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(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2291/93

of 13 August 1993

concerning the classification of certain goods in the combined nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], as last amended by Commission Regulation (EEC) No 1969/93 [2], and in particular Article 9,

Whereas in order to ensure uniform application of the combined nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation;

Whereas Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the combined nomenclature and these rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivisions to it and which is established by specific Community provisions, with a view to the application of tariff or other measures relating to trade in goods;

Whereas, pursuant to the said general rules, the goods described in column 1 of the table annexed to the present Regulation must be classified under the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3;

Whereas it is appropriate that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the combined nomenclature and which do not conform to the rights established by this Regulation, can continue to be invoked under the provisions in Article 6 of Commission Regulation (EEC) No 3796/90 [3], amended by Regulation (EEC) No 2674/92 [4], for a period of three months by the holder if a binding contract has been concluded such as is envisaged in Article 14 (3) (a) or (b) of Commission Regulation (EEC) No 1715/90 [5];

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Nomenclature Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the annexed table are now classified within the combined nomenclature under the appropriate CN codes indicated in column 2 of the said table.

Article 2

Binding tariff information issued by the customs authorities of Member States which do not conform to the rights established by this Regulation can continue to be invoked under the provisions of Article 6 of Regulation (EEC) No 3796/90 for a period of three months by the holder if a binding contract has been concluded as envisaged in Article 14 (3) (a) or (b) of Regulation (EEC) No 1715/90.

Article 3

This Regulation shall enter into force on the 21st day following its publication in the *Official Journal of the European Communities.*

[1] OJ No L 256, 7. 9. 1987, p. 1.
[2] OJ No L 180, 23. 7. 1993, p. 9.
[3] OJ No L 365, 28. 12. 1990, p. 17.
[4] OJ No L 271, 16. 9. 1992, p. 5.
[5] OJ No L 160, 26. 6. 1990, p. 1.

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

Done at Brussels, 13 August 1993.

For the Commission
Christiane SCRIVENER
Member of the Commission

ANNEX

Description	Classification CN code	Reason
(1)	(2)	(3)
1. Semi-liquid product with a yoghurt flavour made of fermented milk plus apricot pulp, sugar, stabilizers and thickening agents (modified starches, pectin and gelatine totalling less than 1,8 % by weight taken together), with a milk fat content of less than 3 % by weight Microscopic examination showed *streptococcus thermophilus* and *lactobacillus bulgaricus* bacteria in a ratio of approximately 1 : 1 ; these were killed by ultra-heat treatment of the product	0403 90 91	Classification in accordance with General Rules 1 and 6 for the interpretation of the combined nomenclature and the wording of CN codes 0403, 0403 90 and 0403 90 91. The presence of small quantities of stabilizers and thickeners does not preclude classification in heading 0403 (see also the Harmonized System Explanatory Notes to Chapter 4 : second paragraph of Part I of the General Section) The absence of live bacteria precludes classification in CN code 0403 10 (see also CN Explanatory Notes to subheadings 0403 10 02 to 0403 10 99).
2. Brown-beige powder obtained by roller drying from a mixture of milk, whey and sugar, with individual brown grains, tending to form lumps, sweet and tasting of powdered milk and caramel, with the following analytical results by % of weight : — dry matter 97,2 — total fat (milk fat) 23,5 — total protein content (N × 6,38) : 20,4 — sucrose 1,8 — lactose : 44,6 — casein 17,1 — sweet whey (GMP) : detectable As a result of its high temperature in the manufacturing process, the sugars are caramelized and the proteins have been partly degraded	0404 90 53	Classification is determined by the provisions of the General Rules 1 and 6 for the interpretation of the Combined Nomenclature and by the working of CN codes 0404, 0404 90 and 0404 90 53 Nothwithstanding the partial degradation of the proteins and the caramelization of the sugars, this product has not lost the characteristic of a natural milk product within the meaning of heading 0404