Commission Regulation (EC) No 437/2006 of 16 March 2006 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.

(4) It is appropriate to provide that, subject to the measures in force in the Community relating to double checking systems and to prior and retrospective Community surveillance of textile products on importation into the Community, binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature and which is not in accordance with this Regulation, can continue to be invoked for a period of 60 days 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 437/2006. (See end of Document for details)*

Article 2

Subject to the measures in force in the Community relating to double checking systems and to prior and retrospective Community surveillance of textile products on importation into the Community, 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 60 days, under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

This Regulation shall enter into force on the 20th 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, 16 March 2006.

For the Commission

László KOVÁCS

Member of the Commission

ANNEX

Description of the goods	Classification CN code	Reasons
(1)	(2)	(3)
Self-coloured lightweight garment made from knitted fabrics of man-made fibres (90 % polyamide, 10 % elastomeric yarn) intended to cover the lower part of the body from the waist to above the mid-thigh area, enclosing each leg separately, with an opening at the front without any closing system and without an opening at the waist. The garment has an elasticated waist band and is hemmed at the leg ends. There are patch pockets on both sides of the garment, having a zip fastening system and holding a mass-produced removable, oval insert. The inserts are made of a hard plastic material on the outside and are padded with foam on the inside. They are designed to prevent injuries to the hips in case of a fall. They absorb shocks to the hip area of the body. (men's underpants) (See photographs No 636 A + B + C)[a]	6107 12 00	Classification is determined by the provisions of General Rules 1, 3(b) and 6 for the interpretation of the Combined Nomenclature, the first paragraph of Note 9 to Chapter 61 and the wording of CN code 6107 and 6107 12 00. The inserts are designed to prevent injuries to the hips in case of a fall. Therefore, the garment cannot be classified in heading 9021 as 'orthopaedic appliance', because the inserts neither prevent bodily deformities nor do they support or hold parts of the body within the meaning of the first paragraph of Note 6 to Chapter 90. The article lacks the essential characteristics of the goods covered by Chapter 90, i.e. a high 'finish of their manufacture and a high degree of precision' in the way they operate (see paragraph 37 of the Judgment of European Court of Justice in joined cases C-260/00 to C-263/00 of 7 November 2002 and see also the first paragraph of the HS Explanatory Notes to Chapter 90, General, Part (I)). Moreover, the inserts are neither made to measure nor are they adjustable to fit a wearer's specific morphology, which makes the garment an 'ordinary product' and, as such, it is excluded from heading 9021 by virtue of paragraph 37 of abovementioned Judgment.

a The photographs are purely for information.