Commission Implementing Regulation (EU) 2018/125 of 24 January 2018 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

COMMISSION IMPLEMENTING REGULATION (EU) 2018/125

of 24 January 2018

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[(1)], and in particular Article 9(1)(e) 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 that Regulation.

(2) Additional note 2(f) to Chapter 27 of the Combined Nomenclature defines the family of products referred to as 'fuel oils'. These products are classified either in subheadings 2710 19 51 to 2710 19 68 or in subheadings 2710 20 31 to 2710 20 39, depending on their physico-chemical properties and characteristics.

(3) One such physico-chemical characteristic is the saponification number. 'Fuel oils' of additional note 2(f), first paragraph, first indent shall have a saponification number of less than 4. This rule applies to products in subheadings 2710 19 51 to 2710 19 68. However, an exception is made for products in subheadings 2710 20 31 to 2710 20 39 (products containing fatty acid mono-alkyl esters or 'FAMAE') where the saponification number exceeds 4. That exception is currently set out in a footnote to additional note 2(f).

(4) The exception currently in a footnote to additional note 2(f) needs to be extended to take account of developments in technology, in particular the development of renewable fuels containing animal or vegetable fats or oils. It also needs to be extended to tackle the potential for the counterfeiting of diesel fuels that is generally achieved by adding small quantities of vegetable or animal fats or oils to gas oils in order to change their classification from gas oils (which are subject to excise duties) to other products (which are not subject to excise duties). In particular, the addition of vegetable oils serves to change the distillation parameter and to obtain a saponification number equal to or exceeding 4. The addition of small quantities of such substances does not change their essential character as fuel oils from a physico-chemical point of view. They are still used as fuel oils. Removing the requirement in these cases for the saponification number to

be less than 4 will therefore ensure that such products are classified correctly as fuel oils, not as other products.

(5) The current exception for products containing FAMAE also needs to be extended so that it covers products where the saponification number equals 4, not just products where it exceeds 4.

(6) Additional note 2(f) to Chapter 27 should be amended accordingly to ensure its uniform interpretation throughout the Union.

(7) Regulation (EEC) No 2658/87 should therefore be amended accordingly.

(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 27 of the Combined Nomenclature set out in Annex I to Regulation (EEC) No 2658/87, additional note 2(f) is amended as follows:

(1) in the first paragraph, the first indent, including the footnote, is replaced by the following:

— not exceeding that shown in line I of the following table when the sulphated ashes content is less than 1 % by the ISO 3987 method and the saponification number is less than 4 by the ISO 6293-1 or 6293-2 method (except where the product contains one or more bio-components, in which case the requirement in this indent for the saponification number to be less than 4 does not apply),;

(2) the following fourth paragraph is inserted:

The term “bio-components” means animal or vegetable fats, animal or vegetable oils, or mono-alkyl esters of fatty acids (FAMAE)..

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, 24 January 2018.

For the Commission

The President

Jean-Claude JUNCKER