

COMMISSION REGULATION (EEC) No 313/90

of 5 February 1990

on the classification of goods within code 2710 00 69 of the combined nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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⁾, as last amended by Regulation (EEC) No 3845/89⁽²⁾, and in particular Article 9 thereof,

Whereas to ensure uniform application of the combined nomenclature it is appropriate to adopt provisions concerning the classification of a gas oil having a flash-point equal to, or above 55 °C which is intended to be subjected to a process of vacuum distillation with a view to increasing the flash-point in order to ensure that the flash-point of the finished product, resulting from transportation, after its entry into free circulation, in tanks which may be contaminated or following the addition of kerosene to increase its fluidity, does not fall below 55 °C which is the minimum generally required for marketing the product as a gas oil;

Whereas the combined nomenclature annexed to Regulation (EEC) No 2658/87 refers in code 2710 00 61 to gas oil for 'undergoing a specific process' together with a footnote reading as follows: 'Entry under this subheading is subject to conditions to be determined by the competent authorities' and in code 2710 00 69 to gas oils 'for other purposes'; whereas the said codes come into consideration for classification of the gas oil in question;

Whereas Additional Note 4 to Chapter 27 lists the operations to which the term 'specific process' can be taken to apply; whereas subparagraph (a) of that note reads as follows: 'vacuum distillation'; whereas consequently the classification of the gas oil in question in CN code 2710 00 61 or CN code 2710 00 69 depends on whether or not the process referred to at the first recital may be regarded as a 'specific process' for the purposes of the aforementioned Note 4 (a);

Whereas, although Note 4 (a) is limited to mentioning the process 'vacuum distillation' and whereas the Explanatory Note to the combined nomenclature concerning this

Note 4 (a) states that 'Vacuum distillation means distillation under a pressure not exceeding 400 mbar, measured at the head of the column', the structure and content of Chapter 27 indicate that an operation may be regarded as a 'specific process', i.e. give entitlement to exemption from customs duty, only if it appreciably changes the characteristics of the basic product;

Whereas the process of vacuum distillation in question does not have the effect of appreciably changing the characteristics of the basic product; whereas, in reality, it does not appear to be justified either by technical or economic reasons, if the flash-point of the basic imported product is higher than that generally required for marketing the product as gas oil; whereas, in effect, the gas oil in question may be used as diesel fuel or as light heating fuel before as well as after the process indicated at the first recital; whereas on the other hand in so far as the existence of the abovementioned explanatory note is concerned, although it technically incorporates the legal text, it is equally established that the latter shall be interpreted and applied within the constraints deriving from the existence of the footnote establishing 'end use' and therefore from Community legislation in this matter;

Whereas the process to which the gas oil is submitted cannot be considered a specific process within the meaning of the aforementioned Note 4 (a); whereas, consequently, this gas oil is classified in code 2710 00 69;

Whereas the Nomenclature Committee has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

A gas oil, having a flash-point equal to or above 55 °C for undergoing a process of vacuum distillation in order to raise the flash-point so as to ensure that, resulting from its transportation, after its entry into free circulation, in tanks which may be contaminated or following the addition of kerosene to increase its fluidity, the flash-point of the finished product does not fall below 55 °C which is the

⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽²⁾ OJ No L 374, 22. 12. 1989, p. 2.

minimum generally required for marketing the product as a gas oil, shall be classified in the combined nomenclature, as follows:

- Heavy oils :
- — Gas oils :
- 2710 00 69 — — — For other purposes'.

Article 2

This Regulation shall enter into force on the 21st day after its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 5 February 1990.

For the Commission
Christiane SCRIVENER
Member of the Commission
