



HARMONIZED SYSTEM
COMMITTEE

-
30th Session
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O. Eng.

Brussels, 2 October 2002.

CLASSIFICATION OF BATTERY PACKS USED IN CELLULAR

(MOBILE) TELEPHONES

(Item VIII.26 on Agenda)

I. BACKGROUND

1. On 10 September 2002, the Secretariat received the following note from the **Canadian** Administration concerning the classification of battery packs used in cellular (mobile) telephones. The **Canadian** Administration requested that the issue be placed on the agenda of the 30th Session of the Harmonized System Committee.

II. NOTE FROM THE **CANADIAN** ADMINISTRATION

2. "The **Canadian** Administration understands that some Customs administrations classify battery packs used in cellular (mobile) telephones under heading 85.07 of the Nomenclature while others use heading 85.29. We believe that this lack of uniformity should be reviewed by the HSC and ultimately resolved through the issuance of a formal Classification Opinion.
3. The issue can best be described through the differing rationale used by formal appeals bodies in **Canada** and the **United Kingdom** to arrive at the classification of the battery packs in question. On July 26, 2000, as a result of an appeal involving **Nokia** products, the **Canadian International Trade Tribunal** overturned a decision of the **CCRA** classifying the product under heading 85.07. In supporting the appellant's arguments, the Tribunal ruled that the battery packs were classified under heading 85.29, as parts suitable for use solely or principally with cellular telephones of heading 85.25. Conversely, on July 5, 2001, a **UK VAT and Duties Tribunal** arrived at the opposite conclusion. It upheld a decision made by **UK** Customs to classify similar battery packs used in mobile (cellular) telephones as electric accumulators under heading 85.07 rather than as a part of heading 85.29, as claimed by the appellant.

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

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4. For your information, I have attached copies of the decisions rendered by the Canadian and UK Tribunals. The Canadian Tribunal found that battery packs designed for Nokia model cellular telephones are ergonomically designed by the manufacturer as an integral part of the said telephone. As its power source, they form a complete unit with the cellular telephone, have no alternative function, are committed for use with one particular model of Nokia telephone and marketed for this purpose.
5. In addition, after reviewing the description of electric accumulators in the Explanatory Notes to heading 85.07 against the corresponding heading text, the Canadian Tribunal concluded that an assembly of components (which includes accumulators) such as a battery pack falls outside the scope of this heading. To reiterate the point, reference was made to the General Notes to Chapter 84, page 1394, Part (C), Parts, which indicates that separately presented electrical parts should be classified under their respective headings in Chapter 85, unless incorporated in other parts of the host machine.
6. After eliminating heading 85.07 from consideration, the Canadian Tribunal based its decision under heading 85.29 on General Interpretative Rule 1 and Section XVI Note 2 (b) rather than Note 2 (a).
7. On the other hand, in the appeal before the UK Tribunal, the battery packs were found to be both electric accumulators for the purposes of heading 85.07 and a dedicated part of a mobile (cellular) telephone under heading 85.29. This led the Tribunal to determine that Section XVI, Note 2 (a) was decisive in determining the proper classification of the goods under heading 85.07.
8. The UK Tribunal also gave due regard to Section XVI, Note 4 in its deliberations. This Note was deemed helpful in establishing that the batteries and additional components comprising a battery pack operate together to perform one primary function – that of an electric accumulator under heading 85.07. The additional components add functionality to the battery charging process rather than the functionality of the mobile telephone. Nothing was apparently found in the Explanatory Notes to disturb these findings.
9. The UK decision took into account the nature and function of the goods rather than their end-use in mobile telephones. Once it was decided that the battery packs fall under heading 85.07, Legal Note 2 (a) represents the first criterion that must be applied to classify goods also classifiable under Section XVI of the Nomenclature. The wording of this Note specifically excludes heading 85.29.”

III. SECRETARIAT COMMENTS

10. As explained in the Canadian Note, the goods at issue are battery packs used in cellular (mobile) telephones. The question to be determined is whether to classify these battery packs in heading 85.07 as electric accumulators or in heading 85.29 as parts of cellular (mobile) telephones classified in heading 85.25. The description of the battery pack at issue is as follows :

Product Description A :

The product at issue is labelled as a "Nickel Cadmium Rechargeable Battery" designed for a particular brand of **Nokia** cellular telephone. It is comprised of the following :

- 3 x nickel cadmium batteries
- Printed circuit board which connects the batteries to the cellular telephone's circuits
- Conductive strips which run between the batteries
- Outer plastic casing specially designed to form a whole with the cellular telephone. This receptacle houses the battery pack components
- A circuit board containing a resistor and a capacitor which combine to allow for the safe recharging of the batteries.

The **Nokia** battery pack assembly serves as the power source for its host cellular telephone. It has no other function. The outer casing is said to be ergonomically designed so that it forms the back of the telephone.

Product Description B :

The product at issue is a **Matsushita** battery pack comprised of the following :

- 3 or 6 nickel hydride accumulators (model **GD30**)
- electrical connectors to the telephone
- A thermistor which monitors the temperature of the battery pack and cuts it off if it is outside the temperature range
- A positive temperature coefficient (PTC) current protection circuit protecting against short circuit by increasing the resistance if too high a current passes through the battery pack thus preventing more current from passing
- The rear outer casing so that the pack forms part of the telephone.
- The inner plastic cover.

11. While the descriptions of the two products differ as to the components that were provided by the two administrations to their respective tribunals, the Secretariat understands that the functions of the two are the same; that is, they both serve as the power source for the cellular telephones.
12. The Secretariat accepts the statement made by the **Canadian International Trade Tribunal** that the battery packs designed for **Nokia** model cellular telephones are ergonomically designed by the manufacturer as an integral part of the said telephone. As its power source, they form a complete unit with the cellular telephone, have no alternative function, are committed for use with one particular model of **Nokia** telephone and marketed for this purpose.
13. In reviewing the classification of the battery packs at issue, the Secretariat would draw the Committee's attention to the statement made by the **UK VAT and Duties Tribunal** in its decision :

"Accordingly the question is whether the battery pack is an electric accumulator, in which case Note 2 (a) requires it to be classified as such, or, because of the additional

components, so much more than an electric accumulator that it cannot be classified in that heading, in which case it is classified by Note 2 (b) as part of a mobile phone.” This, in essence, is the question which the Committee must answer.

14. In paragraph 5 above, it is noted that the **Canadian International Trade Tribunal** concluded that an assembly of components (which includes accumulators) such as a battery pack falls outside the scope of heading 85.07. The Secretariat is not convinced by this statement. The Secretariat would first point out that the Explanatory Notes cannot broaden or limit the scope of a heading. The reference made to the Explanatory Note to heading 85.07 refers to the composition of electric accumulators. The Secretariat would draw the Committee’s attention to page 1631 of the Explanatory Note to heading 85.07, second paragraph, wherein the products are described as follows “Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connections to an external circuit.” The word “essentially” shows that this is not an all-inclusive list. It does not limit accumulators to a specific description.
15. Paragraph 5 above also makes reference to the General Notes to Chapter 84, page 1394, Part (C), “Parts”. Essentially, this Explanatory Note says that separately presented electrical parts should be classified under their respective headings in Chapter 85, unless incorporated in other parts of the host machine. In the Secretariat’s view, this does not apply in the present situation. The Secretariat acknowledges that the battery packs are comprised of a number of components. While it is true that these battery packs are considered a “part” of the telephone, the individual components which comprise the battery pack are “parts” of the battery pack and not the telephone. These components (other than the cells) contribute to the function of the battery packs in controlling and safeguarding the performance of the cells. They perform no function with regard to the telephone itself. In order for this note to apply, *mutatis mutandis*, to the present situation, these parts would have to be parts of the telephone itself. That is not the case.
16. The **UK** decision interjects the idea of functional units (Note 4 to Section XVI) into the discussion of the classification of the battery packs. The Secretariat has some doubts as to its relevance in this particular case. Note 4 to Section XVI reads “Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.” The battery packs at issue have various components contained in a single housing, so the configuration does not meet the conditions of the Note in order for the Note to apply.
17. The Secretariat would, rather, bring the Committee’s attention to Note 3 to Section XVI. The **Canadian International Trade Tribunal** argued that the goods cannot be classified in heading 85.07 because their assembly constitutes a product that is “more than” what is covered by that heading. The Secretariat would argue that these battery packs are comprised of various components contained in a single housing and, according to the Note 3 to Section XVI, the classification of the battery packs must be according to “that component or as being that machine which performs the principal function.” In this case, it would be the electrical accumulator which performs the principal function.
18. The classification of parts of machines is governed by Note 2 to Section XVI, which is hierarchical in nature. Having determined that the principal function performed by these battery packs is that of an electrical accumulator, which is a function described in the text of

heading 85.07, the Secretariat believes that the classification is directed to heading 85.07. In the case of the **Nokia** battery pack, as the description states that it has **nickel cadmium batteries**, the subheading would be 8507.30 by application of GIRs 1 (Note 2 (a) to Section XVI, as well as Note 3 to Section XVI) and 6. The Secretariat would agree with the **UK VAT and Duties Tribunal** to classify the **Matsushita battery pack** in subheading 8507.80.

19. The Secretariat leaves it to the Committee to rule on the classification of the battery packs at issue. For the convenience of the delegates, the Secretariat will have copies of the decisions by the **Canadian International Trade Tribunal** and the **UK VAT and Duties Tribunal** available in the meeting room.

IV. CONCLUSION

20. The Committee is invited to rule on the classification of the **Nokia** and **Matsushita** battery packs for cellular (mobile) telephones taking into account the note from the **Canadian Administration** and the Secretariat's comments.
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