



HARMONIZED SYSTEM
COMMITTEE

-
26th Session
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NC0305E1
(+ Annexes I to IV)

O. Eng.

Brussels, 3 October 2000.

STUDY WITH A VIEW TO DETERMINING THE LINE OF DEMARCATION
BETWEEN THE UNITS OF HEADING 84.71 AND THE
ACCESSORIES OF HEADING 84.73

(Item VIII.1 on Agenda)

Reference document :

NC0250E2, Annex H/2, paragraph 9 (HSC/25 – Report)

I. BACKGROUND

1. At its 25th Session, the Committee discussed the classification of the “ENW-9500-Fast Ethernet Adapter”, following a reservation by the EC. At the request of the same delegation, the Committee, by 16 votes to 15, decided to undertake a study vis-à-vis the line of demarcation between headings 84.71 and 84.73, with respect to units of automatic data processing (hereinafter : ADP) machines and accessories suitable for use solely or principally with ADP machines, before classifying the Fast Ethernet Adapter within Chapter 84.

II. SECRETARIAT COMMENTS

2. During the intersession, the Secretariat received observations from Senegal, Canada, Switzerland and Turkey, which are set out in the Annexes I to IV to this document, respectively. To facilitate discussions, the Secretariat has numbered the paragraphs of the observations.
3. The Secretariat has set out below its consideration with respect to accessories for use with ADP machines, on the one hand (as mentioned in heading 84.73), and units for ADP machines, on the other hand (as mentioned in heading 84.71).

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A. Accessories

4. Heading 84.73 refers to “accessories (other than covers, carrying cases and the like) suitable for use solely or principally with the machines of headings 84.69 to 84.72”. At the legal level, no description of the term “accessory” is given. However, the Explanatory Note to that heading, second paragraph, on page 1412, describes accessories as “interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations.” (French : “Les accessoires de cette position peuvent consister soit en organes d’équipement interchangeables permettant d’adapter les machines à un travail particulier, soit en mécanismes qui leur confèrent des possibilités supplémentaires, soit encore en dispositifs de nature à assurer un service particulier en corrélation avec la fonction principale de la machine.”)
5. The New Shorter Oxford Dictionary describes the word “accessory” (noun) as “. . . An additional or subordinate thing; an adjunct, an accompaniment; a minor fitting or attachment . . .”, whereas the Grand Larousse universel describes the term as “1. What is not essential; something secondary. 2. An object, instrument or appliance designed to supplement a main element or to help an appliance function under various circumstances.” (translation).
6. With respect to the classification of accessories, it is to be noted that the General Interpretative Rules do not contain specific provisions. They should, therefore, be regarded as “normal” goods and classified in their own right, without regard to the goods for which they are intended, unless specific provisions have been made at the Section, the Chapter or the heading level. Within Chapter 84 specific provisions have been made by the terms of certain headings (i.e., headings 84.48, 84.66 and 84.73), which read “parts and accessories suitable for use solely or principally with the machines of headings (. . .)”. It should be noted that the terms of these headings refer to “parts” and “accessories” indiscriminately at the heading level and at the subheading level. Similarly, the Explanatory Notes to these headings do not separate “parts” from “accessories”.
7. In many cases, the application of General Interpretative Rule (GIR) 3 (a) may be invoked, since accessories may also be covered by a heading which refers to the characteristics or the constituent material of the commodity at issue. The Explanatory Note to GIR 3 (a), items (IV) (b) (1) and (b) (2), on page 4, for example, indicates that certain goods, though being accessories for automobiles should be classified in the heading which describes them more specifically, and not in the heading covering automobile accessories. Similarly, an accessory for an ADP machine would be classified elsewhere when the heading at issue gives a more specific description of the good. In this context, attention is drawn to the above-referenced Explanatory Note, part (IV) (a) (on page 4), which stipulates that a description by name is more specific than a description by class, which may include the term “accessories”.
8. In conclusion, the Secretariat considers that an accessory itself does not contribute to the basic functioning of a machine, but merely adapts the machine, performs a particular service, or increases the number of operations (see paragraphs 4 and 5 above). Therefore, whether or not the “accessory” is present or attached to the machine, the machine can function perfectly.

B. Units for ADP machines

9. Heading 84.71 covers, among others, ADP machines and separately presented units thereof. An ADP machine of heading 84.71 may consist of several separate units (introductory paragraph, first sentence, of Note 5 (B) to Chapter 84). The provisions of this sentence, are, in principle, the same as those of Note 4 to Section XVI. The latter Note stipulates that
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individual components intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, are classified as a whole in the heading appropriate to that function.

10. The difference between Note 4 to Section XVI and Note 5 to Chapter 84 concerns the classification of the individual components when presented separately. Whereas under Note 4 to Section XVI the individual components presented separately should be classified in their appropriate headings, separately presented units of ADP machines are, subject to paragraph (E) of Note 5 to Chapter 84, classified within the same heading as the complete machine (or system) (see Note 5 (B) to Chapter 84). These units should, however, meet all of the following criteria :
 - (a) be of a kind solely or principally used in an automatic data processing system;
 - (b) be connectable to the central processing unit either directly or through one or more other units; and
 - (c) be able to accept or deliver data in a form (codes or signals) which can be used by the system.
11. From the foregoing it can be concluded that a unit is to be regarded as a unit of an ADP machine if it (i) meets all conditions of Note 5 (B), (ii) is a part of the complete system and (iii) contributes to the function of automatic data processing.

C. Function of “ADP”

12. Since the classification of units and of accessories depends on the function performed (i.e., whether or not the unit is processing data), the Secretariat considers it crucial to explore the meaning of that function. Below, it has reproduced descriptions taken from various sources, i.e., from the Explanatory Note to heading 84.71, from the “Dictionary of computer science – ISO afnor” (French : “Dictionnaire de l’informatique – ISO afnor”), from the Grand Larousse universel and from the New Shorter Oxford Dictionary, respectively.
13. The first three paragraphs of the Explanatory Note to heading 84.71, Part (I), on page 1402, read as follows (emphasis added) :

“Data processing consists in handling information of all kinds, in pre-established logical sequences and for a specific purpose or purposes.

Automatic data processing machines are machines which, by logically interrelated operations performed in accordance with pre-established instructions (program), furnish data which can be used as such or, in some cases, serve in turn as data for other data processing operations.

This heading covers data processing machines in which the logical sequences of the operations can be changed from one job to another, and in which the operation can be automatic, that is to say with no manual intervention for the duration of the task. These machines mostly use electronic signals but may also use other technologies (e.g., pneumatic, fluidic or optical); some may use combinations of two or more of these technologies.”

14. The “Dictionary of computer science” describes the expression “data processing system” as : “a system (. . .) that performs input, processing, storage, output, and control functions to accomplish a sequence of operations on data” (French : “système informatique : système (. . .) remplissant des fonctions d’entrée, de traitement, de mémorisation, de sortie et de commande pour effectuer une suite d’opérations portant sur des données”) (emphasis added).

15. The “Grand Larousse universel” gives the following description : “**Data or information processing** : All operations carried out automatically relating to the collection, recording, elaboration, modification, saving, destruction and editing of data and, generally speaking, to data use.” (translation).
16. The “New Shorter Oxford Dictionary” describes the expression “data processing” as follows (emphasis added) : “the performance by automatic means of any operation on empirical data, such as classifying or analysing them”.
17. The word “handling” (French : “mettre en œuvre”), as used in the first paragraph of the Explanatory Note to heading 84.71, seems to cover a number of actions requesting a certain degree of activity (either from a machine or from a person) vis-à-vis data, since the term at issue could be described, from the semantic point of view, as “using, operating, or manipulating in a controlled manner”. This seems to be in line with the descriptions given in the above-referenced dictionaries, although the description given in the Grand Larousse universel also refers to the collection of data and to the use of data.

D. Classification aspects

18. The functionality aspects of units and of accessories play a crucial roll when considering their classification. Whereas a unit for an ADP system contributes to the function “automatic data processing”, and consequently constitutes a part of that system (by virtue of Note 5 (B), first sentence – see paragraph 9 above), an accessory for an ADP machine does not. The latter is merely designed to adapt the ADP machine (or the ADP system), to perform a particular service or to increase the range of operations. This goes equally for accessories classified in heading 84.73 as for those classified elsewhere by virtue of GIR 3 (a) (see paragraph 8 above).
19. In this context, it might be worthwhile to consider the scope of the term “system” when used in connection with ADP machines classifiable in heading 84.71. The heading itself does not mention “ADP systems” or “ADP machines in the form of systems”, but by virtue of Note 5 (B) to Chapter 84 (introductory paragraph, first sentence), ADP machines may be in the form of systems (which consist of a variable number of separate units). Similarly, at one-dash level references are made to “ADP machines”, but not to “ADP systems”. It is understood, however, that the referenced provisions of Note 5 (B) apply, *mutatis mutandis*, at the subheading level, by application of GIR 6.
20. The term “system” appears in subheading 8471.49 (“Other digital automatic data processing machines presented in the form of systems” (other than those comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined – subheading 8471.41). Subheading Note 1 to Chapter 84 stipulates that, for the purposes of subheading 8471.49, the term “systems” means automatic data processing machines whose units satisfy the conditions laid down in Note 5 (B) to Chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer) (emphasis added).
21. Notwithstanding the fact that from a legal point of view Subheading Note 1 to Chapter 84 is restricted to subheading 8471.49, the Secretariat considers that it can also be used at the heading level, taking into account that (i) reference to the said Note is made in the Explanatory Note to heading 84.71 (part (I) (A), ninth paragraph, on page 1403) and (ii) the phrase “comprise at least” does not restrict the number of units.

22. From the phrase “comprise at least” as used in Subheading Note 1 to Chapter 84 it appears that, in addition to input and output units, other units may also be part of the system. These (additional) units, which may have the character of a unit of heading 84.71 (i.e., a unit contributing to the function “automatic data processing”) or of an accessory of heading 84.73 or any other, more specific heading (i.e., a unit merely designed to adapt the ADP machine (or the system), to perform a particular service or to increase the range of operations), are usually inserted between the input or output units (start and end of the system) (see the Explanatory Note to heading 84.71, first paragraph, on page 1404). It is understood, however, that such units are to be classified (as part of the system) in subheading 8471.49, if they are presented with the central processing unit, the input and output units.
23. In this context the Secretariat has noted a possible anomaly between the provisions of Subheading Note 1 to Chapter 84 and the Explanatory Note to heading 84.71, part (I) (A), fourth paragraph, on page 1404. Subheading Note 1 stipulates that the “units satisfy the conditions laid down in Note 5 (B) to Chapter 84”, which means that the input or output units should meet all three conditions ((a), (b) and (c)) of that Note. A strict interpretation would exclude input or output units referred to in Note 5 (D) to Chapter 84 from forming part of a system, when these units meet only the conditions (b) and (c) of Note 5 (B). The referenced Explanatory Note on the other hand, which clarifies the concept of systems classifiable in heading 84.71, indicates that “printers, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of items (b) and (c) [of Note 5 (B)], are in all cases to be classified as constituent units of data processing systems”. This implies, however, a broad interpretation of the Subheading Note.

E. Recent HSC classifications

24. During the past few years, the Committee has classified a number of articles which can be used in conjunction with or could be related to ADP machines. To facilitate discussions, the Secretariat has reproduced these decisions (goods descriptions, classification and HSC session) in the table below (in the order of subheadings).

Classification	Description	HSC
Separate classification of the components in their own heading	Closed circuit video surveillance system	HSC/24
Separate classification of the components in their own heading	System comprising several types of apparatus, connected to each other by cables, designed to enable the teacher to control the work of several students using an interactive communication system (language laboratory)	HSC/24
8443.51	Digital ink-jet printer	HSC/25
8471.60	Graphic tablets / digitizers	HSC/25
8471.70	Data storage devices	HSC/25
8471.70	Digital Linear Tape (DLT) Autoloaders and Libraries	HSC/25
8471.70	5.25" Magneto-Optical Jukeboxes	HSC/25
8471.80	Communications controllers or routers (including "LAN bridges")	HSC/25
8471.80	Synchronous-network-architecture (SNA) cluster controllers (including remote control units)	HSC/25
8471.80	Multistation access unit (a passive LAN hub)	HSC/25
8471.80	Optical fibre converter	HSC/25
8471.90	Flatbed table-top scanner	HSC/22

8473.30	Pentium ® II processor	HSC/23
8517.30	"MVX" voice processing system	HSC/23
8528.21	Display for reproducing computer or video images	HSC/22
8528.30	Full-colour desktop LCD (liquid crystal display) projector	HSC/22
8528.30	Graphics projector	HSC/22
9006.10	Imagesetters	HSC/24
9006.10	Laser photoplotter	HSC/24
9006.59	Laser photoplotter	HSC/24

F. Concluding observations

25. Considering that not every unit that can be connected, either directly or indirectly, to the central processing unit is to be classified as a unit of heading 84.71 (whether or not it meets all the criteria of Note 5 (B) to Chapter 84), the demarcation line between (i) a unit of an ADP machine (classifiable in heading 84.71) and (ii) an accessory of an ADP machine, could be drawn on the basis of the functionality of the commodity, i.e., does it actively contribute in the data processing or not. This results in the following conclusion :
- (i) Separately presented units for ADP machines meeting all the conditions of Note 5 (B) or (D) to Chapter 84 and contributing to the function of data processing in an active way (i.e., handling of data), are to be regarded as units of ADP machines of heading 84.71 and are to be classified in that heading, subject to Note 5 (E) to Chapter 84;
 - (ii) Separately presented goods (units) used in conjunction with an ADP machine but not actively contributing to the processing of data (i.e., not handling the data), should be regarded as "accessories", and are, consequently, to be classified in their own right (e.g., in heading 84.73), regardless whether they meet the conditions of Note 5 (B) or (D) to Chapter 84.
26. If the Committee agrees with the above-suggested demarcation line, it may wish to reconsider a number of references in the Explanatory Note to heading 84.71, in particular references in the second paragraph on page 1406, which is related to separately presented units. It may also wish to reconsider the classification of a number of products related with or working in conjunction with ADP machines.
27. The conclusion reflected in paragraph 25 above seems to be in line with the positions of Senegal and Canada (see Annexes I and II to this document, respectively). The position of the Swiss Administration (see Annex III) is in this respect, however, not entirely clear. The Turkish Customs Administration, finally (see Annex IV), considers that the demarcation line should be drawn according to (i) the possibility of being connected (directly or indirectly) to a central processing unit and (ii) the question whether the unit is able to accept or deliver data in the appropriate form for the system.
28. Finally, the Committee may also wish to consider the provisions of Subheading Note 1 to Chapter 84, given the apparent anomaly with the Explanatory Note to heading 84.71 (see paragraph 23 above).

III. CONCLUSION

29. The Committee is invited :
- (i) to consider the demarcation line between units of an ADP machine, on the one hand and accessories for such machines on the other hand, taking into account the observations in paragraphs 2 to 24 above, the notes in Annexes I to IV to this document, and the conclusions of the Secretariat in paragraph 25;

- (ii) to indicate what action, if any, should be taken, taking into account the results of its considerations;
- (iii) to indicate whether, on the basis of its conclusions, certain references in the Explanatory Note to heading 84.71 and the classification of certain goods should be reviewed (see paragraph 26 above); and
- (iv) to give its opinion on the question whether there is an anomaly in Subheading Note 1 to Chapter 84 (see paragraph 23 above).

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Letter from Senegal

Subject : Line of demarcation between the units of heading 84.71 and the accessories of heading 84.73.

1. Thank you for your above-referenced letter requesting my opinion on the Secretariat's study on the line of demarcation between the units of heading 84.71 and the accessories of heading 84.73.
2. This study was requested by the Harmonized System Committee following the classification in Chapter 84 of an Ethernet Adapter comprising printed circuits and presented in the form of a slot-in card to link two or more computers interconnected within an Ethernet network.
3. This card, which slots into the central processing unit of the automatic data processing machine, was classified in Chapter 84 by application of Note 5 (B) thereto.
4. Thus, the actual computer can function alone without being connected to another computer, the information being processed autonomously by the central processing unit.
5. Hence the card is of an accessory nature, resulting in its classification in heading 84.73 and more specifically in subheading 8473.30.
6. The line of demarcation between heading 84.71 and heading 84.73 is therefore based on the fact that the accessories do not play a part in the actual information processing, whereas the parts are suitable for use as constituents of an automatic data processing machine. These accessories would therefore fall to be classified in subheading 8473.30, as heading 84.71 contains the units explicitly mentioned in the legal texts of subheadings 8471.50 to 8471.90.

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Observations from Canada

1. Our administration has adopted the position that LAN apparatus is classified under heading 84.71 as “control and adapter units of ADP equipment”. The primary function of this apparatus is to facilitate the interconnection of ADP machines to allow them to “communicate”. As a result the “Fast Ethernet Adapter” should be classified under Chapter 84 rather than under Chapter 85 of the HS.
2. Our position on the classification of these Ethernet Adapters differs from the Secretariat and other members of the Committee in that we do not view these LAN adapter circuit boards/cards as other units of ADP machines in subheading 8471.80 but rather view these circuit boards/cards as accessories under heading 84.73, suitable for use solely or principally with ADP machines of heading 84.71. These LAN adapter circuit boards/cards are installed inside the CPU of an automatic data processing machine. Heading No. 84.73 provides for “Parts and accessories ... suitable for use solely or principally with the machines of headings Nos. 84.69 to 84.72”. The ENs to heading No. 84.73, page 1412, paragraph 2, state that “accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to expand its range of operations”. Adapter boards are accessories that enable ADP machines to share and exchange data thereby adapting them to a particular function they could not otherwise perform. Based on the function performed by the “ENW-9500 Fast Ethernet Adapter” which is to allow an ADP machine to be connected to an Ethernet network, this device is an accessory for use solely or principally with an ADP machine. Consequently, this product should be classified under heading No. 84.73 and more precisely under subheading No. 8473.30 pursuant to GIR No. 1 and 6.
3. Our administration has difficulty in accepting the position that “parts or constituents of ADP systems” which have an individual function and extend the performance of a computer beyond its intrinsic or original function should be regarded as “units” of an ADP machine under heading 84.71.
4. Our administration views constituents of ADP systems which have an individual function and extend the performance of a computer beyond its intrinsic or original function as **accessories** of heading 84.73.
5. Accessories are defined as “additional or extra thing” (Concise Oxford Dictionary) “An object or device not essential in itself but adding to the beauty, convenience, effectiveness of something else” (Webster New Collegiate Dictionary).
6. Ethernet Adapters control the ability of the ADP machine to communicate with other machines but it does not directly affect the processing of data. This device clearly meets the definition of the word “accessories” and the terms set out in the Explanatory Notes to heading 84.73.
7. Our administration views the “Fast Ethernet Adapter” as an accessory to an ADP. The Fast Ethernet Adapter increases the range of operation of an ADP machine, as an accessory, it is not essential to the operation of an ADP machine. Therefore, the “Fast Ethernet Adapter” should be classified under heading 84.73, and subheading 8473.30 of the HS.

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Letter from Switzerland
(Extract)

(. . .)

1. Regarding the demarcation line between products covered by heading 84.71 and those of heading 84.73, it must be pointed out that units are mentioned in heading 84.71, while parts and accessories are mentioned in heading 84.73. In accordance with Note 2 (a) to Section XVI, there is no call to apply letters (b) and (c) of that Note, which refer to parts not having a heading of their own.
2. Therefore, provisions of Note 2 to Section XVI do not affect the classification of the apparatus at issue.
3. These observations aside, we feel that a network adapter cannot be regarded as a part (as it is not necessary for an automatic data processing machine to function) or an accessory, as we believe the latter term applies either to interchangeable equipment for adapting the machine to a particular function or to elements for increasing its range of operations. Diskettes for cleaning disk drives in ADP machines (Item 8) are in fact the only example of ADP machine accessories mentioned in the Explanatory Note to heading 84.73. This example is undeniably of a different nature to that of "Ethernet" adapters.

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Letter from Turkey

1. According to Note 5 (B) of Chapter 84, automatic data processing machines may be in the form of systems consisting of a variable number of separate units and subject to Note 5 (E) of the same Chapter, a unit is to be regarded as being a part of a complete system if it meets all of the following conditions :
 - (a) It is of a kind solely or principally used in an automatic data processing system;
 - (b) It is connectable to the central processing unit either directly or through one or more other units; and
 - (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

 2. In this context we are of the view that products which meet all of the conditions stated in Note 5 (B) of Chapter 84 should be classified as the units of heading 84.71 and those which are of a kind solely or principally used in an automatic data processing system but do not comply with the conditions (b) and (c) stated in Note 5 (B) of Chapter 84 should be classified as the accessories of heading 84.73. Accordingly, we think that it would be appropriate to take into consideration the criteria which have been mentioned above as the line of demarcation between the units of heading 84.71 and the accessories of heading 84.73.
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