

COMMISSION REGULATION (EC) No 161/2007
of 15 February 2007
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, 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 Community provisions, 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 to this Regulation 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 which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽²⁾.

(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 issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

This Regulation shall enter into force on the 20th day following 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, 15 February 2007.

For the Commission
László KOVÁCS
Member of the Commission

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 1930/2006 (OJ L 406, 30.12.2006, p. 9).

⁽²⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
<p>1. A liquid product based on fermented milk products with added vegetable sterols and fruit flavour obtained from a fruit preparation.</p> <p>The composition (percentage by weight) is as follows:</p> <ul style="list-style-type: none"> — sucrose/glucose syrup 12,2 — lactose 2,5 — protein 2,6 — fat 2,2 — vegetable sterols (stanol esters) 3 — milk fat content less than 0,2 — moisture content 76,9 <p>and small quantities of vitamins and aroma preparations (flavourings)</p> <p>The product is available in different flavours (for example, strawberry or orange). The fruit preparation consists of a fruit juice that is obtained from a fruit juice concentrate to which a stabiliser (pectin) is added.</p> <p>The product, put up in a 65-ml bottle, is intended for direct consumption as a beverage.</p>	2202 90 91	<p>Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and by the wording of CN codes 2202, 2202 90 and 2202 90 91.</p> <p>Being directly consumable as a beverage, the product is covered by heading 2202.</p> <p>The product is excluded from heading 0403 because stanol esters are not added substances of a kind permitted in the products of chapter 4 (see the Harmonized System Explanatory Notes to chapter 4, General, point (I), second paragraph). The product can therefore not be regarded as a liquid yogurt, flavoured or containing added fruit, nuts or cocoa, of heading 0403.</p> <p>Classification in heading 1901 is excluded because the product has the characteristics of a beverage of Chapter 22 (see the Harmonized System Explanatory Note to heading 1901, point (III), second paragraph).</p>
<p>2. Product with the following composition (percentage by weight):</p> <ul style="list-style-type: none"> — yogurt (milkfat content 0,1 % by weight) 76 — aromatised aloe vera preparation 22 — sugar 2 <p>The colour of the product is greenish-white. The consistency of the substance is that of a common yogurt. Parts of the aloe vera can be seen in the substance.</p> <p>The product is put up in containers holding 150 g.</p>	1901 90 91	<p>Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and by the wording of CN codes 1901, 1901 90 and 1901 90 91.</p> <p>Aloe vera is not a fruit of chapter 8, but a plant of chapter 6. Therefore the product does not meet the criteria of the wording of heading 0403.</p> <p>Food preparations based on dairy products are excluded from Chapter 4 (see Harmonized System Explanatory Note to chapter 4, General, point (I), last paragraph, point (a)).</p> <p>The product is classifiable in heading 1901 as it contains, in addition to natural milk constituents, other ingredients of a kind not permitted in headings 0401 to 0404 (see the Harmonized System Explanatory Note to heading 1901, point (III), first paragraph).</p>