COMMISSION REGULATION (EC) No 1143/2008

of 13 November 2008

concerning the classification of certain goods in the Combined Nomenclature

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) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column 1 of the table set out in the Annex should be classified under the CN code indicated in column 2, by virtue of the reasons set out in column 3 of that table.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column 2 of that table.

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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, 13 November 2008.

For the Commission
László KOVÁCS
Member of the Commission

[1] OJ L 256, 7.9.1987, p. 1.

[2] OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A set put up for retail sale consisting of: — a device with electronic components having the shape of a cigarette; — two cartridges; — two rechargeable lithium batteries; and — a battery charger. The device consists of a stainless steel shell with a microelectronic circuit, a high-sensibility sensor, a chamber for batteries and a chamber for placing a cartridge. Each cartridge is composed of an inhaler and an ampoule. The ampoule contains nicotine, a smell compound for cigarettes and ordinary food additives. Both the inhaler and the ampoule are disposable. The electronic circuit, when activated by the inhalation, starts the atomisation of the nicotine diluent and the creation of atomised 'smoke' to be inhaled by the smoker.	8543 70 90	Classification is determined by General Rules 1, 3(b) and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 8543, 8543 70 and 8543 70 90. The component that gives the set its essential character is the electronic device because it is the electronic circuit that triggers the atomisation of the nicotine diluent and the creation of atomised 'smoke' to be inhaled by the smoker. Classification under heading 8424 is excluded as the device is not a mechanical appliance for projecting, dispersing or spraying liquids. The electronic device is considered to be an electrical apparatus, having an individual function, not specified or included elsewhere in Chapter 85. By virtue of General Rule 3(b), the set is therefore to be classified under heading 8543 (see also the Harmonised System Explanatory Notes to heading 8543, third paragraph).