



2023/2490

10.11.2023

COMMISSION IMPLEMENTING REGULATION (EU) 2023/2490
of 30 October 2023
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 3 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 3 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, 30 October 2023.

*For the Commission,
On behalf of the President,
Gerassimos THOMAS
Director-General
Directorate-General for Taxation and Customs Union*

ANNEX

Description of the goods	Classification (CN-code)	Reasons
(1)	(2)	(3)
A heat and moisture exchanging filter (HMEF), consisting of a plastic housing equipped with two 22 mm connectors and one luer lock connector. The HMEF also contains a filtering material made of glass fibres. It has a compressible volume of 65 ml and a weight of 43 grammes. The article has the following functions: — high-efficiency filtration, — ease of breathing because of a low air-flow resistance, — prevention of heat and moisture loss. The article is designed to be mounted on a patient's airway connector (e.g. a facemask) on one end and to be connected via tubes to the anaesthetic or artificial respiration apparatus on the other end. It is designed for use in intensive care or during anaesthesia, to provide a barrier against the passage of viruses and to heat and moisturise the air inhaled by a patient. (See image) (*)	9033 00 90	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 2 (c) to Chapter 90 and by the wording of CN codes 9033 00 and 9033 00 90. Although the product replaces the nasal functions, as it serves to humidify, warm and filter the inhaled air, classification under heading 9021 is excluded because it is not considered a device worn or carried, or implanted in the body to compensate for a defect or disability. The product is neither a filtering apparatus of heading 8421, as its heating and moisturizing function exceeds the scope of the heading, nor an anaesthetic apparatus of heading 9018 or an artificial respiration apparatus of heading 9019, as it cannot be used independently, as a standalone device. The product is an interchangeable part designed to adapt the anaesthetic or artificial respiration apparatus to which it is connected, for a particular operation, or to increase its range of operations, or to perform a particular service relative to the main function of the apparatus. It is therefore considered an accessory of anaesthetic apparatus of heading 9018, or of artificial respiration apparatus of heading 9019. (See also CJEU, Case C-276/00, Turbon International GmbH, paragraphs 12 and 32 and Case C-152/10, Unomedical, paragraphs 29–34.) The product is, consequently, to be classified according to Note 2 to Chapter 90. As it is not goods included in a specific heading and, furthermore, not suitable for use solely or principally with a particular kind of apparatus or a number of apparatus of the same heading, it is to be classified under heading 9033, by application of Note 2 (c) to Chapter 90.

		The product is therefore to be classified under CN code 9033 00 90, as other accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments, or apparatus of Chapter 90.
--	--	---



(*) The image is purely for information.