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HARMONIZED SYSTEM COMMITTEE	NC0417E
-	O. Fr.
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CLASSIFICATION OF THE "PALM V™"

(Item VIII.14 on Agenda)

Reference documents :

NC0310E1 (HSC/26)
NC0340E2, Annex H/6 (HSC/26-Report)
NC0397E1 (HSC/27)

I. BACKGROUND

1.   After the publication of Doc. NC0397E1, the Secretariat received the following note from the Japanese Customs Administration concerning the classification of the "PALM V™".

2.   At the same time, the ICC also sent the Secretariat an e-mail giving its opinion on the definition of the expression "freely programmed".

II. NOTE FROM JAPAN

3.   "As mentioned in the Secretariat document (NC0310E1), headings 84.70, 84.71 and 84.72 seem to merit consideration.

4.   If the "PALM V™" meets the four criteria of Note 5(A)(a) to Chapter 84, it should be classified in heading 84.71. Because the classification under heading 84.70 should be ruled out since machines of heading 84.70 cannot execute a processing program without human intervention as described in second paragraph of Item (A) on page 1399

File No. 2817

of the Explanatory Notes to heading 84.70, the classification under heading 84.72 should also be ruled out since the heading does not cover machines of the preceding three headings as described in the first paragraph on page 1409 of the Explanatory Notes to heading 84.72.

5.   According to the additional information we have obtained, there are certain "PALM V™" applications that allow users to create and execute "BASIC" programs directly on the "PALM V™".

6.   On the basis of the description of the "PALM V™" in Doc. NC0310E1, it clearly satisfies the criteria set out in Note 5(A)(a)(1), (3) and (4) to Chapter 84.

7.   As for the criterion set out in Note 5(A)(a)(2), the "PALM V™" is capable of being freely programmed by the user and therefore, it also satisfies this criterion because the user is able to write a variety of programs in programming languages such as "BASIC" and execute those programs on the device.

8.   Therefore, we believe the "PALM V™" should be classified in 84.71."

III. COMMENTS BY THE ICC

"Free Programmability Defined

9.   Heading 84.71, read with Note 5(A) to Chapter 84, defines automatic data processing machines as apparatus that meet four distinct technical criteria. The four requirements translate into the presence of : (i) a central processing unit that is freely programmable, (ii) a basic input/output system, and (iii) a minimum amount of random access memory (e.g., a RAM cache). The capability to be freely programmed in accordance with the requirements of the user, however, is the central technical characteristic for determining whether a product is a computer (viz. Chapter 84, Note 5 (A) (a) (2)).

10.   The capability to be freely programmed means that computers are capable of being programmed by the user to perform a wide range of functions. In other words, by virtue of the characteristic of free programmability, computers have a "generic" or "general function" to process all types of data including programmers' code, numbers, text, audio, video, etc. Processing in the context of computers includes the ability to freely manipulate data (edit, compose and combine different types of data) and not simply reproduce it. As general-function machines, computers are capable of, and used for, a variety of applications including word processing, financial management, computer-aided design, games, and education. The only limitation in terms of applications is the ability of the user to translate his/her task into a form that can be processed by the computer.

11.   The major implication of the principles of free programmability and general functionality is that as long as the computer keeps its general purpose character, functionality can be infinitely expanded without affecting the heading 84.71 classification. This result flows from the application of the "principal function" test in Section XVI, Note 3. Adding functionality without altering the general purpose character of the computer enhances the range of capabilities of the computer without

changing its principal function – a general function to process data in the manner directed by the user without limitations imposed by the hardware. For example, the addition of large hard disk drives, CD-ROM/DVD-ROM drives, modems, sound cards and video cards will all expand the functionality of the computer, but will not change its principal function or, therefore, the heading 84.71 classification."

IV. <u>CONCLUSION</u>

12.   The Committee is invited to take account of the comments by the Japanese Administration and the opinion of the ICC when examining this Agenda item.

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