



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Deputy Director-General, in charge of Directorates G, H and I

Brussels, 18 May 2021

AGRI.DDG3/G1/Art
Ares(2021)33058771 (b)

By e-mail only

[Art 4.1 (b) - Privacy]

Thank you for your questions of 27 April 2021 on the implementation of the Directive (EU) 2019/633 on unfair trading practices ('the Directive').

In your email you raise a question regarding the definition of agricultural and food products as provided for in Article 2 (1) of the UTP Directive. You inquire in particular about products which fall under Annex I of the Treaty on the Functioning of the European Union (TFEU) and you raise questions with regard to 'dried flowers' and trees that are cut ('Christmas trees').

We would like to point out that for the definition as an agricultural and food product within the meaning of Article 2(1) of the Directive, the product has to be either a product listed in Annex I TFEU or a product not listed, but processed for use as food using products listed in Annex I. This means that for products falling under Annex I, it is not necessary to assess whether they are processed for the use as food.

For the example of dried flowers we refer you to Annex I TFEU which refers to the entire Chapter 6 of the nomenclature with the title 'Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage'. CN code 0603 of the Combined Nomenclature covers "cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, **dried**, dyed, bleached, impregnated or otherwise prepared". This indicates that dried flowers are covered by Annex I.

Dried flowers to be used in a potpourri could likewise fall under Article 2 of the Directive, as Annex I covers dried flowers "to be used for 'ornamental purposes'".

For live trees which are cut, Chapter 6 of the Combined Nomenclature specifies that 'subject to the second part of heading 0601, this chapter covers only **live trees** and goods (including seedling vegetables) of a kind commonly supplied by nursery gardeners or florists for planting or for ornamental use'. This would indicate that trees without roots are not considered such live trees. 0604 of the Combined Nomenclature on foliage and branches would not cover an entire tree.

[Art 4.1 (b) - Privacy]

Danish Competition and Consumer Authority

[Art 4.1 (b) - Privacy]

We would like to underline, however, that a binding interpretation on the classification of a product can be obtained via the national customs authorities. There is a protocol on how to obtain a binding tariff information and you can find more information on the website of DG TAXUD¹.

The present opinion is provided on the basis of the facts as set out in your email of 27 April 2021 and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Please be advised that we intend to share your questions and our replies with other Member States via the CIRCABC system so as to facilitate the consistent transposition of the Directive. Doing so, we will redact any personal information.

Yours sincerely,

(e-signed)

Michael SCANNELL

c.c.: [Art 4.1 (b) - Privacy]
Danish Competition and Consumer Authority

¹ [Binding Tariff Information \(BTI\) | Taxation and Customs Union \(europa.eu\)](https://ec.europa.eu/taxation_customs/binding-tariff-information/)