of heading 1901 and should be classified under heading 2106.

[1] OJ L 256, 7.9.1987, p. 1.
[2] Judgment of 17 December 2009, Swiss Caps AG, C-410/08 to C-412/08, ECLI:EU:C:2009:794.

(7) For reasons of legal certainty, the provisions of the Combined Nomenclature should reflect the jurisprudence mentioned above. This has been partially achieved with the introduction of additional note 5 to Chapter 21 by Commission Implementing Regulation (EU) No 698/2013 ([1]). For the sake of consistency and uniformity with that previous measure, a corresponding additional note should also be introduced to Chapter 19.

(8) A new additional note should therefore be added to Chapter 19 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 measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

In Chapter 19 of Part Two of the Combined Nomenclature set out in Annex I to Regulation (EEC) No 2658/87, the following additional note 4 is added:

'4. *Food preparations of flour, groats, meal, starch or malt extract of heading 1901 as well as those of goods of headings 0401 to 0404 presented in measured doses, such as capsules, tablets, pastilles and pills intended for use as food supplements, are excluded from classification under heading 1901. The essential character of a food supplement is not only given by its ingredients, but also by its specific form of presentation revealing its function as a food supplement, since it determines the dosage, the way in which it is absorbed and the place where it is supposed to become active. Such food preparations are to be classified under heading 2106 insofar as they are not specified or included elsewhere.*'.

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, 18 July 2017.

For the Commission

The President

Jean-Claude JUNCKER

([1]) Commission Implementing Regulation (EU) No 698/2013 of 19 July 2013 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 198, 23.7.2013, p. 35).