Commission Regulation (EC) No 717/2009 of 4 August 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 codes 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 codes 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, 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 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, 4 August 2009.

For the Commission

Antonio TAJANI

Vice-President

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 717/2009. (See end of Document for details)*

ANNEX

Description of the goods	**Classification(CN code)**	**Reasons**
(1)	(2)	(3)
1. A handheld, battery-operated apparatus, foldable, with overall dimensions of approximately 8,7 cm (L) × 5,4 cm (W) × 1,8 cm (D), in a single housing having: — an alpha-numeric keyboard of a kind used in cellular phones; — one colour display of the liquid crystal device (LCD) type with a diagonal measurement of the screen of approximately 5 cm (2 inches); — a second rectangular colour display of the LCD type with a diagonal measurement of the screen of 2 cm (0,8 inch); — a 2 megapixels digital camera with a digital zoom; — a slot for a solid state non-volatile storage card not exceeding 4 GB; and — a USB (Universal Serial Bus) port for recharging the battery, for data exchange and for connecting external earphones. The apparatus comprises: — a microprocessor; — microphone and loudspeaker; — an in-built memory of 128 MB; and	8517 12 00	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 3 to Section XVI and by the wording of CN codes 8517 and 8517 12 00. The apparatus is a composite machine consisting of different components. Given that the apparatus is designed to be equipped with a SIM (Subscriber Identity Module) and given that, when equipped with an activated SIM, the mobile telephony function takes precedence over all the other functions of the apparatus (in particular, the incoming calls override all other functions used), the principal function of the apparatus within the meaning of Note 3 to Section XVI is considered to be that of mobile phone communication over a cellular network as provided for in heading 8517 (subheading 8517 12 00). The apparatus is therefore to be classified under subheading 8517 12 00 as a telephone for cellular networks according to the component that performs the apparatus' principal function.

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— a television receiver of the DVB-T type. The apparatus has an integrated operating system for mobile telephony over the cellular network which can be activated when a SIM card is inserted into the apparatus. The apparatus has the following functions: — mobile phone communication over the cellular network; — wireless transmission and reception of images or other data (such as SMS (Short Message Service), MMS (Multimedia Messaging Service), e-mail, etc.); — recording and reproducing of sound as well as still and video images; and — reception of television signals (DVB-T). The apparatus also functions using other wireless communication protocols such as 'Bluetooth'.		
2. A handheld, battery-operated apparatus, foldable, with overall dimensions of approximately 10,9 cm (L) × 5,9 cm (W) × 1,9 cm (D), in a single housing having: — a colour display of the liquid crystal device (LCD) type with a diagonal measurement of the screen of approximately 7 cm (2,8 inches), which incorporates an alpha-numeric	8517 12 00	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 3 to Section XVI and by the wording of CN codes 8517 and 8517 12 00. The apparatus is a composite machine consisting of different components. Given that the apparatus is designed to be equipped with a SIM (Subscriber Identity Module) and given that, when equipped with an activated SIM, the mobile telephony function

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keyboard of the touch screen type; — a 1,92 megapixels digital camera with an optical zoom; — a slot for a solid state non-volatile storage card not exceeding 4 GB; and — a USB (Universal Serial Bus) port; and — a port for recharging the battery. The apparatus comprises: — a microprocessor; — microphone and loudspeaker; — an in-built random-access memory with a storage capacity of 64 MB; — an in-built electrically erasable, programmable, read only memory with a storage capacity of 256 MB; — an antenna for the reception of radio navigational signals from satellites, and — a GPS (Global Positioning System) module. The apparatus has an integrated operating system for mobile telephony over the cellular network which can be activated when a SIM card is inserted into the apparatus. The apparatus has the following functions: — mobile phone communication over the cellular network; — wireless transmission and reception of images	takes precedence over all the other functions of the apparatus (in particular, the incoming calls override all other functions used), the principal function of the apparatus within the meaning of Note 3 to Section XVI is considered to be that of mobile phone communication over a cellular network as provided for in heading 8517 (subheading 8517 12 00). The apparatus is therefore to be classified under subheading 8517 12 00 as a telephone for cellular networks according to the component that performs the apparatus' principal function.