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COMMITTEE
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(+ Annexes I to VI)
O. Eng.

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CLASSIFICATION OF DVD DRIVES AND DVD PLAYERS, INCLUDING GAME PLAYERS

(Item VIII.10 on Agenda)

Reference documents :

42.448 (HSC/22)	NC0302E1, (HSC/26)
42.508 (HSC/22)	NC0340E2, Annex G/19 (HSC/26 – Report)
NC0160E2, Annex G/17, para. 7 (ii) (HSC/24 – Report)	NC0389E1, (HSC/27)
	NC0430E2, Annex H/6 (HSC/27 – Report)
NC0221E1 (HSC/25)	NC0471E1 (HSC/28)
NC0250E2, Annex IJ/11 (HSC/25 – Report)	NC0510E2, Annex G/9 (HSC/28 – Report)

I. BACKGROUND

1.   The Committee at its 28th Session continued to examine the classification of DVD drives and DVD players, including game players.

2.   The Delegates of Japan, Indonesia and China stated that they were ready to discuss the classification of DVD drives and standalone DVD players at the present session but indicated that they were not yet in a position to discuss the classification of game players. Noting that, according to the International Chamber of Commerce (ICC), there were no DVD game players on the market, the Delegate of Japan indicated that the classification of the PS2 referred to the Committee as an example of game type DVD apparatus was a new issue. Since the PS2 was produced in his country, he could submit more detailed technical information on this article for examination by the Committee at its next session.

3.   Supported by some other delegates, the EC Delegate argued that the Committee should not be bound by the industry statement that there were no DVD game players on the market. He pointed out that the Committee at its previous session had agreed that the final decisions on the classification of DVD drives, standalone DVD video/audio players and DVD game players would be taken at the 28th Session. Since the classification of these three groups of articles were closely interrelated, he insisted that the Committee should classify them at the same time, at the 28th Session, or, if the Committee decided to postpone the examination of this agenda item, the whole question should be studied at the next session.

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

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4.   On the basis of the foregoing, the Committee agreed to discuss the classification of DVD drives, standalone DVD players and the PS2 at its 28th Session but to take a final decision on the classification of these products only at its 29th Session.

5.   The Secretariat was instructed to prepare a new document, containing precise descriptions of DVD drives, standalone DVD players and the PS2, for examination by the Committee at the 29th Session, at which time a final decision on the classification of these articles would be taken.

6.   On 12 December 2001, the Secretariat invited the Japanese Administration and the ICC to provide additional information on the DVD drives, standalone DVD players and the PS2.

II. <u>DVD DRIVES AND STANDALONE DVD PLAYERS</u>

Note from the ICC

7.   On 21 March 2002, the Secretariat received a note from the ICC providing information on DVD drives and standalone DVD players. Due to the length and technical nature of the information provided the Secretariat has reproduced to pertinent parts of the note in Annex I to this document.

8.   It should be noted that the information provided by the ICC includes several new types of products the classification of which was not discussed by the Committee in its previous sessions. These products are the DVD Drive Library Storage, Portable DVD Video or Audio/Video Players, DVD Video Recorder/Players, DVD Players for Mobile Entertainment for Vehicles and DVD Players for Navigational Purposes. The Secretariat is of the view that, if the Committee so wishes, the classification of these products should not be considered by the Committee at this time, but could be examined at a later session if the Committee so desires.

<u>Secretariat comments</u>

9.   The following descriptions of DVD drives and DVD players are based on the information given in Doc. NC0389E1 and Annex I to this document.

<u>DVD drives</u>

10.   DVD-ROM/Recordable/Rewritable (e.g. : DVD-R, DVD-RAM, DVD+RW, and DVD-RW) drives operate exactly like CD-ROM/Recordable/Rewritable drives (e.g. : CD-R and CD-RW). In other words, they allow users to access (read and/or write) large quantities of data in the range from 7 to 28 times that of conventional CDs (650 MegaBytes). They cannot operate as a "standalone" apparatus, and must be connected to an ADP machine to control all the functions of the drive (stop, start, search, data transfer).

11.   The automatic data processing (ADP) machine determines any and all information that it needs from the disc. The DVD-ROM drive simply retrieves the digital information (1s and 0s) on the disc from the location specified by the ADP machine and then passes that information back to the machine. During this process, the DVD-ROM drive requires no knowledge of the content of the digital information that it passes back and forth. DVD-ROM

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drives lack all of the necessary components (hardware and software) needed to convert the information on the disc into viewable text or images.

12.　　　　DVD drives also lack all of the necessary processing software and hardware (including decryption, MPEG-2 decoding, creation of video images, and the necessary output ports such as Composite Video, S-video, and/or Component Video) that are normally included in a DVD player.

　　　　　DVD players

13.　　　　DVD players are optical disc players specifically designed to convert digital information into video and audio signals for use by TV receivers or audio systems. DVD players play DVD discs that have video information coded using the MPEG-2 compression system at a 40 to 1 ratio. These discs have different audio tracks for 5+1 multi-channel systems as well as stereo use. The player works by using a laser beam to read the very high density tracks which are pressed onto the optical discs. The signal read by the laser beam goes through stages of error correction and decoding, decompression and is then transformed from a digital signal into an analogue signal which can be connected to a TV receiver.

14.　　　　A DVD player acts entirely on its own (no ADP machine is required). It reads the file system to determine the location of the video files, takes the files from the disc and processes the information to play (decrypts/descrambles the information, separates navigation information from video/audio information, converts the MPEG-2 compressed video/audio into video/audio frames). It includes hardware to create signal for TV/stereo (video and audio digital to analogue converters) and hardware to control navigation (fast forward, reverse, pause, zoom, etc.).

15.　　　　The comparison table given in paragraph 7 of Doc. NC0302E1 is reproduced below for ease of reference, since it contains useful information :

DVD CHARACTERISTICS	
DVD-ROM/DVD-Recordable	**DVD Player**
Requires ADP machine	No ADP machine is required
Does not have dedicated memory for MPEG decoding	Has dedicated memory for MPEG decoding
No video output ports	Has video output ports. Example(s) : • RGB/YUV/YUV Progressive • S-Video • Composite • SCART
No integrated components to support "Standalone" capabilities to play DVD video and/or audio and/or game discs • No MPEG-2 decoding, software or hardware	Has integrated components to support "Standalone" capabilities to play DVD video and/or audio and/or game discs • Has MPEG-2 decoder (hardware)
No direct control of unit function (Play, Stop, Record, etc.)	Has direct control of unit function (Play, Stop, Record, etc.)
Direct access to file system (data file name structure)	No direct access to file system (data file name structure)

16. It should be noted that the Committee at its 28th Session agreed that :

(a) DVD drives exclusively used in conjunction with ADP machines were, in principle, classifiable in heading 84.71 as they fulfilled the conditions laid down in Note 5 (B) to Chapter 84; and

(b) Standalone DVD players designed to be used for video reproduction (both images and sound) on television receivers or video monitors were, in principle, classifiable in heading 85.21, provided that they did not have the function of a video game player.

17. The Committee is invited to take final decisions on the classification of DVD drives and standalone DVD players.

III. THE PLAYSTATION2 - "PS2"

18. As regards the classification of the PS2, the Japanese Delegate felt that, based on the information provided in paragraph 5 of Doc. NC0471E1 and information gathered by his administration, the PS2 should be considered to be an ADP machine and, as such, classifiable in heading 84.71, by application of GIR 1 and Note 5 (A) (a) to Chapter 84. Since an operating system which was common to ordinary ADP machines was used, software other than games could be run on the PS2.

19. However, several other delegates pointed out that the PS2 was capable of performing the functions of an ADP machine of heading 84.71, sound reproducing apparatus of heading 85.19, video reproducing apparatus (DVD) of heading 85.21 and a video game player of heading 95.04. Given the fact that the PS2 was designed to be connected directly to a television receiver (but not an ADP monitor), was presented with a joystick (but not with a keyboard), did not have a hard disk and that the data processing capability of its central processing unit was limited to executing programs written in a few programming languages, it could not be regarded as being solely or principally an ADP machine within the meaning of the Harmonized System. Any machine having "data processing capability" would not necessarily be classified in heading 84.71. The PS2's principal function was playing video games and thus it should fall in heading 95.04 by application of GIRs 1 and 3 (b).

20. Although there was a tendency among delegations having expressed their views to classify the PS2 in heading 95.04, the Committee agreed to re-visit this matter at its next session on the basis of further information to be provided by Japan. This information should include all the technical data available on the PS2, as well as a clarification of whether there was one or more than one version of the PS2 currently traded around the world.

21. In this connection, the Secretariat received the following information from Japan on 5 March 2002 (see Annexes II to VI to this document for additional details). The manufacturer's technical brochure on the PS2 will be displayed in the meeting room during the session.

Note from Japan

"I. PRODUCT

22. The product under consideration is PlayStation 2 console ("PS2") produced by Sony Computer Entertainment, Inc. (SCE). The PS2, as imported, is presented to Customs in a

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box for retail sale containing an apparatus together with a controller module with a connecting cable, a cable to connect the apparatus to an audio/video device and a power supply cable.

23. There are several versions of the PS2 according to the timing of release and the location where it is marketed. However, the difference of the versions does not affect its classification, an therefore, all versions of the PS2 can be considered as only one product to determine its classification (see Annex II to this document).

24. The apparatus itself basically consists of the following components :

- a 128-BIT emotion engine Central Processing Unit (CPU);
- a basic operating system containing the BIOS (Basic Input Output System) incorporated in a read only memory (ROM) integrated circuit chip on the main board;
- a graphics chip;
- a main memory module consisting of a 32-Mega-byte DRAM;
- a DVD-ROM drive;
- two Universal Serial Bus (USB) connectors;
- an I-Link (IEEE 1394) connector;
- a drive bay (for optional hard disk drive and Ethernet adapter);
- two controller ports;
- two memory card slots for use with 8 MB memory cards; and
- an AV multi-out connector and an optical digital out connector.

25. The PS2 operates by reading and processing binary data stored on either DVD-ROM, CD-ROM, Memory Card media, hard-disk drive and/or external networks such as the Internet. The USB connectors enable standard computer input and output units, such as a keyboard, mouse, printer, etc., to be connected to the PS2. The drive bay allows for the incorporation of optional data storage units such as a 3.5" hard-disk drive, as well as an Ethernet adapter.

26. The Memory Card enables the data to be stored and later retrieved by the user.

27. By means of the supplied multi-AV cable, the processed data is displayed on a television. An optional multi-AV cable enables the PS2 to use an external high-resolution monitor for automatic data processing machines as well.

28. The operating system and high performance CPU in the PS2 provide data processing capabilities. The PS2, as imported, is capable of :

- processing video-game software written for the PS2;
- reading and processing video and audio data files from video DVDs and audio CDs;
- reading and processing other kinds of application software such as word processing and spreadsheet; and
- being programmed by using programming language.

29.	The above listed components are very similar to components which are found in many current Personal Computer ("PC") models[1] (see Annexes III and IV to this document) and each of these hardware components is necessary in order to perform the function for which the PS2 has been designed, i.e., data processing.

30.	The "heart" of the PS2 is the central processing unit ("CPU") which processes data files. The data files can be audio files, video files, game files, scientific computation file, word processor files, spreadsheet files, or other types of software files. The apparatus always performs the same function for all data files : data processing by means of the CPU. What changes is the content of the file, not the process. A more detailed description of how the various data files are processed can be found in the attached flow sheets[2] (see Annex V to this document). In fact, the PS2 processing function is identical to those of most consumer PCs which can also process different data files such as business applications, video games, audio CDs or DVDs.

31.	The PS2 is capable of being freely programmed by using operating systems and programming languages. For instance, a Linux operating system can run on the PS2[3] (see Annex VI to this document). Linux is one of the most popular operating systems for computers. The Linux is publicly open and its source code is freely available. Due to the nature of Linux's availability and functionality, it has become popular worldwide. This means that a wide variety of existing application software for Linux, e.g., scientific computation, word processing, spreadsheets, web browsers, and very high level programming tools, can be executed on the PS2 in such a way as a Windows® operating system can be executed on a standard Personal Computer. The user can run these application software on the PS2 by simply accessing the precompiled software or recompiling the source code itself. To do this actually, it is not necessary for the user to modify his PS2 console itself at all. What necessary is to get an optional "Linux kit" consisting of disks containing Linux software in the market.

32.	Additionally, the use of the optional hard disk drive and Ethernet adapter enables the PS2 to read and process data stored on the hard disk or on the network. Users of the PS2 are able to access rich source of network content provided by various network service providers in a high-speed, reliable and efficient manner. There is no limit to such network content. As other computers, the PS2 plays a role as a terminal in broadband network era. Of course, as well as the Linux kit, every version of the PS2 ever traded in the world is available to these broadband services.

II. CLASSIFICATION DISCUSSION

33.	First, it should be confirmed that classification of a product should not be determined by its accessories presented with it but by its own function and capabilities unless otherwise provided in the HS text. The PS2 is properly classified as an automatic data processing machine under heading 84.71 for the reasons below. An automatic data processing machine is not necessarily presented with peripherals such as a monitor, a keyboard, or a hard-disk drive to be classified under heading 84.71. It is clear from Notes 5 (A)(a) which only requires a product itself to have "capabilities" as an automatic data processing machine.

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[1]	See comparison table in Annex III. The column with the heading PC2001 lists the standards for PCs that Intel and Microsoft would like manufacturers to adopt. It provides the closest description of a "standard" PC. See table comparing the PS2 with the PC Sony VAIO in Annex IV.
[2]	See Annex V.
[3]	See "Linux on PS2" in Annex VI.

6.

Though the PS2 is presented with a controller as imported, this has nothing to do with determining the function of the PS2 console itself. Therefore, accessories presented with the PS2 should not be taken into account when considering whether the PS2 is properly classified as heading 84.71 or not, in the same way as other automatic data processing machines are classified under heading 84.71 without considering whether monitors, keyboards, hard-disk drives are presented with them, nor software as imported.

1. PS2 is an automatic data processing machine of heading 84.71

(a) PS2 meets the criteria provided in Note 5(A) to Chapter 84

34.   Heading 84.71 reads in its relevant part :

"Automatic data processing machines and units thereof; […]"

Note 5(A)(a) to Chapter 84 reads as follows :

"For the purposes of heading 84.71, the expression automatic data-processing machines means :

5. (A) (a) digital machines, capable of :

(1)   storing the processing program or programs and at least the data immediately necessary for the execution of the program;
(2)   being freely programmed in accordance with the requirements of the user;
(3)   performing arithmetical computations specified by the user; and
(4)   executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run;".

35.   The PS2 satisfies the above four criteria of Note 5(A) to Chapter 84 defining an automatic data processing machine since :

(1)   the PS2 stores the processing programs and the data immediately necessary to execute them in its RAM (5(A)(a)(1));
(2)   the PS2 is capable of being freely programmed by the user, because the user is able to write a wide variety of programs (not only game programs) as well as use scientific computation, word processing, and spreadsheet applications. A version of the Linux operating system, one of the most popular operating systems for computer users who write programs, can run on the PS2. The user is not limited to choosing among a number of pre-existing applications (5(A)(a)(2));
(3)   complex arithmetical computations specified by the user are performed by the user inputting a sequence of instructions; precisely which computations are performed depends on the actual instruction sequence input by the user (5(A)(a)(3)); and
(4)   on the basis of the instructions contained in the particular program, the execution of the program is modified by logical mathematical calculation during the program processing run; no further intervention is required for a program to be processed, once the initial run command is entered (5(A)(a)(4)).

(b) Note 5 (E) to Chapter 84 is not applicable to the PS2

36.   Digital machines satisfying the criteria of Note 5(A) to Chapter 84 are thus classified under heading 84.71 unless they would be covered by Note 5 (E) to Chapter 84 :

"(E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings."

Chapter Note 5 (E) is not applicable to the PS2 since the PS2 does not perform any function other than the processing of data.

37.   The PS2 has such capabilities as described in paragraph 24 above. These capabilities of the PS2 on various data are also to be considered as data processing. Indeed, all data categories, whether software, sound or images, irrespective of how they have been entered into the system, i.e., from disk, keyboard or controller, are processed by the CPU of the system before being sent to the output device.   As is apparent from the technical flow charts [4] (see Annex V to this document), the PS2 carries out the same processes, using the same circuits, irrespective of the type of data category.

38.   In addition, Note 5 (E) is based on the premise that two machines exist, i.e., an automatic data processing machine and, in addition, another machine which carries out a specific function which is quite distinct from data processing. These machines are either closely linked together, or one may even incorporate the other. The above condition is not fulfilled by the PS2. The PS2 does not incorporate or work in conjunction with another machine performing such a specific task other than data processing, which could also be performed independently from the PS2's data processing functions. The technical specifications of the PS2 make it clear that no such separate machine is incorporated in the PS2.   All its circuits work together and contribute to the data processing function of the PS2. This function is clearly covered by the wording of heading 84.71.

2. <u>PS2 cannot be classified under heading 95.04</u>

   (a) <u>HS Explanatory Note (b) to heading 95.04 confirms that the PS2 is excluded from that heading</u>

39.   The PS2 is an automatic data processing machine which meets the conditions of Note 5 (A) to Chapter 84. As such, it is capable of processing different categories of data files[5] (see Annex V to this document). The processing capabilities of the PS2, in respect of processing way and types of data files, are similar to those of current PC types[6] (see Annex III to this document).

40.   Depending on their chip-set, the PS2 can process software such as LINUX-based applications, run BASIC as well as process video and audio files. The classification of an automatic data processing machine cannot vary depending on the type of data file which is being processed. To hold the contrary would lead to the absurd result that a PC mainly used to make calculations should be classified as a calculator, a PC used for word processing as a word processor. From a legal viewpoint, it would also lead to the introduction of an unjustifiable limitation on the scope of heading 84.71.

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[4]   See Annex V.
[5]   See the flow charts in Annex V.
[6]   See the comparison chart comparing the PS2 with the PC standards as set in the PC2001 design guide, Annex III.

41.   The fact that automatic data processing machines may not be classified according to the type of data files which are processed with them has even been expressly confirmed by the Explanatory Note (b) to heading 95.04 stating that this heading excludes :

> "machines and apparatus fulfilling the conditions of Note 5(A) to Chapter 84, whether or not capable of being programmed for video games (heading 84.71)".

42.   This Explanatory Note merely confirms that the ability to be used as a video game machine does not constitute a "specific function" which would prevent an automatic data processing machine, such as the PS2, from being classified under heading 84.71. The PS2 clearly meets the conditions of Note 5 (A) to Chapter 84. It, therefore, cannot be classified under heading 95.04.

(b)   Note 7 to Chapter 84 is not applicable to the PS2

43.   The PS2 cannot be classified under heading 95.04 by application of Note 7 to Chapter 84.

> Note 7 to Chapter 84 :
>
> "A machine which is used for more than one purpose is, for the purpose of classification, to be treated as if its principal purpose were its sole purpose …"

However, Note 7 to Chapter 84 can be applicable only when a product is classifiable under Chapter 84, and one should consequently not rely on this Note to classify a product under heading 95.04 or Chapter 85.

44.   Furthermore, heading 84.71 appears to be provided originally on the assumption that machines capable to be used for multi-purpose would be classifiable under this heading. If Note 7 to Chapter 84 were applied to other automatic data processing machines, classified under heading 84.71, e.g., Windows PCs, all of these machines would be regarded as "machines which are used for more than one purpose" and classified according to their "principal purposes". For instance, it can be classified as word processing machines (heading 84.69), electronic calculators (heading 84.70), or otherwise classified under heading 84.79 when their principal purposes are not described in any heading or they do not have principal purposes. The result is, there will be no apparatus classified under heading 84.71 as automatic data processing machines. The purposes of the PS2 are not confined to above listed capabilities. It is indeed a multi-purpose machine and capable of being used for various purposes including scientific computation, word processing, calculating, and so on. In other words, it is the very machine which should be classified under heading 84.71. Therefore, Note 7 to Chapter 84 should not be applied to the PS2.

3. GIR 3 (b) is not applicable to the PS2

45.   It is clear that the PS2 is properly classified under heading 84.71 by application of GRI 1. There is no appropriate heading for the PS2 other than heading 84.71, that is, the PS2 is not classifiable under two or more headings. Therefore, GRI 3 (b) is not necessary to be considered.

46.   Supposing the PS2 is classifiable under two or more headings for the reason that the PS2 has several capabilities as stated in paragraph 28 above, GRI 3 (b) is not still applicable to the PS2.

GIR 3(b) :

"mixtures, composite goods consisting of different materials or made-up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), <u>shall be classified as if they consisted of the material or component which gives them their essential character</u> in so far as this criterion is applicable;" (emphasis added).

47.　　　All capabilities of the PS2 are performed by the same components carrying out the only function of the PS2, that is, data processing function. The PS2 is not a combination of components or machines performing two or more complementary or alternative functions whereby the different functions can be linked to different constituent machines, materials or components.[7] As is apparent from attached flow sheets[8] (see Annex V to this document), the PS2 does not contain separate circuits to play video DVDs, to process video game software, to run LINUX applications. All such data files are processed by the CPU.

48.　　　GIR 3(b) cannot be applied to the PS2 by determining the essential character solely on the basis of the capabilities of the PS2 rather than on the basis of the materials or components in which these capabilities must be inherent.

III. CONCLUSION

49.　　　The PS2 satisfies all four criteria in the statutory definition of automatic data processing machines set forth in Chapter 84 Legal Note 5(A)(a). Thus, it is classifiable under heading 84.71. All capabilities result from the PS2's only function, that is, data processing function through its CPU and there is no other function. Therefore, Note 5 (E) to Chapter 84 cannot be applied to the PS2. The Explanatory Notes (b) to Chapter 95 expressly precludes classification under 95.04 for articles meeting the requirements of Note 5(A) to Chapter 84. Furthermore, Note 7 to Chapter 84 cannot be applied to the PS2.

50.　　　There is no appropriate heading for the PS2 other than 84.71 by application of GRI 1. Therefore, GRI 3 is not necessary considered. Supposing the PS2 is a machine classifiable under two or more headings, GRI 3 is not applicable to the PS2, because the PS2 is not a combination of components or machines performing two or more complementary or alternative functions.

51.　　　For the foregoing reasons, the PS2 is properly classified under heading 84.71."

<u>Secretariat comments</u>

52.　　　Referring to paragraph 4 of Doc. NC0471E1 (HSC/28), the Secretariat would like to point out that the EC Regulation concerning the PS2 states that :

(a)　　the apparatus ("PS2") is capable of :

- processing dedicated software for playing video games;

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[7]　Compare, e.g., with the Classification Opinion adopted by the HS Committee (22nd Session-November 1998) regarding a combination of a PC and a television receiver.
[8]　See the flow charts in Annex V.

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- converting digital information from DVD video disks or audio CDs into video/audio signals for reproduction by television receivers or audio systems; and

- being programmed in "YABASIC".

(b)   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, 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.

53.   From the above, the Secretariat understands that the EC, while recognising that one of the functions of the PS2 was "automatic data processing", has not taken into consideration Note 5 (A) to Chapter 84 or the wording of heading 84.71.

54.   According to Japan, however :

(a)   The PS2 is an ADP machine of heading 84.71, since the PS2 fulfils the criteria provided in Note 5 (A) (a) to Chapter 84 :

- It stores the processing programs and the data immediately necessary to execute them in its RAM (Note 5 (A) (a) (1));

- It is capable of being freely programmed by the user, because the user is able to write a wide variety of programs (not only game programs) as well as use scientific computation, word processing, and spreadsheet applications. A version of the Linux operating system can run on the PS2. (Note 5 (A) (a) (2));

- Complex arithmetical computations specified by the user are performed by the user inputting a sequence of instructions (Note 5 (A) (a) (3)); and

- On the basis of the instructions contained in the particular program, the execution of the program is modified by logical mathematical calculation during the program processing run; no further intervention is required for a program to be processed, once the initial run command is entered (Note 5 (A) (a) (4)).

(b)   Note 5 (E) to Chapter 84 is not applicable to the PS2, since the PS2 does not perform any function other than the processing of data. As imported, it is capable of :

- processing video-game software written for the PS2;

- reading and processing video and audio data files from video DVDs and audio CDs;

- reading and processing other kinds of application software such as word processing and spreadsheets.

(c)   The PS2 cannot be classified in heading 95.04, because it is an ADP machine which meets the conditions of Note 5 (A) to Chapter 84 :

- It is capable of processing different categories of data files. The processing capabilities of the PS2, in respect of processing way and types of data files, are similar to those of current PC types;

- The classification of an ADP machine cannot vary depending on the type of data file which is being processed. To hold the contrary would lead to the absurd result that a PC mainly used to make calculations should be classified as a calculator, a PC used for word processing as a word processor. From the legal viewpoint, it would also lead to the introduction of an unjustifiable limitation on the scope of heading 84.71;

- The fact that ADP machines may not be classified according to the type of data files has been expressly confirmed by exclusion (b) to the Explanatory Note to heading 95.04, which states that "machines and apparatus fulfilling the conditions of Note 5 (A) to Chapter 84, whether or not capable of being programmed for video games" are excluded from this heading.

(d)   Note 7 to Chapter 84 is not applicable to the "PS2" :

- Note 7 to Chapter 84 can be applicable only when a product is classifiable under Chapter 84 and one should consequently not rely on this Note to classify a product under heading 95.04 or Chapter 85.

- If Note 7 to Chapter 84 were applied to other ADP machines classified in heading 84.71 (e.g., Windows PCs), all of these machines would be regarded as "machines which are used for more than one purpose" and classified according to their "principal purposes" (e.g., as word processing machines (heading 84.69), electronic calculators (heading 84.70), or heading 84.79 when their principal purposes are not described in any heading or they do not have principal purposes).

(e)   GIR 3 (b) is not applicable to the PS2 :

- Since the "PS2" is classifiable in heading 84.71 by application of GIR 1 and not classifiable under two or more headings, there is no need to consider GIR 3.

- Even supposing the PS2 is classifiable under two or more headings, GIR 3 is still not applicable, because the PS2 is not a combination of components or machines performing two or more complementary or alternative functions. The PS2 does not contain separate circuits to play video DVDs, to process video game software, to run Linux applications – all such data files are processed by the CPU.

(f)   For the reasons summarised above, the PS2 is classified under heading 84.71.

55.   The technical information provided by the Japanese Administration suggests that the configuration of the PS2 is similar to those of current ADP machines available on the market. It also appears that the PS2 satisfies the criteria set out in Note 5 (A) (a) to Chapter 84.

56.   As noted by the Japanese Administration, the attention of the Committee is drawn to Classification Opinion 8471.49/1 regarding the classification of a personal computer consisting of a combination of a 14" (35 cm) colour television receiver (display) with a digital processing unit, a keyboard (input unit), and an infra-red remote control device.

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57.   It should be noted that certain new models of portable digital ADP machines (generally called "Laptops") are equipped with built-in DVD drives and sound and image decoding and are used for more than one purpose (e.g., listening music, watching movies, playing games, word processing, spreadsheet applications, etc.) but are normally classifiable in heading 84.71.

58.   It is, therefore, up to the Committee to decide whether the PS2 should be classified in heading 84.71 as an "automatic data processing machine" by application of GIR 1and Note 5 (A) to Chapter 84 or in heading 95.04 as a "video game" by application of GIR 3 (b).

IV. CONCLUSION

59.   Taking into account its preliminary conclusions at the 28th Session and the additional information provided by the ICC regarding the classification of DVD drives and DVD players; and the information and comments provided by the Japanese Administration and comments by the Secretariat regarding the classification of the "PS2", the Committee in invited to :

(a)   Take a final decision that (i) DVD drives exclusively used in conjunction with ADP machines are classified in heading 84.71 and (ii) standalone DVD players designed to be used for video/audio reproduction (both images and sound) on television receivers or video monitors are classifiable in heading 85.21;

(b)   Decide, whether the PS2 should be classified in heading 84.71 as an "automatic data processing machine" by application of GIR 1 and Note 5 (A) to Chapter 84 or in heading 95.04 as a "video game" by application of GIR 3 (b);

(c)   Express its views as to whether the classification of the new types of the products identified by the ICC in its submission (Annex I) should be studied at a future session of the Committee on the basis of further information to be provided by interested administrations and the ICC; and

(c)   Instruct the Secretariat as to the further actions to be taken to reflect its decisions.

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