

## COMMISSION IMPLEMENTING REGULATION (EU) No 698/2013

of 19 July 2013

amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

THE EUROPEAN COMMISSION,

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

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<sup>(1)</sup>, and in particular Article 9(1)(a) thereof,

Whereas:

- (1) Regulation (EEC) No 2658/87 established a nomenclature of goods, hereinafter referred to as the Combined Nomenclature, which is set out in Annex I to this Regulation.
- (2) The judgment of the Court of Justice of 17 December 2009 in Joined Cases C-410/08 to C-412/08 ('Swiss Caps') presented a new paradigm for the classification of 'food supplements'.
- (3) On the one hand, paragraph 29 of this judgment states that *'the intended use of an article may constitute an objective criterion for the classification if it is inherent to the article'*. On the other hand, paragraph 32 states that the presentation in capsules is *'a decisive factor which reveals their function as a food supplement, since it determines the dosage of the edible preparations, the way in which they are absorbed and the place where they are supposed to become active'*.
- (4) Consequently, pursuant to the Court's ruling, products that are used as food supplements to maintain general health or well-being and that are presented in capsules are classified under heading 2106 as *'food preparations not elsewhere specified or included'*.
- (5) However, tariff classification problems could occur in case of the classification of products with the same

composition, the same purpose, containing a measured dose, but presented in tablets, pastilles or pills.

- (6) Therefore, in order to ensure a consistent interpretation of the Combined Nomenclature, the classification of food preparations presented in measured doses, such as capsules, tablets, pastilles and pills and which are intended for use as food supplements, should take into account the criteria developed in Joined Cases C-410/08 to C-412/08 ('Swiss Caps').
- (7) Consequently, a new Additional Note should be inserted in Chapter 21 of the Combined Nomenclature to ensure a uniform interpretation throughout the territory of the Union.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

## Article 1

In Chapter 21 of the Combined Nomenclature set out in Annex I to Regulation (EEC) No 2658/87, the following Additional Note 5 is inserted:

- '5. Other food preparations presented in measured doses, such as, capsules, tablets, pastilles and pills, and which are intended for use as food supplements are to be classified under heading 2106, unless elsewhere specified or included.'

## 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, 19 July 2013.

For the Commission,  
On behalf of the President,  
Algirdas ŠEMETA  
Member of the Commission

<sup>(1)</sup> OJ L 256, 7.9.1987, p. 1.