Commission Regulation (EC) No 949/2006 of 27 June 2006 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 949/2006

of 27 June 2006

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) By Commission Regulation (EC) No 535/94 of 9 March 1994 amending Annex I to Council Regulation (EEC) No 2658/87 on the Tariff and Statistical Nomenclature and on the Common Customs Tariff[(2)] Additional Note 8 was inserted in Chapter 2 of the Combined Nomenclature in order to clarify the classification of salted meat and edible meat offal falling under CN Code 0210 (meats and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat and meat offal). In 1995 this Additional Note was renumbered Additional Note 7.

(2) Additional Note 7 was amended by Commission Regulation (EC) No 1871/2003 of 23 October 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the Tariff and Statistical Nomenclature and on the Common Customs Tariff[(3)] to clarify, in the light of case-law of the European Court of Justice, that the salting in the meaning of heading 0210 is to ensure the long-term preservation.

(3) The Commission adopted in 2002 Regulation (EC) No 1223/2002 of 8 July 2002 concerning the classification of certain goods in the Combined Nomenclature[(4)] pursuant to which boneless chicken cuts, frozen and impregnated with salt in all parts, having a salt content by weight of 1,2 to 1,9 %, are to be classified under CN code 0207 14 10.

(4) Further to a challenge brought in the WTO by certain exporting countries to Regulation (EC) No 1223/2002, a WTO Panel and the WTO Appellate Body concluded that frozen boneless chicken cuts with a salt content of 1,2 to 3 % are covered by the tariff commitment under heading 0210 of the EC schedule.

(5) The general matter of the interpretation of heading 0210 and the classification of these goods has been raised by the European Community in the appropriate bodies of the World Customs Organisation.

(6) In order to bring Community law into conformity with the Community's international obligations as they currently stand, as interpreted by the competent organs of the WTO, Additional Note 7 to Chapter 2 needs to be amended in respect of meat and meat offal falling under subheading 0210 99. This is without prejudice to the eventual result of any decision taken in this respect by the appropriate bodies of the World Customs Organisation.

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

(8) It is appropriate that Regulation (EC) No 1223/2002, classifying boneless chicken cuts, frozen and impregnated with salt in all parts, having a salt content by weight of 1,2 to 1,9 %, in CN code 0207 14 10, ceases to be valid as from the entry into force of the present regulation and should therefore be repealed.

(9) This regulation should enter into force on 27 June 2006 at the end of the reasonable period of time granted by the WTO for the Community to bring itself into conformity. Recourse to the DSU is not subject to time limits. The recommendations in reports adopted by the DSB only have prospective effect. Consequently, this regulation cannot 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 27 June 2006 it cannot serve as a basis for the reimbursement of any duties paid prior to that date.

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

HAS ADOPTED THIS REGULATION:

Article 1

Additional Note 7 to Chapter 2 of the Combined Nomenclature set out in Annex I to Regulation (EC) No 2658/87 is replaced by the following:

> For the purposes of subheadings 0210 11 to 0210 93, the terms "meat and edible meat offal, salted, in brine", means meat and edible meat offal deeply and homogeneously impregnated with salt in all parts and having a total salt content by weight of 1,2 % or more, provided that it is the salting which ensures the long-term preservation. For the purposes of subheading 0210 99 the terms "meat and edible meat offal, salted, in brine" mean meat and edible meat offal deeply and homogeneously impregnated with salt in all parts and having a total salt content by weight of 1,2 % or more.

Article 2

Regulation (EC) No 1223/2002 is repealed with effect from the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on 27 June 2006. 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.