COMMISSION IMPLEMENTING REGULATION (EU) 2016/664

of 26 April 2016

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 issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 12(6) of Council Regulation (EEC) No 2913/92 ([2]). That period should be set at three months.

(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 which does not conform to this Regulation may continue to be invoked in accordance with Article 12(6) of Regulation (EEC) No 2913/92 for a period of three months from the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

([1]) OJ L 256, 7.9.1987, p. 1.
([2]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

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

Done at Brussels, 26 April 2016.

For the Commission,
On behalf of the President,
Stephen QUEST
Director-General for Taxation and Customs Union

ANNEX

Description of the goods	Classification (CN-code)	Reasons
(1)	(2)	(3)
A portable battery-operated apparatus for capturing and recording video images, with dimensions of approximately 10 × 5 × 2 cm, of a weight of approximately 120 g, comprising: — camera lens, — an LCD display with a diagonal measurement of the screen of approximately 5 cm (2 inches), — a microphone, — a loudspeaker, — a processor, — an internal Li-ion battery, — an internal memory with a capacity of up to 8 GB, — a built-in ('flip out') USB connector, — an HDMI output, — a built-in CMOS image sensor. The apparatus offers a 2-step digital zoom function. It is capable of recording video images at a resolution of 1 280 × 720 pixels at a rate of 30 frames per second for a maximum of 2 hours. It is not capable of capturing still images. Video images recorded by the apparatus can be either transferred to an automatic data-processing (ADP) machine via the in-built USB interface or to a television set via a micro HDMI cable. Upon presentation, video files can also be transferred to the apparatus from an ADP machine via the in-built USB interface. The apparatus can also be used as a removable storage device.	8525 80 99	Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 8525, 8525 80 and 8525 80 99. As the apparatus is only capable of recording video images, classification as a digital camera under CN code 8525 80 30 is excluded. The fact that the apparatus has no optical zoom function does not prevent its classification as video camera recorder. (see Case C-178/14, *Vario Tek*, ECLI:EU:C:2015:152, para. 17-29). Given its objective characteristics, the apparatus is a video camera recorder. Video files can be transferred and stored to the apparatus from an ADP machine and the apparatus is capable of performing this function autonomously without any modifications. Therefore, the apparatus is considered to be able to record video files from sources other than the incorporated television camera. (See Case C-178/14, *Vario Tek*, ECLI:EU:C:2015:152, para. 30-39). Classification under CN code 8525 80 91 as video camera recorders only able to record sound and images taken by the television camera is consequently excluded. It is therefore to be classified under CN code 8525 80 99 as other video camera recorders.