



HARMONIZED SYSTEM
COMMITTEE

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(+ Annexes I to III)
O. Fr.

H11-3

Brussels, 23 April 2001.

CLASSIFICATION OF RADIO EQUIPMENT (TRANSMITTER/RECEIVER)

(Item IX.3 on Agenda)

I. BACKGROUND

1. On 13 February 2001, the Secretariat received a Note from the European Community requesting that this question be examined by the Harmonized System Committee.

II. NOTE FROM THE EUROPEAN COMMUNITY

" **Subject** : Classification of radio equipment (transmitter/receiver) in the HS
Nomenclature
Dispute between the EC and Senegalese Administrations

Ref. : Article 10 of the HS Convention

• **BACKGROUND**

2. The European Community wishes to submit to the Harmonized System Committee a dispute between it and the Senegalese Administration concerning the tariff classification of radio equipment.
3. The goods to be classified consist of radio communications equipment enabling a telecommunication link to be established between two points.
4. Delegations will find appended hereto a technical leaflet describing the items of equipment concerned (Annex I) which bear the reference numbers :
 - SRT 1/6L EM/REC 128 TCM SPD/PDH6L
 - SPS 155 SDH/DPH
 - RADIO-RELAY SYSTEM (RRS) transmitter/receiver management system

File No. 2848

5. In addition, two technical/commercial documents on the equipment are reproduced in Annex 2.

6. The EC has classified these items of equipment in subheading 8525.20, which seems appropriate in as much as they serve to establish a radio link between two communications stations and are presented separately for clearance. In this connection, the EC has prepared a Binding Tariff Information (BTI) through the good offices of the French Administration (Annex 3).

7. On the other hand, Senegal would classify these articles in subheading 8517.50 on the grounds that since the equipment is intended to form part of an optical-fibre digital data telecommunication network, it should be classified under Note 3 to Section XVI as an integral part of a network using optical-fibre technology.

• **CLASSIFICATION**

8. This radio communications equipment makes it possible to establish a telecommunications link between two points and is intended to form a whole after interconnection.

9. The equipment, which operates in frequency bands between 5945 MHz and 6315 MHz, is made up of three separate elements :

1 - Central unit

This item of equipment (reference SRT 1/6L EM/REC 128 TCM) comprises 4 radio signal transmitters and 4 receivers with parabolic antennas.

2 - SPS 155 SDH/DPH module

The central unit is supported by a switching system used to compensate for any deficiencies in one of the receivers. This system makes it possible to switch the signal to a properly functioning receiver.

3 - RRS transmitter/receiver network management module

10. This system detects any anomalies in the operation of the central unit. It performs equipment control functions.

11. The radio equipment is incorporated in a network forming a loop. Only the RRS GHz link transmitter/receiver part needs to be classified.

12. As the items of equipment are presented separately for clearance, classification in subheading 8525.20 would appear to be the most appropriate in as much as they establish a radio link between two communications stations.

13. However, Senegal favours classification in subheading 8517.50 on the grounds that as the equipment is to form part of an optical-fibre data telecommunication network, it should be classified under Note 3 to Section XVI as part of a network using optical-fibre technology.

14. This approach seems to us mistaken in as much as, at the time of clearance, the items of equipment are presented separately. Accordingly, we consider that there would be

no point in applying Note 3 to Section XVI to determine whether the equipment should be regarded as forming part of a digital telecommunication apparatus.

15. Thus, Note 2 (a) to Section XVI states that "parts which are goods included in any of the headings of Chapters 84 or 85 [...] are in all cases to be classified in their respective headings".

16. Moreover, it seems to us more appropriate to argue for classification in subheading 8525.20 by application of Note 4 to Section XVI, by treating the transmission function as the principal function of the equipment, rather than to consider the separate classification of its various components.

17. With a view to settling this dispute bilaterally, the EC requested the opinion of the WCO Secretariat by letter dated 28 October 1999. The latter gave its opinion in a letter dated 14 December 1999 (Annex 4).

18. The EC could accept the analysis made by the WCO Secretariat, which concludes as follows :

"[...] from these descriptions of the various items of equipment, the Secretariat concludes that they perform clearly defined functions expressly mentioned in the Nomenclature.

The Secretariat is therefore inclined to classify them, by application of GIR 1 and 6, as follows :

- (1) *The central unit "SRT" in subheading 8525.10 as transmission apparatus for radio-telephony, incorporating reception apparatus.*
- (2) *The switching system "SDH/DPH" in subheading 8517.30 as switching apparatus for digital telecommunication."*

19. At the 25th and 26th Sessions of the Harmonized System Committee, the Delegations of France and the EC met the representative of the Senegalese Delegation in an attempt to reach a bilateral agreement within the context of paragraph 1 of Article 10 of the HS Convention. On 4 April 2000, the EC sent a new fax to Senegal, which was followed by a further exchange of communications between the representatives of the French and Senegalese Administrations.

20. However, by Note of 30 May 2000 (Annex 5), Senegal confirmed the classification of this radio equipment in HS subheading 8517.50.

• **PROPOSAL FOR SETTLING THE DISPUTE**

21. Finally, with the aim of finding a bilateral solution, the EC - which continues to prefer a single classification - made it known, through a further letter from the French Administration dated 30 November 2000 (Annex 6) that it was prepared to accept the separate classification of the three components of the radio equipment in full conformity with the analysis made by the WCO Secretariat in its letter of 14 December 1999 :

- The SRT central unit in subheading 8525.10 as transmission apparatus for radio-telephony, incorporating reception apparatus.

- The SDH/DPH switching system in subheading 8517.30 as switching apparatus for digital telecommunication.

22. In a letter dated 9 January 2001, the Senegalese Administration said that it was maintaining its initial position in favour of classifying all the equipment in the single heading 85.17.

23. In conclusion, the EC wishes to point out that as the function of the equipment to be classified is to provide radio links, in no circumstances could it be regarded as line equipment for optical-fibre cables used for digital telecommunication, and it remains convinced that, for the various reasons mentioned above, the equipment should be classified in subheading 8525.20.

24. As it has not been possible to find a bilateral solution to this dispute with the Senegalese Administration, the EC requests that the question be submitted to the Harmonized System Committee under Article 10.2 of the HS Convention."

III. SECRETARIAT COMMENTS

25. First, the Secretariat would draw the Committee's attention to the last paragraph of the above note from the EC where it is indicated that it has not been possible to settle the present dispute by direct negotiations between the two Contracting Parties and Article 10.2 of the HS Convention is therefore invoked.

26. Next, the Secretariat would point out that all the documents appended to the EC note will be made available to delegates in the course of the session. Nevertheless, a technical leaflet describing the equipment in question, with a sketch of the network, is reproduced at Annex I hereto in order to provide an overview of the telecommunications equipment in question.

27. Moreover, it should be noted that when this case was submitted by the EC, in 1999, the Secretariat observed that the file did not contain anything concerning the case for the application of Note 3 to Section XVI. However, the position of the Senegalese Administration is explained in a letter which it sent to the General Directorate of French Customs. This letter is reproduced at Annex II to the present document.

28. As regards classification, the Secretariat concluded that, according to the information placed at its disposal, which also indicated that the items in question were presented separately for clearance, the equipment at issue consists of various pieces of apparatus whose respective functions are expressly mentioned in the Nomenclature.

29. The Secretariat therefore proposed that these pieces of apparatus be classified, by application of GIR 1 and 6, as follows :

- (1) The central unit "SRT" in subheading 8525.10 as transmission apparatus for radio-telephony, incorporating reception apparatus.

(2) The switching system "SDH/DPH" in subheading 8517.30 as switching apparatus for digital telecommunication.

30. In conclusion, the Secretariat stated that since it was not in a position to determine the precise nature of the RRS modular network management system, it was unable to give an opinion on the classification of that equipment based on a full knowledge of the facts. Nevertheless, this system could fall in heading 85.17 or heading 85.37, as the case might be.

31. For the sake of clarity, the reply that the Secretariat sent the EC at the time is also reproduced below (see Annex III).

IV. CONCLUSION

32. The Committee is invited to examine the classification question raised by the European Community, taking into account the Secretariat comments in paragraphs 25 to 31 above.

* * *

Technical leaflet on radio equipment

The equipment, which operates in frequency bands between 5945 MHz and 6315 MHz, is made up of three separate elements :

1 - Central unit

This item of equipment (reference SRT 1/6L EM/REC 128 TCM) comprises 4 radio signal transmitters and 4 receivers with parabolic antennas.

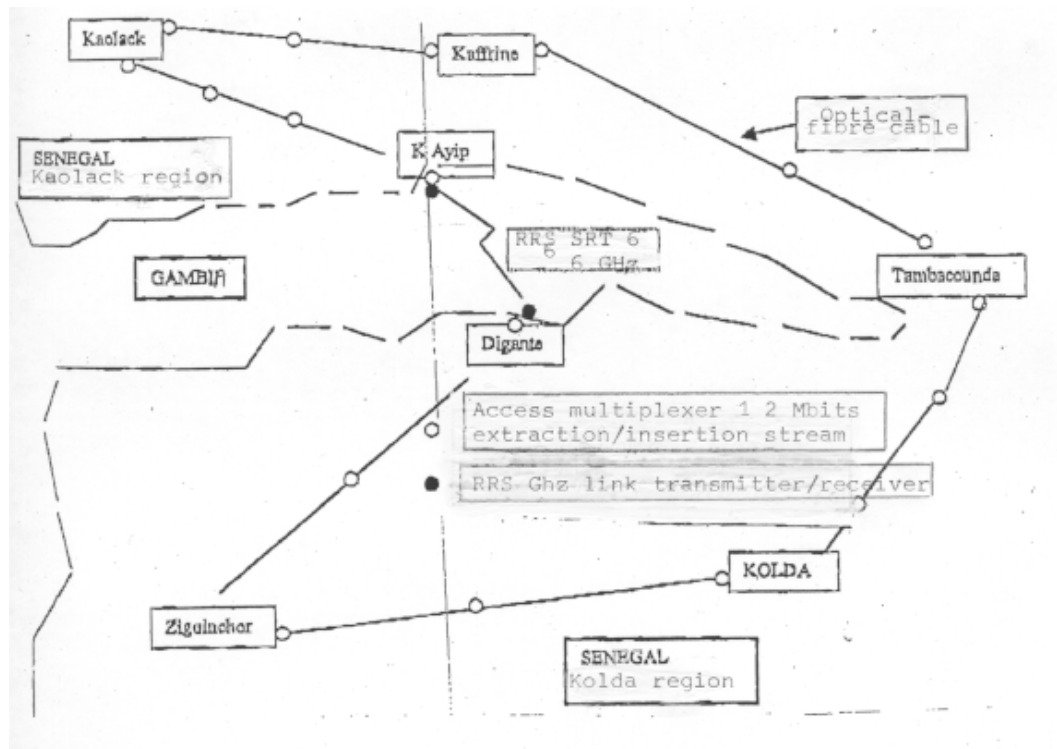
2 - SPS 155 SDH/DPH module

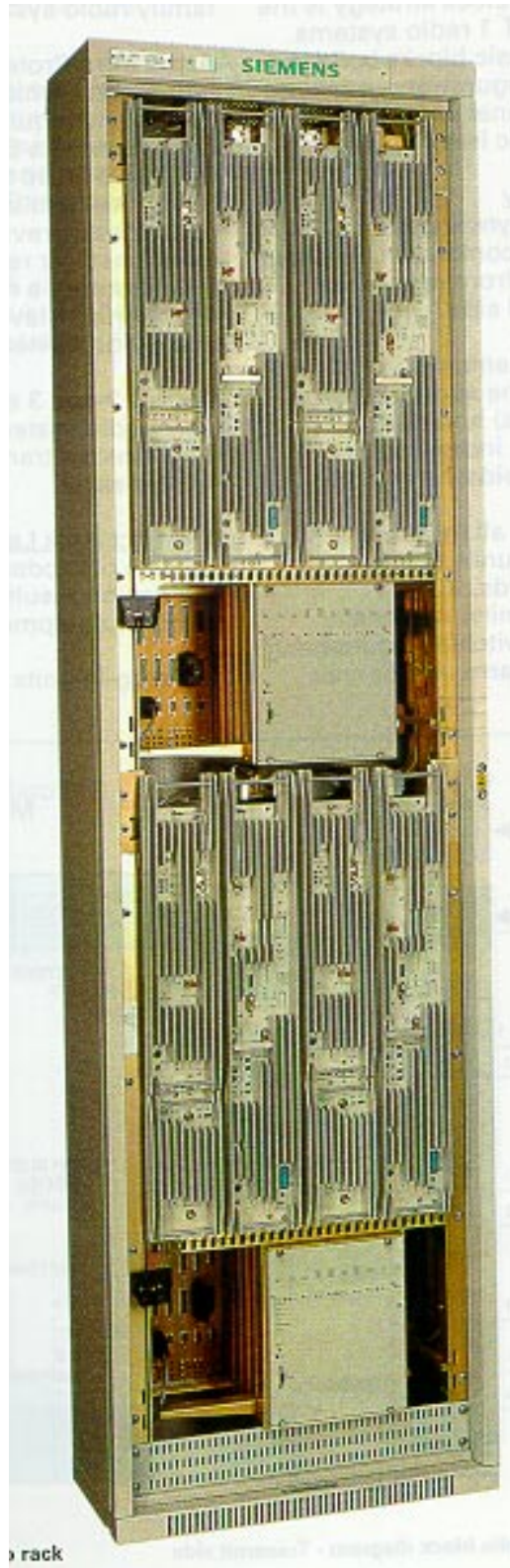
The central unit is supported by a switching system used to compensate for any deficiencies in one of the receivers. This system makes it possible to switch the signal to a properly functioning receiver.

3 - RRS transmitter/receiver network management module

This system detects any anomalies in the operation of the central unit. It performs equipment control functions.

The radio equipment is incorporated in a network forming a loop. Only the RRS GHz link transmitter/receiver part needs to be classified.





Dakar, 30 May 2000

General Directorate of Customs
Republic of Senegal

To : General Directorate of Customs
Paris, France

Subject: Classification of the "SAGEM" SRT 1/6L EM/REC 128 TCM SPD/PDH6L

Dear Sir,

Further to our telephone conversation of 25 May 2000, I wish to inform you that Senegal's position on the tariff classification of the above-mentioned apparatus is as follows :

the apparatus is line equipment for optical-fibre cables used for digital telecommunication;

as the apparatus in question is a composite machine consisting of two or more machines (modems, multiplexers, transmitters, receivers, etc.) fitted together to form a whole, its classification is determined by Note 3 to Section XVI of the HS Nomenclature, which states that : "Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted 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";

moreover, according to the Explanatory Note to heading 85.17, "line equipment" includes transmitters and receivers when they form part of an optical-fibre digital telecommunication network (cf. HS Explanatory Notes, Vol. 4, page 1475).

In view of the above, it is our opinion that the apparatus in question should be classified in subheading 8517.50.

Fax No. 99NL1150 – J/Gon of 14 December 1999 concerning the classification of radio equipment in the Harmonized System

A. Description and use

From the information provided it appears that the goods to be classified consist of various pieces of equipment that form part of a microwave link facility. These pieces of equipment are presented separately for clearance.

Moreover, the Secretariat notes that the EC considers the correct classification for the equipment to be subheading 8525.20 in so far as it is used to establish a radio link between two communication stations.

However, at the same time, you point out that, from another point of view, in so far as it is intended to be incorporated in an optical-fibre digital data telecommunication network, the equipment is also potentially classifiable in subheading 8517.50, by virtue of Note 3 to Section XVI.

The following elements appear to be involved :

(1) Reference No. SRT 1/6L EM/REC 128 TCM

This element, which is understood to be the central unit of the installation, comprises 4 radio signal transmitters and 4 receivers with parabolic antennas.

(2) Reference No. SPS 155 SDH/DPH

According to the information provided, this is a switching system used to compensate for any deficiencies in one of the receivers. It allows the signal to be switched to a properly functioning receiver.

(3) RRS transmitter/receiver network management module

According to the technical-commercial leaflet included in the documentation, this system detects any anomalies in the operation of the central unit. It performs equipment control functions.

B. Classification

Firstly, the Secretariat notes that it has no information concerning the case for the application of Note 3 to Section XVI, mentioned in the third paragraph under A above.

Moreover, from the descriptions of the various items of equipment provided, the Secretariat concludes that they perform clearly defined functions expressly mentioned in the Nomenclature.

The Secretariat is therefore inclined to classify them, by application of GIR 1 and 6, as follows :

- (1) The central unit "SRT" in subheading 8525.10 as transmission apparatus for radio-telephony, incorporating reception apparatus.
- (2) The switching system "SDH/DPH" in subheading 8517.30 as switching apparatus for digital telecommunication.

However, since the Secretariat is not in a position to determine the precise nature of the RRS modular network management system, it is unable to give an opinion on the classification of that equipment based on a full knowledge of the facts. Nevertheless, this system could fall in heading 85.17 or heading 85.37, as the case may be.
