Commission Regulation (EC) No 360/2008 of 18 April 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

COMMISSION REGULATION (EC) No 360/2008

of 18 April 2008

amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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) For the classification of fruit juices within the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, a distinction is to be made between, on the one hand, fruit juices containing added sugar of heading 2009 and, on the other hand, preparations for the manufacture of beverages including flavoured sugar syrups of heading 2106.

(2) According to the Harmonised System Explanatory Note to heading 2009, amongst other additives, sugar can be added to fruit juices, provided that they retain their original character.

(3) Consequently fruit juices or mixtures of fruit juices, whether or not containing added sugar, are to be classified in the subheadings of heading 2009 of the Combined Nomenclature, unless they have lost their original character of fruit juice. In the last case they have to be excluded from classification under heading 2009 and have to be classified under heading 2106.

(4) In accordance with Additional Note 5(b) to Chapter 20 of the Combined Nomenclature, fruit juices to which so much sugar has been added that they contain less than 50 % by weight of fruit juice have lost their natural state of fruit juice and can therefore not be classified under heading 2009. The added sugar content is to be determined according to their Brix value which depends, amongst others, on the sugar content of these products.

(5) Problems have risen with respect to the classification of concentrated natural fruit juices. When the added sugar content of those products is calculated as set out in Additional Notes 2 and 5, it may appear to be so high that products contain less than 50 % by weight of fruit juices so that they have to be classified under heading 2106. This result is unsatisfactory as it is based on a fictive calculation of the added sugar content while in reality no sugar has been added and the high added sugar content results from the concentration.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 360/2008. (See end of Document for details)*

(6) It is therefore appropriate to reword point (b) of Additional Note 5 to Chapter 20 and to add a new provision to that point, clearly stating that for concentrated natural fruit juices the criterion of 50 % by weight of fruit juices does not apply so that those juices are not to be excluded from heading 2009 on the basis of a calculated addition of sugar. It should also be clearly stated that Additional Note 5 is to be applied on the products as presented.

(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

Additional note 5 to Chapter 20 of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87 is replaced by the following text:

5. The following shall be applied to the products as they are presented:

(a) the added sugar content of products of heading 2009 corresponds to the "sugar content" less the figures given hereunder, according to the kind of juice concerned:
- — lemon or tomato juice: 3,
- — grape juice: 15,
- — other fruit or vegetable juices, including mixtures of juices: 13.

(b) the fruit juices with added sugar, of a Brix value not exceeding 67 and containing less than 50 % by weight of fruit juice lose their original character of fruit juices of heading 2009.

Point (b) shall not apply to concentrated natural fruit juices. Consequently, concentrated natural fruit juices are not excluded from heading 2009.

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, 18 April 2008.

For the Commission

László KOVÁCS

Member of the Commission