



HARMONIZED SYSTEM
COMMITTEE

-
32nd Session

NC0789E1

O. Eng.

Brussels, 21 October 2003.

CLASSIFICATION OF THE "PALM V™" PRESENTED AS A SET
WITH CRADLE AND INSTALLATION SOFTWARE
(RESERVATION BY THE EC)

(Item VI.2 on Agenda)

Reference documents :

NC0310E1 (HSC/26)	NC0510E2, Annex G/12 (HSC/28 - Report)
NC0340E2, Annex H/6 (HSC/26 - Report)	NC0545E1 (HSC/29)
NC0397E1 (HSC/27)	NC0585E1 (HSC/29)
NC0430E2, Annex H/14 (HSC/27 - Report)	NC0590E2, Annex H/9 (HSC/29 – Report)
NC0455E1 (HSC/28)	NC0755E1 (HSC/32)
NC0498E1 (HSC/28)	

I. BACKGROUND

1. After the preparation of Doc. NC0755E1, the Secretariat received on 7 October 2003 a note from the **US** Administration concerning the reservation entered by **EC** on the classification of the **Palm V** presented as a set with the **Palm Desktop** software for use on a personal computer. This note is reproduced below (the Secretariat has numbered the paragraphs to facilitate the discussions).

II. NOTE FROM THE **US** ADMINISTRATION

2. "At its 32nd Session (November 2003), the Harmonized System Committee will examine the classification of the **Palm V** presented as a set with the **Palm Desktop** software for use on a personal computer. For the reasons set forth below, the **United States** believes that the **Palm Desktop** software, the **Palm V** and the other articles presented with the **Palm V** should be classified together as a set in heading 84.71.
3. At its 28th Session, the Harmonized System Committee unanimously decided to classify the **Palm V** in subheading 8471.30 by application of General Interpretative Rules 1 (Note 5 (A) to Chapter 84) and 6.

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

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4. At its 29th Session, the Committee considered the classification of the **Palm V** presented as set. The Committee voted to classify the set comprising the **Palm V** and the other components presented with it for retail sale (including the CD-ROM containing the **Palm Desktop** software for installation and use on a personal computer) in heading 84.71 (8471.30), by application of General Interpretative Rules 3 (b) and 6.
5. Subsequent to its 29th Session, a reservation was entered against the decision by the Committee classifying the set in heading 84.71. The Committee will re-examine the classification of the set at its 32nd Session.
6. The **United States** believes that the **Palm Desktop** software, the **Palm V** and the other articles presented with the **Palm V** should be classified together as a set in heading 84.71 pursuant to General Interpretative Rules 1 (Note 5 (A) to Chapter 84) and 3 (b) for the reasons set forth below.

Description of the merchandise

7. The **Palm V** is presented with software known as the "**Palm Desktop** software." It is not intended for use and installation on the **Palm V** but rather for use and installation on a personal computer (desktop or laptop computer) in order to allow the exchange of data between the **Palm V** and the personal computer. Several other articles (e.g., "**HotSync**" cradle and battery charger, user manual, etc.) are also presented with the **Palm V**.

Discussion

8. Note 6 to Chapter 85 provides as follows :

"Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended."
9. Guidance on the interpretation of the above-mentioned note can be found in the Explanatory Notes to the Harmonized System. The Explanatory Note (3rd edition, 2002) to Note 6 to Chapter 85 (Item (B) to the General Explanatory Note to Chapter 85, page 1619) provides as follows :

"(B) Media presented with apparatus for which they are Intended (Chapter Note 6).

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles shall be applied :

 - (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that rule; or

- (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.”

10. In light of the above, media will only be classified separately under Note 6 to Chapter 85 when it is presented together with the apparatus for which it is intended to be used, i.e., the media must be able to be physically inserted in or installed on the apparatus that was imported or presented with the media. Typical examples of merchandise covered by this note would be a video cassette with a video cassette player or a CD-ROM with a CD-ROM player. By contrast, in the instant case, the media (i.e., **Palm Desktop** software) presented with the **Palm V** is not intended for use and installation on the **Palm V**. Rather, the **Palm Desktop** software is intended for use and installation on a personal computer in order to connect the **Palm V** to the personal computer so that data can be sent from the **Palm V** to the personal computer. Accordingly, the media presented with the **Palm V** is not covered by or subject to the terms of Note 6 to Chapter 85.

11. As indicated above, the **United States** is of the view that the **Palm V** and the other articles presented with it should be classified together by application of General Interpretative Rule 3 (b), which provides as follows :

“Mixtures, composite goods consisting of different materials or made up of different components, and **goods put up in sets for retail sale**, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which give them their essential character, insofar as this criterion is applicable.” (Emphasis added.)

12. The Explanatory Notes (3rd edition, 2002) to the General Interpretative Rules provide guidance on the concept of “goods put up in sets for retail sale” (page 5) :

“For 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).”

13. The **Palm V** together with the other articles with which it is presented meet all the above-listed three requirements for a set as (1) together they consist of at least two different articles (e.g., **Palm V** and cradle); (2) they are put up together to meet the particular need or carry out the specific activity of storing, processing and transferring data; and (3) they are put up together in packaging for sale directly to users.

14. The **Palm V** is clearly the article that imparts the essential character to the set by whatever factor one considers, e.g., value of the **Palm V** or role of the **Palm V** in relation to the use of the good. Accordingly, the set should be classified as if it consisted of the **Palm V**. As the Committee previously decided, the **Palm V** is properly classified in heading 84.71, and specifically in subheading 8471.30 (by application of General Interpretative Rules 1 (Note 5

(A) to Chapter 84) and 6). Therefore, the set should be classified in heading 84.71, and specifically in subheading 8471.30.

15. The **Palm V** and the other articles with which it is presented should be classified together as a set in heading 84.71 by application of General Interpretative Rules 1 (Note 5 (A) to Chapter 84) and 3 (b). The Committee should reconfirm the decision taken at its 29th Session and classify the merchandise in heading 84.71.”

III. CONCLUSION

16. The Committee is invited to take the Note from the **US** Administration into account when it examines this agenda item.
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