



HARMONIZED SYSTEM
COMMITTEE

-
29th Session
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NC0585E1

O. Eng.

Brussels, 24 April 2002.

CLASSIFICATION OF THE "PALM V™"
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)	NC0545E1 (HSC/29)

I. BACKGROUND

1. After Doc. NC0545E1 was prepared, the Secretariat received the following Note from the US Administration concerning the application of Note 6 to Chapter 85 with regard to the classification of the "PALM V™".

II. NOTE FROM THE UNITED STATES

"Introduction

2. At its 28th Session, the Harmonized System Committee continued its consideration of the classification of the Palm V personal digital assistant. The Committee unanimously decided to classify the Palm V in subheading 8471.30 by application of General Interpretative Rules 1 (Note 5 (A) to Chapter 84) and 6. The issue was then raised as to how the software that is presented with the Palm V should be treated for classification purposes. With respect to this issue, the Secretariat was instructed to prepare a new document on the classification of the Palm V when presented in the form of a set.
3. The Palm V is presented with software known as the "Palm Desktop software". It is intended for use not with the Palm V but rather with a desktop or laptop computer to allow the exchange of data between the Palm V and the desktop or laptop computer. Several other articles (e.g., "HotSync" cradle and battery charger, user manual, etc.) are also presented with the Palm V.

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

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4. The United States believes that the Palm Desktop software, the Palm V and the other articles presented with the Palm V should be classified together as a set in heading 84.71 pursuant to General Interpretative Rules 1 and 3 (b) for the reasons set forth below.

Discussion

5. Note 6 to Chapter 85 has been amended in the 2002 version of the Harmonized System. As amended, the note provides 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. Guidance on the interpretation of the above-mentioned note can be found in the Explanatory Notes to the Harmonized System. The Explanatory Note (3rd edition, 2002) to Note 6 to Chapter 85 (Item (B) to the General Explanatory Notes to Chapter 85, page 1619) provides as follows :

(B) Media presented with apparatus for which they are intended
(Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles shall be applied :

- (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that rule; or
- (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

7. In light of the above, media will only be classified separately under Note 6 to Chapter 85 when it is presented together with the apparatus for which it is intended to be used. Typical examples of merchandise covered by this note would be a video cassette with a video cassette player or a CD-ROM with a CD-ROM player. By contrast, in the instant case, the media (i.e., Palm Desktop software) presented with the Palm V is not intended for use on and cannot be used on the Palm V. Rather, the Palm Desktop software is intended for use on a desktop or laptop computer. Accordingly, the media presented with the Palm V is not covered by the terms of Note 6 to Chapter 85.

8. As indicated above, the **United States** is of the view that the **Palm V** and the other articles presented with it should be classified together by application of General Interpretative Rule 3 (b), which provides as follows :

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), shall be classified as if they consisted of the material or component which give them their essential character, insofar as this criterion is applicable.

9. The Explanatory Notes (3rd edition, 2002) to the General Interpretative Rules provide guidance on the concept of "goods put up on sets for retail sale" (page 5) :

For purposes of this Rule, the term "goods put up in set for retail sale" shall be taken to mean goods which :

- (a) consist of at least two different articles which are, prima facie, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

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10. The **Palm V** together with the other articles with which it is presented meet all the above-listed three requirements for a set as (1) together they consist of at least two different articles (e.g., **Palm V** and cradle); (2) they are put up together to meet the particular need or carry out the specific activity of storing, processing and transferring data; and (3) they are put up together in packaging for sale directly to users.
11. The **Palm V** is clearly the article that imparts the essential character to the set by whatever factor one considers, e.g., value of the **Palm V** or role of the **Palm V** in relation to the use of the good. Accordingly, the set should be classified as if it consisted of the **Palm V**. As the Committee decided, the **Palm V** is properly classified in heading 84.71, and specifically in subheading 8471.30. Therefore, the set should be classified in heading 8471, and specifically in subheading 8471.30.

Conclusion

12. The **Palm V** and the other articles with which it is presented should be classified together as a set in heading 84.71 by application of General Interpretative Rules 1 and 3 (b)."

III. CONCLUSION

13. The Committee is invited to take the above comments from the **US** Administration into consideration while examining this Agenda Item.