



HARMONIZED SYSTEM
COMMITTEE

-
26th Session

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O. Fr.

Brussels, 26 September 2000.

CLASSIFICATION OF THE "COLOR QUICKCAM"

(RESERVATION BY ARGENTINA)

(Item VII.7 on Agenda)

Reference documents :

42.081 (HSC/22)
42.750, Annex H/11 (HSC/22 - Report)
NC0051E1 (HSC/23)
NC0087E1 (HSC/23)

NC0160E2, Annex G/19 (HSC/24 - Report)
NC0210E1 (HSC/25)
NC0233E1 (HSC/25)
NC0250E2, Annex H/5 (HSC/25 - Report)

I. BACKGROUND

1. At its 25th Session (March 2000), following a reservation by the Japanese Administration, the Harmonized System Committee re-examined the classification of the "Color QuickCam".
2. In the first of two votes, the Committee decided, by 27 votes to 9, that the "Color QuickCam" was classifiable elsewhere than in heading 84.71. It then unanimously decided to classify it in heading 85.25 and, also unanimously, in subheading 8525.30 (television cameras). This classification was made on the basis of GIR 1 and GIR 6 (texts of heading 85.25 and subheading 8525.30, Notes 5 (B) and 5 (E) to Chapter 84). It should be noted that the question of whether or not apparatus of subheading 8525.40 should have a built-in memory was not considered by the Committee.
3. Argentina's proposal to classify each element separately received no support from the Committee, which took the view that the apparatus should not be regarded as a set within the meaning of GIR 3 (b), and should therefore be classified on the basis of GIR 1.
4. Finally, the separate classification of the diskettes supplied with the system, by application of Note 6 to Chapter 85, was not called into question.

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5. By letter of 29 May 2000, the Argentine Administration informed the Secretary General that it would like the classification of the "Color QuickCam" to be resubmitted to the Harmonized System Committee for re-examination at its 26th Session, in accordance with Article 8 of the Harmonized System Convention and paragraph 2 (a) (ii) of Council Decision No. 298. In its letter, the Argentine Administration points out that it does not approve the Committee's decision to classify this article in heading 85.25 and that it does not agree that all the elements making up this article – except for the diskettes – should be classified in that heading by virtue of GIR 1.

II. DESCRIPTION

Apparatus presented in a box for retail sale, consisting of a digital camera, a rubber camera stand, a manual, a keyboard adapter plug, a cable to connect the camera to a computer, diskettes containing software for capturing still and video images, and a registration card. The camera incorporates an adjustable focus lens, an image capture board with a charge coupled device (CCD), a VIDEDEC[™] (Video Digitally Enhanced Compression) compression board, and a cable fitted with three plugs. For use, the apparatus must be connected to an automatic data processing machine equipped with the following : 486/66 (or faster) processor, 8 MB of RAM, 2 MB of hard disc space for the digital camera's software, minimum of 5 MB disc space to create videos, and an operating system. The apparatus is used for capturing video or still images, transforming them into digital signals and sending the signals, possibly after compression, directly to a computer where the data can be recorded, reworked, edited, etc. with appropriate software. With this apparatus one can produce videos and still images for a computer system, hold video conferences and produce illustrated documents.

III. SECRETARIAT COMMENTS

6. On 9 August 2000, the Argentine Administration sent the Secretariat a Note setting out its point of view and the arguments in support of its reservation. That Note is set out in the Annex hereto.

Classification

7. The Argentine Administration points out that the apparatus is technically an input unit for automatic data processing machines, fulfilling the conditions set out in paragraphs (a), (b) and (c) of Note 5 (B) to Chapter 84, and is therefore classifiable in subheading 8471.60 by application of Note 5 (C) (GIR 1).
8. It adds that paragraph (E) of the said Note 5 applies solely to "machines", a term that cannot be used to describe an input unit, and that the exclusion from heading 85.25 is justified by the fact that the apparatus of that heading send video signals, whereas the "Color QuickCam" sends digital signals.

9. The Secretariat would first point out that the fact that the “Color QuickCam” meets the three conditions set out in paragraphs (a), (b) and (c) of Note 5 (B) to Chapter 84 was not queried by the Committee.
10. The Secretariat does not agree with the Argentine Administration that paragraph (E) of Note 5 does not apply in the case at issue. It feels that the term "machine", considered in this context, should be interpreted in a broad sense and that it covers apparatus that could potentially be regarded either as units of automatic data processing machines or as apparatus performing a specific function, which explains the restriction clause in the second sentence of the introduction of Note 5 (B).
11. If the Committee shares this view, it must first determine whether the “Color QuickCam” performs a specific function other than data processing, within the meaning of Note 5 (E) to Chapter 84.
12. The function of this apparatus is to capture light images, to convert the flow of data into digital signals that can be used by an automatic data processing machine and to send the signals to such a machine where they are stored and processed using suitable application software.
13. By way of reminder, the function of input machines is to receive data and to convert it into signals which can be processed by the machine. The question is therefore whether the function of capturing still or video images is equivalent to receiving data.
14. In this respect it is worth recalling that the Committee has also ruled on the classification of a flatbed scanner whose function, namely reading an image, scanning it and transmitting it to an automatic data processing machine where it can be stored, worked, etc., would seem comparable to that of the “Color QuickCam”. The Committee decided to classify that apparatus in subheading 8471.90 as an optical reader, rather than in subheading 8471.60 as an input unit for an automatic data processing machine.
15. Assuming that the “Color QuickCam” performs a specific function and that it is therefore excluded from heading 84.71, two headings are potentially applicable, namely heading 85.25 (subheading 8525.30 as a television camera or subheading 8525.40 as a still image video camera) or, in the absence of a more specific heading, heading 85.43 as apparatus having individual functions, not specified or included elsewhere.
16. The Committee felt that the function performed by this apparatus was identical to that of television cameras mentioned in the text of heading 85.25, and it unanimously ruled in favour of classification in that heading (subheading 8525.30), by application of GIRs 1 and 6, even if the images captured cannot be reproduced using a television receiver.
17. While accepting that the “Color QuickCam” has a function similar to that of television cameras, the Secretariat feels that its operating principle is substantially different. In fact, it is used solely in connection with an automatic data processing machine (it cannot operate independently) and it cannot be incorporated in a television network (telecommunications), where captured light images are converted into video signals and reconstituted, after amplification and modulation, by appropriate apparatus.
18. It is therefore for the Committee to decide whether the apparatus actually corresponds to the text of subheading 8525.30 and whether it can be classified in that subheading by application of GIRs 1 and 6.

19. Subheading 8525.40 covers still image cameras and video camera recorders, the latter combining a video camera and a video recorder.
20. Although the Committee has not ruled on whether or not the apparatus of subheading 8525.40 has to have its own built-in (or removable) memory, the Secretariat feels that the present text of the subheading requires this condition. In this respect, it is worth recalling the comments made by the Secretariat in paragraphs 23 and 24 of Doc. NC0210E1 (HSC/25).
21. "At the RSC's 3rd Session (September 1990), it was pointed out that the expression "still video cameras", in isolation, did not necessarily imply that such cameras incorporated recording apparatus (Doc. 36.250, Annex I, paragraph 128 - RSC/3/Sept. 90).
22. The Committee therefore agreed to use for new subheading 8525.40 the existing text "still image video cameras and other video camera recorders" (appareils de prise de vues fixes vidéo et autres caméscopes), so as to make clear, firstly, that the term "video camera recorders" covered all cameras of this type, whether they recorded moving images or still images, and secondly, that all such equipment was able to record images (Doc. 36.600, Annex E, paras. 20 and 21 – HSC/7/Apr. 91). The Committee also decided to prepare an Explanatory Note clearly indicating that still image video cameras and other video camera recorders consisted of a combination of a video camera and a video recording or reproducing apparatus (EN to heading 85.25, Part (D), page 1489)."
23. The Secretariat also points out, in this respect, that according to French encyclopaedias the French expression "prise de vues" refers to the operation of recording the image of the subject. Taken alone, the device at issue does not fulfil this function, as this operation is performed by the automatic data processing machine.
24. Moreover, the images recorded by the apparatus of subheading 8525.40 can be reproduced by a television receiver or a video monitor, which is not the case with the images digitalized by the "Color QuickCam".
25. If the Committee stands by its decision to exclude this apparatus from heading 84.71, the Secretariat feels that classification in heading 85.43 should be considered. In fact, within heading 85.25, only the two subheadings mentioned above are potentially applicable.

Legal provision applicable

26. In its letter of 9 August 2000, the Argentine Administration states that the article at issue is made up of various components and that it is to be considered a set put up for retail sale within the meaning of GIR 3 (b). Given the separate classification of the installation diskettes, by application of Note 6 to Chapter 85, it argues for the separate classification of the other components (camera, rubber camera stand, manual, etc.).
27. The Secretariat feels that the rubber camera stand, the manual, the adapter plug, the connection cable and the registration card are to be considered parts or accessories of the digital camera and that the whole is classifiable as an apparatus, by application of GIR 1, the rule for sets being inapplicable in this particular case. It therefore considers the decision adopted by the Committee at its 25th Session (Annex H/5 to Doc. NC0250E2, paragraph 15) to be appropriate.

IV. CONCLUSION

28. The Committee is invited to re-examine the classification of the “Color QuickCam” and to determine the legal bases of this classification, taking account of Argentina’s comments set out at the Annex hereto and the Secretariat’s comments above.

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Note from the Argentine Administration

The Directorate General of Argentine Customs writes regarding its Note of 29 May 2000 in which it requested that the classification of the "Color QuickCam" in subheading 8525.30 (as established in Annex H/5 to Doc. NC0250) be resubmitted to the Harmonized System Committee, by application of Customs Co-operation Council Decision No. 298.

The apparatus at issue differs from other digital cameras. In fact, the "Color QuickCam" sends digital signals that can only be interpreted by a central processing unit, unlike the cameras of subheading 8525.30 which send out video signals and can thus be connected up to video monitors of heading 85.28 and to image and sound recording apparatus of heading 85.21. The "Color QuickCam" does not include a still image video device, as do the apparatus of subheading 8525.40.

From a technical perspective, the "Color QuickCam" is an input unit for automatic data processing machines, given that it fulfils the conditions required by Note 5 (B), paragraphs (a), (b) and (c) to Chapter 84. By application of Note 5 (C) to Chapter 84, and given that it is specifically covered by the first part of the text of heading 84.71, this apparatus must fall in that heading by application of General Interpretative Rule 1.

The Argentine Administration shares the opinion of the Delegate of Japan expressed in paragraph 2 of Annex H/5 to Doc. NC0250, but with one difference. Argentina feels that in the fifth line, "GIR 1" should be replaced by "GIR 6", given that it refers to the exclusion of subheading 8525.30 by the text of that subheading, which is an element of GIR 6.

Moreover, the Argentine Administration feels that Note 5 (E) to Chapter 84 does not apply in the case of the "Color QuickCam", as indicated in paragraph 6 of Annex H/5 to Doc. NC0250, given that this Note refers to "machines", such as numerically controlled lathes, a term that could never be applied to an input unit (see the difference in the first part of the text of heading 84.71). With regard to paragraph 7 of Annex H/5 to Doc. NC0250, the most important factor is not whether or not the apparatus of heading 85.25 have their own recording device, but rather that the output signal is a video signal and not a digital signal. Argentina would reiterate that with the "Color QuickCam" it is exactly the reverse, as the apparatus sends digital signals and not video signals.

In paragraph 14 of Annex H/5 to Doc. NC0250, it is stated that the Committee classified the apparatus at issue in heading 85.25 and in subheading 8525.30, by application of GIRs 1 and 6 (texts of heading 85.25 and subheading 8525.30, Notes 5 (B) and 5 (E) to Chapter 84). In this connection, the impact of Note 5 to Chapter 84 has already been analysed and it should merely be pointed out that no apparatus can be considered a television camera if it does not send video signals. This means that the classification can only be justified by application of GIR 4, as indicated by the Delegate of Japan.

It is also necessary to look at an aspect of the analysis which is implicit in the classification issue and which, in Argentina's opinion, has important consequences and has not been considered in the detail and with the care it deserves.

This aspect is the correct application of GIR 3 (b), although that was not the legal basis finally applied. In particular, Argentina would like to focus the Committee's attention on the possible consequences of the decision taken regarding the criteria to be applied for "goods put up in sets for retail sale" **when Note 6 to Chapter 85 does not come into play**, as in this case.

In fact, the criterion adopted made it possible to **remove**, from a set of goods **contained** in a single box for retail sale, **one of the goods** (the recorded medium). By application of Note 6 to Chapter 85, this article is classifiable in heading 85.24. Argentina is in agreement with this decision up to this point.

In Argentina's opinion, from this point on there are two possibilities for examining the classification of the other components presented (see part II - "DESCRIPTION" in Doc. NC0210 - HSC/25) :

Either apply GIR 1 and consequently classify each component separately, or analyse the possibilities offered by GIR 3.

In this particular case, it seems clear that a classification study on the basis of GIR 3 (b) cannot be pursued since the question has been resolved by GIR 1, given that once the existence of a set has been ruled out **by considering all** the goods contained in a common box, it is impossible to analyse a situation which is hypothetical rather than real, the set is being obtained artificially as a product resulting from the application of a prevailing legal provision (Note 6 to Chapter 85).

It has to be borne in mind that Item (X) of the Explanatory Note to General Interpretative Note 3 (page 5) states that :

(X) "For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which :

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards)."

It is therefore clear that the concurrent conditions set out above would not be met if the box of components under consideration also contained an **article unrelated** to the set. Once ruled out for consideration as a set under the terms of GIR 3, each component must therefore be classified separately by application of GIR 1.

An opposing theory would require persons making the classification to carry out a subjective and very complicated analysis every time they encountered a situation where a **single container** was made up of several different goods which might indicate the presence of a set (to be identified by the person making the classification), accompanied by other goods. This state of affairs could have negative consequences, given that the main aim is to ensure uniform application of the Harmonized System.

In this way, the interpretation of the essential principles governing the Harmonized System could be exposed to changes in commercial practices, thus dangerously altering the concept of sets, so widely applied. As a result, Customs would be faced with the full variety of "commercial offers" that the market could dream up.

Although the above argument was not reflected in the final report on the Harmonized System Committee's 25th Session, Argentina feels that this reasoning was followed to rule out the possibility of using GIR 3.

In accordance with what is stated in paragraph 15 of Annex H/5 to Doc. NC0250, the Argentine Administration considers that the goods under examination taken as a whole (see part II - DESCRIPTION, on page 2 of Doc. NC0210 - HSC/25) cannot be regarded as a set within the meaning of GIR 3 (b) and that the classification must be determined by application of GIR 1.

However, Argentina finds it impossible to use GIR 1 to justify the classification, in a single heading, as is established in Annex H/5 to Doc. NC0250. This is because there is no heading text or Section or Chapter Note governing the case at issue, involving the combining of goods of a different nature in a single package, especially if account is taken of previous decisions in very similar cases to this one.

By way of example, it is worth reminding the Committee of the decision adopted at its 20th Session regarding toilet sets (HSC/20 - Doc. 41.600, Annex F/8), mentioned in Doc. NC0233 for the Committee's 25th Session, when the Committee ruled in a manner completely contrary to the decision taken in the present case, given that once the non-existence of a set was established, each component was classified in its own appropriate heading.

The Committee also applied this criterion to the separate classification of the books and cassettes forming the "Children's Bible Book", by applying Note 6 to Chapter 85 in a general manner.

In conclusion, the Argentine Administration maintains that :

- (i) The "Color QuickCam" is an input unit for automatic data processing machines, given that it fulfils the conditions set out in Note 5 (B), paragraphs (a), (b) and (c) to Chapter 84. By application of Note 5 (C) to Chapter 84, and because it is explicitly covered by the first part of the text of heading 84.71, the apparatus must fall in that heading by application of General Interpretative Note 1; and
- (ii) The articles other than the camera and the diskettes, packaged together, as mentioned in part II - "DESCRIPTION" of Doc. NC0210 - HSC/25 (page 2), are to be classified separately in their own appropriate headings, by application of GIR 1.

Consequently, on the basis of the new arguments presented and given that this is a very important issue for the Argentine Administration, Argentina requests the Committee to give its opinion on the two aspects mentioned above by establishing :

- (a) The classification of the goods at issue.
- (b) That the conditions required for goods put up in sets, as laid down in Item (X) (page 5) of the Explanatory Note to GIR 3 (b) and which have to be fulfilled simultaneously, rule

out all possibility of using the above-mentioned Rule to consider the classification of goods presented in a single package when one or more of those goods are classified in their own appropriate heading either by application of a legal provision (in this case Note 6 to Chapter 85) or because it is an article which does not meet a specific need or perform a specified activity with the other articles contained in the same package.

- (c) That, by application of GIR 1, **it is not possible to include in a single heading** a collection of different goods contained in a common package for retail sale when they do not fulfil the conditions to be considered a set under the terms of the Harmonized System. Each component must therefore fall in its own appropriate heading, in accordance with the legal instruments established by the Harmonized System.
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