

COMMISSION IMPLEMENTING DECISION

of 22 April 2013

concerning the validity of certain binding tariff information

(notified under document C(2013) 2297)

(Only the German text is authentic)

(2013/190/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, and in particular Article 12(5)(a)(iii) and Article 248 thereof,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽²⁾, and in particular Article 9(1) thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature, the Commission adopted Regulation (EC) No 160/2007 of 15 February 2007 concerning the classification of certain goods in the Combined Nomenclature ⁽³⁾, classifying a product consisting of a clear, dark brown liquid with an aromatic, herb-like smell and a bitter, herbal taste, having an actual alcoholic strength of 43 % by volume and consisting of a mixture of 32 kinds of medicinal herb extracts with caramel extract, water and alcohol under CN code 2208 90 69.
- (2) This classification was adopted on the following reasons: 'Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Additional Note 1(b) to Chapter 30, and by the wording of CN codes 2208, 2208 90 and 2208 90 69. The product cannot be regarded as a medicament of Chapter 30. Neither the label, nor the accompanying user directions nor the packaging contains any information about the type and concentration of the active substance(s). Only the amount and type of plants or parts of plants used are mentioned. The conditions of Additional Note 1(b) to Chapter 30 are therefore not met. The product is a spirituous beverage of heading 2208, having the characteristics of a food supplement, designed to maintain general health or well-being, based on extracts from plants (see the Harmonised System Explanatory Note to heading 2208, third paragraph, item 16).'
- (3) Following publication of the above Regulation on 20 February 2007, all Binding Tariff Information (BTIs)

previously issued by Member States classifying the products concerned as medicaments of heading 3004 ceased to be valid.

- (4) Subsequently Member States issued BTIs for such products under heading 2208.
- (5) However, Austria has issued the BTI referred to in the Annex, classifying a similar product under CN Code 3004 90 00. In so doing, Austria has failed to take account of the fact that the classification regulation constitutes the application of a general rule to a particular case, and thus contains guidance on the interpretation of the rule which can be applied by the authority responsible for the classification of an identical or similar product.
- (6) The BTI referred to in the Annex concerns a product that consists of a transparent, yellowish-brown liquid with specific aromatic odour and a bitter, spicy-aromatic taste. The product has an actual alcoholic strength of 43,4 % by volume and consists of a mixture of Camphor and 26 other medicinal herb extracts with essential oils, a food colouring agent and alcohol. That product is sufficiently similar to the one covered by Regulation (EC) No 160/2007.
- (7) The conditions of Additional Note 1(b) to Chapter 30 are not met because the labelling is not precise regarding the quantitative composition. The product described in the BTI issued by Austria consists of an alcoholic mix of camphor with different herbal extracts. However, a clear rationale for mixing all these herbs together is absent. The product does not treat or prevent specific diseases or ailments. Some of the indications are related to pathophysiological conditions not clearly defined.
- (8) To ensure equality between operators and the uniform application of the CN, the BTI referred to in the Annex should cease to be valid. The customs administration which issued the information should therefore revoke it as soon as possible and notify the Commission to that effect.
- (9) According to Article 12(6) of Regulation (EEC) No 2913/92 the holder should be given, during a certain period of time, the possibility of invoking binding tariff information which has ceased to be valid subject to the conditions laid down in Article 14(1) of Regulation (EEC) No 2454/93.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

⁽³⁾ OJ L 51, 20.2.2007, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

1. The binding tariff information referred to in column 1 of the table set out in the Annex, which has been issued by the customs authorities specified in column 2 for the tariff classification specified in column 3 shall cease to be valid.

2. The customs authorities specified in column 2 of the table set out in the Annex shall revoke the binding tariff information referred to in column 1 at the earliest possible date and in any case not later than 10 days from the notification of this Decision.

3. The customs authority which revokes the binding tariff information shall notify the Commission thereof.

Article 2

The binding tariff information referred to in the Annex may continue to be invoked under Article 12(6) of Regulation (EEC) No 2913/92 for a period of six months provided that the conditions laid down in Article 14(1) of Regulation (EEC) No 2454/93 are met.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels, 22 April 2013.

For the Commission

Algirdas ŠEMETA

Member of the Commission

ANNEX

Binding tariff information Reference No	Customs authority	Tariff classification
1	2	3
AT 2009/000788	Zollamt Wien	30049000