Commission Implementing Regulation (EU) 2019/321 of 18 February 2019 concerning the classification of certain goods in the Combined Nomenclature and repealing Implementing Regulation (EU) 2017/1232

COMMISSION IMPLEMENTING REGULATION (EU) 2019/321

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concerning the classification of certain goods in the Combined Nomenclature and repealing Implementing Regulation (EU) 2017/1232

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 ('CN') annexed to Council Regulation (EEC) No 2658/87[(2)], it is necessary to adopt measures concerning the classification of certain goods.

(2) By Commission Implementing Regulation (EU) 2017/1232[(3)], an article made of spheroidal graphite cast iron (ductile iron, EN-GJS-500-7) was classified under CN code 7325 99 10 as other cast articles of malleable cast iron.

(3) The classification in Implementing Regulation (EU) 2017/1232 was based on the Explanatory notes to the Combined Nomenclature to CN code 7307 19 10 which defined malleable cast iron and according to those notes, the expression 'malleable' included spheroidal graphite cast iron.

(4) In Joined Cases C-397/17 and C-398/17, *Profit Europe*[(4)], the Court of Justice ruled that cast tube or pipe fittings of spheroidal graphite cast iron must be classified under subheading 7307 19 90.

(5) The Court of Justice based its decision on the finding that spheroidal graphite cast iron and malleable cast iron differ in terms of their composition and method of production and that even if spheroidal graphite cast iron has characteristics similar to those of malleable cast iron (EN-GJM), none the less it constitutes a separate category in the classification of cast iron (EN-GJS).

(6) The Court of Justice concluded that in that regard those Explanatory Notes, in so far as they state that 'the expression 'malleable' includes spheroidal graphite cast iron', have the effect of extending the concept of 'malleable cast iron' to another category of cast iron and must therefore be disregarded.

(7) The judgment of the Court of Justice is applicable by analogy to the product covered by Implementing Regulation (EU) 2017/1232 since that product corresponds to standard

EN-GJS-500-7 and its classification as an article of malleable iron was based on the text of Explanatory notes to the Combined Nomenclature to CN code 7307 19 10 which were found by the Court of Justice to be altering the scope of CN subheading 7307 19 10.

(8) Classification of the article covered by Implementing Regulation (EU) 2017/1232 is therefore not in line with the findings of the Court of Justice in its judgment in Joined Cases C-397/17 and C-398/17.

(9) Implementing Regulation (EU) 2017/1232 should therefore be repealed and replaced.

(10) 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

Implementing Regulation (EU) 2017/1232 is repealed.

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*.

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

Done at Brussels, 18 February 2019.

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)**
A circular article with a diameter of approximately 500 mm and a weight of approximately 23 kg. It is made of spheroidal graphite cast iron (ductile iron, EN-GJS-500-7). The article is painted with black bitumen for protection against corrosion. The article is certified according to EN 124 standard (gully tops and manhole tops for vehicular and pedestrian areas) and it is used as a sewer cover (for example, for rainwater sewers). See image[a].	7325 99 90	Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 7325, 7325 99 and 7325 99 90. Classification of the article under CN code 7325 10 00 as other cast articles of non-malleable cast iron is excluded as non-malleable cast iron is not deformable under compressive stress, while spheroidal cast iron is deformable under tensile stress and also under compressive stress to a certain degree. Therefore spheroidal graphite cast iron as such cannot be considered non-malleable iron (see, by analogy, judgment of 12 July 2018, *Profit Europe*, Joined Cases C-397/17 and C-398/17, EU:C:2018:564). Classification of the article under CN code 7325 99 10 as other cast articles of malleable iron is also excluded as spheroidal graphite cast iron and malleable cast iron differ in terms of their composition and method of their production. Even if spheroidal graphite cast iron has characteristics similar to those of malleable cast iron (EN-GJM), none the less it constitutes a separate category (EN-GJS) (see, by analogy, judgment of 12 July 2018, *Profit Europe,* Joined Cases C-397/17 and C-398/17).

a The image is purely for information.