Commission Implementing Regulation (EU) 2019/368 of 4 March 2019 repealing Implementing Regulation (EU) No 444/2013 concerning the classification of certain goods in the Combined Nomenclature

COMMISSION IMPLEMENTING REGULATION (EU) 2019/368

of 4 March 2019

repealing Implementing Regulation (EU) No 444/2013 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) In order to ensure uniform application of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87[(2)], it is necessary to adopt measures concerning the classification of certain goods.

(2) By Implementing Regulation (EU) No 444/2013[(3)], the Commission classified a product obtained from defatted soya beans after the extraction of the oil, further extracted with water and ethanol to remove soluble carbohydrates and minerals ('product concerned') under subheading 2309 90 31 of the Combined Nomenclature as 'other preparations of a kind used in animal feeding'.

(3) As regards starch in products of heading 2309, it has to be ascertained whether any starch is present by applying a qualitative test (iodine-starch reaction; microscopic analysis). Once the presence of starch has been verified, the starch content of any product of heading 2309 is determined by using the polarimetric method (Ewers method) as laid down in Part L of Annex III of Commission Regulation (EC) No 152/2009[(4)]. Where the polarimetric method is not applicable, e.g. due to the presence in significant amounts of specific materials listed in Article 1 of Commission Regulation (EC) No 121/2008[(5)], the enzymatic analytical method laid down in the Annex to that Regulation is to be applied.

(4) At the time of adoption of Implementing Regulation (EU) No 444/2013, the only analytical method to be applied to the product concerned was the polarimetric method.

(5) By its judgment in case C-144/15 ('Customs Support Holland BV')[(6)], the Court ruled that a soya protein concentrate which has been made suitable for use as feed must be classified in heading 2309. The soya protein concentrate at issue in the main proceedings in that case is described as being obtained from dehulled, ground and steamed soya beans which first undergo an oil-extraction process, after which what remains is so-called soya meal. This meal is then treated with ethanol and water to

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/368. (See end of Document for details)*

extract the residual fat, reduce the content of components other than proteins, primarily carbohydrates or food fibre, and eliminate certain harmful substances. The soya protein concentrate obtained in this way does not contain any trace of the ethanol used and consists, inter alia, of proteins and starch.

(6) The product at issue in the main proceedings in case C-144/15 and the product concerned are sufficiently similar as both are feed products based on soya products, which are to be classified in heading 2309. In both cases, the products are not a residue of heading 2304 directly resulting from the extraction of soya-bean oil but result from a process whereby the vegetable material from which the products have been derived has lost its essential characteristics.

(7) Commission Implementing Regulation (EU) 2017/68[7] added 'soya products' to the list of feed materials set out in Article 1 of Regulation (EC) No 121/2008 in respect of which the starch content of preparations of a kind used in animal feeding (heading 2309) is to be determined using the enzymatic analytical method.

(8) Therefore, in the interest of legal certainty as regards the tariff classification of products of heading 2309 based on soya products and in order to ensure the uniform application of the Combined Nomenclature within the Union, Implementing Regulation (EU) No 444/2013 should be repealed.

(9) It is appropriate to provide that binding tariff information issued on the basis of Implementing Regulation (EU) No 444/2013 in respect of the goods concerned by this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 34(9) of Regulation (EU) No 952/2013. That period should be set at three months.

(10) 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 444/2013 is repealed.

Article 2

Binding tariff information issued on the basis of Implementing Regulation (EU) No 444/2013 in respect of the goods concerned by this Regulation may continue to be invoked in accordance with Article 34(9) of Regulation (EU) No 952/2013 for a period of three months from the date of entry into force of this Regulation.

Article 3

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.