COMMISSION IMPLEMENTING REGULATION (EU) 2023/2

of 21 December 2022

repealing Implementing Regulation (EU) No 761/2014 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) By Commission Implementing Regulation (EU) No 761/2014 ([2]), a surface-active preparation for washing the skin and the hair, presented in the form of a gel, and containing in similar proportions specific components for washing the skin and for washing the hair, presented in a plastic bottle containing 300 ml, put up for retail sale, was classified under code 3401 30 00 of the Combined Nomenclature (CN) annexed to Council Regulation (EEC) No 2658/87 ([3]), as 'a preparation for washing the skin, put up for retail sale'. The product is a preparation for washing both the hair, within the meaning of heading 3305 of the CN, and the skin, within the meaning of heading 3401. Given its objective characteristics, it was not possible to determine which component gives the product its essential character. Consequently, by virtue of general rule 3(c) for the interpretation of the CN, the product had to be classified under the heading occurring last in numerical order, that is, under heading 3401.

(2) During its 69th session in March 2022, the Harmonized System Committee (HSC) of the World Customs Organisation (WCO) approved classification opinion 3305.10/5 classifying a shampoo gel for hair and skin washing containing water, organic surface-active agents, glycerin, plant extracts, magnesium sulphate, zinc gluconate, butylene glycol, sodium chloride, citric acid, alcohol, fragrance, aromatic substances and excipients, packaged in a 250 ml bottle for retail sale. It was classified under HS heading 3305 as note 1(c) to Chapter 34 of the HS, which excludes 'shampoos, dentifrices, shaving creams and foams, or bath preparations, containing soap or other organic surface-active agents' from that Chapter and indicates classification to headings 3305, 3306 or 3307, was considered applicable for the classification of the product. Consequently, the product was classified under HS subheading 3305 10, which corresponds to CN code 3305 10 00, by application of general rules 1 and 6 for the interpretation of the HS, and note 1(c) to Chapter 34 of the HS.

(3) Given the identical or very similar characteristics of the product with the preparation described in Implementing Regulation (EU) No 761/2014, the tariff classification of the preparation as set out in the Annex to that Regulation is not in accordance with classification opinion 3305.10/5.

([1]) OJ L 269, 10.10.2013, p. 1.

([2]) Commission Implementing Regulation (EU) No 761/2014 of 10 July 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ L 207, 15.7.2014, p. 13).

([3]) 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).

(4) The Union is, by virtue of Council Decision 87/369/EEC ([4]), a contracting party of the International Convention on the Harmonized Commodity Description and Coding System. Classification opinions approved by the HSC are guidance instruments for Union tariff measures.

(5) With a view to securing uniformity in the interpretation and application of the Harmonized System at international level and considering that classification opinion 3305.10/5 is in conformity with the wording of note 1(c) to Chapter 34 of the CN and HS subheading 3305 10, it is necessary to repeal Implementing Regulation (EU) No 761/2014.

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

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 761/2014 is repealed.

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, 21 December 2022.

For the Commission
Gerassimos THOMAS
Director-General
Directorate-General for Taxation and Customs Union

([4]) Council Decision 87/369/EEC of 7 April 1987 concerning the conclusion of the International Convention on the Harmonized Commodity Description and Coding System and of the Protocol of Amendment thereto (OJ L 198, 20.7.1987, p. 1).