COMMISSION REGULATION (EU) No 428/2011

of 27 April 2011

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 provisions of the Union, 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 3 months, continue to be invoked by the holder, pursuant to Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

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

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 3 months pursuant to 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, 27 April 2011.

For the Commission,
On behalf of the President,
Algirdas ŠEMETA
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)
1. A battery-powered apparatus in the form of a cylinder with dimensions of approximately 21 cm in height with a diameter of 9 cm and a weight of approximately 310 g (so-called 'aerosol dispenser') specifically designed to be used together with an interchangeable aerosol can. The apparatus comprises: — an electromechanical system for the activation of the spraying mechanism of the aerosol can, — a sensor and buttons for activation of the electromechanical system, and — a plastic housing with an aperture enabling the dispersal of aerosol when the electromechanical system is activated. The apparatus, when equipped with an aerosol can, is capable of freshening air within a limited space inside a building by dispersing portions of fragrance, either when the sensor detects the presence of a person, or at regular pre-set intervals.	8509 80 00	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 3(b) to Chapter 85 and by the wording of CN codes 8509 and 8509 80 00. Given that the apparatus itself does not project, disperse or spray but merely activates the spraying mechanism of the aerosol can, classification under heading 8424 is excluded. The apparatus is an electromechanical appliance with a self-contained motor of heading 8509 of the kind commonly used for domestic purposes. It is therefore to be classified under CN code 8509 80 00.
2. A set put up for retail sale consisting of: — an electromechanical appliance (so-called 'aerosol dispenser'), and — an interchangeable aerosol can. The 'aerosol dispenser' is a battery-powered apparatus in the form of a cylinder with dimensions of approximately 21 cm in height with a diameter of 9 cm and a weight of approximately 310 g comprising: — an electromechanical system for the activation of the spraying mechanism of the aerosol can, — a sensor and buttons for activation of the electromechanical system, and — a plastic housing with an aperture enabling the dispersal of aerosol when the electromechanical system is activated. The aerosol can contains a prepared room deodoriser, perfumed, of CN code 3307 49 00. The 'aerosol dispenser', when equipped with an aerosol can, is capable of freshening air within a limited space inside a building by dispersing portions of fragrance, either when the sensor detects the presence of a person, or at regular pre-set intervals. The aerosol can is consumable goods which can be replaced when empty by another aerosol can of the same dimensions.	8509 80 00	Classification is determined by General Rules 1, 3(b) and 6 for the interpretation of the Combined Nomenclature, Note 3(b) to Chapter 85 and by the wording of CN codes 8509 and 8509 80 00. The component that gives the set its essential character is the aerosol dispenser because it is permanently used, whereas the aerosol can has to be replaced when empty. Given that the apparatus itself does not project, disperse or spray but merely activates the spraying mechanism of the aerosol can, classification under heading 8424 is excluded. The apparatus is an electromechanical appliance with a self-contained motor of heading 8509 of the kind commonly used for domestic purposes. The set is therefore to be classified under CN code 8509 80 00.