



HARMONIZED SYSTEM  
COMMITTEE  
-  
29<sup>th</sup> Session  
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NC0545E1  
O. Fr.

Brussels, 25 April 2002.

CLASSIFICATION OF THE "PALM V<sup>TM</sup>"  
PRESENTED AS A SET WITH ITS CRADLE AND INSTALLATION SOFTWARE  
(Item VIII.9 on Agenda)

Reference documents :

NC0310E1 (HSC/26)	NC0455E1 (HSC/28)
NC0340E2, Annex H/6 (HSC/26 - Report)	NC0498E1 (HSC/28)
NC0397E1 (HSC/27)	NC0510E2, Annex G/12 (HSC/28 - Report)
NC0430E2, Annex H/14 (HSC/27 - Report)	

I. BACKGROUND

1. At its 28<sup>th</sup> Session (November 2001), the Committee decided to confirm the classification of the "PALM V<sup>TM</sup>", as such, in subheading 8471.30 by application of GIR 1 (Note 5 (A) to Chapter 84) and GIR 6. However, it instructed the Secretariat to prepare a new document on the "PALM V<sup>TM</sup>" put up for retail sale in the form of a set with a charger/connector (cradle) and installation software, indicating that this study would have to pursue two new lines of enquiry concerning : (1) the interpretation to be given to Note 6 to Chapter 85 and (2) the classification of certain sets from which certain components that needed to be classified separately had been removed (incomplete sets).

II. SECRETARIAT COMMENTS

2. To facilitate the discussions in the Committee, the Secretariat has reproduced below the description of the collection of articles, as shown in Doc. NC0310E1 (HSC/26).

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

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Palm-size electronic organizer : 11.5 cm x 7.7 cm x 1 cm. Weight : 115 g. The front of the devices incorporates a touch screen with a writing area (a stylus is part of the package) and various function keys. The lithium ion battery that powers the device can be recharged by means of a serial connector when dropped into a cradle. If the battery becomes too weak to power the device, the user has a week in which to recharge it before the data are irretrievably lost. The organizer can be connected to a computer and, after the installation of special software (sold separately on CD-ROM), exchange data with it. Similarly, an IR (infrared) port enables it to beam data to other IR-enabled units. Its principal applications are as follows : date book, address book, to-do list, memo pad, calculator and expense record keeper. The device is supplied with a HotSync cradle and battery charger, a metal stylus and spare plastic stylus, data input software, an organizer user manual, a getting started guide, a lithium ion (internal) rechargeable battery, a DB-25 adapter and a protective cover.

3. In accordance with the HS Committee's instructions, the Secretariat will begin by considering the two lines of enquiry mentioned at the last session.

Interpretation to be given to Note 6 to Chapter 85

4. The question vis-à-vis the interpretation of Note 6 to Chapter 85, is basically whether or not installation software on a diskette or CD-ROM presented with an article which itself does not have a diskette or CD-ROM drive, should be classified separately.
5. Note 6 to Chapter 85 reads 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".
6. Heading 85.24 refers to "recorded media for sound, or other similar phenomena", and includes such media (for example CD-ROMs) containing software. Consequently, a CD-ROM as presented with the "PALM V™" would potentially fall within the scope of Note 6 to Chapter 85.
7. The Secretariat would be inclined towards the view that the second paragraph of Note 6 would apply in the case of the "PALM V™" software, for the simple reason that (i) the "PALM V™" does not contain a CD-ROM drive (and that, therefore, the software cannot be intended for the apparatus, as required by the first paragraph of Note 6 and (ii) the software will be installed in another automatic data processing (ADP) machine, in order to enable that machine to communicate with the "PALM V™".
8. On the other hand, it could be argued that in this case Note 6 to Chapter 85 should not be interpreted too literally, but should be read in a more metaphorical sense. In other words, it is not the physical disc which is intended for the (presented) apparatus, but its content, i.e., the software which allows another machine to communicate with the presented article, or which allows the presented article to function with the other machine (as, for example, in the

case of a video card for an ADP machine, presented with a diskette containing the installation software). If the Note should be read in this sense, the CD-ROM presented with the "PALM V™" should be classified separately.

9. In this connection, the Secretariat would like to remind delegates that the Committee, at its 27<sup>th</sup> Session (May 2001) adopted two Classification Opinions concerning a video card and a sound card presented with a magnetic disc containing the installation software, in which the discs were classified separately (Cl. Op. 8471.80/7 and Cl. Op. 8471.80/8). It should be noted, however, that these Opinions had been agreed upon under the 1996 text of Note 6 to Chapter 85, and that the Committee had also agreed that the examination of the conditions for applying the new wording of the said Note would be included on the Agenda for the next session (paragraph 1 of Annex G/10 of Doc. NC0430E2 – HSC/27 – Report). Unfortunately, this issue was not incorporated in the HSC/28 Agenda.
10. Finally, it should also be noted that the Committee will discuss the possible classification of flash electronic storage cards (Item VIII.13 on Agenda). Depending on the Committee's decision to classify those cards in heading 85.23 or 85.24 (depending whether or not they contain data) or elsewhere, the interpretation of the second paragraph of Note 6 to Chapter 85 might also have repercussions on the classification of commodities presented with such a card, which is to be inserted into the apparatus by the user (e.g., a mobile telephone presented with a SIM-card).

Classification of sets from which one or more components that needed to be classified separately have been removed (incomplete sets)

11. The key question to consider is, whether or not a collection of articles put up for retail sale, but from which one (or more) of the elements has been removed for reasons of classification, can still be regarded as a "set" within the scope of General Interpretative Rule (GIR) 3 (b). Item (X) of the Explanatory Note to that Rule, on page 5, elaborates the concept of "sets" by saying that "For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which simultaneously satisfy the following conditions :
- (a) Consist of at least two different articles which are, *prima facie*, classifiable in different headings (...),
  - (b) Consist of products or articles put up together to meet a particular need or carry out a specific activity,
  - (c) Are put up in a manner suitable for sale directly to users without repacking (...)."
12. The Secretariat is inclined towards the view that it is possible to classify a collection of articles as a set, if one (or more) of the components of that set has to be classified separately. However, this question should be considered on a case by case basis, taking into account the provisions of GIR 3 (b), the relevant Explanatory Note, and, where appropriate, Section or Chapter Notes. It should be noted in this connection that if a component has to be classified separately for whatever reason, this component is being removed from the collection theoretically, and not physically.
13. In the case at issue, the following articles are presented together in a box :

- The organizer;
- A CD-ROM with installation software;
- A cradle, which is used as an accumulator charger and which can also be used to connect the organizer to an ADP machine;
- A metal stylus and a plastic stylus;
- User manual and a getting started guide;
- A rechargeable battery; and
- A protective cover.

14. If presented separately, the organizer, the CD-ROM, the cradle and the battery are all classifiable in Section XVI, whereas the manual and the guide would be classifiable in heading 49.11, and the protective cover and the stylus in the materials Chapters.
15. If the CD-ROM had **not** been presented with the other components, it appears that the whole could be classified as a set on the basis of GIR 3 (b). This classification rationale would, in the view of the Secretariat, also apply if the Committee decides that the CD-ROM should **not** be classified separately (see paragraphs 4 to 7 above).
16. In the case the Committee decides that the CD-ROM should be classified separately by virtue of the first paragraph of Note 6 to Chapter 85 (see paragraph 8 above), it could be argued that the remaining components still fulfil the criteria for "sets", as laid down in Item (X) of the Explanatory Note to GIR 3 (b) (see paragraph 11 above), i.e., the remaining commodities consist of different articles classifiable, *prima facie*, in different headings, and are put together to meet a particular need, in a manner suitable for sale directly to the user without repacking.
17. It could also be argued, on the other hand, that, at least in a virtual way, the remaining commodities have been repacked, since the CD-ROM is no longer there. This would result in the separate classification of all the remaining components, since the third condition (i.e., suitable for sale directly to the user without repacking) would no longer be met.
18. If this approach were to be followed, the Secretariat is somewhat concerned about the repercussions, not only in the case at issue, but for all cases where, for one reason or the other, one or more of the components of a potential set should be classified separately. In particular where it concerns a manual, the rechargeable batteries, or other accessories, such as accumulator chargers, presented in the same packing as the commodity. Such an approach would certainly not facilitate international trade or Customs procedures.
19. Finally, one may consider the possible application of Note 4 to Section XVI with respect to the organizer and the cradle, or the organizer and the batteries, since all of these apparatus are classifiable in Section XVI and would potentially fall within the scope of that Note.

20. In any event, the Secretariat considers that it would be highly desirable to clarify the situation in the relevant parts of the Explanatory Notes, reflecting the decisions of the Committee on the question referred to in paragraph 1 above.

### III. CONCLUSION

21. The Committee is invited to rule (i) on the interpretation to be given to Note 6 to Chapter 85, (ii) on the classification of certain sets from which certain components that need to be classified separately have been removed (incomplete sets), and (iii) on the classification of the "PALM V™" put up for retail sale in the form of a set with a charger/connector (cradle) and installation software, in the light of the Secretariat comments above.
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