Commission Regulation (EC) No 872/2009 of 18 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 on it or which adds any additional subdivision to it 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 can, for a period of three months, continue to be invoked 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 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 872/2009. (See end of Document for details)*

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked 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 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 September 2009.

For the Commission

László KOVÁCS

Member of the Commission

ANNEX

Description of the goods	Classification(CN code)	Reasons
(1)	(2)	(3)
Footwear with outer soles of plastics and a vamp made of straps, attached to the sole at three points. The vamp extends from the left side of the sole to the right side. The arch formed by this part of the vamp is also attached to the sole by means of a strap extending from the middle of the arch down into the sole separating the toes. The vamp of the footwear in question is made up of several layers of different materials. The two straps forming the arch consist of a layer of textile (textile straps T1 and T2 in the photos) on top of which a layer of leather is sewn (two leather straps C1 in the photos). On top of this leather another smaller layer of leather is sewn (two leather straps C2 in the photos) with a brightly coloured textile thread. In between the textile layer (T1/ T2) and the leather layer (C1) two non-visible straps (of plastic) (strap A in the photo 646 D) are inserted, one on each side of the arch. In the centre of the arch the two textile straps (T1 and T2) and the four leather straps (C1 and C2) are sewn together with one single thread (see photo 646 C). In the centre of the arch the textile strap separating the toes encircles all before-mentioned materials of the arch by forming a loop around them (textile strap T3	6404 19 90	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 4(a)(b) to Chapter 64 of the Combined Nomenclature, Additional Note 1 to Chapter 64 and the wording of CN codes 6404, 6404 19 and 6404 19 90. The rectangular piece of leather C3 reinforces the central textile strap T3 and also decorates the shoe. Thus, when identifying the constituent material of the upper, no account is to be taken of this reinforcement/ accessory within the meaning of Note 4(a) to Chapter 64. The two small leather straps C2 that are sewn with a decorative, bright coloured textile thread to the leather straps C1 serve mainly decorative purposes and, thus, are considered accessories within the meaning of Note 4(a) to Chapter 64. At the centre of the arch the two textile straps (T1 and T2) and the two leather straps (C1) are sewn together with one single thread in a way that shows that the textile and leather are of equal importance in constituting the upper. However, the fact that only the textile straps (T1 and T2) are properly inserted in the sole — unlike the leather straps C1 —, shows that only the textile straps fix the upper (the arch) to the sole. Thus, the textile straps T1 and T2 cannot be

a The photographs are purely for information.

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in the photos). The textile strap is partly exposed. On top of this textile loop, in the centre of the arch, there is a rectangular piece of leather sewn onto the textile loop and the aforementioned materials of the arch (rectangular piece of leather C3 in the photos). On the left and right side of the arch, at the point where it is fixed to the sole, several of the straps forming the arch are inserted and glued into the sole. Whereas the leather straps C1 are inserted in the sole with barely 1 cm of their length and the leather straps C2 are inserted only with approximately 5 mm of their length, the textile straps T1 and T2 are inserted into the sole with 5 cm of their length (see photo 646 E). ('thong' sandal) (See photographs Nos 646 A, 646 B, 646 C, 646 D and 646 E)[a]		considered to be lining, but are the constituent material of the upper within the meaning of Note 4(a) to Chapter 64, whereas, the leather straps C1 only reinforce the textile straps T1 and T2 and are not to be taken into consideration as constituent material of the upper. The two non-visible straps A are fully inserted between the leather strap C1 and the textile strap T1/T2 along both sides of the arch. Since they are smaller than the leather (C1) and textile straps (T1/T2) enclosing them, they do not interfere with the reinforcing function of the leather straps C1. The central textile strap T3 separating the toes is part of the constituent material of the upper because it constitutes the specific form of this 'thong' sandal and, moreover, because it is the only material constituting this strap. Moreover, the textile material (T1 and T2 and T3 together) show the characteristics of an upper within the meaning of Additional Note 1 to Chapter 64 because the textile material of the upper of the sandal, without the other materials, fulfils the purpose of an upper, that is to say, provides sufficient support for the foot to enable the wearer to walk in the sandal (See judgment of the Court of Justice of the European Communities in Case C–165/07, Skatteministeriet v Ecco Sko A/S, paragraph 48). The two textile straps T1 and T2 and the central textile strap T3 are therefore the constituent material of the

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		upper within the meaning of Note 4(a) to Chapter 64. The surface of the constituent material of the upper is at least partly exposed on the outside surface of the footwear, because a part of the textile material (consisting of three assembled pieces of identical textile fabrics (T1, T2 and T3)) is exposed on the outside surface of the footwear (part of textile strap T3) (see the Explanatory Notes to the Combined Nomenclature to Chapter 64, General, (1)(a), first sentence of second paragraph). The part of the sole in contact with the ground is of plastic within the meaning of Note 4(b) to Chapter 64. Thus, the footwear has a plastic outer sole.

a The photographs are purely for information.

Explanation of symbols used in the photos

C3	(rectangular piece of leather)
C1	(two leather straps, one on each side along the arch)
C2	(two smaller leather straps on top of each of the C1 straps)
T1 and **T2**	(two textile straps, T1 on the right side and T2 on the left side along the arch)
T3	(central textile strap separating the toes)
A	(non-visible plastic strap that is fully inserted between the lateral leather strap C1 and the lateral textile strap T2; see photo 646 D)
S	(sole)