OPINION OF ADVOCATE GENERAL MAZÁK
delivered on 6 March 2007 [1]

1. This case concerns the customs classification of combined network/modem cards giving access to Local Area Network (for example, company intranets) as well as the Wide Area Network (for example, the internet). The Court is essentially asked to rule whether such products are to be subject to customs duty as data-processing machines (PCs) (heading 8471) or as telecommunication apparatus (heading 8517). What is important here is inter alia whether the products at issue perform a 'specific function'.

I — The legal framework

2. There seems to be an ongoing wider variance of opinion as to customs classification of electronic (and particularly IT) products. It is, however, not the first time these issues have been raised before the Court. [2] In fact, the Court has already resolved a number of questions in this context. I would at this point mention, in particular, the cases of *Peacock* and *Cabletron*. [3] Nonetheless, as I will show below, I am of the opinion that too strict an application of the latter case-law by the Court in a case such as this one could actually run counter to the purpose of customs classification.

3. Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, [4] established in Annex I thereto a nomenclature for goods known as the 'Combined Nomenclature' (hereafter 'CN'), which is based on the Harmonised Com-

1 — Original language: English.

2 — As long ago as 1999, in the Opinion in Case C-339/98 *Peacock* [2000] ECR I-8947, point 13, Advocate General Jacobs noted that the 'development of LANs and the convergence of the technology used in computer data transmission and telephony have engendered uncertainty as to where exactly the distinction is to be drawn between the two types of system'.

3 — Case C-463/98 *Cabletron* [2001] ECR I-3495.

4 — OJ 1987 L 256, p. 1.

modity Description and Coding System ('HS').[5] The version of the CN in force at the time of the events at issue in the main proceedings is that modified by Commission Regulation (EC) No 3009/95,[6] applicable as of 1 January 1996.

4. Section XVI[7] of Annex I includes Chapters 84 and 85,[8] which are relevant for the purposes of the present case. Heading 8471 of the CN refers to: '[ADP] machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.' On the other hand, CN heading 8517 reads as follows: 'Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones.'[9]

5. The general rules for the interpretation of the CN (General Interpretative Rules or 'GIRs'[10]), which are set forth in Part I of Title I A thereof, provide, inter alia:

'3. When by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail

5 — The Harmonised Commodity Description and Coding System introduced by the International Convention of 14 June 1983, approved for the Community by Council Decision of 7 April 1987, 87/369/EEC (OJ 1987 L 198, p. 1). The CN takes from it the six-digit headings and subheadings, only the seventh and eighth digits forming subdivisions specific to the CN. Hence the CN makes it possible to meet the requirements of both the Common Customs Tariff and the external trade statistics of the Community. May I add that the Annex I is amended every year with effect from 1 January.

6 — Regulation of 22 December 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ 1995 L 319, p. 1. That Commission regulation reflected a substantial revision of the HS.

7 — It is entitled: 'Machinery and mechanical appliances ...'.

8 — The former concerns: 'Nuclear reactors, boilers, machinery ...' and the latter: 'Electrical machinery ...'.

9 — Both the CN headings as well as the interpretative rules in the version amended by Commission Regulation No 3009/95, cited above in footnote 6.

10 — The six GIRs are applicable by way of a hierarchical order (that is to say, GIR 1 before GIR 2, the latter before GIR 3 and so forth). Having said that, GIR 1 is the fundamental rule, according to which: 'The titles of sections, chapters and subchapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.' GIR 6 provides that: 'For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and mutatis mutandis to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule the relative section and chapter notes also apply, unless the context otherwise requires.'

sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(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), shall be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.'

6. Note 3 to Section XVI and Note 5 to Chapter 84 of the CN respectively provide:

'3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.'

'5. A. For the purposes of heading No 8471, the expression "automatic data processing machines" means:

...

(c) hybrid machines consisting of either a digital machine with analogue elements or an analogue machine with digital elements.

B. Automatic data-processing machines may be in the form of

systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all of the following conditions:

(a) it is of a kind solely or principally used in an automatic data-processing system;

(b) it is connectable to the central processing unit either directly or through one or more other units; and

(c) it is able to accept or deliver data in a form (codes or signals) which can be used by the system.

C. Separately presented units of an automatic data-processing machine are to be classified in heading No 8471.

...

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.'

7. The World Customs Organisation ('WCO') includes a Harmonised System Committee ('HS Committee'), on which the European Community, as a party to the HS Convention, is represented by the European Commission ('the Commission'). The HS Committee has the role, inter alia, of proposing amendments to the HS and preparing Explanatory Notes thereto ('HSENs'), classification opinions, other advice on interpretation and recommenda-

tions to secure uniformity in interpretation and application of the HS. [11] The Commission also prepares explanatory notes with regard to the CN. These complement those of the HS.

II — Factual and procedural background and the questions referred

8. This case concerns combined network/modem PCMCIA cards, designed to be inserted into portable computers, of types OC 2232 and OC 3232 ('GoCards' or 'the Products'), imported by Olicom A/S ('Olicom') in the period 1996 to 1999. [12] Each GoCard has a PC-interface, in conformity with the PCMCIA standard. The cards are 'combined' in the sense that each has both a LAN-interface and a WAN-interface (modem), enabling a PC to communicate with other PCs through a network. [13] Hence there is a unit which receives, processes and sends on the data from one PC to other PCs in the network. The CN refers to 'automatic data-processing machines' in general instead of 'computers' or 'PCs', and so does the HS. Therefore throughout my opinion I shall make use of this terminus technicus or its abbreviated form 'ADP machines' as well.

9. According to the order for reference, since GoCards are in fact a mere development of pure LAN cards they are designed in such a way that the WAN function (modem) cannot work without the LAN function (Token Ring). The latter can, however, work whether the WAN function is removed or not. [14]

10. Olicom, a Danish company, when importing network equipment, in particular

11 — Although not recognised as having binding authority, they are usually regarded as persuasive. See Case C-328/97 *GlobSped* [1998] ECR I-8357, paragraph 26, and Case C-201/96 *LTM* v *FIRS* [1997] ECR I-6147, paragraph 17, and the case-law cited therein.

12 — The former model's full name is 'GoCard 2232 Eth/Modem 336 PC Card' and the latter's 'GoCard 3232 TRN/Modem 336 PC Card'. 'Eth' and 'TRN' stand for Ethernet and Token Ring, which, at the time the cards were marketed, were the two prevailing technologies in LAN communications.

13 — PCMCIA stands for Personal Computer Memory Card Industry Association. The GoCards can hence be easily inserted in any portable PC (compatible with this standard) in slots provided for this purpose. LAN equipment, as the name implies, is for local communication, for example an intranet. WAN equipment is designed for long-distance communication and hence intended for external networks, in particular the internet. The Products' specification adds that '[t]he modem capability allows the users when they travel or are working from the home to connect to host computers for access to corporate data, electronic mail, BBS and public services either via the Public Service Telephone Network (PSTN) or via an analog cellular telephone'.

14 — For further details and explanation regarding network cards as such, LAN, WAN as well as the wider context, I refer to *Peacock* and *Cabletron*, which dealt with LAN network cards and LAN equipment respectively. In particular, see the Opinion of Advocate General Jacobs in *Peacock*, cited in footnote 2, for instance points 10 to 18 and points 39 to 40; and to a certain extent also his Opinion in *Cabletron*, cited in footnote 3, points 3 to 10.

the GoCards at issue in the main proceedings, classified these as ADP equipment under heading 8473/71. It also imported GoCards of a type having solely a LAN function, which it also classified under heading 8471. The Commission adopted two Regulations, No 1638/94 [15] and No 1165/95, [16] under which, in particular, LAN equipment produced as adapters, link adapters, transceivers and adapter cards were to be classified under CN heading 8517 instead of 8471, which as a result increased the applicable customs duty. By a decision of 16 March 1999, the Told- og Skatteregion Helsingør (the regional customs and tax authority of Helsingør) proceeded to recover *a posteriori* the customs duties from Olicom with regard to the GoCards. Olicom then appealed against this decision on 16 June 1999.

11. In *Cabletron* the Court, however, declared these two Commission Regulations invalid with regard to the tariff classification of adapters, link adapters, transceivers and adapter cards. Following the judgment, the Commission adopted guidelines on product coverage and repayment of duties in that case. [17] The authorities then reimbursed customs duties as regards GoCards having solely the LAN function, but maintained that products which had both LAN and WAN function had to be classified as WAN cards. When the administrative appeals had been exhausted, the dispute concerning the classification was brought before the Østre Landsret on 14 April 2003.

12. On 11 November 2004, the Customs Code Committee ('CCC') met to hear Olicom. It then issued an opinion on 10 January 2005, in which it stated that the Products at issue in the main proceedings were to be classified under CN heading 8517. The Committee based this conclusion on its finding that the Products did not have a principal function. [18]

13. By order of 9 March 2006, the Østre Landsret (Eastern Regional Court, 15th Chamber, Copenhagen) therefore stayed the

15 — Commission Regulation (EC) No 1638/94 of 5 July 1994 concerning the classification of certain goods in the combined nomenclature, OJ 1994 L 172, p. 5.

16 — Commission Regulation (EC) No 1165/95 of 23 May 1995 concerning the classification of certain goods in the combined nomenclature, OJ 1995 L 117, p. 15.

17 — Commission Guidelines on product coverage and repayment of duties in Case C-463/98 *Cabletron* (TAXUD/1666/2002), 12 February 2002.

18 — According to the order for reference, the CCC's statement is allegedly based on the incorrect assumption that the parties actually agreed that the WAN function at issue was a specific function in the form of line telephony. The Commission, however, refutes this argument as a misunderstanding: it cannot be inferred from the CCC's opinion that the parties agreed on modem being a 'specific function' *within the meaning of Note 5(E) of the CN*. If the CCC thought that, the whole case would be rendered meaningless since it is precisely on this very point that the parties disagree.

proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) Is Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by [Commission] Regulation No 3009/95, to be interpreted as meaning that combined network/modem cards such as those at issue in the main proceedings are to be subject, after 1 January 1996, to customs duty as data-processing machines under heading 8471 or as telecommunication apparatus under heading 8517?

In that connection the Court of Justice of the European Communities is asked to rule on whether the concept of "specific function" within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature, as amended by Regulation No 3009/95, is to be interpreted as meaning that classification is to be under a heading other than 8471 when a WAN function is present, or whether there is to be a classification under a heading other than 8471 only if the WAN function can operate independently of an automatic data-processing machine.

(2) If the Court of Justice of the European Communities should find that the WAN function in the combined network/modem card is a specific function, the Court is asked to rule on whether it is relevant for the customs classification that the product's principal function can be deemed to be the LAN function.'

III — Assessment

A — *Arguments of the parties*

14. According to the order for reference, Olicom (the applicant in the main proceedings) argues that the Products ought to be classified as ADP machines under heading 8471, as they do not perform any 'specific function'. While the parties agree that three of the *Cabletron*'s [19] four conditions are met, there is disagreement on whether the fourth

19 — Cited above in footnote 3, paragraph 17. By way of these four conditions, the Court essentially decided when network cards are to be classified as ADP machines under 8471.

one is met as well: '4. the equipment has no function that it would be capable of performing without the assistance of an [ADP] machine.' Further to *Cabletron* and *Peacock*,[20] communications apparatus in the form of inter alia a network card requires an ADP machine in order to perform a function[21] — unlike, for example, a mobile telephone, which performs a communications function independently — hence heading 8471.[22] In any event, Olicom believes heading 8471 should nevertheless apply, due to the Products' principal function (LAN), since they constitute a mere 'development' of pure LAN products. Olicom disagrees with the Customs Code Committee's statement.

both contend, in essence, that the Products' correct classification ought to be under heading 8517 as they do have a specific function. Note 5(E) of Chapter 84 prevents their classification under 8471, because, owing to the in-built modem, they are capable of establishing data communication independently of the ADP machine. The Products' physical connection to an ADP machine does not mean they do not perform a specific function per se, as the WAN function is not dependent on the ADP machine and its functions. Both the Skatteministeriet and the Commission[23] submit that *Cabletron*'s fourth condition is not met.

B — *First question*

15. The Skatteministeriet (the defendant in the main proceedings) and the Commission

16. By its first question, the national court essentially seeks to ascertain whether the

20 — Cited above in footnote 2, paragraph 16.

21 — Since an ADP machine transmits to the Products the electric current, instructions and also data necessary for their functioning, the Products are incapable of working without the help of an ADP machine (PC) and that of the relevant programme (driver). Both LAN and WAN require the Products to be physically connected to an ADP machine.

22 — As the Products' sole purpose is to establish data communication between ADP machines, it cannot, according to the case-law, be a 'specific function' within the meaning of Note 5(E); the modem function does not change anything in that regard. Both LAN and WAN functions are similar in that they both send/receive data between ADP machines within a network, the only difference being that the former covers local networks and the latter external ones, especially the internet.

23 — The Commission's guidelines, cited above, stated that where the four conditions are not met then the product is classifiable elsewhere than under 8471 most likely under 8517 (continuing that (i) a specific function is present when the product is capable of supporting communication between computer networks over telephone lines or by using telecommunication technologies; and (ii) modems, including digital modems, and products incorporating any kind of modem are always classifiable in HS heading 8517).

Products are to be classified under heading 8471 or 8517 of the CN, as amended by Regulation No 3009/95. I shall, however, first start with some of the Court's case-law related to the matter.

17. As the Court has repeatedly held, in the interests of legal certainty and for ease of verification, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the wording of the relevant heading of the CN. [24]

18. In *Peacock*, the Court held that between July 1990 and May 1995, (LAN) network cards designed to be installed in ADP machines were to be classified under heading 8471 as units of machines of that type, [25] whereas in *Cabletron*, [26] it essentially confirmed that (LAN) network equipment, notably network cards, must be classified under CN heading 8471 both before and after 1 January 1996.

19. In *CBA Computer*, [27] the Court ruled that sound cards at issue in that case [28] have no specific function and are to be classified under CN heading 8471. Then, in *Jacob Meijer*, [29] it confirmed that sound cards are not to be classified under heading 8543, which relates solely to electrical machines and apparatus having individual functions. On the contrary, in *Ikegami*, [30] the Court held that a machine which, for video-surveillance purposes, records signals from cameras and, after compressing them, reproduces them on screen, does perform a specific function other than data processing within the meaning of Note 5(E) to Chapter 84 of the CN.

20. In *Hewlett Packard*, [31] the Court of First Instance held inter alia that 'it is clear from Note 5(E) that the type of machine which is

24 — See for example Case C-467/03 *Ikegami* [2005] ECR I-2389, paragraph 17. See also *Peacock*, cited in footnote 2, paragraph 9, and the case-law cited therein.

25 — Cited in footnote 2. In particular, (LAN) network cards are designed solely for ADP machines, are directly connected to those machines and their function is to supply and accept data in a form which those machines can use.

26 — Cited in footnote 3, paragraph 27. I note that even if one of the 58 types of equipment dealt with in *Cabletron* appeared to be designed also for WANs, the Court considered in that case that all those types of apparatus were meant to connect computers working in LAN.

27 — Case C-479/99 *CBA Computer* [2001] ECR I-4391, paragraphs 21 to 28.

28 — Defined as '[e]lectronic circuit boards which enable [ADP] equipment and units thereof to process audio signals'.

29 — Joined Cases C-304/04 and C-305/04 *Jacob Meijer and Eagle International Freight* [2005] ECR I-6251.

30 — Cited in footnote 24.

31 — Joined Cases T-133/98 and T-134/98 *Hewlett Packard France and Hewlett-Packard Europe* v *Commission* [2001] ECR II-613.

excluded from heading 8471 is an entity in its own right performing a specific task which could also be performed, albeit more laboriously, without an [ADP] machine'. [32] It also stated that the transmission of data within a data-processing system should not be regarded as a telecommunication function. [33]

21. I must point out that even though the Court has already determined in a number of cases the classification of electronic circuits (LAN apparatus), it has not yet done so with regard to WAN. Therefore, while it is now clear from the Court's case-law that LAN network cards merely 'supply and accept data' in a form which ADP machines can use and are thus comparable to any other medium whereby that machine accepts or delivers data (that is to say, they have no specific function), the Products at issue in this case are combined/modem network cards.

22. Hence, what has been said of LAN cards cannot, in my opinion, be applied by analogy to network cards incorporating a WAN function, inasmuch as, contrary to only 'supplying and accepting data', the latter must also necessarily 'convert' such data/signals. WAN apparatus must actually process the data/signals received by way of '*mo*dulating' and '*demo*dulating' them (hence the name 'modem') from analogue to the digital form and vice-versa so that they are, on one hand, transmissible in the telephone network (analogue form) and, on the other, compatible with an ADP machine (digital form). I consider the Commission's argument in this respect — that the WAN function, not least as explained in the above paragraph, must be regarded as a function 'other than data processing' — to be well founded.

23. I am of the opinion that on the basis of objective characteristics, the WAN (modem) function indeed falls under telecommunication (that is to say, under heading 8517) and not under data processing (that is to say, under heading 8471). What is more, unlike LAN apparatus, WAN uses telephone lines for communication. May I point out in this respect that the Products were already approved for use in a telephone network and can be readily used as modems.

32 — Ibid., see paragraph 39 of the judgment. It found, however, that none of those products (for LAN networks) is capable of performing a function independently either of an ADP machine or of the complete system.

33 — Ibid., see paragraph 42 of the judgment.

24. Therefore I conclude that it follows that WAN apparatus — as opposed to the apparatus incorporating LAN function only — performs a 'specific function', because the data sent and received by the modem must inevitably be converted from signals that an ADP machine is capable of processing to signals transferable by way of telephone lines and other similar means.

25. This is confirmed by the HSENs, which explicitly exclude modems from being classified under heading 8471 and, rather, clearly attribute them to heading 8517. [34] The Products' classification under heading 8517 was also confirmed by the CCC. [35] What is more, the HS Compendium of Classification Opinions [36] published by the WCO contains the numerical list of classification opinions adopted by the WCO, drawn up in the order of HS headings and subheadings. The following classification opinion of 13 November 1998 appears therein:

'3. Card designed to be inserted into an [ADP] machine (slot-it card)' ought to be classified under heading 8517.50/3 since it 'converts digital [ADP] machine signals into analogue signals, and vice versa, thus permitting communication with another [ADP] machine through the telephone line system. It also enables the [ADP] machine to send and receive faxes and e-mail, permitting those operations to be achieved even via a cellular (mobile) telephone.' [37]

26. Moreover, even if not relevant *rationae temporis* to the present case, the latest changes to the CN (as a result of a restructuring of the HS), which entered into

34 — Section XVI, part entitled '(IV) Apparatus for Carrier-Current Line Systems or for Digital Line Systems' reads as follows: 'These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals [and] are used for the transmission of all kinds of information (characters, graphics, images, or other data, etc.). This includes: ... (B) Combined modulators-demodulators (modems)', p. 1654 (February 2004 version).

35 — While the Court stated that the CCC's opinions are not legally binding, it also noted that they 'constitute an important means of ensuring the uniform application of the Customs Code by the customs authorities of the Member States and as such they may be considered as a valid aid to the interpretation of the Code' (Case C-11/05 *Friesland Coberco Dairy Foods* [2006] ECR I-4285, paragraph 39 and the case-law cited).

36 — The WCO, Harmonised Commodity Description and Coding System — Compendium of Classification Opinions, Section XVI, Position 8517.50, p. XVI/19 E (February 2004 version).

37 — It also refers to the other adjacent Opinions 8517.50/1 regarding apparatus for linking an ADP machine to a telephone line and 8517.50/2 on apparatus for linking an ADP machine to a telephone line via ISDN, adding that GIRs 1 and 6 were applied.

force on 1 January 2007, bringing significant changes to the structure of Chapters 84 and 85, support my finding. While Note 5(E) remains unchanged, by way of a new Note 5(D), specific products are now excluded from heading 8471. These are inter alia: '[ii] Apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network).' [38] At the same time, CN heading 8517 is amended to include: 'Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network)'. [39]

28. I must say that I cannot agree with this. As I explained above, the Products' WAN function is to be objectively interpreted as being different from data processing. If the quite absolute criteria of the *Peacock* and *Cabletron* case-law [40] and Chapters 84 and 85 were interpreted too strictly, then all apparatus would have to be classified as ADP machines — even if they perform functions totally different from data processing — merely on the ground that such machines function connected to an ADP machine, for example by way of electronic circuits. [41] In this vein, I must agree with the Commission's argument that such an interpretation would deprive CN Note 5(E) of all effect.

C — *Second question*

27. The questions referred contain the contention that in any case the Products ought to be classified under heading 8471, inasmuch as the WAN function cannot operate independently of an ADP machine.

29. By its second question, the national court asks — in the event that the Court

38 — Amendments to the Nomenclature appended as an Annex to the Convention, accepted pursuant to the Recommendation of 26 June 2004 of the Customs Cooperation Council, World Customs Organisation, International Convention on the Harmonised Commodity Description and Coding System (Brussels, 14 June 1983), entry into force: 1 January 2007, p. 67.

39 — Ibid., p. 80.

40 — Which stated inter alia that products having no function that they would be capable of performing *without the assistance* of an ADP machine must be classified under 8471.

41 — When I look at the technological progress (ubiquitous use of PCs, electronic circuits etc. in an increasing variety of products) I must add that this would therefore cover a not insignificant percentage of products — quite the opposite — which only adds to the gravity of the issue discussed.

finds the Products' WAN function is a specific function — whether it is relevant for the purposes of the customs classification that the Products' principal function can be deemed to be the LAN function.

30. Olicom argued that LAN is in any case the Products' principal function and the one essentially used by consumers. However, the fact that the cards at issue are specially designed for use in portable computers already shows, in my opinion, that owing to the objective characteristics of portable computers and their use and purpose, it may well be that often only the WAN function is available (the LAN being inherently 'local' and fixed to, for example, one's office or company premises in general). I think that one usually buys a portable computer instead of a typical PC precisely because of the flexibility and transportability the former offers, which are reflected in its higher price and generally lower computing power, equipment and so forth.

31. From what I have said under the first question above it follows that, in my opinion, it suffices to say that — the Products' WAN function being a specific function — it does not matter whether the LAN function can indeed be deemed to be their principal function or not.

32. In any event, contrary to Olicom's argument, I am of the opinion that in reality the Products' essential character would rather have to be their dual function (that is to say, the fact that they have both LAN and WAN capability), which, by the way, is reflected in their specific design for portable computers, price etc. As already mentioned above, moreover, the CCC decided in a unanimous vote (of all Member States present) that it is impossible to determine a principal function of the Products at issue in the main proceedings. [42]

33. In the light of the foregoing, since in the present case neither GIR 3(a) nor GIR 3(b) is applicable (since, as regards the former, both 8471 and 8517 have the same degree of specificity and, as regards the latter, it would have to be the essential character — the cards' dual function — rather than the principal function that was decisive), in my opinion it is GIRs 1, 3(c) (classification under the heading which occurs last in numerical order) and 6 that determine that the Products' correct classification is under CN heading 8517.

42 — I find the opinion of the CCC in this case — where it held that on the basis of objective characteristics and arguments the Products do not have a principal function — quite persuasive. Its conclusion was that the Products have two separate functions (LAN and WAN) and do not have a principal function.

IV — Conclusion

34. I therefore consider that the Court should give the following answer to the questions raised by the Østre Landsret in the present case:

(1) Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 3009/95, is to be interpreted as meaning that combined network/modem cards such as those at issue in the main proceedings are to be subject, after 1 January 1996, to customs duty as telecommunication apparatus under heading 8517.

The concept of 'specific function' within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature, as amended by Commission Regulation No 3009/95, is to be interpreted as meaning that classification is to be under a heading other than 8471 when a WAN function is present, whether or not the WAN function can operate independently of an automatic data-processing machine.

(2) Since the WAN function in combined network/modem cards such as those at issue in the main proceedings is a specific function, it is not relevant for the customs classification that the Products' principal function can be deemed to be the LAN function.