



HARMONIZED SYSTEM
COMMITTEE

-
28th Session
-

NC0471E1
(+ Annex)
O. Eng.

Brussels, 5 October 2001.

CLASSIFICATION OF DVD DRIVES AND DVD PLAYERS, INCLUDING GAME PLAYERS

(Item VII.10 on Agenda)

Reference documents :

42.448 (HSC/22)
42.508 (HSC/22)
NC0160E2, Annex G/17, para. 7 (ii) (HSC/24 – Report)
NC0221E1 (HSC/25)
NC0250E2, Annex IJ/11 (HSC/25 – Report)
NC0302E1, (HSC/26)
NC0340E2, Annex G/19 (HSC/26 – Report)
NC0389E1, (HSC/27)
NC0430E2, Annex H/6 (HSC/27 – Report)

I. BACKGROUND

1. At its 27th Session, the Harmonized System Committee continued its discussion on the classification of DVD drives.
2. The Committee decided that DVD drives exclusively used in conjunction with ADP machines were, in principle, classifiable in heading 84.71. However, it was agreed that the final decisions on the classification of DVD drives, DVD video/audio players, DVD game players and on the further actions to be taken to reflect these decisions would be taken at the next session. The Committee also invited interested administrations to submit all the necessary information to the Secretariat with their comments on the types of the above-mentioned DVD drives and DVD players. The Secretariat was instructed to prepare a new document on this basis for examination by the Committee at its next session (see Annex H/6 to Doc. NC0430E2 – HSC/27 Report).

II. SECRETARIAT'S ACTION AND COMMENTS

3. On 12 June 2001, interested administrations were invited to submit information and comments to the Secretariat as requested by the Committee.

File No. 2811

Note from the EC

4. On 24 July 2001, the Secretariat received, from the EC, a copy of Commission Regulation (EC) No. 1400/2001 of 10 July 2001 concerning the classification of DVD game-type apparatus (console) in subheading 9504 10 00 of the Combined Nomenclature and a corrigendum to that regulation (see the Annex to this document).

- (a) Description of the goods concerned is given in Column (1) of the EC regulation as follows :

“An apparatus (console) presented in a box for retail sale, together with a controller module with a connecting cable, a CD-ROM, a cable to connect the console to audio/video device and a power supply cable.

The console includes the following components :

- A central processing unit (CPU),
- A 32 Mbits DRAM main memory module,
- A digital versatile disk (DVD) drive, a graphics chip,
- A graphics chip,
- 2 universal serial bus (USB) connector ports,
- 2 controller module ports,
- 2 memory card slots,
- an audio/video connector port (IEEE 134),
- an optical digital output connector port.

Besides the controller module, several devices can be connected to the console such as a standard keyboard, a mouse, a television receiver, a data monitor or a printer.

A drive bay inside the console allows incorporation of a hard disk drive and an Ethernet adaptor.

The apparatus is capable of :

- processing dedicated software for playing video games,
- converting digital information from DVD video disks or audio CDs into video/audio signals for reproduction by television receivers or audio systems,
- being programmed in ‘YABASIC’.

The controller module has several control buttons, which are mainly used for playing video games.

The CD-ROM includes the programming language ‘YABASIC’ as well as several video games and videos...” (The same regulation indicates that this CD-ROM is classifiable in heading 8524 39 90 of the Combined Nomenclature).

The regulation also includes a photograph of the apparatus.

- (b) Reasons for classification are given in Column (3) of the regulation as follows :

“Classification is determined by the provisions of General Rules 1, 3 b) and 6 for the interpretation of the Combined Nomenclature, Note 6 to Chapter 85 and the wording of the CN codes 8524, 8524 39, and 8524 39 90 as well as 9504 and 9504 10 00.

Of the various functions (including playing video games, playback of CD audio, DVD video, automatic data processing, etc.), playing video games gives the apparatus its essential character and determines classification under heading 9504 as a game console...”.

Note from the International Chamber of Commerce (ICC)

5. On 21 August 2001, the Secretariat received the following information from the ICC :

(a) The following is an excerpt from the ICC letter :

“...The ICC agrees with the provisional decision of the WCO Harmonized System Committee (HSC) in May 2001 that DVD drives exclusively used in conjunction with ADP machines are, in principle, classifiable in heading 84.71. The ICC had provided a great deal of information to the HSC prior to the May 2001 meeting on both DVD drives and DVD players and thus, believes this information is sufficient to address those types of products.

With respect to the question of “DVD Game Players,” the ICC has consulted member companies within the high-tech industry and concluded that such products do not exist on the current market. To this end, the enclosed letters explain the original intent behind the reference to “DVD Game Players” and provide an explanation as to why such products do not exist on the current market...”

(b) The following is an excerpt from a letter sent to the ICC by a member company :

“...With regards to the ICC submission on DVD drives and DVD players that was submitted in April 2001 (and included in the WCO... documentation - Paragraph 8 of Doc. NC0389E1, HSC/27), I am writing to clarify a reference to “DVD Video/Audio/Game Players.”

When I included the above-cited reference as part of the overall ICC submission, I envisioned DVD Game Players to include products such as the Sony PlayStation II and other similar items. However, based on further examination of the issue and the discussions by the HSC in May 2001, I agree with the provisional decision on DVD drives, but believe that there is not a product on the market that is defined as a “DVD Game Player”...”

(c) The following is an excerpt from a letter sent to the ICC by another member company :

“...With respect to the ICC submission on DVD drives and DVD players in April 2001, ... there are no “DVD Game Players” in the current market.

DVD Drives are quite distinct from DVD players : As the information submitted by the ICC stated, DVD drives are storage devices designed to retrieve the digital data on the discs and pass it from/to ADP machine. They can operate only in conjunction with ADP machines whether or not they are incorporated in ADP machines. On the other hand, DVD players are optical disk players specifically designed to convert digital information into video and audio signals for use by video and audio products. When DVD players operate, no ADP machines are required ...

There is no “DVD Game Player” in the current market : As for DVD players, though ICC submission enumerated “DVD game players” together with DVD audio/video players, I am not aware of any “DVD game players” in the current market.

Sony’s PlayStation 2 (hereinafter referred to as “PS2”) uses DVD as its media and the user can enjoy video games as one of various applications of the PS2. Such applications are available by the execution of each application program on the central processing unit (CPU) of the PS2. That is, the PS2 is an ADP machine itself while a DVD player can act entirely on its own and no ADP machine is required. Moreover, the DVD drive of the PS2 is not an essential component

for the PS2. The PS2 can execute application programs stored not only on its internal drive but also on other storage units, for instance, its optional hard disk drive.

Therefore, I believe that the PS2 is not a DVD player but an ADP machine. And I do not know any DVD players that can play video games...”.

Secretariat comments

6. The Secretariat is of the view that the information so far available to the Committee is detailed enough to make a decision on the classification of DVD Drives which could solely operate in conjunction with ADP machines and Standalone DVD Players. For information on “DVD Definition”, “DVD-ROM/DVD-Recordable Drives”, “Standalone DVD Players” and the distinction between “DVD Drives” and “Standalone DVD Players”, the Committee is requested to refer to paragraphs 6 to 10 of Doc. NC0302E1, paragraphs 8.2 to 8.16 of Doc. NC0389E1 and the Annexes to the both documents.
 - (a) At its 27th Session, the Committee decided that “DVD Drives” exclusively used in conjunction with ADP machines were, in principle, classifiable in heading 84.71. As no additional information was received during the intersession, the Secretariat has no further comments in this regard. The Committee is invited to take a final decision.
 - (b) According to the information referenced above, “Standalone DVD Players” are optical disk players specifically designed to convert digital information into video and audio signals for use by video and audio products. Such players do not operate in conjunction with ADP machines. The Secretariat is of the view that, although “Standalone DVD Players” are capable of sound reproducing from audio CDs, they are basically used for video reproducing (both images and sound) from DVDs and, therefore, should be classifiable in heading 85.21 by application of General Interpretative Rule 1.
7. As regard the classification of game-type DVD apparatus (console) referred to by the EC, such apparatus is classified by the aforementioned EC Regulation in subheading 9504.10 as a game console by application of General Interpretative Rules 1, 3 (b) and 6, on the grounds that, of the various functions (including playing video games, playback of CD audio, DVD video, automatic data processing, etc.), playing video games gives the apparatus its essential character.
8. However, according to the information provided by the ICC, the industry is of the view that there is no “DVD Game Player” on the market. The “Sony PlayStation 2” (PS2) uses DVD as its media and the user can enjoy video games as one of its various applications. Such applications are available by the execution of each application program on the central processing unit of the “PS2”. In other words, the “PS2” is an ADP machine itself. It can execute application programs stored not only on its internal drive but also on other storage units such as its optical hard disk drive.
9. From the logo (PS2) on the photograph appended to the EC regulation (see the Annex hereto), the Secretariat understands that the apparatus (console) referred to in that regulation is the “Sony PlayStation 2”.
10. The description given in the EC regulation states that the apparatus (console) is presented in a box for retail sale, together with a controller module with a connecting cable, a CD-ROM, a cable to connect the console to audio/video device and a power supply cable.

However, several devices such as a standard keyboard, a mouse, a data monitor or a printer can be connected to the apparatus (console) besides the controller module. It is capable of automatic data processing, as well as playing video games, playback of CD audio and DVD video. It could, therefore, be argued that this apparatus (or the "PS2") should be classified in heading 84.71 as an ADP machine by application of Note 5 (A) (a) to Chapter 84.

11. However, it should be noted that the apparatus in question (or the "PS2") is capable of performing the functions of an ADP machine of heading 84.71, a sound reproducing apparatus of heading 85.19, a video reproducing apparatus of heading 85.21 and a video game of heading 95.04. According to Note 7 to Chapter 84, a machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose. Thus, another argument could be made that, since, as presented, the principal purpose of the apparatus concerned (or the "PS2") is not automatic data processing, it should not fall in heading 84.71.
12. If this argument were valid, then the next step would be the determination of the principal purpose of this apparatus (or the "PS2"). In this connection, the reasoning put forward by the EC is that the game-type DVD apparatus described in the aforementioned EC regulation (or the "PS2") should be classifiable in heading 95.04 by application of GIR 3 (b) since the essential character of such apparatus is given by its function of playing video games. This reasoning also seems valid, because, as presented, the apparatus is essentially sold and purchased for playing video games.
13. If the Committee finds it impossible to determine the principal purpose, then it appears that GIR 3 (c) would apply. In that case, the apparatus at issue (or the "PS2") would fall in heading 95.04.
14. Nevertheless, the Secretariat leaves the final decision to the Committee.
15. The Committee is reminded to consider the Canadian concerns and suggestions about the classification of components of the various DVD drives and the usefulness of any classification decision on DVD drives (see paragraphs 9.6 to 9.9 of Doc. NC0302E1).

III. CONCLUSION

16. On the basis of the information and comments provided by the EC and the ICC (paragraphs 4 and 5 above) and the comments by the Secretariat (paragraphs 6 to 15 above), the Committee is invited to :
 - (a) Take a final decision on the classification of "DVD Drives" which solely operate in conjunction with ADP machines;
 - (b) Rule on the classification of "Standalone DVD Players";
 - (c) Rule on the classification of "Game-type DVD apparatus" (or Sony PlayStation 2); and
 - (d) Give its views on the Canadian concerns and suggestions expressed in paragraphs 9.6 to 9.9 of Doc. NC0302E1.

NC0471E1

17. The Committee is also invited to instruct the Secretariat as to the further action to be taken to reflect its decisions.

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COMMISSION REGULATION (EC) No 1400/2001
of 10 July 2001
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, as last amended by Commission Regulation (EC) No 1230/2001⁽²⁾, and in particular Article 9 thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the Combined Nomenclature. Those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to the said general rules, the goods described in column 1 of the table annexed to this Regulation must be classified under the CN codes indicated in column 2, by virtue of the reasons set out in column 3.
- (4) It is appropriate that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature and which does not conform to the provisions of

this Regulation, can continue to be invoked, under the provisions in Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽³⁾, as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council⁽⁴⁾, for a period of three months by the holder.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the annexed table are classified within the Combined Nomenclature under the CN codes indicated in column 2 of the said table.

Article 2

Binding tariff information issued by the customs authorities of Member States which does not conform to the provisions of this Regulation can continue to be invoked under the provisions of Article 12(6) of Regulation (EEC) No 2913/92 for a period of three months.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 July 2001.

For the Commission
Frederik BOLKESTEIN
Member of the Commission

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ L 168, 23.6.2001, p. 6.

⁽³⁾ OJ L 302, 19.10.1992, p. 1.

⁽⁴⁾ OJ L 311, 12.12.2000, p. 17.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 1400/2001 of 10 July 2001 concerning the classification of certain goods in the Combined Nomenclature

(Official Journal of the European Communities L 189 of 11 July 2001)

Page 6, in the second column, third CN code:

for: '8525 39 90,

read: '8524 39 90.

