COMMISSION IMPLEMENTING REGULATION (EU) 2018/603

of 12 April 2018

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 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([1]), and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 ([2]), 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 34(9) of Regulation (EU) No 952/2013. 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 34(9) of Regulation (EU) No 952/2013 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 269, 10.10.2013, p. 1.
([2]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

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

Done at Brussels, 12 April 2018.

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

ANNEX

Description of the goods	Classification (CN-code)	Reasons
(1)	(2)	(3)
An inflatable cushion of plastics (so-called 'wheelchair cushion'), measuring approximately 40 × 40 cm, consisting of two rectangular interconnected chambers filled with air. Each chamber contains an air filled bag of plastics covered with a thin layer of silicone. The cushion is adjustable according to the degree to which the two chambers are inflated, which causes the position of the bag of plastics in each chamber to shift when the user is sitting on the cushion. The cushion has a removable anti-slip cover of textile materials that has two 'velcro'-type straps attached to its underside. The article is intended to prevent the user developing pressure sores. It provides a relieving effect on the seat bones and improves the comfort of the user. See images (*)	3926 90 97	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 3926, 3926 90 and 3926 90 97. Classification of the article under heading 9404 (articles of bedding and similar furnishing) is excluded because pneumatic cushions are excluded from this heading within the meaning of note 1 (a) to Chapter 94 and, consequently, pneumatic cushions of plastics are classified under heading 3926 (see also the Harmonized System Explanatory Notes (HSEN) to heading 9404, last paragraph, (b)). Classification under CN code 8714 20 00 as parts and accessories of carriages for disabled persons is also excluded, because the article is not identifiable as being suitable for use solely or principally with carriages for disabled persons within the meaning of note 3 to Section XVII. Considering its objective characteristics, the article can be used on many seats and chairs as well as on seats of wheelchairs. For example, the article is not designed for use with a specific seat, because it has no specific means by which it can be attached that would identify it for use with a specific seat. The anti-slip cover and the 'velcro'-type straps can be attached to many different types of seats. There is therefore nothing to identify the article as being designed for use with a specific type of seat (see also the HSEN to heading 8714, first paragraph, (i)). Moreover, classification under CN code 8714 20 00 as parts and accessories of carriages for disabled persons is excluded because the article is neither indispensable for the functioning of the wheelchair, nor does it adapt the wheelchair for a particular operation or increase its range of operations or enable it to perform a particular service connected with its main function which is enabling a handicapped person to move (see judgment of the Court of 16 June 2011, *Unomedical*, C-152/10, ECLI:EU:C:2011:402, paragraphs 29, 30 and 36). A wheelchair operates in the same way as it does without the cushion. The cushion merely makes the wheelchair more comfortable and endurable for the user.

(1)	(2)	(3)
		Although the article consists of different components (the cushion of plastics and the cover of textile materials), the article is to be classified as if it consisted of the cushion of plastics because the cushion gives the article its essential character within the meaning of general rule 3 (b). The textile component is merely a cover that protects and keeps the essential component in place. The article is therefore to be classified according to its constituent material under CN code 3926 90 97 as 'other articles of plastics'.

(*) The images are purely for information.



