

COMMISSION IMPLEMENTING REGULATION (EU) No 715/2012

of 30 July 2012

amending Regulation (EU) No 42/2010 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) According to the second paragraph of column (3) of the table set out in the Annex to Commission Regulation (EU) No 42/2010⁽²⁾ the edible product in tablet form described in column (1) of that table does not meet the requirements of Note 2(b)(2) to Chapter 19 of the Combined Nomenclature (CN) because of its composition, presentation and use as a food supplement. Classification of the product under Chapter 19 is therefore excluded.

(2) In the light of the judgment of the Court of Justice of the European Union of 17 December 2009 in joined cases C-410/08 to C-412/08, *Swiss Caps*⁽³⁾, and in particular paragraph 33, classification of edible goods intended to be used as food supplements under heading 2106 of the CN can be envisaged only if the food preparations in question are not specified or included elsewhere. Food

preparations intended to be used as food supplements may therefore be classified under other headings of the CN where the description of those headings is more specific.

(3) As a consequence, the presentation and use of an edible product as a food supplement cannot be the reason for the exclusion from Chapter 19 of the CN. It is therefore necessary to state that the reason why the product does not meet the requirements of Note 2(b)(2) of Chapter 19 of the CN lies solely in its composition.

(4) The reasons set out in the second paragraph of column (3) of the Annex to Regulation (EU) No 42/2010 should therefore be amended accordingly. However, for reasons of clarity the whole Annex to Regulation (EU) No 42/2010 should be replaced.

(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 Annex to Regulation (EU) No 42/2010 is replaced by the following:

‘ANNEX

Description of goods	Classification (CN Code)	Reasons
(1)	(2)	(3)
Product consisting of (% by weight):	2106 90 98	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature and the wording of CN codes 2106, 2106 90 and 2106 90 98.
— barley grass, powdered 28,8		Since the product does not meet the requirements of Note 2(b)(2) to Chapter 19 because of its composition, classification under Chapter 19 is excluded.
— honey 27,5		
— wheatgrass, powdered 21,5		The product does not meet the requirements of Additional Note 1 to Chapter 30 as no statements on the use for specific diseases or the concentration of active substances are given. It should therefore not be considered as herbal medicinal preparation within the meaning of heading 3004.
— alfalfa, powdered 21,5		
— stearic acid 0,4		
— pepper 0,25		
— chromium picolinate 0,01		
(corresponds to 8,7 µg Cr per tablet)		

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ L 12, 19.1.2010, p. 2.

⁽³⁾ [2010] ECR I - 11991.

(1)	(2)	(3)
The product is presented for retail sale, in tablet form and used as a food supplement (one tablet twice a day).		The product is therefore considered to be covered by the terms of heading 2106 as a food preparation not elsewhere specified or included and is used as dietary supplement indicated to maintain general health or well-being (see also HSEN to heading 2106, second paragraph, number (16)).'

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, 30 July 2012.

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