COMMISSION IMPLEMENTING REGULATION (EU) 2019/923

of 3 June 2019

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 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([1]), and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 ([2]), 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 codes 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 issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 34(9) of Regulation (EU) No 952/2013. That period should be set at three months.

(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 codes indicated in column (2) of that table.

Article 2

Binding tariff information which does not conform to this Regulation may continue to be invoked in accordance with Article 34(9) of Regulation (EU) No 952/2013 for a period of three months from the date of entry into force of this Regulation.

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*.

([1]) OJ L 269, 10.10.2013, p. 1.
([2]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 June 2019.

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

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
1. A product consisting of an alcoholic liquid with an alcoholic strength by volume of 4 % to 6 %. It is produced by mixing a fermented apple juice with distilled ethyl alcohol, carbonated water, sugar, citric acid, flavourings, a preservative agent (E 202), caffeine and colouring agents (E 102, E 124). The addition of distilled ethyl alcohol to the fermented apple juice increases its alcoholic strength: 62,05 litres of fermented apple juice at 18 % vol. (11,17 litres of alcohol) are mixed with 37,95 litres of distilled ethyl alcohol at 28,28 % vol. (10,73 litres of alcohol). The fermented alcohol component in the product accounts for 51 % and the distilled alcohol accounts for 49 % of the total alcohol content. The resulting mixture is diluted to a drinking strength of 4 % to 6 % vol. by adding carbonated water. Sugar, citric acid, a preservative agent (E 202), caffeine, colouring agents (E 102, E 124) and flavourings (for instance mango, rum, passion fruit or port) are added as well. The product is presented to be used for the production of cocktails. The smell and taste are alcoholic, acidic and sweet. The product is for human consumption and is put up for retail sale in containers holding two litres or less.	2208 90 69	Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature and the wording of CN codes 2208, 2208 90 and 2208 90 69. The product is an alcoholic beverage that has not retained the character of a product falling under heading 2206 (see also the Harmonized System Explanatory Notes to heading 2206, third paragraph) as the added substances have led to a loss of the properties and characteristics of a fermented apple juice. The fact that the distilled alcohol does not exceed, either in volume or percentage, 49 % of the alcohol present in the product, with the remaining 51 % resulting from a process of fermentation, is not a classification criterion as there is no majority rule by percentages that determines the character of products of heading 2206. Consequently, classification under heading 2206 is excluded as the product shows objective characteristics similar to those of a spirituous beverage and not anymore those obtained by fermentation of a specific fruit or plant. The product is therefore to be classified under CN code 2208 90 69 as other spirituous beverage in containers holding two litres or less.
2. A product consisting of an alcoholic liquid with an alcoholic strength by volume of 15 %. It is produced by fermenting a sugar beet extract, consisting by weight of 93,4 % sucrose (96,7 % sucrose in dry matter), protein, trace minerals, fibre and water. The fermentation process is achieved by the addition of water and yeast, and it proceeds until an alcohol content of 15 % has been reached. The yeast is then removed by sedimentation and microfiltration. The product has no specific smell and taste except that of alcohol. The product is intended to be used as a base in the formulation of alcoholic beverages. It is presented in bulk.	2208 90 99	Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature and the wording of CN codes 2208, 2208 90 and 2208 90 99. Sugar beet extract is neutral raw sugar and therefore the product cannot have the taste, smell and/or appearance of a beverage produced from a particular fruit or natural product. Consequently, it has not obtained the characteristics of a product falling under heading 2206 but acquired those of ethyl alcohol of heading 2208. The product, which is obtained through processing a fermented sugar beet extract and is intended to be used as a base in the formulation of alcoholic beverages, being neutral in terms of colour, smell and taste as a result of purification (including microfiltration), falls therefore under heading 2208. The product is therefore to be classified under CN code 2208 90 99 as other undenaturated ethyl alcohol in containers holding more than two litres.