Commission Implementing Regulation (EU) No 620/2011 of 24 June 2011 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 620/2011

of 24 June 2011

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)(d) thereof,

Whereas:

(1) Further to a complaint brought in the World Trade Organisation (WTO) by certain countries, a WTO panel report adopted by the WTO Dispute Settlement Body on 21 September 2010[(2)] concluded that the European Union had acted, inter alia, inconsistently with the General Agreement on Tariffs and Trade 1994 (GATT 1994) by according tariff treatment less favourable than that provided in the tariff bindings with regard to certain information technology products made by the European Union pursuant to the Information Technology Agreement (ITA). Annex I to Regulation (EEC) No 2658/87 should be amended in order to bring it into conformity with the international obligations of the European Union under the GATT 1994. The required amendments are in accordance with Council Decision 97/359/EC of 24 March 1997 concerning the elimination of duties on information technology products[(3)], which approved the ITA.

(2) Following the WTO Panel Report, digital copying should not constitute photocopying under the GATT 1994 and copying speed should not be the sole classification criterion. Subheading 8443 31 of Annex I to Regulation (EEC) No 2658/87 and the corresponding duty rate should therefore be amended accordingly.

(3) The wording of subheading 8528 71 15 of the CN (previously 8528 71 13) should be amended in order to include set-top boxes which, besides the function of communication, may be capable of performing the additional functions of recording or reproducing, provided that, as a result, they do not lose the essential character of a set-top box which has a communication function.

(4) This regulation should enter into force on 1 July 2011 at the end of the reasonable period of time agreed by the European Union with the complaining parties for the European Union to bring itself into conformity with its WTO obligations.

(5) As recommendations in reports adopted by the WTO's Dispute Settlement Body only have prospective effect, this regulation should not have retroactive effects nor

provide interpretative guidance on a retroactive basis. Since it cannot operate to provide interpretative guidance for classification of goods which have been released for free circulation prior to 1 July 2011 it should not serve as a basis for the reimbursement of any duties paid prior to that date.

(6) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Part Two, Section XVI of Annex I to Regulation (EEC) No 2658/87 is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 July 2011.

It shall have neither retroactive effect nor provide interpretative guidance on a retroactive basis.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 June 2011.

For the Commission, On behalf of the President,

Algirdas ŠEMETA

Member of the Commission

ANNEX

Part Two, Section XVI of Annex I to Regulation (EEC) No 2658/87 is amended as follows:

(1) Chapter 84 is amended as follows:

(a) the row for CN code 8443 31 10 is deleted;

(b) between the row for CN code 8443 31 10 and the row for CN code 8443 31 91‘– – – Other’ is deleted;

(c) the following row for CN code 8443 31 20 is inserted:

8443 31 20	– – – Machines having digital copying as principal function, where the copying is performed by scanning the original and printing the copies by means of an electrostatic print engine …	2,2 %	p/st

(d) the following row for CN code 8443 31 80 is inserted:

8443 31 80	– – – Other …	Free	p/st

(e) the row for CN code 8443 31 91 is deleted;

(f) the row for CN code 8443 31 99 is deleted;

(2) Chapter 85 is amended as follows:

(a) the row for CN code 8528 71 13 is deleted;

(b) the following row for CN code 8528 71 15 is inserted:

8528 71 15	– – – – Apparatus with a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange,	Free	p/st