



HARMONIZED SYSTEM
COMMITTEE

-
29th Session
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NC0574E1
(+ Annexes I and II)
O. Eng.

Brussels, 26 April 2002.

CLASSIFICATION OF A MACHINE CALLED
"NOACK 900 BLISTER PACKER" (NOACK 900)

(Item IX.13 on Agenda)

I. BACKGROUND

1. On 22 March 2002, the Secretariat received the following note from the Australian Administration.

II. NOTE FROM THE AUSTRALIAN ADMINISTRATION

2. "The Australian Administration invites the Harmonized System Committee to consider the matter of the classification of certain form, fill and seal machines at its 29th Session in May 2002.

Description of the goods

3. The subject goods are a very sophisticated and "state of the art" machine called a "Noack 900 Blister Packer" (Noack 900). It packages capsules/tablets by the following process :
 - (a) "blisters", being indentations of an appropriate shape and size to hold a capsule/tablet, are formed in a plastic film, which enters the machine as a continuous sheet;
 - (b) a capsule/tablet is then fed into each blister;
 - (c) the top is sealed with aluminium foil, which bonds to the plastic;
 - (d) the sheet is then die-cut into individual blister packs; and
 - (e) the machine also prints the foil, but it is not clear at what stage that occurs.

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

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4. It is advised that all the above is a continuous process. The result is a blister-pack of capsules/tablets that is put up for retail sale, in a manner that is commonly used to present such articles.
5. Annotated illustrated descriptive literature of the **Noack 900** has been forwarded for the Committee's information (see Annex I to this document). Also forwarded is descriptive literature on a similar machine called a "**GL-250**" vertical form, fill and seal machine (see Annex II to this document).
6. **Australia** considers that the **Noack 900** and its like are very different machines from those originally envisaged when the structure of heading 84.22 was initially developed.

Nomenclature

7. In examining the classification of the **Noack 900**, **Australia** has considered headings 84.22, 84.77 and 84.79, together with Note 3 to Section XVI. After considering heading 84.22, **Australia** has then considered subheadings 8422.30 and 8422.40.

Note 3 to Section XVI directs :

"Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function."

Heading 84.22 covers :

"84.22 Dish washing machines; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages.

...

8422.30 - Machinery for filling, closing, sealing, or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages

8422.40 - Other packing or wrapping machinery (including heat-shrink wrapping machinery)".

Heading 84.77 covers :

"84.77 Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter."

Heading 84.79 covers :

"84.79 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter."

Classification

8. The terms of the headings 84.22, 84.77 and 84.79 are mutually exclusive, as both plastic working machines of heading 84.77, and the residual machinery heading 84.79, are qualified by the phrase “not specified or included elsewhere in this Chapter”. The potential application of heading 84.22 therefore should be considered before the other two headings.
9. The relevant parts of heading 84.22 are repeated in the terms of subheadings 8422.30 and 8422.40. These subheadings are also mutually exclusive. A machine cannot be classified within the terms of subheading 8422.40 “other packing or wrapping machinery” unless it does not fall within the terms of subheading 8422.30. Subheading 8422.30 therefore should be considered before subheading 8422.40. Thus, the order of consideration is 8422.30, 8422.40, 84.77 and 84.79.
 - (a) Subheading 8422.30
10. The terms of subheading 8422.30 : “Machinery for filling, closing, sealing, or labelling bottles, cans, boxes, bags, or other containers” describe various actions being performed on containers. There is no reference to the initial creation or forming of a container in the subheading. In other words the subheading seems to presume that a pre made container will be a feedstock for the machine.
11. The other functions of the **Noack 900** besides the initial forming of the container are covered by the terms of the subheading. The **Noack 900** fills the blisters, seals them, and labels them by printing.
12. In the **Australian** legal process classification cases have developed a principle called the “more than” rule, to assist in determining whether tariff descriptions are applicable. If an article is, or does, significantly “more than” goods described in a heading, the heading is inapplicable. As these machines form the containers before performing any of the functions described in subheading 8422.30, they appear to be “more than” machinery of that subheading. The ordinary meaning of subheading 8422.30 is, in **Australia’s** view, inapplicable.
13. However, subheading 8422.30 is in effect given an extended meaning by Note 3 to Section XVI. That Note is applicable to classify between subheadings by Interpretative Rule 6, “unless the context otherwise requires”. The **Noack 900** can, in **Australia’s** view, be regarded as a machine “designed for the purpose of performing two or more complementary or alternative functions” within Note 3. The complementary or alternative functions being forming, filling, sealing and printing containers. This machine is therefore able to be classified by reference to its “principal function”, if there is in fact a principal function.
14. **Australian** Customs has applied Note 3 to the **Noack 900**, and until now determined that the principal function of the machine was “filling” containers, and as that function is covered by subheading 8422.30, has decided that the machine is classified under that subheading.
15. Research indicates that other administrations generally classify form, fill and seal machines within subheading 8422.30.

(b) Subheading 8422.40

16. A closer examination of the issue and reference to Australian legal precedent has indicated that the classification of the Noack 900 may be more appropriate within subheading 8422.40. The Administrative Appeals Tribunal (AAT) has handed down judgements on other machines that carry out a number of complementary functions.
17. One concerns a blown film extrusion line that Australian Customs had classified within subheading 8477.20, as an extruder. The AAT ruled that the machine was classified within subheading 8477.80, as other machinery. In their deliberations the AAT found that as :

“... the goods are a blown film line, they cannot come within the more limited heading of ‘extruder’. Extruder can only describe that particular component of the line It may be the most integral component of the line but in order to produce the end product it must have the other line components also associated and assembled with it.”
18. Although the AAT judgement relates to a line, rather than one machine, it is an indication that the Australian courts look to overall function, rather than attempt to locate a principle or essential function.
19. Another case related the classification of a Gipsomat machine, which mixed the ingredients for plaster, and then pumped and sprayed the plaster onto a surface, providing a rendered finish. Separate headings referred to machinery for mixing mineral substances, pumps, and sprayers, but there was no heading that covered all the functions of the machine. The AAT found that the Gipsomat was “more than” a mixer, a pump, or a sprayer. Further it found that none of the mixing, pumping or spraying functions was the principal function, as each of those functions was essential, and not incidental, to the machine’s operation. Note 3 to Section XVI was therefore inapplicable as there was no principal function or purpose covered by a heading. The AAT classified the machine to the pre Harmonized System residual heading 84.59 (equivalent to the now HS heading 84.79).
20. It is now Australia’s view that a similar analysis is applicable to the Noack 900 machine. The forming and filling functions at least, are equally essential and important. It is not possible to fill a container unless a container has first been formed. The forming function is not subsidiary or incidental to the other functions of the machine covered by subheading 8422.30. In Australia’s view, none of the individual functions of the machine is the principal function.
21. Australian Customs has previously discounted subheading 8422.40 on the understanding that the subheading is traditionally restricted to machinery that performs a secondary packing function like wrapping, strapping, cartoning, etc.
22. An examination of the use of the word “packing” elsewhere in the Harmonized System and more particularly in the General Rules for the Interpretation of the Harmonized System indicates that subheading 8422.40 cannot be so restricted.

23. General Interpretative Rule 5(b) provides :

“Subject to the provisions of Rule 5(a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods ... ”.

24. The term “packing” used in General Interpretative Rule 5(b) clearly relates to the type of packing performed by the **Noack 900** machine. It is considered significant that the General Rules for the Interpretation of the Harmonized System use the term “packing” here in relation to a primary function of placing goods into packages.

25. In any case, as a matter of statutory construction subheading 8422.40, in referring to “other packing or wrapping machinery”, covers all packing or wrapping machinery other than such machinery included in subheading 8422.30. Subheading 8422.40 includes, but is not limited to, secondary packing or wrapping machinery. Any primary packing or wrapping machinery that is not included in subheading 8422.30 is included in subheading 8422.40.

26. The view has already been expressed above that forming the container is beyond the expression “filling, closing, sealing or labelling...containers” in subheading 8422.30. The question is - is forming the container beyond “packing” within the terms of subheading 8422.40 ?

27. The Macquarie Dictionary gives the following relevant meanings of “pack” :

18. To fill with anything compactly arranged : *pack a trunk* ...20. To put or arrange in suitable form for the market : *pack fruit*. ...22. To cover or envelope with something pressed closely around.

That dictionary also gives as a meaning of “package” :

3. the packing of goods, etc.

Packing and packaging are relevantly synonymous terms.

28. The Macquarie Dictionary definition of “packing” equivalent to filling containers could not be intended by subheading 8422.40, as filling containers are already covered by subheading 8422.30. It is considered that the ordinary meaning of “packing” intended by subheading 8422.40 is conveyed by the Macquarie Dictionary definition : “to put or arrange in suitable form for the market”. This meaning of “packing”, in **Australia’s** view, can include the forming of the container as part of the process of putting goods into suitable form. It is noted that the last quoted meaning of “packing” in the Macquarie Dictionary seems an apt description of the process employed by the **Noack 900**.

29. In cases of ambiguity, or to confirm the ordinary meaning conveyed by the headings, reference can be made to the HS Explanatory Notes (HSEs). The HSEs state, in relation to heading 84.22 :

The heading also covers machines for filling or closing such containers (including machines for aerating beverages) and, generally, for packing (including heat-shrink wrapping) goods for sale, transport or storage. These include :

...

- (2) Machines for filling containers (e.g., casks, barrels, cans, bottles, jars, tubes, ampoules, boxes, packets or bags), frequently equipped with subsidiary automatic volume or weight control and with devices for closing the containers.

...

- (5) Wrapping or cartoning machines, including those with provision for forming, printing, tying, stapling, taping, glueing, closing or otherwise finishing the packing. The heading includes machines for packing filled cans or bottles into external containers (crates, boxes, etc.).

30. Machines which in addition to packing, wrapping, etc., also perform other operations remain classified in the heading **provided** the additional operations are incidental to the packing, etc. Thus machines which pack or wrap goods into the forms or presentations in which they are normally distributed and sold in commerce, are classified in this heading, whether or not the machines also contain devices for weighing or measuring. Similarly the heading includes machines incorporating devices which, as a secondary function, cut, mould or press previously prepared products into purely presentational forms without affecting their essential character (e.g., machines for moulding butter or margarine into blocks, etc., and wrapping them). The heading **does not**, however, **cover** machines whose primary function is not to pack, wrap, etc., but to manufacture raw or semi-finished materials into finished products (e.g., combined cigarette making and packaging machines). [Underlining added] The HSEs are helpful in several respects. They confirm that the intended meaning of “packing” is the process of putting goods into suitable form. The express reference to “forming” in relation to cartoning machines confirms that forming at least some containers may be regarded as part of a packing process. Secondary packing is only one example given of “packing”, confirming that the term is not limited to secondary packing. Finally, the examples of subsidiary or secondary functions given include weighing, measuring and moulding the product. There is no suggestion that forming containers is a subsidiary or secondary function to filling.

31. In Australia's view “packing”, within the terms of subheading 8422.40, covers the entire process employed by the Noack 900 machines at issue, including the initial forming of the containers. Support for this is given by the descriptions the manufacturer gives the machine. The Noack 900 machine is described as a “blister-packer”. How goods are described by those who trade in them, is relevant to identification and classification, but may not be conclusive, as some trade descriptions are inaccurate or misleading. In this case the trade description seems appropriate, as it is consistent with the relevant ordinary meaning of packing, and with the examples expressed within the HSEN.

32. If the entire process of the machines is covered by “packing” within the terms of subheading 8422.40, and the forming of the container is not a subsidiary function of the machine, then the machine is classified under subheading 8422.40.

33. If it is considered that the forming of the containers is outside the meaning of “packing”, and the forming function is not subsidiary, then the machines would be “more than” packing machines of heading 84.22, and headings 84.77 and 84.79 should be considered.

(c) Heading 84.77

34. Australia does not consider heading 84.77 to be applicable to the Noack 900, as the initial working of the plastic should not be regarded as the principal function of the machine.

(d) Heading 84.79

35. Classifying the goods within heading 84.79 is not a solution that this administration is comfortable with. Heading 84.79 is only available if neither headings 84.22 nor 84.77 are applicable, and although there is some deliberation about whether the goods are a packing machine or a packaging machine, it seems these machines rightly belong within heading 8422.

(e) Packing versus packaging

36. Many of the considerations about the correct classification of the Noack 900 turn on the meaning applied to the word “packing” in subheading 8422.40. The terms “packing” and “packaging” are used variously throughout the Harmonized System Nomenclature but there is no indication if the terms are meant to be relevantly synonymous. In its consideration of the classification of the Noack 900 machine, the Committee is requested to clarify the meaning of these terms.”

III. SECRETARIAT COMMENTS

37. The Secretariat would first of all draw the Committee’s attention to the fact that it could only find the use of the expression “for...packaging”, at the legal level, in heading 83.05, while the French version uses the expression “pour...emballeurs”. In heading 84.22, the corresponding French term for “wrapping” is “emballer”, which, when used in that context, is synonymous with “empaqueter” (“packing” in English). The Secretariat also would point out that an examination of its records did not uncover any deliberations by the relevant Committees concerning the meaning of the terms “packing” and “packaging” at the time that these terms were introduced into the Nomenclature.
38. The Noack 900 is a machine designed for the purpose of forming the blister, filling and sealing the blister, cutting the blister and printing the foil; in other words, it is a packing or packaging machine. This function is covered by heading 84.22 as packing machinery and the Secretariat would be inclined, at the four-digit level, to classify it in heading 84.22 by application of GIR 1.
39. The Secretariat would agree with Australia that for the purposes of heading 84.22 the term packing should be interpreted to cover the term packaging. Furthermore, the Secretariat would consider that in the case at issue, Note 3 to Section XVI would not be applicable because the “context otherwise requires”, i.e., there is a specific heading (84.22) covering the overall function of the machine at issue (packing machinery).
40. Having determined that heading 84.22 is the applicable heading, the Secretariat is of the view that we have to be consistent in our approach and also classify the machinery in question as packing machinery in subheading 8422.40 for the reasons detailed by the Australian Administration.

IV. CONCLUSION

41. The Committee is invited to rule on the classification of the “Noack 900 Blister Packer” taking into account the Note from the Australian Administration and the Secretariat’s comments.

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