Commission Regulation (EU) No 211/2010 of 11 March 2010 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

COMMISSION REGULATION (EU) No 211/2010

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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) Certain products containing nicotine and intended to assist smokers to stop smoking have been classified by different customs authorities of the Member States under heading 2106, 3004 or 3824 of the Combined Nomenclature (CN), laid down in Annex I to Regulation (EEC) No 2658/87.

(2) Commission Regulation (EEC) No 3565/88 of 16 November 1988 concerning the classification of certain goods in the Combined Nomenclature[(2)] has classified chewing-gum consisting of nicotine bound to an ion-exchange resin to simulate the taste of tobacco smoke whose use is suggested to persons wishing to give up smoking as 'food preparations' of subheading 2106 90 of the CN. The Court of Justice of the European Communities in its order of 19 January 2005[(3)] has ruled that certain nicotine patches intended to help their users to stop smoking are to be classified as 'medicaments' of heading 3004 of the CN.

(3) In order to ensure uniform application of the Combined Nomenclature in respect of goods and products to assist smokers to stop smoking, it is necessary to add an additional note 2 to Chapter 30 of the CN.

(4) Products intended to assist smokers to stop smoking, such as tablets, chewing gum or other preparations, do not allow a gradual and continuous release of nicotine throughout the day and cannot be seen as presenting prophylactic and therapeutic characteristics. It is therefore appropriate to provide in the additional note that Chapter 30 on Pharmaceutical products does not cover products, such as tablets, chewing gum or other preparations, intended to assist smokers to stop smoking which fall under heading 2106 or 3824, with the exclusion of nicotine patches.

(5) Nicotine patches present prophylactic and therapeutic characteristics because of their direct application on the skin allowing a gradual and continuous release of nicotine throughout the day. Given their prophylactic and therapeutic characteristics, nicotine

patches are classified in Chapter 30 and therefore have to be excluded from the additional note.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

In part Two, Section VI, Chapter 30 of Annex I to Regulation (EEC) No 2658/87, the following Additional note 2 is inserted:

2. *This Chapter does not cover products, such as tablets, chewing gum or other preparations, intended to assist smokers to stop smoking which fall within heading 2106 or 3824, with the exclusion of nicotine patches.*

Article 2

This Regulation shall enter into force on the 20th day following 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, 11 March 2010.

For the Commission, On behalf of the President,

Algirdas ŠEMETA

Member of the Commission