Commission Regulation (EC) No 895/2009 of 23 September 2009 concerning the classification of certain goods in the Combined Nomenclature

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 thereon or which adds any additional subdivision thereto and which is established by specific Community provisions, 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 may, for a period of three months, continue to be relied on by the holder, under 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, may continue to be relied on for a period of three months under 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, 23 September 2009.

For the Commission

László KOVÁCS

Member of the Commission

ANNEX

Description of the goods	Classification(CN code)	Reasons
(1)	(2)	(3)
Boot which covers the ankle. The sole of the boot is made of rubber, yet the majority of the outer sole is cut away and allows inserts holding different outer soles to be inserted into the hollowed out area of the sole. The boots are put up in a set for retail sale together with two pairs of inserts, each holding different outer soles, and a metal tool needed to attach the inserts. One pair of inserts holds outer soles of rubber which have a deeply carved sole typical for trekking boot soles. The other pair of inserts holds outer soles of textile material (approximately 8 mm of felt), which can be used when walking in shallow water according to the importer's documentation. The sole of the boot retains a small part of the outer sole, an almost continuous rim around the edge of the sole. This small part of the outer sole is of rubber matching the trekking sole insert. The footwear cannot be used without the inserts. The insoles have a length of more than 24 cm. The upper of the boot is made up of different leather pieces sewn together leaving 'windows' into which nine metallic-mesh pieces and four textile pieces are sewn. The leather makes up the greater part of the external surface area of the upper. The inside of the boot is lined with textile material.	6403 91 13	Classification is determined by General Rules 1, 2(a), 3(b) and 6 for the interpretation of the Combined Nomenclature, note 4(a) and (b) to Chapter 64 and the wording of CN codes 6403, 6403 91 and 6403 91 13. Since the typical trekking boot rubber outer sole inserts match the boot uppers, this footwear is intended to be used and assembled essentially as a trekking boot. Moreover, the small part of the outer soles retained around the edges of the soles of the boots, matches exactly the trekking sole inserts. Whereas, the indented use of the textile outer sole inserts is not obvious. Their use in water can only be very limited, because the upper of the boot is neither waterproof nor water resistant. Consequently, the textile sole inserts are accessories meant to be used in specific situations only and, thus, enhancing the use of the product. The boots and the rubber sole inserts have therefore to be classified as complete but unassembled footwear within the meaning of GIR (General rules for the interpretation of the Combined Nomenclature) 2(a), second sentence. The part of the sole of the assembled footwear in contact with the ground is of rubber within the meaning of note 4(b) to Chapter 64 and, thus, the footwear has outer soles of rubber.

a The photographs are purely for information.