JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
13 February 2001 *

In Joined Cases T-133/98 and T-134/98,

Hewlett Packard France, established in Courcouronnes (France),

Hewlett Packard Europe BV, established in Amstelveen (Netherlands),

represented initially by F. Goguel and A. Trager, and subsequently by F. Goguel and F. Foucault, lawyers, with an address for service in Luxembourg,

applicants,

v

Commission of the European Communities, represented by R. Wainwright and R. Tricot, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of Commission Decision 98/406/EC of 16 June 1998 concerning the validity of certain binding tariff information (OJ 1998 L 178, p. 45) in so far as it requires the revocation of, in particular, in

* Language of the case: French.

Case T-133/98, Binding Tariff Information FR 12030199700151 and, in Case T-134/98, FR 12030199701394, FR 12030199702134 and FR 12030199702135,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 December 2000,

gives the following

Judgment

Legal background

1 At the material time, Chapter 84 of the Combined Nomenclature laid down in 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 (OJ 1987 L 256, p. 1), as amended by Commission Regulations (EC) No 3009/95 of

22 December 1995 (OJ 1995 L 319, p. 1), which entered into force on 1 January 1996, and No 1734/96 of 9 September 1996 (OJ 1996 L 238, p. 1), which entered into force on 1 January 1997, included the following headings and subheadings:

'8471	Automatic data-processing 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:
...	
8471 80	— Other units of automatic data-processing machines:
8471 80 10	— Peripheral units
8471 80 90	— Other.'

2 Note 5 to Chapter 84 is worded as follows:

'...

(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.

(D) Printers, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of 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.'

3 Chapter 85 of the Combined Nomenclature includes the following headings:

'8517	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:
8517 50	— Other apparatus, for carrier-current line systems or for digital line systems
8517 50 10	— For carrier-current line systems
8517 50 90	— Other.'

Background to the dispute

4 The Hewlett Packard group manufactures hardware and software for use in the operation of local area networks.

5 Hewlett Packard France imports some of that hardware into France and manufactures some of it there. Hewlett Packard Europe BV imports some of that hardware into France and into other European Union countries.

6 Local area networks, or LANs, are a relatively recent development of computer technology. They have replaced older systems in which terminals without any independent data-processing capability had access to a remote central mainframe computer which performed all the data-processing operations. A local area network connects a number of personal computers (hereinafter 'PCs'), which are capable of processing data independently, to other automatic data-processing machines, including file servers and more powerful mainframe computers, and to peripheral accessories, such as printers, in such a way that data can be exchanged between the various components of the system and so that, at least in 'distributed networks', any automatic data-processing machine in the local area network can, to a certain extent, make use of the processing capability of other components. LANs generally cover a limited area such as a suite of offices.

7 On 5 November 1996, Hewlett Packard France lodged with the French Directorate-General of Customs and Excise an application for binding tariff information in respect of the HP JetDirect EX Plus.

8 By Binding Tariff Information of 31 January 1997, bearing the number FR 12030199700151, the French Directorate-General of Customs and Excise classified the HP JetDirect EX Plus under heading 8471 80 10 of the Combined Nomenclature.

9 On 18 March 1997, Hewlett Packard Europe lodged with the French Directorate-General of Customs and Excise three applications for binding tariff

information in respect of the devices named HP J3125A and HP J3126A, switching hubs HP J3200A, J3202A and J3204A and card HP J3210A.

10 By Binding Tariff Information FR 12030199701394 of 27 May 1997, the French Directorate-General of Customs and Excise classified the card HP J3210A under heading 8471 80 90. By Binding Tariff Information FR 12030199702135 and FR 12030199702134 of 16 July 1997, the devices HP J3125A and HP J3126A, as well as the switching hubs HP J3200A, J3202A and J3204A, were classified under heading 8471 80 10.

11 By Commission Decision 98/406/EC of 16 June 1998 concerning the validity of certain binding tariff information (OJ 1998 L 178, p. 45, hereinafter 'the contested decision'), the Commission decided that the abovementioned and certain other tariff information were to be revoked because they were incompatible with the general rules for the interpretation of the Combined Nomenclature, laid down in Annex I to Regulation No 2658/87.

12 The French Directorate-General of Customs and Excise issued binding tariff information revoking and replacing the abovementioned information and classifying the hardware in question under heading 8517 50 90.

Procedure and forms of order sought by the parties

13 By application lodged at the Registry of the Court of First Instance on 20 August 1998, Hewlett Packard France brought an action (T-133/98) for the annulment of the contested decision in so far as it requires the revocation of Binding Tariff Information FR 12030199700151 concerning the device HP JetDirect EX Plus.

14 By application lodged at the Registry of the Court of First Instance on the same day, Hewlett Packard Europe brought an action (T-134/98) for the annulment of the contested decision in so far as it requires the revocation of Binding Tariff Information FR 12030199702134 concerning the switching hubs HP J3200A, J3202A and J3204A, FR 12030199702135 concerning the devices HP J3125A and HP J3126A and FR 12030199701394 concerning the card HP J3210A.

15 By orders of the President of the Fifth Chamber of the Court of First Instance of 11 June 1999, the proceedings in Cases T-133/98 *Hewlett Packard France* v *Commission* and T-134/98 *Hewlett Packard Europe* v *Commission* were stayed pending delivery of the judgment of the Court of Justice either in Case C-463/98 *Cabletron Systems* v *The Revenue Commissioners* or in Case C-339/98 *Peacock* v *Hauptzollamt Paderborn.*

16 On 19 October 2000, the Court of Justice delivered its judgment in *Peacock* (C-339/98 [2000] ECR I-8947).

17 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided, first, as a measure of organisation of procedure provided for in Article 64 of the Rules of Procedure of the Court of First Instance, to invite the parties to inform it of their positions on the conclusions to be drawn from the *Peacock* judgment for the present cases and, second, to open the oral procedure.

18 By order of the President of the Fifth Chamber of 13 November 2000, after hearing the parties, Cases T-133/98 and T-134/98 were joined for the purposes of the oral procedure and judgment on account of the connection between them, pursuant to Article 50 of the Rules of Procedure.

19 On 27 and 28 November 2000 respectively, the applicants and the Commission lodged their observations on the conclusions to be drawn from the *Peacock* judgment for the present cases.

20 The parties were heard and gave replies to the Court's questions at the hearing on 5 December 2000.

21 The applicants claim that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

22 The Commission contends that the Court should:

— dismiss the application as unfounded;

— order the applicants to pay the costs.

Law

23 The applicants put forward a single plea in law based on misapplication of the Combined Nomenclature laid down in Annex I to Regulation No 2658/87, as amended.

24 First, as the Court has repeatedly held, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff and in the notes to the sections or chapters (see, in particular, Case C-11/93 *Siemens Nixdorf* v *Hauptzollamt Augsburg* [1994] ECR I-1945, paragraph 11, Case C-382/95 *Techex* v *Hauptzollamt München* [1997] ECR I-7363, paragraph 11, and *Peacock*, paragraph 9).

25 Both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the Nomenclature of the Customs Cooperation Council are important means of ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation (see *Siemens Nixdorf*, cited above, paragraph 12, *Techex*, cited above, paragraph 12, and *Peacock*, paragraph 10).

26 In this case, the parties agree on the description of the products in question.

27 The device HP JetDirect EX Plus takes the form of a separate unit in which an electronic card is inserted. It is designed to be connected between the network and one or more printers. It enables several PCs in a local network to have access to and control of that printer or those printers. Thus, the HP JetDirect EX Plus governs the data transmitted from the PCs via the network, determines which parts of the data are intended for the printers to which it is connected, converts that data according to the printer protocols and transmits it to the appropriate

printers. Reverse communication can also take place since the printers are capable of sending data and transmitting it via that device to the computers connected to the network.

28 The products HP J3125A and HP J3126A are switches designed to reduce network saturation or problems of pass bands in a local area network. They have 16 ports for connection between the PCs and the input or output devices such as printers or other computer devices.

29 The switching hubs HP J3200A, J3202A and J3204A are devices having the function of switches in a local area network. A hub is a common point of connection for the hardware in a network. Hubs are currently used to connect together the sections of a local area network. They have several ports, which are input and output sockets for hardware connected to the local area network. When data arrives at a port, it is copied to the other ports in such a way that all the sections of the local area network can use all the data. A switching hub is a particular type of hub which transmits data to the appropriate port on the basis of the address of that data. These hardware components thus improve the performance of the local area network with port switching and segmentation.

30 The HP J3210A is an electronic card designed for hub units and other switches. It is a communication controller which provides the switch with additional functionalities, allowing the user greater control over the local area network environment. This hardware component enables switches to be configured in several ways.

31 The parties are also in agreement on the fact that the products described above meet the three conditions relating to 'units', laid down in Note 5(B) to Chapter 84 of the Combined Nomenclature, namely, to be solely or principally used in an automatic data-processing system, to be connectable to the central processing

unit either directly or through one or more other units, and to be able to accept or deliver data in a form (codes or signals) which can be used by the system.

32 According to that note, a unit meeting all of the abovementioned conditions is to be regarded as being part of a complete system and therefore, pursuant to Note 5(C), to be classified under heading 8471, '[s]ubject to paragraph (E)'.

33 Under Note 5(E), '[m]achines 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'.

34 The parties are not in agreement on the interpretation of Note 5(E) as regards the products in question.

35 According to the Commission, the products in question perform a specific function other than data processing, namely, that of transmitting data in a network where the components are connected together by cable. That specific function of data transmission should be regarded as a telecommunication function, so that the products in question should be classified under heading 8517. The fact that some of the products also perform minor or intermediate data-processing functions does not make that type of function the main function. They should therefore be excluded from heading 8471.

36 The applicants claim that the products in question do not perform a specific function within the meaning of Note 5(E) and should therefore be classified under heading 8471. They take the view that the function of those products is data processing and not telecommunication.

37 The question which arises is therefore whether the products in question perform a specific function within the meaning of Note 5(E) and, consequently, whether their classification under heading 8471 was incorrect.

38 Since none of the products in question is a 'machine incorporating an automatic data-processing machine' within the meaning of Note 5(E), it is necessary to consider whether they are none the less machines working in conjunction with that type of machine and performing a specific function. Those conditions must both be satisfied.

39 The expression 'machine working in conjunction with an automatic data-processing machine' implies that the first machine is intended to perform a specific function, and that it is able to do so, but that the fact that it is connected to an automatic data-processing machine offers a certain advantage. Indeed, it is clear from Note 5(E) that the type of machine which is 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 automatic data-processing machine (Opinion of Advocate General Jacobs in *Peacock* [2000] ECR I-8947, I-8949, points 74 and 75).

40 In this respect, the Court held in *Peacock* that machines which are designed solely for automatic data-processing machines, which are directly connected to the latter and of which the function is to supply and accept data in a form which

those machines can use cannot be regarded as performing a 'specific function'. Such machines are comparable with any other medium whereby an automatic data-processing machine accepts or delivers data in the sense that they have no function which they would be capable of performing without the assistance of such a machine (*Peacock*, paragraphs 16 and 17).

41 Here, in view of the objective characteristics of the products which are the subject-matter of the present cases, as they are described at paragraphs 27 to 30 above, it is clear that none of those products is capable of performing a function independently either of an automatic data-processing machine or of the complete system. The transmission of data within such a system cannot be regarded as a specific function. They are therefore comparable with any other medium whereby an automatic data-processing machine accepts or delivers data in the sense that they have no function which they would be capable of performing without the assistance of such a machine. Consequently, they have no specific function within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature.

42 The Commission is therefore wrong to maintain that the transmission of data within a data-processing system should be regarded as a telecommunication function. That assessment is based not on the objective characteristics and properties of the products in question but on the functions which they allow an automatic information processing machine, as a whole, to perform.

43 Indeed, the transmission of data within a data-processing system, as defined by Note 5(B), is a vital component for the functioning of that system since data processing consists in utilising data of any kind. Thus, whenever there are one or more automatic data-processing machines and one or more units, it is necessary

for them to communicate in order for the complete system itself to be able to function. It is for that reason that any product which meets all three of the conditions laid down by Note 5(B) necessarily transmits data. To exclude from heading 8471 any product which transmits data within a data-processing system would render Note 5(B) purposeless.

44 Finally, the Commission's argument that the effect of the amendment to the second part of the description of heading 8517 made by Commission Regulation (EC) No 2448/95 of 10 October 1995 amending Annex I to Council Regulation (EEC) No 2658/87 (OJ 1995 L 259, p. 1), which has been in force since 1 January 1996, and by which the phrase 'including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems' was inserted, is that the products in question must be classified directly under that heading, without it being necessary to ascertain whether they perform a specific function, must be rejected.

45 Apart from the fact that, as maintained by the applicants and not denied by the Commission, the amendment referred to was made only upon the proposal of the Swiss Confederation, in order to include a public digital data device in heading 8517, it is important to note that, since the products in question work in conjunction with an automatic data-processing machine, it is necessary to ascertain whether they perform a specific function within the meaning of Note 5(E) before deciding whether they are to be classified under heading 8517. However, as has been observed above, such products do not have a specific function.

46 Consequently, it must be held that Note 5(E) to Chapter 84 of the Combined Nomenclature does not preclude the classification of the products in question under heading 8471. Therefore, since, as the Commission itself acknowledges, the products in question meet the conditions relating to 'units' laid down in Note 5(B) to Chapter 84 of the Combined Nomenclature, they should have been

classified under heading 8471 of that nomenclature as 'units' of automatic data-processing machines.

47 It must therefore be concluded, first, that the HP JetDirect Ex Plus, the HP J3125A and HP J3126A, and the switching hubs HP J3200A, J3202A and J3204A should have been classified under heading 8471 80 10 and, second, that the card HP J3210A should have been classified under heading 8471 80 90. That being the case, the Commission made an error of assessment of the facts inasmuch as it concluded in the contested decision that the tariff information for the abovementioned hardware must be revoked.

48 It follows from all the foregoing that the plea put forward in the two applications must be declared well founded. The contested decision must therefore be annulled in so far as it requires the revocation of Binding Tariff Information FR 12030199700151, FR 12030199701394, FR 12030199702134 and FR 12030199702135.

Costs

49 Pursuant to Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendant has failed in its submissions, it must be ordered to pay its own costs and those of the applicants, in accordance with the applicants' pleadings.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Annuls Commission Decision 98/406/EC of 16 June 1998 concerning the validity of certain binding tariff information in so far as it requires the revocation of Binding Tariff Information FR 12030199700151, FR 12030199701394, FR 12030199702134 and FR 12030199702135;

2. Orders the Commission to bear its own costs and to pay those of the applicants.

Lindh García-Valdecasas Cooke

Delivered in open court in Luxembourg on 13 February 2001.

H. Jung
Registrar

P. Lindh
President