Commission Implementing Regulation (EU) No 388/2014 of 10 April 2014 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) No 388/2014

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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)(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 that Regulation.

(2) The classification of frozen and salted fillets of cod (*Gadus morhua, Gadus ogac, Gadus macrocephalus*) under subheadings 0304 71 10 and 0304 71 90 (frozen fillets) or under subheadings 0305 32 11 and 0305 32 19 (salted fillets) depends to a large extent on the salt content in the product.

(3) Salted cod, commonly known as '*salt cod*' or '*clipfish*', is a traditional product with a total salt content by weight of 12 % or more which is fit for human consumption without further industrial processing. In that case, the salt is intended to penetrate the fish meat to give it a long shelf life.

(4) Cod fillets that have been only lightly salted (usually of a total salt content by weight of around 2 % but in any case less than 12 %) present different objective characteristics in so far as the actual and lasting preservation depends essentially upon an additional external process, such as freezing.

(5) In order to ensure a consistent application of the Combined Nomenclature, the classification of frozen and salted cod fillets under subheadings 0304 71 10 and 0304 71 90 or subheadings 0305 32 11 and 0305 32 19 should therefore depend on the process which ensures the actual preservation of the product. This is consistent with the case law of the Court of Justice which used the same criterion for the classification of slightly dried and slightly smoked meat[(2)].

(6) Cod that has been only lightly salted should therefore be classified under subheadings 0304 71 10 and 0304 71 90 in so far as freezing is necessary to avoid degeneration of the product. Where, on the contrary, if it is the salt that ensures the preservation of the

product, the cod fillets should be classified under subheadings 0305 32 11 and 0305 32 19.

(7) An Additional note should therefore be inserted in Chapter 3 of Part Two of the Combined Nomenclature to ensure its uniform interpretation throughout the Union.

(8) Annex I to Regulation (EEC) No 2658/87 should therefore be amended accordingly.

(9) 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 3 of Part Two of the Combined Nomenclature set out in Annex I to Regulation (EEC) No 2658/87 the following Additional note 1 is inserted:

1. For the purposes of subheadings 0305 32 11 and 0305 32 19, cod fillets (*Gadus morhua, Gadus ogac, Gadus macrocephalus*) having a total salt content by weight of 12 % or more which are fit for human consumption without further industrial processing, are considered to be salted fish.

However, frozen cod fillets which have a total salt content by weight of less than 12 % are to be classified under subheadings 0304 71 10 and 0304 71 90 in so far as the actual and lasting preservation depends essentially upon freezing.

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, 10 April 2014.

For the Commission,

On behalf of the President,

Algirdas ŠEMETA

Member of the Commission