COMMISSION REGULATION (EC) No 321/2007

of 23 March 2007

amending Regulation (EEC) No 396/92 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 point 4 of the Annex to Commission Regulation (EEC) 396/92 [2] certain vehicles with a reinforced hydraulically-tippable flatbed have been classified within the Combined Nomenclature under CN Code 8704 31 91. According to the same point, the versatility and intricate construction of the tippable flatbed prevent this article from being considered as a dumper covered by CN Code 8704 10.

(2) In its judgment in case C-396/02 [3] the Court of Justice of the European Communities ruled that the fact that a flatbed vehicle is equipped with an intricate, versatile and precise tipping function does not exclude its classification as a dumper within the meaning of subheading 8704 10 of the Combined Nomenclature.

(3) Since the classification measure laid down in Regulation (EEC) No 396/92 is not in accordance with the said judgment of the Court, which found the point 4 to be incorrect, this Regulation should be amended insofar as it classifies hydraulically-tippable vehicles under CN code 8704 31. Therefore it is appropriate to delete the point 4 and revoke it as from 10 March 1992.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Point 4 of the Annex to Regulation (EEC) 396/92 is deleted.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 10 March 1992.

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

Done at Brussels, 23 March 2007.

For the Commission

László KOVÁCS

Member of the Commission

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[1] OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 129/2007 (OJ L 56, 23.2.2007, p. 1).

[2] OJ L 44, 20.2.1992, p. 9. Regulation as last amended by Commission Regulation (EC) No 705/2005 (OJ L 118, 5.5.2005, p. 18).

[3] Judgment of 16 September 2004, case C-396/02, DFDS, [2004] ECR I-8439.