

COMMISSION IMPLEMENTING REGULATION (EU) 2023/808
of 5 April 2023
concerning the classification of certain goods in the Combined Nomenclature

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 annexed to Council Regulation (EEC) No 2658/87 ⁽²⁾, 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 provisions of the Union, 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 issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 34(9) of Regulation (EU) No 952/2013. That period should be set at three months.
- (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 to this Regulation shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information which does not conform to this Regulation may continue to be invoked in accordance with Article 34(9) of Regulation (EU) No 952/2013 for a period of three months from the date of entry into force of this Regulation.

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*.

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

⁽²⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

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

Done at Brussels, 5 April 2023.

*For the Commission,
On behalf of the President,
Gerassimos THOMAS
Director-General
Directorate-General for Taxation and Customs Union*

ANNEX

Description of the goods	Classification (CN-code)	Reasons
(1)	(2)	(3)
<p>Reusable (refillable) evaporator ('atomizer'), for an electronic cigarette, consisting of:</p> <ul style="list-style-type: none"> — a base with an opening for air regulation and a connector for connection to the power supply device (not presented with the atomizer), — a heater with metal wire and cotton, — a glass container, and — a mouthpiece. <p>The atomizer is presented without e-liquid.</p> <p>The atomizer is connected to the power supply device by a threaded connector which also establishes the electric connection. The supplied power heats the wire of the heater which subsequently heats and vaporizes the e-liquid. This produces a vapour mist which is then inhaled by the user.</p> <p>(See image) (*)</p>	<p>8543 40 00</p>	<p>Classification is determined by general rules 1, 2(a) and 6 for the interpretation of the Combined Nomenclature (GIR) and by the wording of CN codes 8543 and 8543 40 00.</p> <p>Although the atomizer is suitable for use solely with an electronic cigarette, classification under CN code 8543 90 00, as part of the electronic cigarette, is excluded as the atomizer is an assembly of parts so far advanced that it already has the main essential features of the complete article, the electronic cigarette (see also the Harmonized System Explanatory Notes to Section XVI, General, (IV) Incomplete machines).</p> <p>More specifically, the atomizer comprises all the necessary elements to perform the functions for which an electronic cigarette is designed, namely, to heat and vaporize the e-liquid, allowing the user to inhale the vapour mist produced via the mouthpiece. Consequently, it has the essential character of the complete article, and is thus to be considered as an incomplete electronic cigarette within the meaning of GIR 2(a).</p> <p>The atomizer is, therefore, to be classified under CN code 8543 40 00, as an electronic cigarette.</p>



(From the bottom to the top: base, heater, glass container, mouthpiece)

(*) The image is purely for information.